

The University Senate of Michigan Technological University

PROPOSAL 23-95

CONFLICT OF INTEREST POLICY

STATEMENT OF GENERAL PRINCIPLES

University conflict of interest is an extremely difficult subject, for it touches on many different, but related, topics. Conflicts can be divided into two basic categories. The first covers what many people traditionally associate with the term conflict of interest--opportunities for inappropriate personal gain during the pursuit of official duties. These gains may be financial, but other forms of benefit (power, political advantage, etc.,) might also be involved. Another form of conflict has been labeled conflict of commitment, and refers to the choices individuals make about their professional priorities, especially the allocation of their time to the different institutions and organizations they serve as professionals. Conflicts of commitment may emerge when outside professional activities take priority over other professional responsibilities of members of the MTU community to the University. Attention to conflict of commitment is relatively recent, but growing in importance.

This policy addresses conflicts emerging from professional activities. (The distinction between professional and non-professional outside activities is made clear below.) To be sure, conflicts of commitment between one's university responsibilities and non-professional outside activities (such as business enterprises unconnected to one's professional career) can negatively affect performance of university responsibilities. Members of the MTU community should be sensitive to possible conflicts of commitment arising from such private activities and exercise reasonable caution. But the University does not seek to regulate the private decisions of individuals in areas completely removed from their professional university functions. Conflicts of commitment connected to non-professional outside activities are best addressed through regular performance reviews, not conflict of interest procedures.

Michigan Technological University's conflict of interest and commitment policies rest upon the following statement.⁽¹⁾

Upon becoming a member of the MTU community, every individual makes a commitment to the University. Those who accept full-time University appointments or employment are expected to accord the University their primary professional loyalty. Every member of the community is expected to arrange their personal interests and activities so as not to conflict with their commitment to the University.

This does not mean that members of the MTU community should avoid involvement in outside activities both public and private. To the contrary, such involvement often serves the University as a whole and the greater public interest. Further, a state-funded, public university such as Michigan Tech is expected to be broadly engaged in meeting the needs of society for its improvement and enrichment, including the application of new knowledge and improved technologies.

Nonetheless, the efforts of members of the MTU community to balance their commitments of time to the University and to outside professional interests must result in their primary professional commitment of time being made to the University. Similarly, avoidance of conflict of interest requires that individuals not realize gain, financial or otherwise, from the inappropriate use of University property, funds, equipment, or prestige. Also, individuals should not realize gain from outside professional interests that would improperly influence the conduct of their University duties.

The policies that follow are intended to assist members of the Michigan Tech community as they carry out this complicated professional balancing act. Detailed discussion is provided of many specific cases of conflict of interest and of commitment. The content of these specific recommendations is informed and connected by a set of general principles.

It must be recognized that universities are not the same as other institutions or organizations in society. Both the purposes and goals of universities are different, as are the motives of individuals working in universities, from other organizations. For example, as a public university, one of the missions of Michigan Tech is to serve the "public good" rather than narrow private interests. For this reason, the public can expect--and universities can establish--standards of professional conduct reflecting these differences.

Conflicts of interest will always exist, for they are inherent in the requirements and expectations placed on members of academic communities such as Michigan Technological University. Conflicts are not always blatant; they are not always easily defined in terms of obvious or absolute rights and wrongs. Indeed, many circumstances exist where individuals can be involved in conflict situations without realizing it. Because conflicts are unavoidable in many instances, these conflict of interest policies are designed to assist members of the MTU community to recognize and deal with those real and perceived conflicts that arise. Efforts in this direction should not be judgmental or punitive.

The most basic and important procedure for achieving both a balance of commitment and preventing conflicts of interest with financial implications is full and open disclosure of potential conflicts between an individual's public and official obligations and responsibilities on the one hand, and outside professional goals and interests on the other. Many conflicts are largely perceived. The way to mitigate many of these is to disclose all outside connections and relationships. Disclosure allows the University to identify and address conflicts of interest.

Recognizing and disclosing the existence of conflicts of interest and commitment must be, primarily, the responsibility of individual members of the Michigan Tech community. Individuals have to be guided by a sense of professional responsibility, which must include the recognition that they have a public trust as employees of a public university and must be sensitive to potential conflicts. In this respect, actions by individuals should protect the integrity of Michigan Tech.

Michigan Technological University has a responsibility to help individuals resolve, or at least minimize, conflicts of interest. Administrators have a special responsibility of creating both an environment and the conditions that encourage full disclosure and the mitigation of conflicts. Still, the resolution of conflicts cannot and should not be left solely to administrators. A structure and process should be created within the University to provide assistance and guidance to the entire community.

POLICY OVERVIEW

Most situations that pose real or apparent conflicts of interest are created by contacts or relationships between individual members of the Michigan Tech community and external entities that compromise, or appear to compromise, the judgment or activities of the individuals. Perception is an especially slippery realm, for it is not guided strictly by "the facts." And perception can be as damaging to the individual and to Michigan Tech as clearcut, open conflicts. The standard that should be applied in thinking about apparent conflicts of interest is how matters will appear to an outside third party.

These policies primarily are intended to provide guidance for individual members of the Michigan Tech community as they attempt to minimize those conflicts of interest that will, inevitably, exist. A secondary goal is to promote understanding of the difficulties associated with conflicts of interest and to help faculty, researchers, administrators, the Board of Control, and other members of the Michigan Tech community make decisions that minimize, ameliorate, or eliminate those situations.

Conflicts of interest at Michigan Tech are divided into five categories of increasing seriousness.

Exempt Activities: Almost all outside professional activities can pose conflicts of interest, if an honoraria or royalties are received, or conflicts of commitment. But participation in certain traditional professional activities expected of all members of the MTU academic community does not have to be reported or disclosed. These include, but are not limited to

attending professional meetings;

writing books, articles, and research reports; or creating works of art;

giving lectures, symposia, speeches, colloquia at other universities;

conducting site visits and program evaluations at other universities;

refereeing manuscripts for journals and publishers.

Category I: Professional activities and academic service that pose very little conflict of interest in traditional financial terms, but can create conflicts of commitment.

Category II: External professional relationships with minimal financial interests, such as consulting relationships or royalty-sharing arrangements.

Category III: Outside business activities, including entrepreneurial activities such as ownership of outside companies, that are connected to one's professional activities within the University and that involve more complex financial relationships.

Category IV: Outside professional activities that create unacceptable conflicts of interest.

DISCLOSURE MECHANISMS

Depending upon both local circumstances and the specific aspect of conflict of interest at issue, individual units (departments, schools, institutes) or the University as a whole will develop the specific procedures implementing MTU's conflict of interest policy. The mechanisms identified in this policy provide a framework for developing these procedures. All procedures covering the entire MTU community shall be presented to the MTU Senate for approval.

The guiding principle for resolving or mitigating conflict of interest difficulties is public disclosure of all outside relationships and activities that might create real or perceived conflicts of commitment or interest. In most instances, prior public disclosure will resolve concerns about conflict of interest, especially in cases where only an appearance of conflicts of interest or commitment exists. All members of the Michigan Tech community have a responsibility to publicly disclose the existence of any real or potential conflicts of interest. But different standards of disclosure should be applied as one moves from Category I to Category IV, reflecting increasing degrees of seriousness. Thus advance disclosure is recommended for activities under Category I, but can be made after the fact. Activities listed under Category III, however, can only be

undertaken after individuals make public disclosure of real or potential conflicts of interest and receive permission from supervisors or a review committee.

Disclosure can be accomplished by reporting to an immediate supervisor, department head/chair, director, dean, vice president, or provost the existence of outside connections that constitute potential conflicts of interest or commitment. The provost and president will make any necessary disclosures to the Board of Control. Disclosure must be written.

Finally, purchasing officials, upper-level administrators who approve purchases, and members of the Board of Control shall file annual financial statements, to be placed in the University Library for public review. Amendments to these documents should be filed as necessary.

AUTHORIZATION

In most instances, members of the MTU community will not need authorization or approval from their immediate superiors before engaging in outside professional activities. Unless specifically stated, disclosure will constitute compliance with University policy and be viewed as mitigating conflicts of interest or commitment.

Conflict of interest issues shall be handled at the lowest appropriate administrative level. Certain cases, however, may require detailed scrutiny and greater care in handling to protect the rights of all parties. Moreover, activities that fall under categories III and IV cannot be resolved by disclosure alone. In those instances, a University-level review committee will examine the circumstances and provide direction aimed at insuring the amelioration of inappropriate conflicts of interest. (See Category III.)

CATEGORY I: CONFLICTS ASSOCIATED WITH OUTSIDE PROFESSIONAL SERVICE

Faculty, staff, researchers, and administrators at Michigan Technological University are expected to serve both their academic professions and the wider community of the region, state, and nation.⁽²⁾ Nothing in these guidelines should be interpreted as discouraging such efforts. Indeed, Michigan Tech strongly encourages this professional activity by faculty, staff, and administrators, for such efforts usually complement the other responsibilities of members of the Michigan Tech community. Many University employees, including most faculty, must perform outside professional service as evidence of professional development and merit. Service to professional organizations includes holding any elected office, serving on boards of directors, and conducting editorial activities for journals, among other activities. However, these outside professional activities can generate complicated demands on the time of members of the MTU community, creating potential conflicts of commitment. These usually can be mitigated and resolved by disclosure of the activities in question to one's immediate supervisor, department head/chair, director, or dean.

DEFINITIONS

1. Category I includes occasional outside consulting related to one's area of professional expertise. Such consulting normally will involve one-time activities for businesses, non-profit entities, educational institutions, or government agencies, as distinguished from the continuing or on-going consulting efforts described in Category II.

2. Other activities under Category I include outside professional service. This is defined as special work performed or rendered with or without compensation for any non-university entity or organization, whether or not the work is performed on campus. Work supported by grant or contract awarded to the University and duly authorized under University policies does not constitute outside service. To be considered outside professional service, the activity or work must require distinctive training, expertise and/or certification that qualifies the employee for paid employment at the University, or where such activity in itself is a basis for paid work in the larger community. Such positions and activities include editorships, secretariats, and other administrative functions in national or regional organizations and academic societies. (EXAMPLE: A faculty member who teaches accounting performs professional service when acting as treasurer for a National Society of Certified Public Accounts).

3. Outside community service activities do not generally fall under this policy and its requirements for reporting, as they are not considered professional service. (EXAMPLE: A faculty member who teaches accounting and serves as treasurer for a local volunteer service agency is performing community service, not professional service.) For some members of the MTU community, the distinction between community service and professional service is difficult to determine. (EXAMPLE: A technical communicator writes a brochure for the Audubon Society.) When in doubt, it is best to disclose such activity.

GUIDELINES

1. Members of the MTU community involved in outside professional service or community service should not allow their activities to interfere with their other responsibilities to the University. The amount of time devoted to outside service should be within limits regarded as reasonable by co-workers and colleagues. All employees should be sensitive to the perceived and actual imposition their activities may pose for co-workers and others within the University, and whenever possible adjust their activities accordingly.

2. To avoid or reduce conflicts of commitment related to outside professional service, members of the MTU community should disclose in writing their involvement in such activities to their immediate supervisor. The time and attention devoted to rendering an outside professional service should not have priority over routine University obligations, unless the individual is appropriately released from those obligations.

3. Members of the MTU community must obtain approval in advance for outside professional service that requires an unusual expenditure of time, effort, and commitment.

4. Supervisors may request an alteration of patterns of outside professional activity that, in retrospect, are deemed detrimental to the college's, school's, department's, or individual's primary duties, especially if they place excessive or disproportionate demands on the time, energy, or intellectual effort of the individual involved. Members of the MTU community may request a review of such decisions by the University Conflict of Interest Committee. (See Review and Enforcement below).

5. Individual members of the MTU community and supervisors share responsibility for insuring that outside professional activities, including limited consulting, do not exceed an average of one day per five-day work week, and ten days per academic quarter. Faculty and researchers, may, upon approval of their supervisors, be extended the privilege of flexible scheduling of working hours so that some consulting may be performed during otherwise normal working hours.

DISCLOSURE MECHANISMS

Members of the MTU community are encouraged to report outside professional activities that create real or potential conflicts of interest or commitment because they might influence proposed research or involve substantial time or financial resources. Such disclosure may be made after the fact to one's immediate supervisor--department head/chair, dean, or director; disclosure may be either formal or informal. It is recommended, however, that all activities requiring substantial amounts of time be disclosed in advance and in writing.

CATEGORY II: EXTERNAL RELATIONSHIPS WITH MINIMAL FINANCIAL INTERESTS

Certain aspects of the efforts of members of the Michigan Tech community to serve their professions or the wider community may create opportunities for individuals to benefit from those efforts monetarily, over and above their normal salary or regular compensation. These opportunities include professional consulting, adoption of self-authored textbooks, and royalties from patents. Michigan Tech encourages these activities in the belief that such contacts and the activities benefit both the University and the wider community. But conflicts of interest and, more importantly, conflicts of commitment, are inherent in these activities. When compensation is small, the primary conflict is likely to be a conflict of commitment, as one diverts his/her time from regular responsibilities at Michigan Tech to an outside professional activity. The general solution is prior public disclosure of the activity to one's immediate supervisor, department head/chair, director, or dean. Two special cases in this category concern supervision of relatives and research proposals.

1. CONSULTING⁽³⁾

Michigan Tech encourages its employees to provide outside corporate, government, educational, and non-profit agencies with the benefit of their knowledge and expertise as a means of keeping faculty current in

their fields of expertise, of exposing students to the best practices outside academia, and of expanding the visibility of Michigan Tech, its faculty, and its researchers. Such professional work, when undertaken for pay or external compensation not paid via the University, is considered to be consulting. By definition, consulting is always in addition to the full-time activities of members of the Michigan Tech community. For this reason, consulting activities create potential conflicts of commitment.

DEFINITIONS

1. This policy applies to consulting activities conducted during the academic school year as part of an ongoing relationship with a client, as opposed to the one-time consulting visits described in Category I. Professional activities or outside employment of any type undertaken by faculty on nine-month appointments during their off-quarter (usually summer) are not considered consulting, and are not subject to this policy.
2. Consulting work should be undertaken by faculty on nine-month appointments only when the individual's primary duties in the classroom, research, and other academic areas continue to be performed at a high standard.
3. Due to the greater demands placed on their time by the University, faculty on twelve-month appointments should pursue consulting in a more limited fashion.

GUIDELINES

1. Before beginning consulting relationships, members of the MTU community must disclose their intentions to their immediate supervisors. Supervisors may request termination or curtailment of consulting efforts that are deemed detrimental to the college's, school's, department's, or individual's primary duties, especially if they place excessive or disproportionate demands on the time, energy, or intellectual effort of the individual involved. Individuals may request a review of supervisors' decisions by the University Conflict of Interest Committee (See Review and Enforcement below).
2. Faculty members, upon the approval of their supervisor, may be extended the privilege of flexible scheduling of work efforts so that some consulting may be performed during what would otherwise be normal working hours.
3. Individual members of the MTU community and supervisors share responsibility for insuring that consulting activities do not exceed an average of one day per five-day work week and ten days per academic quarter.
4. Use of University Facilities
 - A. To protect the University from the appearance of inappropriate endorsement of firms, products, or processes, consulting work should be clearly separated from Michigan Technological University. Correspondence and reports related to consulting activities should not be written on University stationary, nor should the individual be identified in such correspondence as representing Michigan Technological University.
 - B. The University shall be reimbursed for the use of facilities, including small-scale office or laboratory equipment, used in the course of providing consulting services. If actual costs cannot be determined, a rate of 15 percent of any consulting fee should be used. Persons conducting projects involving more than minimal use of equipment or University resources as determined by the supervisor, department head/chair or dean, must make special arrangements to schedule the use of those facilities or resources.
 - C. Members of the MTU community may not divert work from the University into an external consulting situation for personal gain for the purpose of avoiding payment of University overhead or to reduce the

cost to the sponsor or client. Faculty members and researchers utilizing University facilities should be especially careful to avoid the appearance of such diversion.

5. Other conflicts of interest can also emerge from consulting. To avoid real or apparent conflicts, members of the Michigan Tech community should:

not compete with professional services offered through the University;

not accept consulting contracts that would be perceived by the private sector as taking unfair advantage⁽⁴⁾;

not accept consulting contracts that expose the individual to actual or apparent conflicts arising from multiple concurrent financial, recommendational, or occupational programs.

These points are not absolute restrictions, but guideposts designed to protect both the individual and the University from real and apparent conflicts of interest. Special attention should be paid to the second point; members of the University community must recognize that they can gain unfair competitive advantages over the private sector because of their affiliation with MTU. A good rule is to voluntarily forego consulting contracts for services that would be perceived by the private sector as taking unfair advantage.

DISCLOSURE MECHANISMS

In all cases, consulting work may be undertaken only after prior disclosure of such activity to an immediate supervisor, department head\chair, director, or dean. Disclosure should also include information about the reimbursement of costs to the University. In most instances, disclosure will remove apparent conflicts. But the disclosure and review process also provides an arena for resolving questions about the appropriateness of complex or difficult consulting relationships.

2. ADOPTION OF SELF-AUTHORED TEXTBOOKS

This policy governing the adoption by faculty of self-authored or edited books and course materials recognizes the fundamental importance of academic freedom and its attendant responsibilities. In a university community, faculty have the freedom to, and the responsibility of, selecting whatever textbook or course materials they consider the most appropriate for their classes. All textbooks and course materials adopted for a class should represent, in the teacher's professional opinion, the most appropriate choice for that class and the students within it. The university community has the related responsibility of providing an environment that supports faculty as they make the best scholarship and research publicly available for the review, and use, of other scholars and students. Students have the right to expect that instructors will select books and course materials according to the merit and appropriateness of these items, not for personal financial gain.

DEFINITIONS

1. Textbooks are books published by commercial presses and sold to students, including books from university presses; books assembled and/or published within MTU or through local duplication services for a cost to students.

2. Course Materials are instructional materials (e.g., workbooks; laboratory assignments; coursepacks; audio or video tapes; course notes; computer disks, CDs, or laser disks containing collections of instructional materials; among other forms) published by commercial or university presses; and sold to students; material assembled and/or published within MTU or through local duplication services for a cost to students.

GUIDELINES

1. Faculty are encouraged to author, or edit, textbooks and develop course materials in support of instructional efforts. However, faculty should not sell books or course materials directly to students.
2. Faculty who use personally authored or edited textbooks and course materials and who receive royalties from the sale of those books or materials are encouraged to donate royalties accruing from such adoptions in MTU courses to the Michigan Tech Fund. Such action will eliminate even the appearance of conflict of interest. Royalties placed in Tech Fund accounts may be used for academic or development programs.

DISCLOSURE MECHANISMS

To avoid potential conflicts of interest in this area, faculty who receive royalties from the sale of textbooks and course materials should disclose their selections for review at the department level. Departments may choose to establish faculty committees to conduct such reviews; alternatively, faculty should discuss their intentions and rationales for their choices with the department head/chair, before making a final decision.

3. ROYALTIES FROM PATENTS⁽⁵⁾

University policy provides that researchers, faculty, and other members of the Michigan Tech community who develop inventions or software that the University successfully licenses receive a share of the royalty payments from the licensee. Although such activities have a relatively low potential for conflicts of interest, conflicts may arise from the continued involvement of those individuals with their original idea, especially commercialization activities.

GUIDELINES

1. Under normal circumstances, members of the MTU community may continue research on a technology, process, product, or software developed in whole or in part by that individual to which they (or a member of their family) are entitled to receive royalties, but in which they have no other financial interests in that project.
2. Similarly, individuals may assign students, post-doctoral fellows, or other trainees to research projects in which that individual (or a member of their family) is entitled to receive royalties, but has no other financial interests in that project.

DISCLOSURE MECHANISMS

Members of the MTU community who receive royalties and continue to conduct research in the same field must first disclose the existence of these royalty payments to their immediate supervisor in writing before continuing their research or assigning others to the project. Supervisors may suggest special oversight or management procedures in some cases, subject to the approval of the University Conflict of Interest Committee (See Review and Enforcement below).

4. SUPERVISION OF RELATIVES

This recommendation is intended to prevent supervisors from being accused of unfairly or inappropriately advancing the interests of a family member or relative. This policy also applies to principal investigators conducting sponsored research.

GUIDELINES

1. Primary responsibility for avoiding situations that create the appearance of conflict of interest falls on the supervisor or principal investigator.

2. Under no circumstances may supervisors initiate or participate in University decisions involving a direct benefit (initial appointment, retention, promotion, salary determination, leave of absence, etc.) to a member of their immediate family (spouses, partners, children, brothers, sisters, parents, etc.).

3. Supervisors should exercise caution in their involvement with University decisions that lead to benefits for members of their extended family or to domestic partners with whom they have a relationship comparable to marriage.

4. Principal investigators of research proposals funded by outside agencies and operated through Michigan Tech must abide by the same rules as regards hiring and supervision of family members, relatives, etc., in the conduct of research during the life of the grant or contract.

DISCLOSURE MECHANISMS

Supervisors have the primary responsibility for avoiding this type of conflict of interest, and should excuse themselves from any situation that might create even the appearance of nepotism. When in doubt, supervisors should step aside from potential conflicts of interest and seek advice from higher administrators, who may appoint alternate supervisors for such cases.

Principal investigators of research proposals must disclose in writing their intent to hire of members of their immediate family, etc., at the time they submit grant and contract proposals to the University for approval, and justify such a hire.

5. RESEARCH PROPOSALS

All proposals from members of the MTU community seeking support for sponsored research from public and private entities must include a disclosure form that identifies any potential conflicts of interest in any way related to the proposed research by the principal investigator or project participants. Potential conflicts include, but are not limited to, intent to hire a family member as a subcontractor for the proposed research, the existence of financial connections between the project staff, including the P.I., and the research sponsor or client; and financial involvement by the P.I. and/or other members of the research team with an outside business enterprise.

GUIDELINES

1. All research proposals through Michigan Tech shall be reviewed for potential conflicts of interest issues.

A. The P.I. and other investigators involved with the proposal must attach a financial disclosure form with each research proposal. This form must be updated at least once a year. (See Disclosure Mechanisms below.)

B. The University Conflict of Interest Coordinator shall review the disclosure forms from all research proposals. This review is analogous to University's review of budgets and financial materials for sponsored research proposals.

C. If the Conflict of Interest Coordinator finds no conflicts of interest exist, or that the conflicts have been ameliorated by disclosure, the Coordinator shall sign the disclosure form to this affect. In accordance with the requirements of some federal agencies, the Conflict of Interest Coordinator shall be the designated signatory concerning conflict of interest reviews. Research proposals may not be submitted to granting agencies or sponsors unless approved in this fashion.

D. If the Conflict of Interest Coordinator identifies the existence of a conflict of interest in a proposal, the Coordinator will work with the principal investigator to propose remedies. With mutual agreement, the proposal can be submitted. For more serious conflicts, or if agreement cannot be reached concerning

ways to eliminate, mitigate, or ameliorate conflicts of interest, the proposal shall be referred to the University Conflict of Interest Committee to recommend steps to resolve the impasse (see Review and Enforcement below).

E. In instances where a satisfactory resolution of actual or potential conflicts of interest still cannot be achieved through this procedure, the University Conflict of Interest Coordinator shall contact relevant funding agencies to inform them of the circumstances surrounding such cases.

F. After receipt of the award, investigators must update their disclosure forms as significant new financial interests are developed. Updates must continue at least annually during the life of the project. Disclosure of significant potential or real conflicts of interest after an existing grant or contract has been awarded may require another review in accord with sections D and E above.

G. Failure to provide complete disclosure at the time of the submission of the proposal, or to update disclosure forms during the life of the grant may lead to disciplinary procedures. Given the responsibility placed upon individuals for the operation of Michigan Tech's policy, failure to make disclosure is especially serious. Sanctions may be imposed by the University; steps might also be taken by funding sources outside the University, including disbarment from future grants. (see Review and Enforcement below).

DISCLOSURE MECHANISMS

Disclosure in the context of research and grant proposals is to include all "significant interests," i.e., salary, payment for services, honoraria, consulting fees, equity interests (stocks, stock options, or ownership rights), and intellectual property rights. Disclosure need not include salary or remuneration from Michigan Tech; or ownership in interests in institutions that are applicants under the Small Business Innovation Research Program or Small Business Technology Transfer Program; income from seminars, lectures, or teaching engagements at public or private nonprofit entities; income from advisory panels for public or nonprofit entities; or financial interests in business enterprises that would in no way be affected by the proposed activity. Disclosure would not be required for involvement by investigators in business enterprises connected to the proposed project if the value of that interest is less than \$5,000 or represents less than 5 percent of the ownership interest in any one enterprise (when aggregated with the shares of the spouse and dependent children). Disclosure forms must be updated at least once a year; any changes in status that might create a conflict of interest must be reported immediately.

CATEGORY III: COMPLEX EXTERNAL RELATIONSHIPS, INCLUDING OUTSIDE BUSINESS ACTIVITIES AND ENTREPRENEURIAL PROJECTS⁽⁶⁾

Certain external relationships entered into by members of the Michigan Tech community by their very nature pose complicated conflict of interest problems. For example, Michigan Tech, like most state universities, is expected to contribute to the state's economic development by encouraging the movement of new ideas, processes, and technologies developed by members of the MTU community into the marketplace. On occasion, members of the MTU community have sought to turn ideas into marketable products, jobs, and profits. Yet a state university is also prohibited from providing improper preferential treatment to individual business enterprises. These sometimes contradictory goals illustrate the basic difficulty that emerges when University employees also have private business interests related to their professional university responsibilities--delineating clearly where activities that are part of one's University position end and where outside activities begin. The possibility of financially benefiting outside entities, as well as one's self, further clouds the issue. Finally, it is also possible for research efforts by members of the MTU community who are connected to outside business interests to take unfair advantage of the University's facilities, since these facilities are not available to potential competitors.

Individuals who have financial interests (beyond royalty payments from the University) in outside business activities growing out of their research and professional expertise, or who serve on the boards of such businesses, must take special precautions to insure that their outside connections do not compromise,

or appear to compromise, their primary affiliation and obligation to Michigan Tech. As always, individuals should disclose the existence of any real or perceived conflicts of interest. But the complexity of these relationships makes it difficult to anticipate every conceivable circumstance. Therefore, disclosure of activities under Category 3 must be made in writing and in advance, and University approval must be given BEFORE such connections can be developed between members of the MTU community and outside agencies. The University Conflict of Interest Coordinator (see below) may be used as a resource in making such disclosure and developing steps to minimize any potential conflicts of interest. The University Conflict of Interest Committee shall review and approve all activities under Category III. The committee is charged with examining the circumstances of all such cases and with recommending mechanisms that best protect the University and the individual involved.

This disclosure, review, and approval process governing all outside business and financial relationships is not intended to discourage such activities. Michigan Tech strongly encourages attempts to move ideas, inventions, processes, and other technology into the marketplace. But conflict of interest questions arise when the relationships and connections between University responsibilities and outside activities are ambiguous or, more importantly, overlap. The University Conflict of Interest Committee shall recommend, on a case-by-case basis, ways to draw clear boundaries between each individual's university responsibilities, including research and teaching, and outside professional and business activities.

DEFINITIONS

1. Activities that fall under Category III include, but are not limited to

participation in trials, evaluation, or development of a technology, process, product, or software owned or controlled by a business in which the employee, a member of his/her family, or an associated entity (trust or any other enterprise over the individual exercises a controlling interest) has a consulting relationship, holds stock or similar ownership interest, or has any other financial interest;

assignment of students, post-doctoral fellows, or other trainees to projects supported by a business (either as sponsored research or as a gift) in which the individual, a member of his/her family, or an associated entity (trust or any other enterprise over the individual exercise a controlling interest) has a financial interest other than royalties under University policies;

participation in, or taking administrative action on, University-supervised sponsored-research or research through gifts from a business in which the individual, a member of his/her family, or an associated entity (trust or any other enterprise over the individual exercise a controlling interest) has a consulting relationship, holds stock or similar ownership interest, or has any other financial interest, other than royalties under University policies;

receipt of research support (sponsored research or gift) from a business in which the individual or a member of his/her family serves on the board of directors or advisory board;

assumption of an executive position in a business engaged in commercial or research activities related to his/her University responsibilities;

holding of a financial interest in a business related to the individual's university responsibilities that competes or has the potential to compete with services provided by the University;

taking administrative action on behalf of the University that is beneficial to a business in which the individual, a member of his/her family, or an associated entity has a financial interest;

GUIDELINES

Early efforts to establish a business to commercialize the results of an individual's university research may require some latitude in these areas. But once an enterprise has been established (and no later than a

year after the firm's establishment), members of the Michigan Tech community must clarify their relationship between the University and the business with which they have financial interests.

DISCLOSURE MECHANISMS

1. Members of the MTU community who have a financial interest in any outside professional activity that is related to their university responsibilities, including research, are required to disclose in writing, and in advance of pursuing that activity, the nature and extent of their involvement with the outside entity.
2. This financial disclosure should include a description of the nature of the relationship; information on the short- and long-term commitment of time and effort to the relationship; the financial aspects, including extent of compensation, equity, indirect, or potential economic value; expected benefits to the commercial entity; expected benefits to MTU; and expected benefits to the individual.

CATEGORY IV: PROHIBITED ACTIVITIES

Certain external activities constitute such a blatant conflict of interest that they must be prohibited. These include recommendation of purchases from companies with which the individual has a significant financial interest, and making referrals to a business with which the individual has a significant financial interest.

PURCHASING

Purchasing is an area where concerns about conflict of interest traditionally have focused, given the opportunities that exist for an employee to benefit inappropriately from official activities. This policy is designed to protect MTU employees from the appearance of taking unfair advantages or making inappropriate gains through their control of University purchases. The policy also protects the University and insure that individuals responsible for purchases are not in a conflict of interest and abusing their position. Obviously, an unacceptable conflict of interest is created when employees responsible for purchasing make purchases from a firm with which they or members of their family have a financial interest. But the committee does not recommend that MTU NEVER make purchases from firms owned partially or wholly by members of the MTU community; nor does it wish to establish allowable thresholds of ownership using dollar amounts or percentages of ownership. It is unreasonable to completely restrict or eliminate purchases with employee-owned companies. All companies may play a regular role in a natural competitive market. This policy seeks to use disclosure mechanisms to insure that the marketplace, not personal financial gain, guides purchasing decisions.

GUIDELINES

1. MTU employees are expected to avoid conflicts, or the appearance of conflicts, of interest regarding purchase orders with companies in which they have any significant financial interest.

2. The MTU Purchasing Department subscribes to the National Association of Educational Buyers (NAEB) Code of Ethics, which outlines a philosophy and conduct for buyers who are committed to

functioning for the greatest benefit to the University and in accord with ethical practices of the purchasing profession. The committee believes this statement provides all necessary guidance for avoiding conflict of interest in this area. Under the NAEB Code of Ethics, buyers promise:

A. To give first consideration to the objectives and policies of my institution.

B. To strive to obtain the maximum ultimate value of each dollar of expenditure.

C. To cooperate with trade and industrial associations, promotion and development of sound business methods.

- D. To demand honesty in sales representation whether offered through the medium of an oral or written statement, an advertisement, or a sample of product.
 - E. To decline personal gifts or gratuities which might in any way influence the purchase of materials.
 - F. To grant all competitive bidders equal consideration, to regard each transaction on its own merits, to foster and promote fair ethical and legal trade practices.
 - G. To be willing to submit arbitration over any major controversies.
 - H. To accord a prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.
 - I. To counsel and cooperate with NAEB members and to promote a spirit of unity among them.
3. Members of the MTU community who advise the University or any unit of the University (for example, members of departmental committees concerned with laboratory equipment or computers) concerning the purchase of equipment or services valued at more than \$25,000 and who have any interest in the entity providing that service or commodity, must disclose that relationship in writing
- at the time they offer that advice.
4. Purchases may be made from firms in which the buyer has a financial interest upon disclosure and approval by the buyer's immediate superior.

DISCLOSURE MECHANISMS

- 1. Individuals at Michigan Tech responsible for purchasing equipment and services for the University must disclose any significant financial relationships with potential vendors in writing on each purchase requisition. Disclosure should be made about any level of ownership in, or control of, a company with which you intend to do business using university funds, equipment, expertise, or influence.
- 2. Individuals purchasing supplies or services under research grants or sponsored programs also must comply with the agency guidelines and standards specified in the individual contracts, as well as with MTU policy. Such disclosure should be made as part of the research proposal.
- 3. Individuals who exercise a significant measure of control over purchases because of their positions (buyers, University officers, members of the Board of Control, etc.) must file an annual public financial disclosure statement.

BUSINESS REFERRALS

Except within the context of consulting activities that conform to the University's policies on consulting, a member of the Michigan Tech community, while acting in the context of his/her University duties, may not make professional referrals to a business or outside entity in which he/she, a member of his/her family, or an associated entity has a financial interest.

CONSULTANTS TO THE UNIVERSITY

A special case of the policy on business referrals concerns the relationship of consultants retained by Michigan Tech. Consultants (persons or firms) may not combine the role of adviser and provider of a service. This division is designed to insure that the consultant does not benefit improperly from the results of their advice. This rule shall also apply when the consultant has a significant interest in a company providing a service or selling a product to the University.

GUIDELINES

1. To eliminate or minimize potential or perceived conflicts of interest, the principle of separation of functions should be applied in employing consultants. In this context, the term "function" pertains to advising versus performance of tasks.
2. A consultant who serves as an adviser to the University is automatically disqualified from providing paid service (other than advising) that has been the subject of his/her/their advice. Nor may the consultant refer the University to an enterprise in which he/she/they have a financial interest.
3. The individuals at Michigan Tech who contract for consulting services are responsible to see that these rules are adhered to by outside consultants.

DISCLOSURE MECHANISMS

Exception to the previous rule may be made if the contract for the purchase of goods or services has been awarded through an open public bidding process. However, such public bids must include public disclosure, in writing, of the earlier advising service.

REVIEW AND ENFORCEMENT

Responsibility for dealing with and minimizing conflicts of interest rests primarily on the individual members of the University community. Nonetheless, it is clear that the University will increasingly find itself held responsible by outside parties for insuring that conflicts of interest are mitigated, minimized and otherwise addressed. Moreover, the rights of individual members of the MTU community must be protected along with the University's. Finally, cases will emerge requiring review by the University to determine whether violations of policy have occurred. Therefore, procedures must be established for the review of individual disclosures, as well as the periodic review of the policies themselves and the means of enforcing conflict of interest policies. Sanctions must be established for the violation of those policies.

A series of steps shall be established as part of the University policy manual to help members of the MTU community identify and resolve conflict of interest issues, as well as to deal with cases of conflicts that appear, including violations of University policy. These procedures shall be approved by the University Senate.

UNIVERSITY CONFLICT OF INTEREST COORDINATOR

The University shall designate a Conflict of Interest Coordinator who should be from an academic background and be familiar with the academic and research process. The primary responsibility of this person shall be reviewing disclosure forms from all grant requests and outside support applications to identify cases that contain conflicts. The coordinator will be designated by the University to sign the transmittal forms to those federal agencies requiring certification that a conflict of interest does not exist in the proposal. This person will work with authors of proposals to identify means of minimizing or eliminating potential conflicts of interest. When mutual agreement cannot be reached on these steps, the coordinator will refer proposals that contain actual or potential conflicts to the University Conflict of Interest Committee (see below) for resolution and further examination. This person shall also be designated to contact funding agencies in the event that conflicts of interest cannot be resolved within the institution.

The coordinator will retain all records connected to conflict of interest reviews for three years after all projects are completed. The coordinator shall receive copies of other disclosure forms from within the University and shall prepare annual reports on the incidence of conflicts in research and other areas. Perhaps most importantly, the Conflict of Interest Coordinator will serve as a resource for those members of the MTU community seeking to gain more information about conflicts of interest and commitment, how to avoid them, and how to mitigate and resolve conflicts that appear. This person will assist in the preparation of disclosure forms by investigators in a fashion analogous to other MTU staff personnel who help prepare budgets and financial statements for sponsored research proposals to outside agencies. This

person shall play the role of facilitator and educator on the subject of conflict of interest at Michigan Tech, and shall work with individuals, including department heads and administrators, in seeking resolutions to potential conflicts of interest. Finally, members of the MTU community who have concerns about potential conflicts of interest involving other members of the MTU community may contact the coordinator about their concerns. The coordinator shall contact immediate supervisors so that possible conflicts of interest or commitment may be examined in the normal fashion.

UNIVERSITY CONFLICT OF INTEREST COMMITTEE

1. All activities that fall under Category III, as well as research proposals seeking outside support that contain conflicts of interest as identified by the University Conflict of Interest Coordinator, will be reviewed by a University Conflict of Interest Committee. This shall be a permanent committee administered by the Senate. It is anticipated that relatively few cases will require such a review. But for these reviews, the committee shall add, on a case-by-case basis, additional members. These additional members shall be appointed by the President of the University Senate and the University administration for their knowledge of the field of expertise as well knowledge of conflict of interest and intellectual property issues.

2. The charge to this committee shall include the following:

serve as an advisory committee for the Provost and to assess the current situation in the University with respect to implementation of the conflict of interest policy;

inform the University Senate on the University community's state-of-compliance with the conflict of interest policy;

prepare recommendations concerning the modification of policy and procedures pertaining to conflict of interest at MTU;

review, in a timely fashion, all cases of Category III activities, even those in which the Conflict of Interest Coordinator and a member of the MTU Community have reached a satisfactory agreement. In those cases connected to Category III activities where members of the MTU community and the University Conflict of Interest Coordinator cannot agree upon the steps that will best ameliorate potential conflicts of interest or commitment related to, the committee shall suggest steps to resolve an impasse. Either party may request the involvement of this committee.

help resolve, in a timely fashion, cases connected to research proposals where members of the MTU community and the University Conflict of Interest Coordinator cannot agree upon the steps that will best ameliorate potential conflicts of interest or commitment, the committee shall suggest steps to resolve an impasse. Either party may request the involvement of this committee.

hear requests from members of the MTU community for reviews of decisions by immediate supervisors concerning conflicts of interest at lower administrative levels. (see Category I and Category II);

If the committee, in considering cases of the first two types, finds that a significant conflict of interest exists, it may recommend to the Provost that a member of the MTU community take actions to ameliorate or alleviate the conflict of interest. These actions include

modification of the research proposal;

monitoring of the research by outside or independent reviewers;

disqualification of an investigator or investigators from participation in that portion of the NSF-funded research which is affected by the outside financial interest;

stepping aside from direct management of the outside enterprise while retaining financial interests;

divestiture of financial interests in publicly trade business;

divestiture of financial interests in privately held business;

retention of financial interests, but withdrawal from University activities, (i.e., alteration of individual's long-term research program);

resignation or leave of absence from the business in which the individual has a financial interest;

Other possible avenues that individuals might choose to adopt to eliminate real or perceived conflicts of interest include

leave of absence from the University

resignation from the University in order to pursue the interests of the outside company.

VIOLATIONS OF UNIVERSITY POLICY

Specific and detailed procedures concerning disciplinary procedures must be developed, including the sanctions that might be imposed for violation of University policy in the area of conflict of interest. These shall become part of the University Procedures manual, and should be subject to approval of the University Senate.

1. All members of the MTU community, at the time they begin their connection with the University, should be given copies of the University policies in this area. Moreover, the import of these policies and the procedures surrounding them should be explained. No member of the MTU community should be able to say that they did not know about conflict of interest issues or the policies governing this issue at MTU.

2. Michigan Tech has the authority to take action against individuals who violate conflict of interest policy, if for no other reason than requirements by some outside funding agencies require it to do so. Sanctions ought to be graduated to reflect the seriousness of the violation. Distinctions must be made between neglect, honest oversights, or ignorance of procedures on the one hand and willful violations on the other, especially deliberate failures to disclose relationships that create conflicts of interest.

Appendix

Procedural Recommendations Accompanying

Draft Conflict of Interest Policies

Ad Hoc Committee on Conflict of Interest

February 3, 1995

1. General Disclosure Mechanisms

The committee believes that for most individuals, Quarterly Service Reports will be a primary mechanism for disclosing potential conflicts of interest or commitment. The existing form would have to be modified, but this would provide a relatively simple and convenient way for most individuals to disclose potential conflicts of interest.

An annual disclosure form must be developed for use by purchasing officials, upper administrators, and members of the Board of Control. The committee believes that a form used by Wayne State University offers a good model for this form.

2. Category 1: Disclosure Procedures

It seems best to utilize the Quarterly Service Report as the primary mechanism for the disclosure of Category I outside professional activities, whether compensated or not. Category I activities also may be reported using absence forms or other written communications with immediate supervisors.

Disclosure of outside professional service that require a significant time commitment should begin with the employee's immediate supervisor, chair, head or director, and should include the name of the client or organization, the nature, and the duration of the activity or commitment.

3. Category 2: Sponsored Research Disclosure

The first step here must be development of a University disclosure form for research proposals.

This University disclosure form, which must accompany all proposals for sponsored research support, shall be the primary means of disclosing conflicts of interest in this area. Investigators must use this form to disclose all significant financial interests (including those of their spouses and dependent children) that would reasonably appear to be directly and significantly affected by the proposed research or educational activities.

Investigators also must disclose significant interests in entities whose financial interests would be directly or significantly affected by the proposed activities. This form should be updated at least annually, with any changes in status that might create a conflict of interest reported immediately on amended forms.

4. CATEGORY 4: Purchasing Disclosure

The best means of handling up-front disclosure for purchases would be to modify the current purchase requisition to allow for disclosure for every individual purchase.

5. REVIEW AND ENFORCEMENT

Detailed procedures need to be developed for the Conflict of Interest coordinator's efforts, as well as for those of the University Conflict of Interest Committee. Steps should be included to address concerns of confidentiality and the protection of individual rights.

Violation of Policies

The committee believes that appropriate sanctions, the procedures governing their imposition, and a specific appeals process to protect the rights of those accused of violation of conflict of interest policy should be modeled on those procedures proposed by the Committee on Scientific Misconduct, or on procedures that govern other violations of University rules.

Sanctions should range from warnings to temporary loss of the privilege of applying for outside funds to termination of employment in the most serious cases.

Adopted by Senate: April 12, 1995

Rejected by President: November 1, 1995

1. For purposes of this document, the MTU community includes everyone with a professional or employment relationship with Michigan Tech, including, for example, faculty, researchers, staff, students, administrators, consultants retained by the University, unpaid advisers to the University, and the Board of Control. The following statement is adapted from the conflict of interest policies at Michigan State University.

2. This policy replaces current Michigan Technological University policies 5.1.7, 5.15.3, and 5.15.5.

3. This policy replaces University Policy 5.15.2 as well as the statements in the Faculty Handbook on pp. 19,21 and Appendix I, p. 95.

4. Examples of taking advantage include offering subcompetitive rates for consulting services based on lower costs of doing business (lower overhead, no charges for medical insurance, etc.) the use of University facilities, or lower hourly rates for professional services. These circumstances offer members of the University community an unfair material advantage over professionals who must cover the full costs of doing business.

5. This policy replaces current MTU policy as stated in the Faculty Handbook, pp. 22-23 and appendices F and G.

6. The committee's recommendations in this section rest heavily on guidelines developed at the University of Minnesota.