

Office/Contact: Division of Research and Economic Development/Office of Human Resources

Source: SDBOR Policies 4:19, 4:32, 4:32:1, 4:34, 4:35; SDCL 5-18A-17 to 5-18A-17.6

Link: <https://sdbor.edu/policy/Pages/Policy-Manual.aspx>

https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=5-18A

Associated Forms: [SDBOR Conflicts of Interest Short Form](#); [SDSU Private Practice, Consulting and Outside Activity Form](#)

SOUTH DAKOTA STATE UNIVERSITY Policy and Procedure Manual

SUBJECT: Conflicts of Interest Reporting and Approval

NUMBER: 4:9

1. Purpose

This policy and its procedures set forth the University protocols for conflicts of interest disclosures and approval to ensure compliance with SDBOR policies and applicable state and federal law.

2. Policy

SDBOR Policies 4:19, 4:32, 4:32:1, 4:34, and 4:35 require certain conflicts of interest and commitment disclosures and prior approval of specified private practice, private consulting, employment with entities outside of the University, and other related activity. Federal regulations also govern the disclosure and management of conflicts of interest. Federal provisions applicable to objectivity in research and financial conflicts of interest require certain disclosures. **University employees are required to review and comply with all SDBOR provisions which control this policy and its procedures, this implementing policy and its procedures, and controlling laws, as applicable.**

a. Conflicts of Interest

i. Conflicts of Commitment

1. Full-time professional employees, whether faculty, extension personnel, or administrators and career service staff who make recommendations for purchasing shall devote their best professional efforts to the University. Best professional efforts means that employees shall apply themselves to the proper work entrusted to them to achieve the employment goals in the most effective and efficient manner.
2. Professional employees should avoid entering into outside endeavors that may reasonably be thought to influence the decisions that they make in their capacity, loyalty, and diligence as University employees.
3. Certain simultaneous outside employment, consulting, and activity, as defined by SDBOR policies and herein, with another entity is considered

a conflict of interest and commitment and will not be approved by the University (*e.g.* providing instructional services for non-SDBOR institutions will not be approved).

ii. Conflicts of Financial Interest

1. In addition to Investigator Financial and Public Health Service Investigator Financial Disclosures required by SDBOR Policies 4:32 and 4:32:1, financial interests are significant and reasonably thought to influence, whether directly or indirectly, University business, research or other decisions that the professional employee makes on behalf of the SDBOR and the University when an outside entity:
 - a. employs the professional employee, or an immediate family member; or
 - b. retains such a person as a consultant, or in any other compensated capacity; or
 - c. when the professional employee or immediate family members, as defined by SDBOR policy, either individually or in aggregate own equity in the outside entity in such amounts as would be reportable under federal regulations governing investigator conflicts of interest.
2. University employees will abide in full with the SDBOR policy provisions applicable to use of facilities, equipment and supplies; restrictions on disclosure of affiliation with the University in private activities; limits on gifts, loans, gratuities, rewards, or promises of future employment that appear to influence; acceptance of honoraria; hiring junior colleagues, subordinates, or students for outside activities; prohibitions on profiting from the sale of books or apparatus authored or invented to South Dakota students; and other provisions as adopted and amended.

iii. Conflicts of Interest Reporting

1. In addition to Investigator Financial Disclosures required by federal law and SDBOR Policies 4:32 and 4:32:1, professional employees are required to annually certify compliance with SDBOR Policy 4:35, annually disclose conflicts of interest and commitment, and have an ongoing continuing duty to disclose apparent and real conflicts of interest and commitment that arise throughout employment within thirty (30) days, as defined herein and by SDBOR provisions.
2. Disclosures are required to include outside employments, occupations, or endeavors for profit of self or immediate family members that may reasonably be thought to influence, either directly or indirectly, institutional business, research or other decisions of related matters.
3. If circumstances suggest the appearance of a conflict of interest or commitment, the University President, or designee, may inquire into the activities.

4. As required by SDBOR policy, employees will cooperate fully and provide information as requested.
 5. Records will be maintained confidentially, as required by SDBOR policy, in the employee's personnel file. Such records will not be disclosed during promotion, tenure, or continuing employment reviews.
- iv. Where actual or apparent conflicts of interest and commitment arise, the conflict must be managed or the activity curtailed as set forth in SDBOR policies and herein.
- b. Private Practice, Private Consulting, Outside Employment for which compensation is received and Conflict of Commitment
 - i. The primary responsibility of full-time employees of the University is to the University. Full-time professional employees may not be simultaneously employed full-time by another employer.
 - ii. Private practice, private consulting, and outside employment, as allowed and limited by SDBOR provisions, including but not limited to SDBOR Policies 4:19, 4:32, 4:32:1, and 4:35 and SDCL Chapter 3-8, must be approved by the University President, or designee, prior to the start of the outside activity.
 1. Faculty members may engage in private practice, private consulting, and outside employment subject to the referenced provisions.
 2. Full-time exempt staff, classified staff, and Extension personnel may engage in private consulting as allowed by the referenced provisions and in accordance with this policy.
 3. Absent prior consent by the University President, or designee, professional employees shall not engage in contracts to provide services where the services are also made available by SDBOR institutions and the professional employee is expected to provide such services as part of their regular assignments. Prior approval does not apply to private activities undertaken by professional employees with nine (9), ten (10), or eleven (11) month contracts outside of the dates of SDBOR service, unless otherwise required by this policy and its incorporated provisions. However, the University requires disclosure of these activities and prior approval as required herein.
 4. Extension personnel whose salaries are funded in whole or part through the Cooperative Extension Service may not enter into consulting contracts to be performed within their assigned responsibilities. Any lawful exception to this requirement must be approved in accordance with University policies and procedures.
 - a. No consulting considered in accordance with those provisions shall be approved if the activity creates the appearance the individual is using their position for private gain, using public funds to lobby for or against legislation or appropriations (Title 18 U.S. Code, sec. 1913), giving preferential treatment to any

individual or group, impeding governmental efficiency or economy, making a decision outside of official channels, or effecting adversely the confidences of the public and the integrity of Extension.

- b. Consulting approved in accordance with those provisions shall also occur on the individual's own time, not impede on employment and Cooperative Extension Service's responsibilities, not be identified with an Extension project, and shall not use Extension resources.
- c. Except for employees testifying in other capacities on unprivileged matters within their personal knowledge, faculty, exempt staff, classified staff, and Extension personnel may not serve as an expert witness on behalf of a party in proceedings against the SDBOR or the University, where the matters involve deliberative or evaluative processes of the institution and the witness has participated in the University's process, unless specifically approved in writing by the University President. Extension personnel may not contract to serve as expert witnesses as to matters related to the expertise used in their employment.

c. Investigator Financial Disclosure

- i. In conformity with SDBOR Policy 4:32, investigators and related University staff who are responsible for projects funded or proposed for funding by federal agencies will disclose significant financial interests prior to proposal submission and update disclosures during the period of pendency and award.
 - 1. Investigators who fail to disclose significant financial interests as defined in SDBOR Policy 4:32 or who fail to comply with duly approved conditions or restrictions shall be subject to discipline, up to and including termination.
 - 2. The University President or designee shall determine whether an actual or potential conflict of interest exists based on information provided in the disclosure and information and additions thereto.
 - 3. The University President is responsible for the determination of appropriate conditions or restrictions to counter actual or potential conflicts, and the University President, or designee, will inform federal agencies of investigator financial interests if it is unable to satisfactorily manage an actual or potential conflict of interest.
- ii. Investigators and other key personnel must disclose significant financial interests in conformity with SDBOR Policy 4:32:1 to the University Research Compliance Coordinator, or successor, for Public Health Service funded research prior to submission for funding and update disclosures annually.
 - 1. Investigators will complete required training prior to engaging in research and attend additional training every four (4) years and as policies are updated.

2. The University Research Compliance Coordinator, or successor, will review disclosures for conflicts of interest as defined by SDBOR Policy 4:32:1 and, when required, implement conditions or restrictions to manage the conflicts of interest, with which the employee will cooperate fully.
3. Finalized conflicts management plans will be signed by the investigator and filed with the University Research Compliance Coordinator, or successor, prior to authorization to participate in Public Health Service funded research.
4. The University will make publicly available information regarding these financial conflicts of interest in conformity with SDBOR Policy 4:32:1.

d. Unlawful Self-Dealing by State Officers and Employees

- i. All employees are subject to the prohibitions imposed upon state employees in the South Dakota Codified Laws, including SDCL 5-18A-17 to 5-18A-17.6. In general, these statutes prohibit state employees from deriving a direct benefit from certain state contracts, while employed or for a period of one (1) year thereafter. The prohibition applies to contracts, other than employment contracts, with any state agency, and it applies whenever an employee:
 1. Approves, awards, or administers;
 2. Recommends for approval or award; or
 3. Supervises a person who approves, awards, or administers the contract.
- ii. A state employee derives a direct benefit from a contract when the employee, the employee's spouse, or other persons with whom the state officer or employee lives and commingles assets:
 1. Has more than a five percent (5%) ownership or other interest in an entity that is a party to the contract;
 2. Derives income, compensation, or commission directly from the contract or from the entity that is a party to the contract;
 3. Acquires property under the contract; or
 4. Serves on the board of directors for a for-profit entity that derives income or commission directly from the contract or acquires property under the contract.
- iii. A state employee does not derive a direct benefit from a contract based solely on the value associated with the officer's or employee's investments or holdings, or the investments or holdings of other persons with whom the state employee lives and commingles assets.

- iv. An authorization may be granted in accordance with SDCL 5-18A-17.2, to allow employees to derive a direct benefit from a contract described herein by the University President, or designee, for authorizations for University employees. Authorizations for the University President must be approved by the Executive Director of the SDBOR. Every authorization granted pursuant to SDCL 5-18A-17.2 is a public record and must be filed with the commissioner of the Bureau of Human Resources.

- e. Conflicts of Interest in Intellectual Property
 - i. The avoidance or management of conflicts of interest related to creation, development, and transfer of intellectual property will be addressed in conformity with SDBOR Policy 4:34 and other related provisions.
 - ii. Prior approval by the Vice President for Research and Economic Development, successor, or designee is required of terms of an agreement with an external entity to fund research with regards to ownership of any resulting intellectual property. Absent such written approval, all rights to intellectual property will reside with the SDBOR.
 - iii. When an entity in which a University employee has a financial interest, as defined by SDBOR policies including 4:32, 4:32:1, or 4:35, seeks to fund research at the University with conditioned title to resulting intellectual property, any such agreement must be approved by the SDBOR Executive Director, or designee.

3. Procedures

- a. Conflicts of Interest
 - i. All professional employees shall certify compliance with SDBOR Policy 4:35 and the applicable sections of this policy annually at the time of contract, and on a continuing basis disclose within thirty (30) days of any real or perceived change in their conflicts of interest status.
 - ii. The Office of Human Resources, or successor unit, will distribute the *SDBOR Conflict of Interest Short Form*, and employees will submit the completed form with their annual contract.
 - iii. The employee's department head or unit supervisor and subsequently, the Office of Human Resources, or successor unit, will review the *SDBOR Conflicts of Interest Short Form* to determine whether there is a conflict that requires further information or seems it must be managed. The Assistant Vice President for Human Resources, or successor, will contact the University President for instances when it is surmised that a conflict may require additional information, management, or curtailment. The University President, or designee, will review the information, request additional information, and develop a management plan or direct curtailment in accordance with this policy and its procedures.

- iv. The Assistant Vice President for Human Resources, or successor, will execute *SDBOR Conflicts of Interest Short Forms* as the University President's designee if and when they are approved. Completed forms and instructions shall be maintained in the University employee's personnel file and shall be reviewed in conjunction with updated conflicts of interest submissions, requests for prior approval of private practice, private consulting, outside employment, and Investigator Disclosures.
- b. Prior Approval of Private Practice, Private Consulting, and Outside Employment and Related Conflicts Review
- i. Faculty, non-exempt, and civil service employees will submit requests for prior approval of private practice, private consultation, or outside employment on the designated form to their department head or unit supervisor.
 - ii. The Department Head or unit supervisor will: 1) review the request; 2) recommend approval or denial; and 3) forward the request to the appropriate Dean, Director, or Vice President for approval or denial.
 - iii. The Dean, Director, or Vice President will: 1) review the request; 2) approve or deny the request; and 3) forward the request to the applicable Vice President, or if there is no Vice President in the supervisory chain, to the Research Compliance Coordinator, or successor.
 - iv. The applicable Vice President will: 1) review the request; 2) approve or deny the request; and 3) forward the request to the Research Compliance Coordinator, or successor, for review in conjunction with other Conflicts of Interest form disclosures, other outside activities of the employee, and development of a conflicts management plan, if required.
 - v. The Research Compliance Coordinator, or successor, will forward the request and any required conflicts management plans to the Vice President for Research and Economic Development, or successor, who will: 1) review the request in conjunction with the recommendation of the Research Compliance Coordinator, or successor; 2) approve or deny the request, or deny approval of outside activities where conflicts cannot be mitigated; and 3) file completed documents with the Office of Human Resources personnel file.
 - vi. The Office of Human Resources, or successor unit, will monitor the conflicts, maintain appropriate personnel documentation, and notify the requesting employee of approval or denial.
 - vii. Upon approval of the outside activity, the employee must update their *SDBOR Conflicts of Interest Short Form* within thirty (30) days and abide by any agreed plans to manage conflicts of interest and commitment.
- c. Conflict Management Plans
- i. Should it be determined that a conflict or potential conflict exists, a management plan shall be created that includes:

1. The name and role of the employee on the project;
 2. A description of the external relationship(s) with which the employee has a potential or actual conflict;
 3. The specific nature of the conflict;
 4. A description of any University-controlled resources (e.g. grants, contracts, unrestricted gifts, intellectual property, facilities, equipment) that may be affected by the conflict;
 5. A description of other employees or students that may be affected by the conflict;
 6. Individual(s) who could serve as an unaffected third party to monitor the activities, if needed;
 7. A description of the documents that the third party would be required to review;
 8. A description of how the activity will be conducted to reduce the potential for unacceptable influence in the performance of the assigned duties with the University; and
 9. A schedule and proposal for monitoring the plan, including reviews by the Office of Human Resources, and for reporting updates or necessary changes to the plan.
- ii. Such plans will be developed through the guidance of the University Research Compliance Coordinator, or successor, and submitted for review and approval according to the process detailed for prior approval of private practice, private consulting, and outside employment or as required by the University President, or designee, in conformity with this policy and SDBOR Policy 4:35.
- iii. If the conflict is found to be unmanageable, or becomes unmanageable or otherwise unacceptable to the University, the employee may be directed to modify or curtail the outside activity as described in §3(e).
- d. Investigator Financial Disclosure
- i. Employees required to make Investigator Financial Disclosures or Public Health Service Investigator Financial Disclosures will submit disclosures to the Research Compliance Coordinator, or successor, for review and cooperate in conformity with SDBOR policies.
 - ii. Where the University President, or designee, believes there is a violation of or departure from these policies, they will provide written notice to the employee, meet with the employee within ten (10) working days to discuss the factual basis, and provide written notice of required actions within five (5) days of that meeting. Employees must comply with the directives given.
 - iii. Should any determination give rise to a grievance within the meaning of applicable policies, the employee may invoke their respective rights to challenge such determinations.

e. Outside Business Endeavors Curtailment

- i. The University President, or designee, may direct professional employees to curtail or to abandon outside business endeavors, or may, in their sole discretion, reassign the professional employees to duties that do not entail conflicts of interest, if professional employees have failed to observe limitations specified in this policy or have otherwise acted in a fashion not otherwise expressly addressed hereunder that compromises the interests that this policy seeks to protect.
 1. Where the University President, or designee, believes that a professional employee has violated or departed from the policies adopted herein, they shall:
 - a. Give the affected professional employee written notice of the facts and circumstances that ground such concerns and advise them of the actions that the institution will require;
 - b. Meet with the affected professional employee within ten (10) working days after the initial notice was sent. The purpose of the meeting will be to discuss the factual basis for the University's concern and the actions that the University will require;
 - c. Within five (5) working days after the meeting, give the affected professional employee written notice of those actions that he or she must take in response to the institution's concerns.
 2. Professional employees must comply with the directives given to them.
- ii. Insofar as any determination of the University President, or designee, might give rise to a grievance within the meaning of applicable policies, professional employees may invoke their respective grievance procedures to challenge such determinations.

f. Unlawful Self-Dealing by State Officers and Employees

- i. University employees that have authority to recommend or approve contracts and agreements will disclose to the Research Compliance Coordinator, or successor, their relationships with outside entities that coincide with the conditions described in §2.d.ii. of this policy. The Research Compliance Coordinator, or successor, will assess the relationship for risk of non-compliance with SDCL 5-18A-17.2.
- ii. Should it be determined that a potential conflict exists, a management plan shall be created as described in §3.c. of this policy.
- iii. In cases that warrant authorization as described in §2.d.iv. of this policy, the Research Compliance Coordinator, or successor, will assist the affected employee in developing a request that will be submitted to the University

President. The Office of Human Resources, or successor unit, will file granted authorizations with the commissioner of the Bureau of Human Resources and also maintain a copy of the authorization in the employee's personnel file.

4. Responsible Administrator

The Research Compliance Coordinator, or successor, is responsible for biennial and ad hoc review of this policy and annual review of procedures and duties designated herein. The Office of Human Resources, or successor unit, is responsible for maintaining confidential personnel records and assisting in monitoring conflicts. The University President is responsible for conflicts management as specified by SDBOR policy and approval of this policy and its procedures.

SOURCE: Approved by President 05/09/2016. Revised; Approved by President on 10/06/2020.