

The University Senate of Michigan Technological University

PROPOSAL 2-03

CONFLICT OF INTEREST PROCEDURES

Definitions

Conflict of Interest: Actual, possible or perceived Conflicts of Interest and/or conflicts of commitment, including time, as discussed in General Principles 1.1.

Committee: MTU Conflict of Interest Committee

Coordinator: MTU Conflict of Interest Coordinator

Member: A member of the MTU community.

MTU: Michigan Technological University

MTU Community: All faculty, staff, students, and administrators of MTU.

MTU Resources: Includes all facilities such as office space and equipment, as well as information technology (including web site servers and telecommunications), personnel and stationery.

Policy: The MTU Conflict of Interest policy for which these procedures were developed to implement (Board of Control Policy 3.13).

Procedures: These Conflict of Interest procedures.

Proposal: A proposal for externally funded or sponsored research, education and training activity, or other external collaborations.

Relative: A member of the MTU community's spouse, child (by blood, adoption or marriage), parent, or person with whom the member has a close personal relationship.

Supervisor: Department chair, dean, director; in some cases a researcher, staff, faculty member or administrator other than a chair, dean or director.

Preamble

MTU is a complex, dynamic university of which we are proud -- a university with important goals and remarkable achievements. For the purpose of these Conflict of Interest procedures, this dynamism has two consequences. First, though these procedures strive to be comprehensive, these procedures cannot address every possible situation and do not obviate the need of members to understand and follow other MTU policies and procedures. Second, as the market and our collective expertise develop, new conflict of interest challenges will arise. In applying these procedures, the President and Board of Control relinquish none of their constitutional or statutory authority. Finally, members should be reminded that the Board of Control cannot change or override federal, state or local laws; as such, members must continue to abide by these laws notwithstanding anything that may appear in these procedures.

1 General Principles

1.1 Conflict of Interest in the university context is a very difficult subject, for it touches on many different, but related, topics, including proprietary rights and use of MTU resources. 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. The gains

might be financial, but may include other forms of benefit such as power or political advantage. The second category covers conflict of commitment -- the choices individuals make about their professional priorities, especially the allocation of their time to the different institutions and organizations they serve as professionals. Members may encounter conflicts of commitment when outside professional activities take priority over other MTU-related responsibilities.

1.2 An important function of these procedures is to (i) describe appropriate commercial relationships beyond normal MTU business between supervisors, faculty, and other researchers and their staff subordinates, students and other parties, and (ii) identify when those relationships generate potential or actual Conflict of Interest and should be disclosed, mitigated (if possible), discouraged, or disallowed. These procedures identify five categories of activity that may generate Conflicts of Interest: (i) activities which are usually exempt, (ii) outside professional service activities, (iii) activities or external relationships with minimal financial interests, including supervision of relatives, and the use of university resources, (iv) complex external relationships, including business activities and entrepreneurial projects.

1.3 Most situations that pose Conflicts of Interest involve contacts or relationships between individual members and external entities that compromise, or appear to compromise, the judgment, activities or perceived loyalty of those individuals. Perception is an especially important but slippery realm, for it is not guided strictly by "the intentions" and perception can be as damaging to the individual and MTU as are clear-cut, open conflicts. Therefore, it is incumbent upon the member to disclose sufficient information so that any perception of a Conflict of Interest can be addressed and satisfactorily resolved. MTU thus will consider how Conflict of Interest appears to an outside third party when applying these procedures.

1.4 These procedures primarily address conflicts emerging from professional activities. MTU does not seek to regulate private decisions that are protected by statute. However, nothing in these procedures should be construed as allowing any member of the MTU community to avoid other obligations under state and federal law. For example, patent and copyright laws must be followed (see Board of Control Policy 18, especially section 1, on Patent and Other Proprietary Rights).

1.4.1 There is a State of Michigan Statute on conflict of interest, MCL 15.301, et seq. (the "Statute") that requires that MTU members disclose any pecuniary interest in a contract with MTU to the Board of Control, which will make the disclosure a matter of record in its official proceedings. Any member contemplating a contract with MTU must disclose this to the Coordinator, who will make a determination regarding the conflict with respect to the provisions of the Statute, and if required by the Statute, will report the conflict to the Board of Control.

1.5 MTU's Conflict of Interest policies and procedures rest upon the following:

1.5.1 Upon becoming a member, every individual makes a commitment to MTU. Those who accept full-time appointments or employment at MTU must accord MTU their primary professional loyalty. These procedures require, therefore, that every member arrange their personal interests and activities so as not to conflict with their commitment to MTU. This avoidance of Conflict of Interest requires that individuals shall not realize improper gain, financial or otherwise, from either (i) the inappropriate use of MTU property, funds, equipment, prestige, or other resources; or (ii) from the exercise of outside professional opportunities that conflict with the conduct of their MTU duties.

1.5.2 These procedures do not require members to avoid involvement in outside public or private activities. To the contrary, such involvement is often wholly consistent with MTU's mission to educate its students and serve the public interest.

1.6 It is vital to the successful performance of MTU's mission that members be as free as possible from Conflicts of Interest. No member may undertake any activity that constitutes an actual or perceived Conflict of Interest, except as may be expressly approved and/or permitted pursuant to these procedures. It is each member's responsibility, therefore, to contact the Conflict of Interest Coordinator (Coordinator) if he or she encounters a Conflict of Interest not contemplated by these procedures or if there is uncertainty about the existence of a conflict.

1.7 In the event that any member makes any disclosure to any MTU official pursuant to these procedures with respect to an ongoing project or relationship, such member must submit complete and accurate follow-up disclosure, in the same form as previously submitted, to such MTU party if change of

circumstances has rendered any previously submitted Disclosure Form materially inaccurate or incomplete.

1.8 In the event that the Conflict of Interest Coordinator or Committee proposes remedies or mechanisms for ameliorating, mitigating, or eliminating a member's Conflict of Interest, these shall be reported to the member's supervisor.

1.9 The MTU Board of Control is governed by separate Michigan statutes with respect to Conflict of Interest (MCL15.301 and MCL 15.341). As a courtesy, the Board may disclose Conflicts of Interests to the Coordinator.

2 Category I: Outside Activities Exempt from Conflict of Interest

Participation in Category I traditional professional activities do not typically create Conflicts of Interest or commitment (but see section 6.2), and as such do not normally have to be fully disclosed to the Coordinator. Category I activities include, but are not limited to:

- attending professional meetings;
- writing books, articles, and research reports; creating works of art, performances and exhibitions;
- giving lectures, symposia, speeches, colloquia at other universities;
- conducting site visits and program evaluations at other universities; and
- refereeing manuscripts for journals and publishers.

If a member has reason to believe that an ordinarily benign Category I activity may create a Conflict of Interest, they must fully disclose this potential Conflict of Interest to the Coordinator prior to participation in the proposed activity. The Coordinator will promptly determine whether the proposed activity would constitute a Conflict of Interest, and in consultation with the member, settle upon an appropriate course of action.

3 Category II: Outside Professional Service Activities Which Create Conflicts of Interest

3.1 Definitions

3.1.1 Activities that may generate Category II Conflicts of Interest include:

- providing brief consulting services related to a member's area of professional expertise, typically involving one-time engagements with businesses, nonprofit entities, educational institutions, or government agencies; and
- providing brief outside professional service with or without compensation for any non-MTU entity or organization, whether or not the work is performed on campus. Work that constitutes outside professional service requires distinctive training, expertise and/or certification sufficient to qualify the member for paid employment at MTU, or where such activity in itself is a basis for paid work in the marketplace. Such outside professional service includes, without limitation, editorships, secretariats, and other administrative functions in national or regional organizations and academic societies. Work during the 9-month academic year supported by a grant or contract awarded to MTU and duly authorized under MTU policies does not constitute outside professional service.

3.1.2 Activities that do not generate Category II Conflicts of Interest include:

- providing outside community service. For some members, however, the distinction between community service and professional service will be difficult to determine. Thus:
- in cases where the community service relates to the member's distinctive training or expertise, if a member has reason to believe that their provision of outside community service may constitute providing outside professional services, then the proposed activity will be deemed to be outside professional services and, as such, subject to these procedures as a Category II activity.

3.2 Category II Guidelines

3.2.1 Members should not allow their outside service activities to interfere with their primary responsibilities to MTU.

3.2.2 The time and attention devoted to rendering an outside professional service must not have priority over routine MTU obligations, unless the member has been appropriately released from those obligations.

3.2.3 By way of guidance, members may not engage in Category II activities in excess of an average of one day per week, up to a maximum of 38 days during the regular academic year. Faculty and professional staff may, upon approval of their supervisors, be extended the limited privilege of flexible scheduling of some working hours so that some Category II activities in excess of this level are performed during normal working hours during the period required to accomplish the service or activity.

3.3 Disclosure and Review

3.3.1 Each Member must promptly *and* fully disclose in writing to their immediate supervisor when such member engages in any Category II activities, whether or not it will result in a conflict of interest.

3.3.2 If an immediate supervisor determines that a Category II activity creates a Conflict of Interest or is otherwise detrimental to the college's, school's, department's, or individual's primary duties, he or she may require that the member submit to special oversight or management procedures or to cease such activity. Members may appeal their supervisor's decision to MTU's Conflict of Interest Coordinator.

4 Category III: External Relationships and Activities With Minimal Financial Interests

4.0 Background

Certain aspects of the efforts of members to serve their professions or the wider community may create opportunities for members to benefit monetarily from those efforts, over and above their regular salary or compensation. These opportunities include professional consulting; adoption of self-authored textbooks or other course materials; royalties from patents; sponsored research, education and training proposals; routine testing; and the ownership and operation of small businesses not directly related to the member's MTU responsibilities. MTU encourages these activities in the belief that such contacts and the activities benefit MTU, its faculty members and students, and the wider community. But Conflicts of Interest and particularly conflicts of commitment are inherent in these activities. When compensation is small, the primary conflict is likely to be a conflict of commitment, as a member diverts his or her time from regular responsibilities from MTU to an outside professional activity. The first step in mitigating such a conflict is prior disclosure of the activity to the member's immediate supervisor. In some cases, additional required actions are described in the guidelines below.

In addition, two activities that are deemed Category III activities are use of university facilities and supervision of relatives.

4.1 Consulting

Category III activities include providing consulting services by a member on more than a one-time basis where such services are related to the member's area of professional expertise. Professional activities or outside employment of any type undertaken by faculty on nine-month appointments during the summer term, however, are not considered Category III activities.

4.1.1 Category III Consulting Guidelines

4.1.1.1 Faculty members on nine-month appointments may provide consulting services during that nine-month period only when the individual's primary duties in the classroom, research, and other academic areas continue to be performed at a high standard. (Also see section 4.1.3).

4.1.1.2 Faculty members, research staff or administrators on twelve-month appointments may pursue consulting on a limited basis only, because of the demands placed on their time by MTU. (Also see section 4.1.3).

4.1.1.3 Any Category III consulting that overlaps with or takes place in the context of Proposals (see section 4.4) will be reviewed by the Coordinator to determine if the activity should be considered Category IV and follow the procedures thereto (see section 5).

4.1.1.4 A full-time member may not engage in Category III activities in excess of the equivalent of one day per week during the regular academic year, up to a maximum of 38 days. Should the member be required to be absent from work or to miss meeting regularly scheduled classes in order to engage in the Category III activity, the member's supervisor must approve the absence in advance.

4.1.1.5 Members may not divert work from MTU that would normally be funded through sponsored research or other proposals into their own Category III consulting activity for the purpose of avoiding payment of MTU overhead or to reduce third party costs.

4.1.1.6 Members may not compete with professional or instructional services offered by MTU.

4.1.1.7 Members may not accept consulting contracts that could be perceived as conveying competitive advantage to third parties due to the member's employment at MTU.

4.1.1.8 Members must not accept consulting contracts that expose the individual or MTU to actual or apparent conflicts arising from multiple concurrent financial, advisory, or occupational programs.

4.1.1.9 Faculty and staff members with financial relationships outside of MTU who can apply for sponsored funding should not allow such pursuits to interfere with their pursuit of sponsored funding for MTU. In situations where MTU and the outside entity can apply for the same funding, MTU has first priority in making application and the member may not cause the outside entity to compete with MTU funding applications. Members must first discuss such ideas or proposals with their supervisors in such situations. The investigator must recognize that he or she owes appropriate time and effort to MTU's search for sponsored projects.

4.1.2 Disclosure and Review

4.1.2.1 Before engaging in Category III consulting activities, members must fully disclose proposed activity in writing to their immediate supervisors. Supervisors may require that the member submit to special oversight or management procedures or to cease such activities, if they determine that such activities constitute a Conflict of Interest or are otherwise detrimental to the college's school's, department's, or individual's primary duties, especially if consulting places excessive or disproportionate demands (e.g., see section 4.1.2.3) on the time, energy, or intellectual effort of the individual involved. Members may appeal their supervisor's decision to the Coordinator.

4.1.2.2 Supervisors may permit faculty members or researchers to adopt a limited flexible work schedule so that some consulting services may be performed during what would otherwise be normal working hours during the period required to accomplish the service or activity.

4.2 Adoption of Self-authored Textbooks and Other Course Materials

4.2.1 Definitions

4.2.1.1 "Textbooks" are books sold to students that are (i) published by commercial or university presses, or (ii) assembled and/or published within MTU or through local duplication services.

4.2.1.2 "Course Materials" are non-book instructional materials sold to students that are (i) published by commercial or university presses; or (ii) material assembled and/or published within MTU or through local duplication services.

4.2.2 Guidelines

4.2.2.1 Faculty may not sell instructional materials directly to students.

4.2.2.2 All textbooks and course materials adopted for a class must represent, in the instructor's professional opinion, the most appropriate choice for that class and the students within it.

4.2.2.3 Members must select books and course materials according to the merit and appropriateness of these items, not for personal financial gain.

4.2.3 Disclosure and Review

4.2.3.1 Faculty who receive royalties from the sale of textbooks or course materials must disclose the use of such works to their chair or dean for approval.

4.2.3.2 If the chair's or dean's review determines that a member's use of member-authored textbooks or course materials constitutes a Conflict of Interest or is otherwise detrimental to the college, school, department, or MTU, the chairperson may require the member to submit to special oversight or management procedures or to cease the use of such textbooks or course materials. Members may appeal the chairperson's decision to the Coordinator.

4.3 Royalties from Patents

4.3.1 Guidelines

4.3.1.1 Members may work on or assign students, postdoctoral fellows, or other trainees to research projects in which that member or a relative is entitled to receive royalties or licensing fees from patents or patent applications, but has no other financial interests in that project, provided that the roles are made clear in writing to their immediate supervisor and the Coordinator.

4.3.1.2 Per the terms of each employee's and graduate student's Patent, Research and Other Proprietary Rights Agreement, and MTU's Board of Control Policy (Chapter 18), developments made while individuals are employed by MTU must be assigned to MTU. Use of technologies that are covered under this agreement and related policies can only be conducted under appropriate license or other agreements. Individuals interested in beginning entrepreneurial activities based on developments that have occurred during their course of employment should consult the Office of Intellectual Property and Technology Commercialization to determine if a license is necessary and to begin discussing licensing conditions.

4.3.2 Disclosure and Review

Members who are entitled to receive royalties (or licensing fees) in connection with projects and continue to conduct research related to the subject for which they are receiving royalties must fully disclose in writing the existence of these royalty payments to their immediate supervisor and the Coordinator before continuing their research or assigning others to the project. To avoid doubt, this disclosure must include the nature and circumstances of the assistance provided by and compensation provided to students, postdoctoral fellows, or other trainees to such projects. The Coordinator may require the member to submit to special oversight or management procedures or to cease such activities altogether, and will inform the member's supervisor of such procedures. Members may appeal the imposition of any such remedy or mechanisms to the Committee.

4.4. Proposals (Sponsored Research, Education/Training, and other Proposals)

4.4.1 Category III Proposal Guidelines

4.4.1.1 Members that submit proposals and who conduct ongoing research and collaborations at MTU funded by outside third parties must avoid if possible, and disclose if unavoidable, all Conflicts of Interest including, without limitation: (1) the existence of financial connections between the project staff, including the investigators, and research sponsor or client; and (2) financial involvement by investigators and/or other members of the research team with an outside business enterprise in the same or a related research area through consulting or other business activities.

4.4.2 Disclosure and Review

4.4.2.1 If no Category III (or IV or V) Conflict of Interest exists for a given proposal, the principal or cooperating investigator indicates on the MTU transmittal form that the proposal does not present a conflict of interest, and by signing the transmittal form, certifies that the investigator(s) have read these procedures and are in compliance with them.

4.4.2.2 If a Category III (or IV or V) Conflict of Interest exists for a proposal, each investigator must submit to the Coordinator a completed Conflict of Interest Cover Sheet and Disclosure Form ("Disclosure Forms") at the time of submission of each such proposal. If there are multiple investigators, Disclosure Forms must be submitted by each investigator.

4.4.2.3 Distinct Disclosure Forms must be submitted to the Coordinator for each separate proposal, including proposals to continue ongoing currently sponsored research. The Coordinator will keep this information as confidential as possible.

4.4.2.4 The Coordinator will review the submitted Disclosure Forms for Conflict of Interest. If the Coordinator identifies a real, potential, or perceived Conflict of Interest, the Coordinator will work with the investigator(s) to propose remedies or mechanisms for ameliorating, mitigating, or eliminating the Conflict of Interest, or will disapprove the proposed activity. These remedies or mechanisms need not be finalized before submission of the proposal, but must be finalized to the satisfaction of the Coordinator before funds may be expended by any investigator. Members may appeal the imposition of any such remedy or mechanisms to the Committee.

4.4.2.5 After the review the Coordinator will attach a signed internal review form to each contract or grant proposal, indicating the satisfactory resolution of any Conflicts of Interest. The satisfactory signed internal review form must be in the proposal file in order for MTU to release funds to the principal investigator. Normally this review, including these forms, is not transmitted to funding agencies. If funding agencies request copies of these forms, the Coordinator will confer with Research and Sponsored Programs and the PI before releasing any information.

4.4.2.6 In the event that the Coordinator is off campus and unable to review external research and project proposals for potential Conflicts of Interest, other designated MTU representatives will be authorized to conduct the Conflict of Interest review and to sign the internal review form. Cover Sheets and Disclosure Forms so reviewed by designated MTU representatives, and the internal review form, must then be transmitted to the Coordinator for subsequent verification.

4.4.2.7 If a new Conflict of Interest arises after receipt of a research award, or if the Conflict of Interest situation changes after receipt of a research award, the investigator(s) must submit to the Coordinator updated Disclosure Forms. The Coordinator will review the submitted Disclosure Forms for Conflict of Interest. If the Coordinator identifies a real, potential, or perceived Conflict of Interest, the Coordinator will work with the investigator(s) to propose remedies or mechanisms for ameliorating, mitigating, or eliminating the Conflict of Interest, or will disapprove the proposed activity. These remedies or mechanisms must be finalized to the satisfaction of the Coordinator before additional funds may be expended by any investigator. Members may appeal the imposition of any such remedy or mechanisms to the Committee

4.5 Testing

4.5.1 Definitions

4.5.1.1 Testing is defined as the performance of a standard test that provides the sponsor with results and does not involve an analysis of those results

4.5.2 Disclosure and Review

4.5.2.1 Members engaged in testing must submit Disclosure Forms to the Coordinator on an annual basis with respect to such testing if a Conflict of Interest exists.

4.5.2.2 After reviewing the Disclosure Forms, the Coordinator may require the member to submit to special oversight or management procedures or to cease such testing altogether. Members may appeal the decision of the Coordinator to the Committee.

4.6 Small Businesses Not Directly Related to the Member's MTU Responsibilities

4.6.1 Definitions

4.6.1.1 Category III activities include owning and operating a small business outside of MTU in an area not directly related to the member's MTU responsibilities or areas of expertise. The ownership or operation of a small business during the summer term by faculty, staff or administrators on nine-month appointments, however, is not considered a Category III activity.

4.6.2 Guidelines

4.6.2.1 Faculty members, staff or administrators on nine-month appointments may own or operate small businesses during that nine-month period. Nonetheless, this business should not interfere with the individual's primary MTU duties. (Also see section 4.6.3).

4.6.2.2 Faculty members, staff or administrators on twelve-month appointments may own or operate a small business on a limited basis only, because of the demands placed on their time by MTU. (Also see section 4.6.3).

4.6.2.3 Should the member be required to be absent from work or to miss meeting regularly scheduled classes in order to engage in the Category III activity, the member's supervisor must approve the absence in advance.

4.6.2.4 Members may not divert work from MTU that would normally be funded through sponsored research into their own Category III small business for the purpose of avoiding payment of MTU overhead or to reduce third party costs.

4.6.2.5 Members may not compete with professional or instructional services offered by MTU.

4.6.2.6 Members may not accept business contracts that could be perceived as conveying competitive advantage to third parties due to the member's employment at MTU.

4.6.2.7 Members must not accept business contracts that expose the individual or MTU to actual or apparent conflicts arising from multiple concurrent financial, advisory, or occupational programs.

4.6.2.8 Faculty and staff members with financial relationships outside of MTU who can apply for sponsored funding should not allow their small business to interfere with their pursuit of sponsored funding for MTU. In situations where MTU and the outside entity can apply for the same funding, MTU has first priority in making application and the member may not cause the outside entity to compete with MTU funding applications. Members must first discuss such ideas or proposals with their supervisors in such situations. The investigator must recognize that he or she owes appropriate time and effort to MTU's search for sponsored projects.

4.6.3 Disclosure and Review

4.6.3.1 It is in the best interest of members to disclose the proposed activity in writing to their immediate supervisors or to the Coordinator before engaging in Category III business ownership or operation. Supervisors or the Coordinator may require that the member submit to special oversight or management procedures or to cease such activities, if they determine that such activities constitute a Conflict of Interest or are otherwise detrimental to the college's school's, department's, or individual's primary duties, especially if the business places excessive or disproportionate demands (e.g., see section 4.1.2.3) on the time, energy, or intellectual effort of the individual involved. Members may appeal their supervisor's decision to the Coordinator, or the Coordinator's decision to the Committee.

4.7 Use of University Resources

4.7.1 Definition

4.7.1.1 Category III activities include the use of MTU resources in connection with any work undertaken by members for outside activities.

4.7.2 Category III Use Guidelines

4.7.2.1 Correspondence and reports related to outside activities must not be written on MTU stationery, nor shall such correspondence or reports identify the member as representing MTU.

4.7.2.2 Members should abide by MTU policies, such as the MTU Computer Use Policy and University Web Policy, that govern use of MTU resources.

4.7.2.3 Members engaged in outside activities involving more than minimal use of MTU equipment or resources as determined by the supervisor, department chair or dean, must make special arrangements to schedule the use of those resources. Members must reimburse MTU for any MTU resources, including small-scale office or laboratory equipment, used during the provision of work for outside entities for which they receive direct compensation. If actual costs cannot be determined or a use fee negotiated, the cost of using MTU facilities will be deemed to be fifteen percent (15%) of any gross revenues (such as a consulting fee) received by the member in connection with the provision of services during which the member used MTU facilities.

4.7.3 Disclosure and Review

4.7.3.1 Before engaging in the use of MTU resources in connection with any work undertaken for outside sponsors, members must fully disclose in writing to their immediate supervisors the extent to which the proposed activity will utilize MTU resources. Supervisors may require that the member submit to special oversight or management procedures or cease such activities, if they determine that such activities constitute a Conflict of Interest or are otherwise detrimental to the college's, school's, department's, or individual's primary duties. Members may appeal their supervisor's decision to the Coordinator.

4.8 Supervision of Relatives

4.8.1 Guidelines

4.8.1.1 This procedure is intended to prevent members from being accused of unfairly or inappropriately advancing the interests of a family member or relative. This policy also applies to principal and cooperating investigators conducting sponsored research or other programs. Primary responsibility for avoiding situations that create the appearance of conflict of interest falls on the member or investigator.

4.8.1.2 Under no circumstances may members initiate or participate in MTU decisions involving a direct monetary or non-monetary benefit to a relative as defined in Board of Control Policy 3.8 (spouses, brothers, sisters, sons, daughters, and parents) or person with whom member has close personal relationship including, without limitation, decisions related to initial appointment, retention, promotion, salary determination, travel, leave of absence, stock shares or profits, stock options, and initial public offerings.

4.8.1.3 Members should exercise caution in their involvement with MTU decisions that benefit relatives or a person with whom the member has a close personal relationship.

4.8.1.4 Members who serve as principal and cooperating investigators of proposals or participate in programs funded by outside agencies and conducted through MTU must at all times abide by MTU policies and procedures regarding hiring and supervision of relatives and related rules regarding procurement during the life of the grant or contract.

4.8.2 Disclosure and Review

4.8.2.1 If any member serves in a supervisory role to a relative, then such member must fully disclose that relationship to his or her immediate supervisor. Supervisors may require the member to submit to special oversight or management procedures or require alternative supervisory responsibility for the relative. Members may appeal the supervisor's decision to the Coordinator. Members 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, members should step aside from potential conflicts of interest and seek advice from higher administrators, who may appoint alternate supervisors for such cases.

4.8.2.2 Principal investigators and cooperating investigators of proposals must fully disclose in writing to their immediate supervisor and to the Coordinator their intent to hire relatives or include relatives as investigators on the proposal at the time they submit grant and contract proposals to MTU for approval and justify such a decision. The Coordinator will work with the investigator(s) to propose remedies or mechanisms for ameliorating, mitigating, or eliminating the Conflict of Interest, including requiring the

member to submit to special oversight or management procedures or requiring alternative supervisory responsibility for the relative, or the Coordinator will disapprove the proposed activity. These remedies or mechanisms need not be finalized before submission of the proposal, but must be finalized to the satisfaction of the Coordinator before funds may be expended by any investigator to hire the relative. Members may appeal the Coordinator's decision to the Committee.

5 Category IV: Complex External Relationships, Including Outside Business Activities and Entrepreneurial Projects

5.0 Background

Certain external relationships entered into by members, by their very nature, pose complicated Conflict of Interest problems. For example, MTU, 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 into the marketplace. On occasion, members have sought to turn ideas into marketable products, jobs, and profits. Adherence to the disclosure and review provisions of this policy will help avoid improper preferential treatment to individual business enterprises that involve members. It will also help to delineate more clearly where activities that are part of a member's MTU responsibilities end, and where outside activities begin, when MTU employees have private business interests related to their professional university responsibilities. 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 who are connected to outside business interests to take unfair advantage of the university's resources, since these resources are not available to potential competitors.

5.1 Definitions

5.1.1 A member is normally deemed to be engaging in Category IV activities when that member has a significant financial interest of \$10,000 or more per year in any outside activity related to their MTU responsibilities, i.e., (i) a significant financial interest that would reasonably appear to be affected by the research, educational and/or professional activities of the member, in particular sponsored research activities, or (ii) a significant financial interest in entities whose financial interests would reasonably appear to be affected by such activities. The term "significant financial interest" means anything of monetary value, including but not limited to, salary or other payments for services (e.g. consulting fees or honoraria); equity interest (e.g. stocks, stock options or other ownership interests); and intellectual property rights (e.g. patents, copyrights and royalties from such rights). The term does *not* include salary, royalties or reimbursements from MTU; income from seminars, lectures or teaching engagements sponsored by public or non-profit entities; income from service on advisory committees or review panels for public or nonprofit entities; equity interests, when aggregated for spouse and dependent children, which do not exceed \$10,000 in value and do not represent more than a 5% ownership interest in a single entity; salary, royalty or other payments, when aggregated for spouse and dependent children, which do not exceed \$10,000 in a year.^[1]

However, Category IV activities defined below in 5.1.1.4-5.1.1.7 require disclosure even if the financial interest has not yet reached the \$10,000 threshold. Category IV activities include, but are not limited to:

5.1.1.1 participation in testing, trials, research, evaluation, or development of a technology, machinery, process, product, hardware or software owned or controlled by a business in which the member, a relative, or an associated entity (trust or any other enterprise over which the individual exercises a controlling interest) has a consulting relationship, sits on a board of directors, holds stock or stock options or similar ownership interest, or has any other financial interest;

5.1.1.2 assignment of students, postdoctoral fellows, or other trainees to projects supported by a business (either as sponsored research or as a gift) in which the member, a relative, or an associated entity (trust or any other enterprise over which the individual exercises a controlling interest) has a financial interest other than royalties under MTU policies;

5.1.1.3 participation in, or taking administrative action on, MTU-supervised activities via grants and contracts, purchase orders, lease arrangement, rentals, and/or donations from a business in which the member, a relative, or an associated entity (trust or any other enterprise over which the individual exercises a controlling interest) has a consulting relationship, holds stock or similar ownership interest,

has any other financial interest (other than royalties under MTU policies), or serves on the board of directors or advisory board;

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

5.1.1.5 holding of a financial interest in a business related to the member's MTU responsibilities that competes or has the potential to compete with services, products, or bids for sponsored research by MTU;

5.1.1.6 taking any action on behalf of MTU that is beneficial to a business in which the member, a relative, or an associated entity has a financial interest.

5.2 Category IV Guidelines

5.2.1 Early efforts to establish a business to commercialize the results of an individual's MTU research may require some latitude in these areas. Members interested in beginning entrepreneurial activities based on developments that have occurred during their employment at MTU should consult the Office of Intellectual Property and Technology Commercialization to determine if a license is necessary (see 4.3.1.2) Once an enterprise has been established by a member or involving a member, he or she must clarify the relationship between MTU and the business with which he or she has financial interests. In particular, the member's role in the business and the relationship between the member's MTU and business activities must be disclosed to the Coordinator. In addition, if students are involved in this activity, members must fully disclose to the students the relationship between MTU and the business.

5.2.2 Members engaging in Category IV activities must abide by the Category III guidelines for use of university resources (see 4.7 above) and supervision of relatives (see 4.8 above).

5.3 Category IV Disclosure and Review

5.3.1 Members who engage in any Category IV activity including research and consulting, must submit timely, complete and accurate Disclosure Forms to their immediate supervisor and the Coordinator in advance of pursuing that activity. Filing these forms with the Coordinator will begin the process of seeking permission to engage in Category IV activities. All new Category IV activities must be reviewed and approved by the Committee. The supervisor, Coordinator and the Committee will keep this information as confidential as possible.

5.3.2 After reviewing the Disclosure Forms the Coordinator may require the member to submit to special oversight or management procedures or to cease such Category IV activity altogether. Members may appeal the Coordinator's decision to the Committee.

5.3.3 All members with a Category IV Conflict of Interest must submit an annual report to the Coordinator with an update of all his or her Category IV activities over the previous 12 months. This report will normally be submitted in April, and the Coordinator will review this report within two weeks.

6 Category V: Other Activities and Conflicts

6.1 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. MTU's purchasing procedures are designed to protect MTU employees from the appearance of taking unfair advantages or making inappropriate gains through their control of University purchases. The procedures also protect MTU and insure that individuals responsible for purchases are not in a Conflict of Interest and abusing their position.

6.1.1 Guidelines

6.1.1.1 MTU's purchasing policy seeks to use disclosure mechanisms to insure that the marketplace, not personal financial gain, guides purchasing decisions.

6.1.1.2 All members authorized to and engaged in purchasing on behalf of MTU in any capacity must:

6.1.1.2.A Give first consideration to the objectives, policies and procedures of MTU.

6.1.1.2.B Strive to obtain the maximum ultimate value of each dollar of expenditure.

6.1.1.2.C Cooperate with trade and industrial associations in the promotion and development of sound business methods.

6.1.1.2.D Demand honesty in sales representation whether offered through the medium of an oral or written statement, an advertisement, or a sample of a product.

6.1.1.2.E Decline personal gifts, gratuities, goods, services, and trips, which might in any way influence the purchase of materials.

6.1.1.2.F Grant all competitive bidders equal consideration, to regard each transaction on its own merits, to foster and promote fair ethical and legal trade practices.

6.1.1.2.G Accord a prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.

6.1.1.2.H Counsel and cooperate with National Association of Educational Buyers members and to promote a spirit of unity among them.

6.1.1.3 Purchases may be made from firms in which a member or a relative has a financial interest only upon prior, written disclosure to the Coordinator and written approval by the member's immediate supervisor.

6.1.2 Disclosure and Review

6.1.2.1 Members authorized to and responsible for purchasing equipment or services for MTU must fully disclose in writing any financial relationships with potential vendors to the Coordinator upon each purchase requisition. A member must disclose any level of ownership in, or control of, a company with which such member intends to do business using MTU funds, equipment, expertise, or influence, for any level of financial relationship.

6.1.2.2 Members authorized to and responsible for purchasing supplies or services under research grants or sponsored projects also must comply with the guidelines and standards specified in the individual contracts, as well as with all MTU policies and procedures. If there is a conflict between the different applicable policies and procedures, the member must resolve the conflict with the advice of the Coordinator.

6.1.2.3 Members who exercise a significant measure of control over purchases because of their positions (buyers, department chairs, MTU officers) or because they must approve certain purchases (deans, upper-level administrators, Board of Control members, etc.) must file financial disclosure forms with the Coordinator if there is a Conflict of Interest.

6.1.2.4 After reviewing submitted Disclosure Forms, the Coordinator may require the member to submit to special oversight or management procedures or to reverse the purchasing decision altogether. Members may appeal the Coordinator's decision to the Committee.

6.2 Business Referrals (see end note 1)

6.2.1 Guidelines

6.2.1.1 Except within the context of consulting activities that conform to MTU's policies on consulting (see sections 3.1.1 and 4.1 and 4.2), a member, while acting in the context of his or her MTU duties, may not make professional referrals to a business or outside entity in which he/she, a relative, or an associated entity has a financial interest.

6.2.1.2 To obtain advice untainted by potential or perceived Conflicts of Interest, MTU employees must apply the principle of separation of functions when retaining consultants or purchasing products. In this context, the term "function" pertains to advising versus performance of tasks.

6.2.1.3 MTU must normally disqualify a consultant who serves as an uncompensated adviser to MTU from receiving compensation for providing services to MTU. MTU normally must not accept advice from a consultant that refers MTU to an enterprise in which the consultant has a financial interest.

6.2.2 Disclosure and Review

6.2.2.1 A member may make exceptions to these procedures in cases where MTU clearly benefits from not separating advice and service into separate functions. Any exception to these section 6.2 guidelines must be approved in advance by the Coordinator and the member's immediate supervisor.

6.3 Business Relationships with Subordinates

When a supervisor enters into a business relationship with a subordinate not involving sponsored research, a conflict could arise concerning potential or perceived coercion. Most business or consulting relationships are routine, acceptable and should be encouraged. Some types of contractual, business relationships are more serious and need more detailed disclosure, and may be prohibited. An example of a relationship that may be prohibited, and that must be disclosed and reviewed by the Coordinator, is a partnership that makes the student (or subordinate) a co-owner or officer of a business, where the differential in power puts the student (or subordinate) in an unfair bargaining position and compromises the advisor's (or supervisor's) primary responsibility to MTU. Such a business relationship is especially problematic if it involves undergraduate students.

6.3.1 Guidelines

6.3.1.1 Members may occasionally hire students or subordinates to do work for them unrelated to the member's MTU responsibilities (e.g., yard work) or in a business setting (e.g., the hiring of students to do survey work or testing as part of a consulting project). These activities are reasonable as long as there is no coercion involved and fair and reasonable compensation is provided.

6.3.1.2 In rare cases, members may enter into contractual or business relationships involving substantial actual or potential financial interests with students that they supervise provided that members sever their MTU supervisory relationship with the student prior to negotiating the contract or business relationship. This supervisory relationship may be maintained, however, at the request of the member and the student, and with the prior approval of the member's chair, dean, or director and the Coordinator.

6.3.2 Disclosure and Review

6.3.2.1 Under cases described in section 6.3.1.1, members must notify their immediate supervisor prior to hiring subordinates or students whom they advise or from their courses. The immediate supervisor may require the member to submit to special oversight or management procedures or to reverse the contemplated hiring altogether. Members may appeal the supervisor's decision to the Coordinator.

6.3.2.2 Under cases described in section 6.3.1.2, members must notify their immediate supervisor and the Coordinator. The immediate supervisor and/or Coordinator may require the member to submit to special oversight or management procedures or to eliminate the contemplated relationship altogether. Members may appeal the supervisor's and/or Coordinator's decision to the Committee. To avoid doubt, in such circumstances the immediate supervisor and/or Coordinator will normally require that a faculty member be replaced as the student's advisor. The involved student has a right to discuss issues related to activities described in this section with the faculty member's immediate supervisor and/or the Coordinator prior to the imposition of any conditions upon the faculty member.

7 Review and Enforcement

7.1 Supervisors

7.1.1 Supervisors have substantial responsibility to work with faculty and staff in their departments to resolve Conflicts of Interest. They should seek the advice of the Coordinator as necessary.

7.1.2 Supervisors must submit to the Coordinator an annual report of conflicts of interest that they have resolved in their department. This will assist the Coordinator in preparing the Coordinator's annual report to the Provost and Board of Control.

7.2 MTU Conflict of Interest Coordinator

The Provost and Senior Vice President for Academic and Student Affairs must designate a Coordinator with an academic background and a familiarity with the academic and research process. The Coordinator's primary responsibility will be to review submitted Disclosure Forms and in cases of Category III, IV or V activities to determine appropriate mitigation procedures whenever possible. The Coordinator will have the authority to certify that MTU is in compliance with the Conflict of Interest guidelines or regulations of external funding agencies as well as those of MTU and the State of Michigan. The Coordinator will work with members to identify means of minimizing or eliminating potential Conflicts of Interest. The Coordinator also will have the authority to contact funding agencies in the event that Conflicts of Interest cannot be resolved under these procedures. The Coordinator will confer with Research and Sponsored Programs before releasing any confidential information.

The Coordinator will develop procedures to hear appeals of decisions made by supervisors and will retain records connected to Coordinator-level Conflict of Interest reviews for three years after each project is completed. The Coordinator will request and must receive from supervisors an annual report that summarizes Conflicts of Interest disclosed to supervisors, and must prepare annual reports for the Provost and Board of Control that includes a summary of Conflict of Interest activities during the previous year.

The Coordinator will serve as a resource for members seeking to gain more information about Conflicts of Interest, how to avoid them, and how to mitigate and resolve conflicts that occur. The Coordinator will assist in the completion of Disclosure Forms by members in a fashion analogous to MTU research staff who help prepare budgets and financial statements for sponsored research proposals to outside agencies. The Coordinator will play the role of facilitator and educator on the subject of Conflict of Interest at MTU and will work with members in seeking resolutions to Conflicts of Interest. Finally, members who have concerns about Conflicts of Interest involving other members may contact the Coordinator about their concerns.

All communications with the Coordinator will normally be kept confidential. Members will have an opportunity to work with the Coordinator to identify and eliminate their conflicts of interest. The Coordinator must contact immediate supervisors about any unremedied Conflicts of Interest so that they may be examined pursuant to these procedures.

7.3 MTU Conflict of Interest Committee

7.3.1 The Committee will review all activities that fall under Category IV, as well as research proposals seeking external funding that contain Conflicts of Interest that cannot be resolved by the Coordinator, in a timely manner. The Committee is a permanent committee elected by the MTU Senate, consisting of three members from the Senate constituency (faculty and staff), with staggered terms, in addition to the Coordinator as an ex officio member. It is anticipated that relatively few cases will require such a review. But for these reviews, the Committee may add, on a case-by-case basis, additional members as necessary. These additional members will be appointed by the President of the MTU Senate and the MTU administration based on their knowledge of the applicable field of expertise as well as knowledge of Conflict of Interest and intellectual property issues.

7.3.2 The charge to this Committee includes the following, without limitation:

- serve as an advisory Committee for the Provost and Senior Vice President for Academic and Student Affairs and to assess the current situation in MTU with respect to applying the Conflict of Interest policy and procedures;
- inform the University Senate on the MTU community's state-of-compliance with the Conflict of Interest policy and procedures;
- 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 IV activities, even those in which the Coordinator and a member have reached a satisfactory agreement. In those cases connected to Category IV activities where members and the Coordinator cannot agree upon the steps that will best ameliorate Conflicts of Interest related to such a case, the Committee shall suggest steps to resolve the impasse. Either party may request the involvement of this Committee;
- resolve, in a timely fashion, cases connected to proposals where members and the Coordinator cannot agree upon the steps that will best ameliorate Conflicts of Interest; the Committee must suggest steps to resolve an impasse. Either party may request the involvement of this Committee.

7.3.3 If the Committee, in considering cases of the last two types, finds that a significant Conflict of Interest exists, it will recommend to the Provost and Senior Vice President for Academic and Student Affairs that a member take actions to ameliorate or alleviate the Conflict of Interest. These actions may include, without limitation:

- requiring public disclosure of significant financial interests;
- modification of the research proposal or entrepreneurial activity;
- monitoring of the research by outside or independent reviewers;
- disqualifying an investigator or investigators from participation in that portion of the sponsored research that is affected by the outside financial interest;
- requiring the investigator(s) to step aside from direct management of the outside enterprise while retaining financial interests;
- divestiture of significant financial interests;
- severance of relationships that create conflicts;
- requiring a faculty member of staff to step aside as the advisor or supervisor of specific staff or students;
- discharge from MTU (see section 7.3.7).

This list is not exclusive and there may be other possible actions adopted to ameliorate or alleviate the Conflict of Interest.

7.3.4 In instances where a satisfactory resolution of Conflicts of Interest still cannot be achieved through this procedure, the Coordinator will contact relevant funding agencies to inform them of the circumstances surrounding such cases. The Coordinator will notify Research and Sponsored Programs before contacting these agencies. This step must be taken only at the conclusion of MTU's internal review process. In the interest of maintaining confidentiality, principal investigators and other members must not contact sponsors about such cases until after the Coordinator has done so.

7.4 Violations of MTU Conflict of Interest Procedures

7.4.1 All members, at the time they begin their connection with MTU, shall be given copies of these procedures. MTU may provide continuing education about these procedures but it is the responsibility of each member to know their obligations.

7.4.2 MTU's Conflict of Interest procedures place significant trust and responsibility upon individual members, who are expected to make full and open disclosure of Conflicts of Interest. Violation of this trust is an especially serious failure of professional conduct. MTU has the authority to take action against individuals who violate these procedures, up to and including discharge. MTU approval to undertake particular projects, including sponsored research, consulting, and outside professional activities that create Conflicts of Interest may be withdrawn immediately in cases where individual members fail to fully disclose or otherwise misrepresent significant financial interests. Similarly, failure to cooperate with MTU officials responsible for reviews of Conflict of Interest disclosure will prevent MTU approval and sending of outside research and project proposals to potential sponsors.

7.4.3 When a violation of MTU policy is alleged (see section 7.2.3), a thorough and timely process shall take place within MTU to provide adequate opportunity for the Committee to reach valid conclusions. It is imperative that the procedures described in this document be followed and protection be afforded to the rights and reputation of both accuser and accused, those investigating the allegations, any sponsoring agency, and MTU. All parties shall be responsible for maintaining the confidentiality of the Committee

proceedings and of all evidence developed in the proceedings to the extent allowed by law. All proceedings shall be in accordance with applicable rules and obligations of MTU. Only substantiated findings of violation of these procedures, as determined by either the Provost and Senior Vice President for Academic and Student Affairs or the MTU President, will be part of the personnel record.

7.4.4 Allegations of violations of these procedures shall be directed to the Coordinator. If the activities fall under Categories I or II, the Coordinator shall refer the matter to the individual's immediate supervisor so that Conflicts of Interest may be examined in the normal fashion. The same shall apply to activities under Category III, with the exception of sponsored research activities. If the allegations allege violations of policy involving sponsored research activities, or about Category IV and V activities, the Coordinator shall notify the individual so accused, and gather basic information. The Coordinator will then present this material to the Committee within fourteen (14) working days. The accused shall have opportunity to respond and present information to the Committee. All evidence produced by the member shall be reviewed and secured by the Committee. The Committee shall determine whether grounds for an investigation of a violation exist, or whether the accusations are without merit. The Committee shall notify the accused and the Provost and Senior Vice President for Academic and Student Affairs of its finding.

7.4.5 If the Committee determines that grounds for an investigation exist, the Provost and Senior Vice President for Academic and Student Affairs may accept or reject that finding. If accepted, an additional three-person investigating Committee shall be designated to investigate the allegations. These individuals shall be impartial members with sufficient expertise and dedication to conduct a thorough and equitable investigation. These members will generally not be from the same academic unit as the accused. Appointments will be made to this committee by agreement of the University Senate President and the MTU President. Strict attention shall be paid to any factors that might compromise their ability to impartially examine the allegations by those members asked to serve.

7.4.6 Private and separate sessions shall be conducted by the investigating Committee to hear the accuser(s), the accused, and others as determined necessary by the Committee. Sessions to obtain testimony may be conducted either in person or by electronic means such as telephone conference calls. The accused shall be informed of the accusations in writing from the investigating Committee and be given the opportunity to respond and present evidence on his/her behalf during the inquiry. All evidence that is produced shall be reviewed and secured. Necessary administrative support (e.g., clerical, gathering information, witnesses, and record keeping) will be provided by the Provost and Senior Vice President for Academic and Student Affairs.

7.4.7 The investigating Committee shall submit a written report of its findings, conclusions, and recommendations, together with pertinent documentation and evidence, to the Provost and Senior Vice President for Academic and Student Affairs, the accused, the Coordinator, and the Committee within thirty (30) working days after its formation, unless the time limit is extended by the Provost and Senior Vice President for Academic and Student Affairs following a written request and explanation from the Committee. If the investigating committee finds that the procedures have been violated, it shall recommend sanctions (see also section 7.2.3) to reflect the seriousness of the violation. Distinctions shall be made between neglect, honest oversights, or ignorance of procedures on the one hand, and willful violations on the other hand, especially deliberate failures to fully disclose relationships that create Conflicts of Interest. Sanctions may include but are not limited to sending a letter of reprimand, setting special conditions on outside professional activities, research or consulting efforts, or external entrepreneurial activities, requiring special certification or assurances of compliance, disbarment from the opportunity to conduct externally funded research with selected funding agencies for fixed periods of time, or termination of employment. Any termination shall occur in a manner consistent with existing applicable MTU policies on employment practices and academic tenure. MTU may impose limitations or special reviews on the outside professional and entrepreneurial activities of affected individuals.

7.4.8 The Provost and Senior Vice President for Academic and Student Affairs shall receive the investigating Committee's report and shall respond within fourteen (14) working days, accepting, modifying, or rejecting its findings. The Provost and Senior Vice President for Academic and Student Affairs shall submit his/her decision in writing to the accused, the investigating committee and the Committee, the Coordinator, the appropriate dean or unit director, and the MTU President. Individuals have a right to appeal decisions to the MTU President, making such an appeal within fourteen (14) working days. The President shall appoint an appeals committee of at least three impartial members, at least two of whom were not members of previous committees hearing this appeal, and who are not party to the conflict. The committee shall report its findings and recommendations to the President within

twenty-one (21) working days of being convened. The President's decision shall be submitted to the accused, all three committees, the Coordinator, the appropriate dean or unit director, and the Provost and Senior Vice President for Academic and Student Affairs.

7.4.9 The Coordinator shall maintain evidence, reports, and recordings involving the allegations, inquiry, and investigation for five years after the submission of the final report. Where required by the rules and procedures of sponsoring and granting agencies, the Coordinator shall inform them of the final decisions and provide reports of investigations.

ENDNOTES

1. This document includes enforceable provisions for members. In addition, MTU will protect its interest from self-dealing advice by including appropriate language in contracts for consultants and letters of appointment for unpaid advisers. The Coordinator and Committee will have the opportunity to review and advise MTU on the language used in the general form of these letters and contracts.

Adopted by Senate: 9 April 2003
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Became Senate Procedures 201.1.1

[1] Note: This definition is from the Conflict of Interest Policies section of the National Science Foundation Grant Policy Manual NSF 02-051, effective August 2002, available at http://www.nsf.gov/pubs/2002/nsf02151/gpm02_151.doc