

Conflict of Interest

Issued: June 10, 2022

POLICIES

Responsible Official: Vice President for Legal Affairs and
Organizational Strategy

Responsible Office: Office of Legal Affairs

Policy Statement

It is the policy of Austin Peay State University that employees should avoid external commitments which significantly interfere with the employee's duties to the Board of Trustees and the University. Employees should avoid situations where the self-interests of the Trustees or employee diverge from the best interests of the Board and the University. Board members should avoid external commitments that interfere with their fiduciary obligations to Austin Peay.

Purpose

The purpose of this policy is to define the general principles which should guide the actions of members of the Board and of employees; offer illustrations of activities which potentially constitute a conflict of interest; make Board members and employees aware of disclosure requirements related to conflicts of interest; describe the process by which those disclosures shall be evaluated and decisions rendered; and describe the appeals process regarding such decisions.

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Definitions

Conflict of interest	Occurs when the personal interests, financial or otherwise, of a person who owes a duty to the Austin Peay State University Board of Trustees and its constituent University (Trustees and all employees) actually or potentially diverge with the person's professional obligations to and the best interests of the Board and the University.
Conflict of commitment	Occurs when the personal or other non-work related activities of an employee of the Board of Trustee and its constituent University impair the ability of that employee to meet their commitments of time and energy to the Board of Trustee and the University.
Family member	Includes the spouse and children (both dependent and non-dependent) of a person covered by this policy.
Immediate family	For purposes of Section VI.A.1.b.(2)(c), means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

Procedures

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| I. Objectives of the Conflicts of Interest Policy | A. Members of the APSU Board of Trustees and all employees of APSU all serve the interests of the State of Tennessee and its citizens, and have a duty to avoid activities and situations which, either actually or potentially, put personal interests |
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II. Pertinent Federal Regulations, State Laws, and APSU Policies

before the professional obligations which they owe to the State and its citizens.

- A. The following lists are intended to indicate sources of information which may provide additional guidance regarding conflict of interest situations.
- B. This policy is intended to be consistent with all pertinent Federal and State laws, regulations, and policies, as well as with other APSU policies.
- C. To the extent that conflicts arise, Federal and State laws, regulations, and policies shall take precedence.
- D. The lists are not intended to be exhaustive and additional laws, regulations, and policies may be implicated in a given conflict of interest situation.
 1. Federal Regulations
 - a. The National Science Foundation (NSF) and the Department of Health and Human Services (HHS), acting through the Public Health Service (PHS) (which includes the National Institutes of Health (NIH)), have promulgated policies and regulations regarding conflicts of interest and disclosure of financial interests by investigators who receive funding from these Federal agencies.
 - b. The NSF policy regarding researcher conflicts of interest is contained in Section 510 of NSF Publication 95-26, the Grant Policy Manual. The PHS regulations, upon which the NSF policy is modeled, are contained in the Code of Federal Regulations at 42 CFR 50.601 et seq. and 45 CFR 94.1 et seq.
 - c. Other Federal agencies (e.g., the Veterans' Administration or the Food and Drug Administration) may require as a condition to a contract, disclosure and management of conflicts of interest (see, for example, Veterans' Administration Acquisition Regulation 852.209-70).
 2. Tennessee State Law
 - a. Various statutes contained in the Tennessee Code Annotated (T.C.A.) are pertinent to the issue of conflicts of interest within the Board of Trustees and the University, including:
 1. T.C.A. § 8-50-501, Disclosure statements of conflict of interests by certain public officials

2. T.C.A. § 12-2-208, Purchase by officer unlawful – penalty for violation
 3. T.C.A. § 12-2-415, State surplus property disposition regulation
 4. T.C.A. § 12-2-416, Violation of § 12-2-415
 5. T.C.A. § 12-2-417, State employee violation – punishment
 6. T.C.A. § 12-4-106, Prohibition against receiving rebates, gifts, money or anything of value -- Conflict of interest
 7. T.C.A. § 12-4-101, Personal interest of officers prohibited
 8. T.C.A. § 12-4-102, Penalty for unlawful interest
 9. T.C.A. § 12-4-103, Bidding by state employees prohibited
 10. T.C.A. § 12-4-104, Penalty for unlawful transactions
 11. T.C.A. § 49-8-203(d), Powers and duties (of the Board of Trustees)
- b. It is significant to note that violation of some of these statutes may lead to criminal penalties (e.g., violation of T.C.A. § 12-4-103 is a Class E felony).
3. APSU Policies
- a. The following APSU policies deal with issues which implicate conflict of interest situations:
 1. APSU Policy 4:014, Purchasing Policy
 2. APSU Policy 4:019, Disposal of Surplus Personal Property
 3. APSU Policy 5:014, Outside Employment and Extra Compensation
 4. APSU Policy 2:047, Intellectual Property, Patents, and Copyrights
 5. APSU Policy 5:035, Nepotism

III. Applicability

- A. This policy shall apply to all persons serving as members of the Board of Trustees and to all persons employed (either as full-time, part-time or temporary employees) by the University.

IV. General Principles

- A. It is the policy of Austin Peay State University that employees should avoid external commitments which significantly interfere with the employee's duties to the Board of Trustees and the University (conflicts of commitment). See also APSU Policy 5:014, Outside Employment and Extra Compensation. Disclosures of

conflicts of commitment shall be made as required under Policy 5:014 and evaluated as indicated in that policy.

- B. It is the further policy of Austin Peay State University that both the Trustees and employees should avoid situations where the self-interests of the Trustees or employees diverge from the best interests of the University (conflict of interest).
- C. The mere existence of either a potential or actual conflict of interest does not mean that such conflict must necessarily be eliminated.
 - 1. Where the potential detriment to the Board and the University is at most minor and inconsequential, and the conflict does not indicate violation of Federal or State law, regulation, or policy, those persons charged with evaluating disclosures should allow the activity to proceed without interference.
 - 2. For those situations which do not implicate Federal or State law, regulation or policy, the standard by which it should be determined whether a conflict of interest should be managed, reduced, or eliminated is whether that conflict would appear to a reasonable person to call into question the integrity or judgment of the affected Trustee or employee.

V. Situations and Activities Creating a Conflict of Interest

- A. In the following situations and activities, there is at least the appearance, and possibly the actuality, of an employee/Trustee allowing his or her personal interests, and not the best interests of the Board of Trustees and its constituent University, to affect that employee's judgments. This list is illustrative, and not exhaustive.
 - 1. Self-dealing
 - a. Situations in which a Trustee or employee can appear to influence or actually influence a University-related decision from which that person or a member of that person's family stands to realize a personal financial benefit is self-dealing, and a conflict of interest.
 - b. Examples of self-dealing activities are numerous, and include those listed below.
 - 1. Purchase of State-owned property by an employee absent fair and open bidding.
 - 1. It is unlawful for any state employee to purchase surplus state-owned property absent a fair and open bidding process (see T.C.A. § 12-2-208 and T.C.A. § 12-2-417).

2. Such purchases are also prohibited under APSU Policy 4:019.
2. Institutional purchases from businesses in which an employee or family member has a financial interest.
 1. T.C.A. § 12-4-103 declares that it is unlawful for any state official or employee to “bid on, sell, or offer for sale, any merchandise, equipment or material, or similar commodity, to the state of Tennessee” or “to have any interest in the selling of the same to the state” during that person’s term of employment and for six months thereafter.
 2. Disclosure of any such transaction by an employee or member of the employee’s family or by a business in which an employee or member of the employee’s family has any significant (more than 4%) ownership interest or for which an employee or employee family member serves as an officer is required by this policy.
 3. T.C.A. § 12-4-106(b) declares that it is a conflict of interest for any person or any company with whom such person is an officer, a director, or an equity owner of greater than 1% interest to bid on any public contract for products or services for a governmental entity if such person or "immediate family" of such person is a member of a board or commission having responsibility for letting or approving such contract.
 4. For purposes of this section only, "immediate family" means spouse, dependent children or stepchildren, or relatives related by blood or marriage.
3. Use of Educational Materials from Which a Faculty Member Derives Financial Benefit in That faculty Member’s Teaching Activities.
 1. Any faculty member who wishes to use in his or her teaching activities educational materials (e.g. a textbook) which he or she has authored, or in which he or she otherwise stands to benefit financially from such use, a conflict of interest disclosure shall be made per Section VII of this policy.

2. Whether the use of such materials shall be permitted shall be evaluated either under the terms of Institutional policy, or in the absence of such policy, by the Review Committee established under Section XI of this policy.
3. Such evaluation shall include consideration of suitable substitute materials and ensure that the needs of students are best served by use of the materials in which the faculty member has an interest.
4. Acceptance of Gifts, Gratuities, or Favors
 1. Gifts. No employee shall knowingly solicit or accept, directly, or indirectly, on behalf of himself or herself or any member of the employee's household, for personal use or consumption any gift, including but not limited to any gratuity, service, favor, food, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value, from any person or entity that:
 1. Has, or is seeking to obtain, contractual or other business or financial relations with the institution in which the individual is employed; or
 2. Has interests that may be substantially affected by the performance or nonperformance of the employee.
5. Exceptions
 1. The prohibition on accepting gifts in Section (4)(a) above, does not apply to:
 1. A gift given by a member of the employee's immediate family, or by an individual, if the gift is given for a non-business purpose and is motivated by a close personal friendship and not by the position of the employee;
 2. Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.
 3. Sample merchandise, promotional items, and appreciation tokens, if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business, including items distributed at tradeshow and

- professional meetings where vendors display and promote their services and products;
4. Food, refreshments, foodstuffs, entertainment, or beverages provided as part of a meal or other event, including tradeshow and professional meetings, if the value of such items does not exceed fifty dollars (\$50.00) per occasion; provided further, that the value of a gift made pursuant to this subsection may not be reduced below the monetary limit by dividing the cost of the gift among two or more persons or entities identified in Section VI.A.1.b.(4).
 5. There may be circumstances where refusal or reimbursement of a gift (such as a lunch or dinner) may be awkward and contrary to the larger interests of the institution. In such circumstances, the employee is to use his or her best judgment, and disclose the gift including a description, estimated value, the person or entity providing the gift, and any explanation necessary within fourteen (14) days to their immediate supervisor;
 6. Food, refreshments, meals, foodstuffs, entertainment, beverages or intrastate travel expenses that are provided in connection with an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which has regular meetings;
 7. Participation in institution or foundation fundraising and public relations activities, i.e. golf tournaments and banquets, where persons or entities identified in Section VI.A.1.b.(4) provide sponsorships; and
 8. Loans from established financial institutions made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any person described in Section VI.A.1.b.(4)
2. Inappropriate use of students or support staff

- a. Employees shall ensure that the activities of students or support staff are not exploited for the benefit of any external activity of the faculty member.
 - b. Prior to assigning any such non-Institutionally related task (which is more than incidental or de minimus in nature) to a student or member of the support staff, an employee shall disclose such proposed activities and obtain approval.
3. Inappropriate use of State owned resources
- a. Employees may not make significant use of State owned facilities, equipment, materials or other resources, not otherwise available to the public, in the course of activities which are not related to the Institution and which are intended for personal benefit, without prior disclosure and approval.
4. Failure to disclose intellectual property
- a. APSU Policy 2:047 governs the rights and responsibilities which persons affiliated with the Board of Trustees and the University have regarding intellectual property developed during the term of their affiliation with the University.
 - b. Among the responsibilities enumerated in the policy is that of disclosure of inventions and those copyrightable works which may be reasonably expected to have commercial value which they have jointly or solely developed with the Board of Trustees and the University.

VI. General Disclosure Requirements

- A. Persons to whom this policy applies who believe that a conflict of interest may exist either personally or with respect to another person covered by this policy shall make a written disclosure of the facts and circumstances surrounding the situation.
- B. No particular format is required, but the disclosure should adequately describe the pertinent facts and circumstances.
- C. For members of the Board, disclosure shall be made to the Secretary of the Board.
- D. A University employee who self-discloses a potential conflict of interest or a written report of a potential conflict of interest is presented to the Conflict of Interest Committee.
- E. Disclosures made by a President shall be submitted to the Director of Internal Audit.

- F. Potential conflicts of interest shall be disclosed in a timely manner, and whenever possible, prior to engaging in a potential conflict of interest.

VII. Special Disclosure Requirements for Instructors of Record and/or Teaching Assistants

Instructors of record and/or teaching assistants who have a student relative (refer to the definitions of family members/immediate family on page 2 of the conflict of interest policy) in their own class need to immediately disclose that information to their direct supervisor and to the conflict of interest committee chair. In lower level courses that have multiple sections taught by several instructors and/or teaching assistants, a student relative must enroll in a section that is not taught by a family member. An exception will be granted if it is necessary for a student relative to enroll in a family member's course due to the specific program requirements. In such a case, the following disclosure steps should be followed:

1. The instructor of record shall immediately disclose to their direct supervisor and the conflict of interest committee chair that a student relative is enrolled in their class. The instructor of record and/or teaching assistants shall provide a specific grading/assessment plan approved by their direct supervisor and the conflict of interest committee to ensure that the student relative is graded fairly.

a. The options for grading include the following:

- i. If there are other subject experts in the department or university, the instructor of record and/or teaching assistant shall have another faculty member with similar expertise grade the exams and assignments using course rubrics.

OR

- ii. The instructor of record and/or teaching assistant shall grade the exams and assignments. Another faculty member within the department or university shall review the grading using course rubrics. The faculty member reviewing the grading should be provided with all relevant course notes and materials to assist in grade review. Any conflicts between the instructor of record and/or teaching assistant and the faculty reviewer will be resolved by the chair or their direct supervisor if the chair is the instructor of record and/or teaching assistant for the course.

2. The instructor of record and/or teaching assistant shall submit the supervisor's approval email, explanation of the relationship, and

specific grading/assessment plan to the university conflict of interest committee chair within 10 business days of identifying the conflict of interest. The conflict of interest committee chair shares the information with the conflict of interest committee. The conflict of interest committee will make the final approval on whether the conflict of interest has been resolved.

VIII. Special Disclosure Requirements for Researchers Applying For or Receiving NSF or PHS Funding

- A. Under the policies and regulations indicated under Section 2.1 herein, investigators seeking funding from either the National Science Foundation or the Public Health Service are required to disclose to the investigator's employer all significant financial interests of the investigator;
1. That would reasonably appear to be affected by the research or educational activities funded or proposed for funding by the NSF or PHS; or
 2. In entities whose financial interests would reasonably appear to be affected by such activities.
 - a. Such disclosures must be submitted prior to the time the proposal is submitted to the Federal agency.
 - b. Further, such disclosures must be updated during the period of the award; either annually or as new reportable financial interests arise.
 - c. The University is responsible for eliminating or managing such conflicts prior to receipt of the award.
 - d. To facilitate such disclosures, the accompanying disclosure form is available.
 3. The University is responsible for determining if a grant, services, or other contract with Federal agencies other than the Public Health Service or the National Science Foundation requires disclosure and / or management of conflicts of interest, and for ensuring that any such requirements are met.
 4. Disclosure of financial interests made pursuant to this Section ~~IX~~^{VIII} notwithstanding, such disclosure does not eliminate the responsibility for making disclosures under Section ~~VIII~~^{VII}, when specific conflict of interest situations arise.

IX. Special Disclosure Requirements for Trustees and Certain APSU Employees

- A. Members of the Board of Trustees, the President, coaches, assistant coaches and employees of athletic departments who are exempt from the provisions of the Fair Labor Standards Act are required to file a financial disclosure form within one month of their initial appointment and annually thereafter.

B. Disclosure of financial interests made pursuant to this Section ~~IX~~ notwithstanding, such disclosure does not eliminate the responsibility for making disclosures under Section VIII, when specific conflict of interest situations arise

1. Members of the Board of Trustees shall make their disclosure using a form as indicated and submitted to the Secretary of the Board annually.
2. The President is required by Tenn. Code Ann. § 8-50-501(a)(15) to file an online Statement of Disclosure of Interests Form with the Tennessee Ethics Commission at <https://apps.tn.gov/conflict/>, Form ss-8005 (State Officials) in January. For the Presidents this Statement of Disclosure will meet the requirements of this Policy.
3. Coaches, assistant coaches, exempt employees of the athletic department and other University personnel required to complete a disclosure form shall also use the Tennessee Ethics Commission Form ss-8005, Statement of Disclosure of Interest Form and accompanying instructions in January. The form shall be submitted to the Human Resource Office or other person designated by the President.

X. Review of Disclosures

- A. Disclosures made under Section VIII of this policy by a member of the Board of Trustee. A member of the Board making a disclosure shall not be entitled to vote regarding disposition of the disclosure.
- B. A University employee who self-discloses a potential conflict of interest or a written report of a potential conflict of interest is presented to the Conflict of Interest Committee.
 1. The Chair of the Conflict of Interest report submits the disclosure report to the Conflict of Interest Committee.
 2. The Conflict of Interest Committee reviews details of possible Conflict of Interest.
 3. The Conflict of Interest Committee evaluates the proposed Conflict of Interest and seeks legal input from the APSU Office of Legal Affairs when indicated in reviewing of the report.
 4. The Conflict of Interest Committee renders a decision regarding the issue around the disclosure, determining if there is a conflict of interest and how it should be managed (restrictions to be placed on the individual to manage the conflict or that the person must eliminate the conflict).
 5. The Conflict of Interest Committee notifies in writing the person of the outcome, and employee is given an opportunity to appear before the committee.
 6. The disclosures and Committee decisions are forwarded to the President.

XI. Sanctions

A. Failure to observe restrictions imposed as a result of review of a conflict of interest disclosure or a knowing failure to disclose a conflict of interest may result in disciplinary proceedings under University policy. A Board member who knowingly fails to disclose a conflict of interest shall be subject to removal.

XII. Appeals

- A. Decisions made by the Board of Trustees may not be appealed.
- B. Decisions made by the University Review Committee may be appealed to the President. Decisions of the President shall be final and binding.

Links

APSU Conflict of Interest Committee <https://www.apsu.edu/governance/committees/conflictofinterest.php>

Revision Dates

APSU Policy 1:001 – Rev.: June 10, 2022
APSU Policy 1:001 – Rev.: September 18, 2020
APSU Policy 1:001 (previously 5:056) – Rev.: March 30, 2017
APSU Policy 1:001 – Rev.: April 11, 2012
APSU Policy 1:001 – Rev.: September 2, 2008
APSU Policy 1:001 – Rev.: January 13, 2003
APSU Policy 1:001 – Issued: February 10, 1999

Subject Areas:

Academic	Finance	General	Human Resources	Information Technology	Student Affairs
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Approved

President: signature on file
