

# FIG Presentation

Ethics and Conflicts of Interest

## Purpose

- A review for most of you.
- To make you aware, or refresh your memory, that these laws and policies exist and where to find them – the hierarchy from state statute to board policy to our policies.
- To enable you to provide guidance to others who may be well-intentioned but uninformed.
- To enable you to serve as the front line in creating the expectation that it will be done right.  
    You help set the tone in your unit.
- To empower you to say, “That may be the way you’ve always done it, but it’s not the right way, and we’re changing.”

# ETHICS and CONFLICTS

The statutes and policies

**Office of the  
Attorney General**

**Idaho  
Ethics In Government  
Manual**



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## TABLE OF CONTENTS

<b>RELEVANT STATUTES.....</b>	<b>1</b>
BRIBERY AND CORRUPT INFLUENCE ACT .....	1
PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS .....	10
ETHICS IN GOVERNMENT ACT.....	13
MISCELLANEOUS STATUTES .....	18
<b>QUESTIONS AND ANSWERS .....</b>	<b>22</b>
STATUTORY INTERPRETATION .....	22
PURPOSE OF ANALYSIS OF ETHICS STATUTES .....	22
PUBLIC EMPLOYEES OR OFFICIALS COVERED BY ETHICS STATUTES.....	23
NEPOTISM .....	24
CONFLICTS OF INTEREST/PROHIBITED CONTRACTS.....	25
BRIBERY/CORRUPT INFLUENCE & GIFTS TO PUBLIC OFFICIALS .....	29
INCOMPATIBILITY OF OFFICE.....	32
<b>CONSANGUINITY CHART .....</b>	<b>35</b>
<b>INDEX OF ADDITIONAL CONFLICTS OF INTEREST STATUTES.....</b>	<b>36</b>

- **18-1356. Gifts to public servants by persons subject to their jurisdiction.**
- (2) Officials concerned with government contracts and pecuniary transactions. **No public servant ... shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.**

- **(5) Exceptions.** This section shall not apply to:
  - (c) **trivial benefits not to exceed** a value of **fifty dollars** (\$ 50.00) incidental to personal, professional or business contacts and **involving no substantial risk of undermining official impartiality;**

So...

- A public servant can't solicit or accept gifts
- The **\$50.00 de minimis limit** –
  - Ask “what’s the purpose of this gift?”
  - Does it, or is it intended to, undermine your impartiality?**
- Stay out of the gray area.

“Let me take you to lunch.”

**18-1357. Compensating public servant for assisting private interests in relation to matters before him**

(1) Receiving compensation. A public servant commits a **misdemeanor** if he solicits, **accepts or agrees to accept compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction** or proposal as to which he knows that he has or is likely to have an official discretion to exercise.

**18-1359. Using public position for personal gain.**

(1) **No public servant shall:**

(a) Without the specific authorization of the governmental entity for which he serves, **use public funds or property to obtain a pecuniary benefit for himself.**

(d) **Be interested in any contract made by him** in his official capacity, or by any body or board of which he is a member, except as provided in section 18-1361, Idaho Code.

So...

- If you're involved in preparing the contract or awarding the grant, you can't accept compensation for your advice or assistance to someone who may be interested in the outcome.
- Don't use public \$ or property for personal benefit
- You can't have an interest in a contract you make

"I'll pay you to look this over."

"I can run that test for you on the lab's equipment for a small fee."

Your spouse's business is a subcontractor.

18-1359(4) "Conflict of interest" means **any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated.**

If there's a benefit to you or yours, you have a conflict of interest

# The P-card rule

§ 18-5701. Misuse of public moneys by public officers and public employees

No public officer or public employee shall:

- (1) Without authority of law, **appropriate public moneys or any portion thereof to his own use, or to the use of another;** or
- (6) Knowingly **keep any false account, or make any false entry or erasure in any account** of or relating to public moneys; or fraudulently **alter, falsify, conceal, destroy or obliterate any such account;** or
- (10) **Knowingly use any** public moneys, or financial transaction card, financial transaction card account number or credit account issued to or for the benefit of any governmental entity to make any purchase, loan, guarantee or advance of moneys **for any personal purpose** or for any purpose other than for the use or benefit of the governmental entity.

- Common source of serious problems and consequences
- If you must use a P-card, read the P-card memo.
- It's a criminal statute –
  - **misdemeanor** for an employee whose job does not involve handling money;
  - **felony** for someone whose job does involve managing funds.
- any public officer or public employee who pleads guilty to or is found guilty of a violation of [section 18-5701](#), ... shall:
  - (a) Be **terminated for cause** from the public office or employment...

# Policies

- Board – Governing policies and procedures

**G. Conflict of Interest**

olicy

Members of the Board and administrators and employees of the institutions, agencies and school serve a public-interest role and have a clear obligation to conduct all affairs of the institution, school and agency in a manner consistent with that role. All decisions of the Board, administrators, and employees are to be made solely on the basis of a desire to promote the best interests of the institution, school or agency and the public good.

2. Procedure

a. The policy of the Board requires that in the event the Board, administrators, or employees must consider any transaction for an institution, school or agency that also involves (a) a member of the Board, an administrator, or employee or (b) a member of his or her immediate family or close relative ("immediate family" means the employee's spouse, parent, step-parent, guardian, brother, sister, mother-in-law, father-in-law, child, or stepchild; "close relative" means the employee's grandmother, grandfather, aunt, uncle, niece, nephew, brother-in-law, sister-in-law, first cousin, or grandchild.), or (c) an organization with which a member of the Board, an administrator, or employee is affiliated, such Board member, administrator, or employee, at the first knowledge of such transaction, must disclose such real or potential conflict. Board members disclose to the Board and administrators and employees disclose to his or her supervisor.

b. Such disclosure is further required of Board members, administrators, or employees concerning all relationships and business affiliations that reasonably could give rise to a conflict of interest involving an institution, school or agency. For the purpose of this procedure, affiliation is understood to exist if the Board member, administrator, employee, or a member of the family is:

- (1) an officer, director, trustee, partner, employee, or agent of such organization; or
- (2) either the actual or beneficial owner of more than five percent (5%) of the voting stock or controlling interest of such organization; or
- (3) has any other direct or indirect dealings with such organization from which he or she knowingly benefited (e.g., through receipt directly or indirectly of cash or other property in excess of \$500 a year exclusive of dividends or interest).

c. Board members, administrators, and other employees who have a real or potential conflict of interest in any matter before the Board or the institution, school or agency administration will comply with all applicable statutes and rules governing conflicts of interest including, but not limited to, the Bribery and Corrupt Influences Act, Idaho Code §18-1351 *et. seq.* and the Ethics in Government Act of 1990, Idaho Code §18-1351 *et. seq.* and the Ethics in Government Act of 1990, Idaho Code §59-701 *et. seq.*

So...

Disclose!

- Stay out of the gray.
- If the relationship or affiliation **could** give rise to a conflict, or the **perception** of a conflict, it should be disclosed.
- Don't rely on your colleagues to make the call for you.
- “The way we've always done it” is not a safe harbor.

- 2. Conflict of Interest
- A conflict of interest occurs when a person's private interests compete with his or her professional obligations to the Board-governed entity to a degree that an independent observer might reasonably question whether the person's professional actions or decisions are materially affected by personal considerations, including but not limited to personal gain, financial or otherwise.

The reason to disclose is to make sure  
you get to an “independent  
observer”

This disclosure obligation is ongoing, and each employee has a duty to supplement or amend his or her disclosure when the employee knows that the disclosure was incorrect in a material respect when made or the disclosure, though correct when made, has become inaccurate in a material respect.

So...

- Keep in touch with your faculty and staff.
- Ask questions. Remind them.
- Help set the tone and make the expectations clear.

“I just agreed to consult for ...”

c. For the purposes of this policy, an employee is “affiliated” with an organization if the person, a member of the person's immediate family (i.e., spouse, parents, children, brothers, and sisters), or a person residing in the employee’s household or a legal dependent of the employee: (i) is an officer, director, trustee, partner, employee, or agent of such organization; (ii) is either the actual or beneficial owner of more than one percent (1%) of the voting stock of or a controlling interest in such organization; (iii) has any other direct or indirect dealings with such organization from which the employee is materially benefited. It shall be presumed that an employee is “materially benefited” if he or she receives, either directly or indirectly, money, services, or other property in excess of one thousand dollars (\$1000) in any year in the aggregate.

d. All disclosures required to be made hereunder must be directed, in writing, to the Chief Executive Officer, or designee, of the institution agency or school.

**Idaho State Board of Education GOVERNING POLICIES AND PROCEDURES SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES**

**Subsection: Q. Conflict of Interest and Ethical Conduct – All Employees April 2002**

**Q. Conflict of Interest and Ethical Conduct – All Employees**

1. General Principles of Ethical Conduct

All employees of the institutions, agencies and school:

- a. shall not hold financial interests that are in conflict with the conscientious performance of their official duties and responsibilities;
- b. shall not engage in any financial transaction in order to further any private interest using nonpublic information of the Board, institution, school or agency;
- c. shall put forth honest effort in the performance of their duties;
- d. shall make no unauthorized commitments or promises of any kind purporting to bind the Board or any Board-governed entity;
- e. shall not use their public offices for private gain;
- f. shall act impartially and not give preferential treatment to any private or public organization or individual;
- g. shall protect and conserve public property and shall not use it for other than authorized activities;
- h. shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with official duties and responsibilities;
- i. shall promptly disclose to their chief executive officer waste, fraud, abuse, or corruption in accordance with applicable law and policy;
- j. shall endeavor to avoid any actions that would create the appearance that they are violating the law or the ethical standards of the Board or the relevant Board-governed entity;
- k. shall disclose potential conflicts of interest to the Chief Executive Officer, or designee, of the institution, agency or school, and avoid conflicts of interest, potential conflicts of interest, and circumstances giving rise to the appearance of a conflict of interest.

- Using university property – the scanner, van, nuclear densometer
- Outside employment – conflict of **commitment** as well as conflict of **interest**

What's the difference?

- Don't “create the appearance”

# Administrative Procedures Manual

- APM 10.40

# Administrative Procedure Manual

## 10.40 -- Property Inventory and Products

### A-2. Ownership.

i) **The University owns all property:** The University owns all property purchased with University funds and all property received as gifts.

...The University owns all personal property purchased with funds from a grant or contract. No department, departmental unit, or University employee, may hold proprietary interest in any piece of University property, or property purchased with grant or contract funds which is held by the University.

Regardless of which departmental unit ordered the item, the fund cited, or the budget expensed, the principle of University ownership prevails.

- I bought it with my Y account. It's the department's.
- What's wrong with that?

# Faculty/Staff Handbook

- FSH 3170
- FSH 5600
- FSH 6240

## CHAPTER THREE: 3170

### EMPLOYMENT INFORMATION CONCERNING FACULTY AND STAFF

January 2008

## 3170

### UNIVERSITY ETHICS

**B. RULES OF ETHICAL CONDUCT.** The purpose of Rules of Ethical Conduct is to establish and maintain high standards of honesty, integrity, and quality of performance for all employees of the University of Idaho. Individuals in public universities have positions of trust and responsibility that require observation of the highest ethical standards. Ethical conduct is of critical importance in our relationships with the public, students, other employees and agencies, and private contractors. The Rules of Ethical Conduct are intended to [establish a general baseline for ethical conduct](#); they are not intended to be inclusive of all conduct. Guidelines are provided for each of the rules in D below (clicking on the title will take you directly to that respective guideline). These guidelines are offered as examples of the issues discussed in their respective sections. They are not presented as policy and do not replace approved policy in evaluating issues of ethics and professional conduct.

### **B-3. Conflicts of Interest and Commitment.**

**a.** Conflicts of Interest refers to situations in which financial or other personal considerations may directly and significantly affect an employee's professional judgment in exercising any university duty or responsibility. Employees are expected to avoid conflicts of interest unless such conflicts are disclosed and managed in accordance with the university policies. [See [FSH 6240.](#)]

**b.** Conflicts of Commitment refers to situations where an individual's distribution of effort between one's university appointment and one's outside activities may directly and significantly affect an employee's ability to perform their university responsibilities in teaching, research and public service. Employees are expected to arrange outside activities and financial interests so as not to interfere with the primacy of these university duties. [See [FSH 6240.](#)]

**B-7. [University Resources](#).** Employees of the university have a responsibility to be [financial stewards of the public resource](#). They are responsible for implementing, maintaining, and following proper administrative and accounting procedures, and for complying with all relevant governmental and regulatory requirements.

**B-11. [Gifts](#).** University employees concerned with contracts and pecuniary transactions, or who influence the allocation of business or exercise administrative decision making authority must be particularly careful to [avoid actions that create the appearance of favoritism or that may adversely affect the university's reputation for impartiality and fair dealing](#) and may not accept any pecuniary benefit from persons interested in or likely to become interested in such action.

[An employee may not accept a gift or business courtesy when a real or perceived attempt is being made to offer the courtesy in exchange for, or to influence favorable action by the university; motivate the employee to do anything prohibited by law, regulation, or university policy; or gain an unfair competitive advantage by improperly influencing an employee's discretionary decisions.](#)

Notwithstanding the above prohibitions, [state law allows for public employees to receive trivial, incidental benefits not to exceed a value of fifty dollars \(\\$50.00\) provided that there is no substantial risk of undermining official impartiality.](#) [See Idaho Code section [18-1356](#) and [18-1359](#), and Board Policy Sections [I.G.](#) and [II.Q.](#)].

**C. REPORTING UNETHICAL BEHAVIOR.** As state employees, UI faculty and staff recognize their **responsibility to report unethical behavior** when it is encountered. UI employees can confidentially report concerns about suspected issues of illegal, unethical or irresponsible acts. Information regarding the confidential reporting line may be accessed from the UI home page or directly from the following web site: <http://www.uihome.uidaho.edu/hotline>, or from the office of Internal Audit.

- The expectations of you as people involved in your unit's financial matters are high. You are in a position to know.
- You have to ask the tough questions.
- You should set the tone.

## CHAPTER FIVE: 5600

### RESEARCH POLICIES

July 2000

5600

### FINANCIAL DISCLOSURE POLICY

#### **C. MANAGEMENT OF POTENTIAL FINANCIAL CONFLICTS OF INTEREST.**

**C-1. Disclosure.** Disclosure is the key mechanism to bring potential financial conflicts of interest to light for further evaluation and for oversight, where necessary.

**C-3. Employee Responsibilities.** Each investigator shall disclose, in writing, all significant financial interests of the investigator and the investigator's spouse and dependent children that would reasonably appear to be affected by the activities funded or proposed for funding by the grant agency; or in entities whose financial interests could reasonably appear to be affected by such activities to the vice president for research and graduate studies on forms to be provided by the Research Office. Each investigator is also responsible for updating financial disclosure statements during the period of the award, either on an annual basis or as new reportable significant financial interests are obtained.

#### **4. Approval Process.**

- a. The vice president for research and graduate studies or his or her designee will make a determination regarding conflicts of interest upon review of the financial disclosure form submitted by the investigator(s). For the purposes of this policy, a conflict of interest exists when the review has determined that a significant financial interest could directly and significantly affect the design, conduct or reporting of the research or educational activities funded or proposed for funding by the agency.

#### **D. SANCTIONS.**

**D-1.** Failure to disclose all significant financial interests or violations of this policy shall be considered a violation of university policy and regulations and shall result in a formal inquiry and an investigation by UI's Scientific Misconduct Committee. This committee may recommend sanctions such as, but not limited to, the following:

- a. disciplinary action up to and including suspension and dismissal;
- b. requiring repayment of all financial benefits resulting from such violation;
- c. freezing research funds or accounts;
- d. rescinding contracts entered in violation of this policy, federal law, or state law;
- e. bringing legal action to recover the amount of financial benefit received by an employee as a result of the employee's violation of this policy.

CHAPTER SIX: 6240

OTHER GENERAL INSTITUTIONAL POLICIES

January 2008

CONFLICTS OF INTEREST OR COMMITMENT

**A. Definitions**

**A-1.** Conflicts of Commitment refers to an individual's distribution of effort between one's university appointment and one's outside activities.

**A-2.** Conflicts of Interest refers to an individual's involvement in activities in which financial or other personal considerations may directly and significantly affect an employee's professional judgment in exercising any University duty or responsibility.

**A-3. Apparent Conflict** refers to an individual's involvement in outside professional activities, outside employment, personal direct or indirect financial or other interests, or acceptance of benefits from third parties that creates a perceived conflict between the University's mission and an individual's private interests, whether or not there is an actual conflict of commitment or interest. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the employee's ability to act in the University's best interests or perform contractual obligations is compromised by outside interests. For example, an employee may have an outside business interest that appears to influence judgment in University decisions. There may not be an actual conflict, but the situation may have the appearance of compromising a person's professional judgment

**B-1.** Employees shall avoid situations that may result in a conflict of interest or commitment with the potential to directly and significantly affect the University's interests, compromise objectivity in carrying out University responsibilities, or otherwise compromise the performance of University responsibilities. Examples of prohibited conflicts are set out in section C-3. Situations that may be managed to avoid conflict are set out in section B-2; such situations may proceed if approved in writing by the president or the president's designee, and subject to an authorized management plan that prescribes the necessary steps and management to avoid the conflict.

**B-2.** University employees who have apparent conflicts are expected to disclose them in compliance with this policy. In all matters, employees are expected to take appropriate steps, including consultation if issues are unclear, to avoid both conflicts of interest and commitment and the appearance of such conflicts.

- Conflict of commitment
- Conflict of interest
- Apparent conflict

Examples?

## FSH 6240 Required Disclosure of Conflicts

**You must complete this disclosure annually with your performance evaluation. If you have a conflict to disclose then you also will need to complete Form FSH 6240A.** Likewise, if there is any change in your circumstance that may give rise to potential conflicts or eliminate potential conflicts previously disclosed, then you will need to complete Form FSH 6240A within 30 days of the change. University of Idaho FSH Policy 6240 Conflicts of Interest or Commitment is available at <http://www.webs.uidaho.edu/fsh/6240.html>. If you have any questions about the form or about specific potential or actual conflicts of interest, please contact your unit administrator or the Chair of the university's Ethical Guidance and Oversight Committee. **Disclose outside employment for compensation of more than 20 hours/week by completing FORM 6240 B – Disclosure of Outside Employment or Consulting for Compensation.**

- I have reviewed FSH 6240 and **DO NOT** have any conflicts of interest, conflicts of commitment or apparent conflicts to report. Please sign and date below.
- I have reviewed FSH 6240 and **DO** have conflicts of interest, conflicts of commitment or apparent conflicts to report. Please, sign below, and fill out form FSH 6240A. Submit completed FSH 6240A to your unit administrator along with separate pages describing a plan to manage each conflict or apparent conflict.

*Your signature below certifies that you have reviewed FSH 6240 regarding disclosure of conflicts, and that the information that you provide regarding disclosure of any conflict is accurate to the best of your knowledge as of the date of this document, and you commit to providing an update if a material change occurs in the information you have provided.*

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**Unit Administrator Signature**

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Interdisciplinary/Center Administrator (when appropriate)  
(when appropriate)

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Interdisciplinary/Center Administrator

- Disclose, disclose, disclose
- Get approval
- Remember the continuing obligation