EXECUTIVE SUMMARY OF PROPOSED POLICY: Research and Development Exception for the Virginia Conflict of Interests Act

New Policy ☐ or Substantive Revision ☒

Policy Type: Board of Visitors

Responsible Office: Office of Research Integrity and Ethics, Office of the Vice President for Research and Innovation

Draft Date: 11/5/2018

Initial Policy Approved: 7/16/1992

Revision History:

05/21/2004  Procedures for Compliance with the Virginia State and Local Government Conflict of Interest Act Prohibited Contracts Exception
[Approved by SCHEV on 01/21/2014 for a period of 2 years]

12/12/2014 Procedures for Compliance with the Virginia State and Local Government Conflict of Interest Act Prohibited Contracts
[Minor revisions pursuant to General Assembly modifications to the Virginia State and Local Government Conflict of Interests Act]

12/18/2015 Research Exception for the Virginia Conflict of Interest Act Prohibited Contracts
[Approved by SCHEV on 12/22/2015]

Governance Process Tracking:

Integrity & Compliance Office Review: 11/14/2018

University Counsel Review: 01/04/2019

Public Comment Posting: MM/DD/YYYY

University Council Academic Affairs and University Policy Committee Review: MM/DD/YYYY

University Council Review: MM/DD/YYYY

President’s Cabinet Approval: MM/DD/YYYY

Board of Visitors Approval (if applicable): MM/DD/YYYY

Template Revised: 10/26/2017
1. Why is this policy being created ☐ or revised ☒?  
   The existing policy reflects necessary revisions required to secure ongoing SCHEV approval in order to proceed with approving exceptions to a prohibited contract for proposed research and development, as provided for in the *Virginia State and Local Government Conflict of Interest Act*. This revision aligns with current processes and offers increased clarity.

2. **New policy** ☐: What are the general points or requirements covered in this policy?  
   **or**  
   **Revised policy** ☒: What are the substantive differences between this draft and the current policy?  
   p. 1 – Moved definitions pertinent to this policy and that are defined within the Va COI Act to the Definitions section on p. 2.  
   p. 2 – Limited the persons ‘Who should know this policy’ to those with a personal interest in a business proposing to contract with VCU for research and development, together with their respective supervisors.  
   pp. 3-4 – A Policy Specifics and Procedures section includes: 1) a list of the conditions for an exception in the Virginia COI Act and 2) the steps in the process to satisfy the legal conditions and requirement of the Conflict of Interest Committee.  
   p. 4 – 2-2 – indicates that the appeal process in the COI in Research policy can be availed if the COI Committee does not recommend an exception.  
   p. 4 – 2-3 – indicates that contract execution cannot occur if the President does not approve the personal interest in the contract.

3. Which stakeholder offices or personnel have provided input into this policy draft?  
   Process within the Conflict of Interest in Research Committee informs this revision as does the state-required process involved in securing the president’s approval and the president’s reporting of open contracts to the state.  
   Relevant individuals within the OVPRI have reviewed.  
   The University Counsel’s office has reviewed and provided edits which have been incorporated.  
   Dr. Gentius and Ms. Schumacher in the President’s Office have kindly provided feedback regarding this policy and process. SCHEV will review the policy revision after Board of Visitors approval.

4. Which other universities’ policies or resources (e.g., laws, regulations, etc.) did you consider when preparing this draft?  
   - Other state universities in Virginia are required to have such a policy.  
   - SCHEV developed a document (with consultation from the ORIE Director) titled, *Guidelines and approval process for policies at public institutions regarding exceptions for certain contracts under the conflict of interests act*, effective June 1, 2015, which informs this policy.

5. What is your general assessment of this policy’s impact?  
   This policy revision affords a better understanding of the state law requirements and the VCU process to attain an exception.
on the university community? from the state-prohibited contract for research and development.
[DRAFT] Research and Development Exception for the Virginia Conflict of Interests Act

Policy Type: Board of Visitors
Responsible Office: Office of the Vice President for Research and Innovation
Initial Policy Approved: 07/16/1992
Current Revision Approved: MM/DD/YYYY

Policy Statement and Purpose

Under the Code of Virginia State and Local Government Conflict of Interests Act (hereafter referred to as ‘the Act’), an employee is prohibited from having a personal interest in a contract with VCU other than the employee’s own contract of employment (§ 2.2-3106). If a VCU employee, or a member of their immediate family, has a personal interest in a business that proposes to contract with VCU, the contract may represent a state-prohibited contract as defined under the Act.

The Act provides for exceptions to such prohibited contracts involving research and development so long as disclosure and approval requirements of the law are satisfied (§ 2.2-3106 (C)(8) (also known as “C8 exceptions”). Although the state-prohibited contract exception also references contracts involving commercialization of intellectual property, this policy specifically pertains to contracts for research and development. Contracts for commercialization of intellectual property are addressed separately and managed by the VCU Intellectual Property Foundation, which is a separate legal entity from VCU.

The purpose of this policy is to provide a framework under which proposed contracts for research and development in which a VCU employee has a personal interest will be processed and managed.

Noncompliance with this policy may result in disciplinary action up to and including termination. VCU supports an environment free from retaliation. Retaliation against any employee who brings forth a good faith concern, asks a clarifying question, or participates in an investigation is prohibited.

Table of Contents

- Who Should Know This Policy
- Definitions

[DRAFT] Research and Development Exception for the Virginia Conflict of Interests Act - 1 -

Approved: MM/DD/YYYY
Who Should Know This Policy

All university employees who, as individuals or through their immediate family, have a personal interest in a business that proposes a research and development contract with VCU, as well as their respective supervisors or unit heads, are responsible for knowing this policy and familiarizing themselves with its contents and provisions.

Definitions

Employee
Employee means any person who holds a full- or part-time paid position with the university including, but not limited to, university and academic professionals, classified, hourly, faculty (teaching, research, adjunct and clinical), and student workers.

Immediate family
Immediate family means (i) the employee’s spouse and (ii) any person who resides in the same household and is a dependent of the employee.

Personal interest
Personal interest means a financial benefit accruing to an employee or to a member of their immediate family that entails ownership in a business exceeding three percent of the total equity of the business or salary or other compensation provided by the business that exceeds, or may reasonably be anticipated to exceed, $5,000 annually.

State-prohibited contract (or C8) exception
Under the Act, a VCU employee is prohibited from having a personal interest in a contract with VCU other than their own employment contract. Exceptions for research and development contracts may be enacted pursuant to meeting the provisions under the Act, in addition to having a finalized management plan.

Additional definitions can be found through the Related Documents.
The Office of the Vice President for Research and Innovation officially interprets this policy. The Office of the Vice President for Research and Innovation is responsible for obtaining approval for any revisions as required by the policy Creating and Maintaining Policies and Procedures through the appropriate governance structures. Please direct policy questions to the Office of Research Integrity and Ethics within the Office of the Vice President for Research and Innovation.

Policy Specifics and Procedures

1. **Conditions for a state-prohibited contract (or C8) exception for research and development**

   The Board of Visitors, pursuant to the Act, hereby delegates authority to the president of VCU to approve an employee's personal interest in a research and development contract with VCU.

   The president will submit an annual report to the Board of Visitors by December 1 of each year, disclosing each open contract entered into subject to the C8 exception within the Act as well as additional details outlined within the law. An annual report of open contracts under the C8 exception, as required under the Act, will be prepared by the Office of Research Integrity and Ethics and forwarded to the Office of the President for filing with 1) the Board of Visitors by December 1 and 2) the Secretary of the Commonwealth by December 31.

   C8 exceptions, as permitted under the Act, apply to an employee's personal interest in a contract for research and development between VCU and a business in which the employee or a member of their immediate family has a personal interest only if:

   1. The employee’s personal interest has been disclosed to VCU prior to the time at which the contract is entered into;
   2. The employee promptly files an initial disclosure statement pursuant to § 2.2-3117 and annually thereafter on or before January 15;
   3. VCU has a policy such as this one that is approved by the State Council of Higher Education (SCHEV); and
   4. VCU files an annual report with the Secretary of the Commonwealth, no later than December 31 of each year, disclosing each open contract entered into subject to this provision as well as additional details outlined within the law.

2. **Process for obtaining approval of a personal interest in a research and development contract with VCU**

   Note: A proposed research and development contract involving an employee's personal interest is referred to the Conflict of Interest Committee (COIC) for consideration. The contract cannot be executed if the personal interest in the contract is not approved by the president.

   1. Employees who have a personal interest in a business that proposes a research and
development contract with VCU are responsible for reporting their own interests, as well as those held by any member of their immediate family, in the Activity and Interest Reporting System (AIRS). The disclosure must fully describe the personal interest and its relationship to current or proposed research. The employee is also responsible for disclosing and obtaining permission for the business relationship according to school or departmental requirements.

2. The COIC reviews the disclosure in the context of the proposed research and development contract and C8 requirements and considers whether the statement of work aligns with VCU’s research mission and is a manageable conflict of interest (COI). If the latter considerations are met, the COIC develops a COI management plan to support a recommendation to the vice president for research and innovation (VPRI) for approval of a personal interest in a contract with VCU. The management plan is designed to mitigate the COI by ensuring 1) separation of the conflicted employee’s VCU position from the business, 2) research integrity, and 3) academic protection of students and trainees. The management plan includes the conditions of the C8 exception that must be addressed by the conflicted employee. The conflicted employee’s department chair or dean must review the management plan and acknowledge that research under the contract cannot begin prior to presidential approval of the personal interest in the contract. If approval is not recommended by the COIC, the conflicted individual may file an appeal according to the process outlined in the Conflicts of Interest in Research policy.

3. If the VPRI is in agreement with the recommendation for approval of a contract with a personal interest, the Conflict of Interest in Research Program requests that the president reviews the materials and renders approval of the personal interest in the contract. If the president does not approve the personal interest in the contract, the contract cannot be executed.

4. Following the president’s approval, the Conflict of Interest in Research Program notifies the conflicted employee, research administrators in the school/department, and the Office of Sponsored Programs that the contract may be executed, funding may be distributed, and the research may begin. The Conflict of Interest in Research Program notifies the Integrity and Compliance Office which contacts the conflicted employee regarding the initial disclosure statement required by the Act. It remains the responsibility of the individual employee to complete the disclosure as required by the Act.

The conflicted employee is responsible for following all elements of the management plan including the state requirements to permit the C8 exception. The Conflict of Interest in Research Program maintains oversight over management plan adherence as it pertains to research integrity.
Forms

There are no forms associated with this policy and procedures.

Related Documents

1. State and Local Government Conflict of Interests Act at § 2.2-3101 (Definitions)
   https://law.lis.virginia.gov/vacode/title2.2/chapter31/section2.2-3101/
2. State and Local Government Conflict of Interests Act at § 2.2-3106 (Prohibited contracts by officers and employees of state government)
   https://law.lis.virginia.gov/vacode/title2.2/chapter31/section2.2-3106/
3. SCHEV document: Guidelines and Approval Process for Policies at Public Institutions Regarding Exception for Certain Contracts Under the Conflict of Interest Act
4. VCU Policy: Conflicts of Interest in Research

Revision History

This policy supersedes the following archived policies:

07/16/1992 Conflict of Interest Act Prohibited Contracts Exception

05/21/2004 Procedures for Compliance with the Virginia State and Local Government Conflict of Interest Act Prohibited Contracts Exception
   [Approved by SCHEV on 01/21/2014 for a period of two years]

12/12/2014 Procedures for Compliance with the Virginia State and Local Government Conflict of Interest Act Prohibited Contracts
   [Minor revisions pursuant to General Assembly modifications to the Act]

12/18/2015 Research Exception for the Virginia Conflict of Interest Act Prohibited Contracts
   [Approved by SCHEV on 12/22/2015]

FAQ

1. I am interested in establishing a start-up company in order to apply for federal funding to further develop my intellectual property. How should I proceed?
If the development of your intellectual property is the result of your work at VCU, it should be disclosed to VCU Innovation Gateway. Plans to establish a start-up company should be discussed with VCU Ventures and the Conflict of Interest in Research Program (AIRS@vcu.edu). Funding to your start-up company that will be subcontracted or subawarded to VCU will pose a state-prohibited contract if you are a VCU employee and have a personal interest in the business seeking to contract with VCU. As described by this policy, an exception to the state-prohibited contract is permitted pending review and recommendation by the Conflict of Interest Committee and approval by the president.