



**THE UNIVERSITY *of* TEXAS**

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**HEALTH SCIENCE CENTER AT HOUSTON**

## **CONFLICT OF INTEREST**

## **REFERENCE GUIDE**

OFFICE OF LEGAL AFFAIRS AND INSTITUTIONAL COMPLIANCE

# Conflict of Interest Reference Guide

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## Purpose of Conflict of Interest Reference Guide

What is a Conflict of Interest? A conflict of interest exists when you owe a professional obligation to The University of Texas Health Science Center at Houston (“the university”) that is or might be compromised by the pursuit of outside interests. Outside interests, such as professional activities, personal financial interests, or the acceptance of gifts from third parties, can create conflicts between the university’s interests and your private interests and may prevent you from making decisions that are in the best interest of the university. Even if those outside interests do not actually impair your ability to act in the best interest of the university, it may appear to the public that your independence of judgment has been affected. Refer to [HOOP 2.19, Conflict of Interest and Outside Activities](#), for detailed information about Conflict of Interest. If you are not sure whether your actions might create a conflict of interest—ask your supervisor or contact the [Office of Legal Affairs and Institutional Compliance](#) at 713-500-3294.

The purpose of this Conflict of Interest Reference Guide is to provide a summary of conflict of interest laws, rules, and policies, all of which are intended to preserve the public trust in our integrity by preventing bias or the appearance of bias in our decision-making.

## Top 10 Conflict of Interest Mistakes to Avoid

### **Mistake #1: Accepting gifts or benefits that could influence your university work.**

As a “Blanket Rule”, Texas law states that a state employee may never accept a gift, favor or service that may influence his or her university duties. This includes *anything of value*, including tickets to entertainment or sporting events, expenses for a trip, and food. If accepting the gift could have the appearance of influencing your university work in any way, do not accept the gift, regardless of the value.

### **Mistake #2: Accepting gifts that are more than \$50 in value if you make recommendations or decisions about financial transactions for the university. Also, accepting cash gifts, in any amount.**

Texas law applies criminal penalties to persons who make recommendations or decisions about the university’s financial transactions if they accept certain gifts. If those are your job duties, you may not accept a gift with a value of \$50 or more from an individual or company that is interested in or likely to become interested in a financial transaction with the university. Cash gifts, in any amount, may never be accepted. But, remember, even if a gift is less than \$50 in value, the “blanket rule” explained in Rule #1 always applies: if taking the gift would influence, or appear to influence, your university duties, do not accept it. Each situation must be measured on its own facts, but any number of situations can at least raise questions under this law, even if the honorarium is not covered by the Penal Code. Therefore, even if the honorarium is permissible under the Penal Code, this law can still apply to prohibit its acceptance.

### **Mistake #3: Accepting gifts of food, lodging, transportation, or entertainment in any amount without the donor being present.**

The same Texas law that criminalizes accepting gifts over \$50 also prohibits accepting gifts of food, lodging, transportation or entertainment, unless these gifts are accepted as a “guest”—meaning that the donor is present at the event. This applies to gifts such as hunting trips or tickets to a sporting event. Unless the donor is also present at one of these events, you cannot accept the gift.

### **Mistake #4: Accepting an honorarium for services you were asked to provide because of your official position.**

This is another “Blanket Rule” provision of Texas law that applies to all employees. Compliance with this law depends on the motivation of the person requesting the public servant to provide the service. Of course, university employees are often asked to perform services because of their academic expertise and not because they hold a position at a particular institution. Although it may be impossible to know the various motivations of a person seeking the services of a public servant, a useful way for a university employee to analyze whether acceptance of an honorarium is permissible is to ask:

- “Would my services be as useful or desirable if I did not hold a position with the state government?” If the answer is yes, the honorarium may be permissible;
- “Is the honorarium being paid because of my experience, training or expertise?” If the answer is yes, the honorarium may be permissible;
- If the answer to either of the questions above is “No,” the blanket rule applies and the honorarium is not permissible—no exceptions.

However, when an employee is asked to provide services because of his or her official position, meals, transportation and lodging may be accepted in connection with the services as long as the services are more than merely perfunctory or superficial. Also, in these instances, an employee may accept a gift of very minimal value, such as a plaque or coffee cup.

**Mistake #5: Participating in outside employment, consulting, or similar activities without getting approval from your supervisor.**

Any outside activities must first be approved by the employee’s immediate supervisor, including self-employment, consulting or employment by another entity, whether compensated or not. All requests must be approved in writing in advance. The [request](#) should describe the type of work, the hours to be worked, and whether or not the service will be compensated. The request must indicate that the work will not conflict with the individual’s regular employment at the university.

**Mistake #6: Accepting outside employment or external consulting that interferes with your university duties and responsibilities.**

External consulting, outside employment or other activities that interferes with an employee’s university duties and responsibilities should not be accepted. This type of interference is often referred to as “conflict of commitment.” Conflicts of commitment occur when the time or effort that an employee devotes to external activities interferes with the employee’s

fulfillment of assigned university responsibilities, or when an employee makes unauthorized use of university resources in the course of an external activity. Faculty members may devote up to 30 working days in any fiscal year to attending/speaking at conferences, symposia, seminars, or to outside consultative or advisory activities with governmental agencies, private industry, or other institutions, whether compensated or not, as long as these activities are closely related to the university mission and beneficial to the university and are not in conflict with their university responsibilities. This 30 working-day time threshold does not apply to or affect service to activities conducted for university-related governmental, university or non-profit boards, study sections, committees, and projects or required attendance for service in the United States armed forces. If you are unsure about whether time spent on outside activities will interfere with your university duties, talk to your supervisor or call the [Office of Legal Affairs and Institutional Compliance](#).

**Mistake #7: Making personal investments that create a conflict between your private interests and your university interests.**

An employee may not make personal investments that could create a conflict between his or her private interest and the public interest. This means that employees should not have a direct or indirect financial interest in a business that conflicts with the university's interests or that might influence how they do their job. Some financial interests may be so indirect or so minimal that they do not create conflicts of interest, such as ownership of a minimal amount of stock in a company or an investment in a publicly traded mutual fund in which you do not exercise discretion regarding the investment of the assets of the fund. If you do have an interest in a business that you think might constitute a conflict of interest, disclose that interest to your supervisor. In some cases, you may be able to cure the conflict by not participating in any decision concerning that business. However, if the conflict is significant, you may be required to divest yourself of the interest that causes the conflict.

**Mistake #8: Conducting business for an external company using university resources.**

Generally speaking, employees may not use University resources to conduct an outside business. Each faculty and staff member is responsible for protecting and preserving university resources, property, equipment and supplies. As such, public resources may not be used for personal financial gain. For, instance, an employee who sells Mary Kay Cosmetics should not participate in any sales activities while at work for the

university. Similarly, a faculty member who works as a consultant for a commercial enterprise not related to their job responsibilities should not participate in phone calls or e-mail correspondence for that commercial enterprise while at work for the university.

**Mistake #9: Participating in financial transactions between the university and a company in which you have a significant financial interest.**

Employees may not initiate or transact any business in an official capacity with any business entity of which they are an officer, agent, or member, or in which they own a substantial interest. In other words, employees may not initiate or transact *public* business for the university with their own *private* business. However, there may be instances where it is permissible for another university department or employee to initiate or transact business with a business entity owned, controlled or operated by a university employee. Such purchases must be approved by the Chief Financial Officer and the purchase may be made only if the cost is less than from any other known source.

**Mistake #10: Accepting outside employment that would require you to disclose confidential university information.**

Sensitive information about university students, employees, strategies, and operations must be protected. Employees who handle sensitive information are entrusted to implement safeguards for its protection. Sensitive information must not be shared with others, inside or outside of the health science center, unless the individuals have a legitimate business need to know and the information is shared in compliance with the applicable laws and policies.

If you are not sure whether your actions might create a conflict of interest—ask your supervisor or contact the [Office of Legal Affairs and Institutional Compliance](#) at 713-500-3294.

## Outside Activities

The primary responsibility of university employees is the accomplishment of the duties and responsibilities assigned to their position at the university. External consulting or outside employment that interferes with those duties and responsibilities should not be accepted.

Any outside activities must first be approved by the employee's immediate supervisor, including self-employment, consulting or employment by another entity, whether compensated or not. All requests must be approved in writing in advance. The request will describe the type of work, the hours to be worked, and whether or not the service will be compensated. The [Request for Approval of Participation in Outside Employment Activities](#) template may be used for this purpose. The request must indicate that the work will not conflict with the individual's regular employment at the university.

Refer to the *Outside Activities Decision Matrix for Faculty* for additional guidance.

## Gifts

There are two standards under Texas law governing gifts – (1) a *general standard* of conduct that applies to all employees at all times and (2) a *criminal standard* that applies only to those persons who make recommendations or decisions about contracts and other financial transactions.

General Standard: An employee may never accept or solicit any gift, favor or service that may influence him or her in the discharge of official duties or that he or she knows or should know is being offered with the intent to influence official conduct. Under the General Standard, a gift is *anything of value*, including tickets to entertainment or sporting events, expenses for a trip, and food.

Criminal Standard: An employee who makes recommendations or decisions about the university's financial transactions may not accept a gift from an individual or entity that is interested in or likely to become interested in that transaction, with limited exceptions, as follows:

1. You may accept non-cash items less than \$50 in value.
2. You may accept benefits in the form of food, lodging, transportation, or entertainment in any amount if you accept them as a "guest" and report them if there is an applicable reporting requirement. In order for you to accept something as a "guest," the donor must be present.

3. You may accept a benefit from a person such as a friend, relative, or business associate with whom you have a relationship independent of your official status. The benefit must be given on account of that relationship rather than your official status.
4. You may accept a payment for which you give “legitimate consideration” (the payment you receive must reflect the actual value of the services or goods you provide in exchange for the payment).

Remember, however, that the General Standard is a blanket rule that applies at all times: it is *never* lawful to accept a gift in exchange for official action. So, even though you may accept a gift described above without committing a crime, acceptance of the gift may still violate the General Standard and constitute grounds for discipline if it is accepted in exchange for official action.

Additional restrictions apply if the gift is from a student loan lender. The definition of “student loan lender” is very broad and covers entities that may not traditionally be thought of as student loan lenders. You should consult with the [Office of Legal Affairs and Institutional Compliance](#) to determine if the proposed gift from the student loan lender is permissible under the Texas Higher Education Fair Lending Practices Agreement.

## Honoraria

An employee may not accept an honorarium for services you would not have been asked to provide but for your official position. This is a “Blanket Rule” provision of the Texas Penal Code that applies to all employees.

Compliance with this law depends on the motivation of the person requesting the public servant to provide the service. According to the Texas Ethics Commission, “presumably university employees are often asked to perform services because of their academic expertise and not because they hold a position at a particular institution.” See Op. Tex. Ethics Comm’n No. 305. Although it may be impossible to know the various motivations of a person seeking the services of a public servant, a useful way for a public servant to analyze whether acceptance of an honorarium is permissible is to ask:

- **“Would my services be as useful or desirable if I did not hold a position with the government?”** If the answer is yes, the honorarium may be permissible.
- **“Is the honorarium being paid because of my experience, training or expertise?”** If the answer is yes, the honorarium may be permissible.

- **If the answer to either of the questions above is “No,” the blanket rule applies and the honorarium is not permissible—no exceptions.**

However, when an employee is asked to provide services because of his or her official position, **meals, transportation and lodging** may be accepted in connection with the services as long as the services are more than merely perfunctory or superficial. Also, in these instances, an employee may accept a gift of very minimal value, such as a plaque or coffee cup.

## **MSRDP and DSRDP Participants**

Faculty participants in The University of Texas Medical School at Houston Medical Service Research and Development Plan (MSRDP) or The University of Texas Dental Branch at Houston Dental Service Research and Development Plan (DSRDP) must abide by the assignment provisions regarding professional income found in the MSRDP and DSRDP Bylaws in addition to the provisions of this policy. Professional income, as defined by the MSRDP and DSRDP Bylaws, must be assigned to the Institutional Trust Fund. For further information and guidance on participating in compensated activities and the retention of payment for such activities, MSRDP and DSRDP participants should direct questions to the respective dean of the Medical School or Dental Branch, MSRDP or DSRDP administration, or subsequently, to the [Office of Legal Affairs and Institutional Compliance](#).

## **Personal Investments**

An employee may not make personal investments that could reasonably be expected to create a substantial conflict between his or her private interest and the public interest. This means that employees should not have a direct or indirect financial interest in a business that conflicts with the university's interests or that might influence how they do their job. Some financial interests may be so indirect or so minimal that they do not create conflicts of interest, such as ownership of a minimal amount of stock in a company or an investment in a publicly traded mutual fund in which you do not exercise discretion regarding the investment of the assets of the fund. If you are not sure whether a particular investment creates a conflict of interest, you should ask your supervisor or consult with the [Office of Legal Affairs and Institutional Compliance](#).

If you do have an interest in a business that you think might constitute a conflict of interest, disclose that interest to your supervisor. In some cases, you may be able to cure the conflict by not participating in any decision concerning that business.

However, if the conflict is significant, you may be required to divest yourself of the interest that causes the conflict.

## **Self-Dealing and Transactions with Employees**

Employees may not initiate or transact any business in an official capacity with any business entity of which they are an officer, agent, or member, or in which they own a substantial interest. In other words, employees may not initiate or transact *public* business for the university with their own *private* business.

However, there may be instances where it is permissible for another university department or employee to initiate or transact business with a business entity owned, controlled or operated by a university employee. Such purchases must be approved by the Chief Financial Officer and the purchase may be made only if the cost is less than from any other known source. Refer to HOOP Policy 13.22 [Purchases from Employees](#).

## **Financial Disclosure Statement**

The [Office of Legal Affairs and Institutional Compliance](#) coordinates the financial disclosure process for the university regarding Institutional Conflict of Interest. Employees are required to report participation in and income earned from outside activities when requested through the annual financial disclosure process. The report is available from the Office of Legal Affairs and Institutional Compliance. Faculty and staff members should notify their immediate supervisor about new circumstances that arise throughout the fiscal year that alter the existing disclosure report of that individual within 30 days of the new circumstances. The Office of Legal Affairs and Institutional Compliance also coordinates activities of the Institutional Conflicts of Interest Committee (COIC) to review the financial disclosures from all employees. The COIC reviews all conflict of interest cases involving activities, whether reported on the annual and periodic disclosures or otherwise, that are in conflict with employees' proper discharge of their duties and responsibilities in the public interest.

## **Research Conflict of Interest: General Principles**

Members of the university community conducting or supervising research or educational activities using public or private funding from any source must disclose potential conflicts of interest and, when appropriate, work cooperatively with the Executive Vice President for Research to develop and implement plans to manage, reduce or eliminate conflicts of interest. The approval of the University of Texas System Office of General Counsel and Executive Vice Chancellor for Health Affairs is also required for employees who are pursuing sponsored research agreements or licensing agreements for intellectual property with entities where

they have equity or serve as a board member, officer or key employee. Consult [HOOP 23.10, Research Conflicts of Interest](#) for additional information.

## Outside Activities Decision Matrix for Faculty

Faculty should refer to this Decision Matrix when determining:

- (1) whether to accept an offer to perform outside activities;
- (2) whether prior approval is required;
- (3) whether the activity may be conducted during regular work hours; and
- (4) whether honoraria or compensation may be retained.

Type/Extent of Outside Activity	Procedures and Responsibilities of the Faculty Member		
	Prior Approval by Dean or Designee Required?	Effort Allowed During Regular Work Hours, Provided Work Does Not Interfere with Regular Responsibilities?	Retaining Honoraria, Compensation or other benefits as Personal Funds Allowed?
<p><b>Category 1</b> Service closely related to the university mission and beneficial to the university on governmental, university or non-profit boards, study sections, committees, and for other compensable academic-related activities (e.g. royalties, authoring or editing of scientific publications)</p>	Yes	Yes	<p style="text-align: center;">Yes, as long as:</p> <p>(1) Services are not requested because of faculty member's government position;</p> <p>(2) Faculty member does not exercise discretion related to contracts, purchases or other financial transactions involving the entity providing the honoraria (if so, certain restrictions apply to accepting honoraria); and</p> <p>(3) The honoraria would not influence the faculty member's university duties</p>
<p><b>Category 2</b> Attending/speaking at conferences, symposia, seminars, consultative or advisory activities with governmental agencies, private industry, or other institutions, whether compensated or not, conducting activities closely related to the university mission and beneficial to the university</p>	Yes	Yes Not exceeding 30 working days in any fiscal year unless exception approved by president, dean or designee	
<p><b>Category 3</b> Service as a consultant for a for-profit (i.e. commercial) enterprise that benefits the Faculty Member but is not closely related to the university mission and/or beneficial to the university</p>	Yes	No Must work outside regular work hours or use vacation or leave without pay	
<p><b>Category 4</b> Other outside un-related activities (e.g. service to a neighborhood association)</p>	No	No Must work outside regular work hours or use vacation or leave without pay	
<p><b>Category 5</b> Professional fees generated for all patient care services, fees for all court appearances, depositions, or legal consultations by members of the MSRDP or DSRDP.</p>	Yes	Yes	

**The University of Texas Health Science Center at Houston  
Request for Approval of Participation in Extramural Activities**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Department: \_\_\_\_\_

**Approval is requested for permission to engage in the following outside activity:**

Company/Agency	Activity (Brief Description)	Dates	Anticipated Compensation (If Applicable)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The University of Texas Health Science Center at Houston equipment may not be used for consulting purposes by any member of the faculty or staff without express approval. In unusual cases where a very unique piece of equipment is not otherwise available, such usage may be authorized, assuming availability of the equipment and adequate compensation to the health science center. In such cases, the faculty or staff member making the request must describe the health science center equipment to be used and justify its request. In no case may the rate of compensation be negotiated by the faculty or staff member. Such negotiations will be between the individual school's or unit's financial manager and the entity contracting with the faculty member to consult. Negotiations for use of equipment and rate of compensation will not occur until final approval has been given to the Request for Prior Approval of Participation in Compensated Outside Activities. I acknowledge that I have read and will abide by the applicable UT System Regents' [Rules and Regulations, Series 30103](#) as well as UTHSC-H [HOOP 2.19, Conflict of Interest and Outside Activities](#).

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVAL RECOMMENDED BY:

\_\_\_\_\_  
Signature  
(Direct Supervisor)

Date: \_\_\_\_\_

## **Conflict of Interest References**

[Texas Government Code](#)

[Section 572.051 Standards of Conduct](#)

[Rules and Regulations of the Board of Regents of The University of Texas System](#)

[Rule 30103 Standards of Conduct](#)

[UTHSC-H Handbook of Operating Procedures](#)

[HOOP 2.19 Conflict of Interest and Outside Activities](#)

[HOOP 23.10 Research Conflicts of Interest](#)

[Texas Ethics Commission](#)

[On-line Ethics Training](#)