



# PA State System of Higher Education Board of Governors

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**Effective:** January 19, 2012

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## **Policy 2012-01: Conflict of Interest**

**See Also:**

**Adopted:** January 19, 2012

**Amended:**

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### **A. Purpose**

To establish a conflict of interest protocol for the Office of the Chancellor and the Universities of the Pennsylvania State System of Higher Education so a pre-existing mechanism to address conflicts of interest is in place when a conflict of interest may arise.

### **B. Background**

The Pennsylvania State System of Higher Education is a Commonwealth entity that employs individuals who are public officials or public employees under the Public Official and Public Employee Ethics Act (Ethics Act). The Ethics Act prohibits a public official or employee from taking action that would result in a conflict of interest under the Ethics Act. In addition, the Ethics Act prohibits the delegation of authority subsequent to a conflict of interest. It is important for all System employees to avoid conflicts of interest in the performance of their public powers and duties under the Ethics Act. System employees may not use the authority of their employment, or any confidential information received as a System employee, for their private pecuniary benefit or for the private pecuniary benefit of a member of their immediate family, or a business with which the employee or a member of their immediate family is associated. A System employee also has a conflict of interest with respect to a person or entity with whom or with which he has a reasonable and legitimate expectation of forming a business relationship. In order to eliminate these issues, the Board of Governors is establishing this policy so that conflicts of interests may be properly identified and adequately addressed by employees of the System.

### **C. Policy**

This policy establishes a process to address those instances where an actual conflict of interest under the Ethics Act arises as well as instances where an appearance of a conflict may arise. This Policy is intended to serve as guidance and provide direction to System employees in assessing and determining the actions that they must take to avoid conflicts of interest under the Ethics Act. In addition, it provides direction in addressing those instances where a legal

conflict of interest may not exist but an appearance of conflict should be avoided.

#### **D. Definitions**

The following words and terms, when used in this policy shall have the following meanings unless the context clearly indicates otherwise:

**"Associated with any business"** - Any business, including any non-profit entity, of which the public official, public employee or immediate family member is a director, officer, owner, employee or has a financial interest. In addition, the State Ethics Commission has determined that a person is associated with a business that is a client or customer of the person or a client or customer of a business with which the person is associated, or under circumstances in which it is reasonably anticipated that a person or business will become a client or customer of any of such businesses.

**"Authority of office or employment"** is the actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

**"Business"** includes any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit. In addition, per the ruling of the State Ethics Commission a non-profit corporation, association or other entity is a business under the Act.

**"Confidential information"** is information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.

**"Conflict of interest"** is use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family, or a business with which the public official/employee or a member of his immediate family is associated. The State Ethics Commission has ruled that it may be a conflict of interest also to use the authority of public office or public employment or confidential information for the private pecuniary benefit of a client or customer of the public official/employee, a member of his immediate family, or a business with which the public official/employee or a member of his immediate family is associated. It is not a conflict of interest, however, if the official's or employee's action has only a *de minimis* economic impact or affects to the same degree a class consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

A person has a **"financial interest"** in a business if the business is a legal entity engaged in business for profit and the person has a financial interest in the business that comprises more than 5% of the equity of the business or more than 5% of the assets of or the economic interest in indebtedness.

**"Immediate family member"** is a parent, spouse, child, brother or sister of a public official or public employee.

**"Public employee"** is an individual employed by the System who is responsible for taking or recommending official action, in a manner that is non-ministerial, *i.e.*, involves the exercise of judgment, with regard to:

- a. contracting or procurement;
- b. administering or monitoring grants or subsidies;
- c. auditing or reviewing System operations; or
- d. any other activity where the official action has an economic impact of greater than a *de minimis* nature on the interests of any person.

**"Public official"** is a person appointed by a governmental body or an appointed official of the government of the Commonwealth.

## **E. Procedure**

In the event that a System employee has a conflict of interest as to one person or entity that is seeking a pecuniary benefit from the System or a System University in competition with others who seek the same limited benefit (such as a contract or position of employment that is to be awarded to a limited number of applicants competing as part of a pool of applicants), the public official or public employee has a conflict of interest as to every applicant in the competitive pool and must fully abstain from the entire matter. Full abstention means that a public official or public employee must be removed and insulated from any involvement in the matter in question, as well as insulated from access to confidential information involving the matter in which the conflict exists. This removal/insulation must extend to supervision, implementation and administration of the activity or program (including employment, grant programs and contracting activities).

1. Chancellor – When the conflict of interest involves the Chancellor, the Chancellor shall provide written notice to the Chair of the Board of Governors and the Chief Counsel about the conflict of interest. The Chancellor will consult with the Chair and the Chief Counsel to determine whether a conflict exists and how the conflict will be addressed. The Chair of the Board shall appoint an individual to whom the Chancellor's authority shall be delegated. The individual to whom responsibility has been designated to perform the powers and duties of the Chancellor shall have full authority to act in place of the Chancellor and to perform in his or her place all official duties and responsibilities that are affected by the conflict of interest. The designee shall carry out those powers and duties without sharing any information with the Chancellor and without the Chancellor's involvement. The designee will notify all principal subordinates and other staff that the Chancellor has a conflict of interest respecting a particular matter or matters and that all inquiries comments and actions related to the conflicted matter or matters will be handled by the designee as the final authority on the matter and that individuals should not discuss any aspect of the matter or matters with the Chancellor or provide the Chancellor with any information concerning the matter or matters. The designee performing duties under this conflict of

interest protocol will not report to the Chancellor on matters related to the conflict but instead will report directly on such matters to the Chair of the Board of Governors.

2. Presidents - When the conflict of interest involves the President of a University, the President shall provide written notice to the Chancellor, Chair of the University Council of Trustees and the Chief Counsel about the Conflict of Interest. The President will consult with the Chancellor and the Chief Counsel to determine whether a conflict exists and how the conflict will be addressed. The Chancellor may perform the duties of the President or may appoint an individual not employed with the President's University to whom the President's authority shall be delegated. The individual to whom responsibility has been designated to perform the powers and duties of the President shall have full authority to act in place of the President and to perform in his or her place all official duties and responsibilities that are affected by the conflict of interest. The Chancellor or designee shall carry out those powers and duties without sharing any information with the President and without the President's involvement. The Chancellor or the Chancellor's designee will notify all principal subordinates and other University staff that the President has a conflict of interest respecting a particular matter or matters and that all inquiries comments and actions related to the conflicted matter or matters will be handled by the Chancellor or designee as the final authority on the matter and that individuals should not discuss any aspect of the matter or matters with the President or provide the President with any information concerning the matter or matters. A designee performing duties under this conflict of interest protocol will report directly on such matters to the Chancellor or designee. The Chancellor shall apprise the Board of Governors and the University Council of Trustees of the results of a matter handled under this protocol.
3. Other System Employees - When a conflict of interest involves an employee other than the Chancellor or the President of a University, the employee shall provide written notice to their immediate supervisor and the legal office. The supervisor and legal office will determine whether the concerns are valid and, if validated, assure that necessary and appropriate actions are taken to remedy or avoid the conflict of interest or potential for conflict of interest by identifying a substitute to perform the functions of the employee with the conflict. The conflicted employee's supervisor will notify all principal subordinates and other staff that the identified individual has a conflict of interest respecting a particular matter or matters and that all inquiries comments and actions related to the conflicted matter or matters will be handled by the named substitute as the final authority on the matter and that individuals should not discuss any aspect of the matter or matters with the conflicted individual or provide the conflicted individual with any information concerning the matter or matters.