

BLACK HILLS STATE UNIVERSITY

Policy and Procedure Manual

SUBJECT: Conflict of Interest

NUMER: 4:2

Office/Contact: Human Resources

Source: [SDBOR Policy 4:19](#); [SDBOR Policy 4:32](#); [SDBOR Policy 4:32:1](#); [SDBOR Policy 4:34](#); [SDBOR Policy 4:35](#); [SDCL 5-18A-17 to 5-18A-17.6](#);

1. Purpose

This policy and its procedures set forth the Black Hills State University (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. Black Hill State University employees are required to review and comply with all SDBOR provisions which control this policy and its procedures.

a. Conflicts of Interest

i. Conflict of Commitment

1. Full-time professional employees, whether faculty, personnel, or administrators and career service staff who make recommendations for purchasing shall devote their best professional efforts to the University. Best professional efforts mean 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 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.
- 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.

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 comingles 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 Chief Research Officer, 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, Human Resources 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 Director for Human Resources 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. 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 or Director, and then Vice President for approval or denial.
 - iii. The applicable Vice President will: 1) review the request; 2) approve or deny the request; and 3) forward the request to Human Resources.
 - iv. Human Resources will monitor the conflicts, maintain appropriate personnel documentation, and notify the requesting employee of approval or denial.
 - v. 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 Human Resources, and for reporting updates or necessary changes to the plan.
 - ii. Such plans will be developed through the guidance Human Resources 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 Human Resources 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 collective bargaining agreements, or other 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 collective bargaining agreements or 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 Director of Human Resources, or successor, their relationships with outside entities that coincide with the conditions described in §2.d.ii. of this policy. The Director of Human Resources 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 Director of Human Resources will assist the affected employee in developing a request that will be submitted to the University President. Human Resources 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 Director of Human Resources is responsible for biennial and ad hoc review of this policy and annual review of procedures and duties designated herein. 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 Laurie Nichols on 9/10/2021.