

SOUTHWEST TENNESSEE COMMUNITY COLLEGE

SUBJECT: Conflict of Interest

EFFECTIVE DATE: November 30, 2020; Revised January 22, 2024 (updating job title);

Revised August 9, 2024 (foreign talent recruitment program)

Purpose

All employees of Southwest Tennessee Community College (“Southwest” or “the College”) have a duty to avoid activities and situations that actually or potentially put their personal interests before the professional obligations that they owe to the College. This policy is intended to establish standards of integrity and objectivity that should guide the actions of all employees.

It is also intended to define the general principles that should guide employees’ actions, offer illustrations of activities that potentially constitute a conflict of interest, make employees aware of disclosure requirements related to conflicts of interest, describe the process by which disclosures will be evaluated, and describe the decision-making process.

Definitions

Conflict of Interest - occurs when the personal interests, financial or otherwise, of a person who owes a duty to the College actually or potentially diverge from the person’s professional obligations to, and the best interests of, the College.

Conflict of Commitment - occurs when the personal or other nonwork-related activities of an employee of the College impair the ability of that employee to meet commitments of time and energy to the College.

Conflicting Party - a person or entity with, or is seeking to obtain, contractual or other business or financial relations with the College or has interests that may be substantially affected by the performance or nonperformance of the employee.

Immediate Family - for purposes of this policy, it means spouse or minor child living with the employee.

Foreign Talent Recruitment Program (FTRP)- a program run by a foreign country or entity that offers money and non-monetary compensation for their services.

Malign Foreign Talent Recruitment Program- a FTRP run by China, North Korea, Russia, Iran, or an entity based in one of these countries.

* See additional definitions in the FTRP section of this policy

Policy

I. Applicability

This policy shall apply to everyone employed by the College whether full-time, part-time, or temporary.

II. General Principles

- A. **Conflict of Commitment.** Employees of the College should avoid external commitments that significantly interfere with the employee's duties to the College. Disclosure of outside employment shall be made as required by TBR Policy 5.01.05.00, Outside Employment, and evaluated as indicated therein.
- B. **Conflict of Interest.** Employees should avoid situations where the self-interests of the employee diverge from the best interests of the College.
- C. **Management of Conflict of Interest.** The mere existence of either a potential or actual conflict of interest does not mean that such conflict must necessarily be eliminated.
 - 1. Where the potential detriment to the College is at most minor and inconsequential, and the conflict does not indicate violation of federal or state law, regulation or policy, individuals charged with evaluating disclosures should allow the activity to proceed without interference after documenting the evaluation process.
 - 2. For those situations that do not implicate federal or state law, regulation or policy, the standard or determination of whether a conflict of interest should be managed, reduced or eliminated is whether that conflict would appear to a reasonable person to call into question the integrity or judgment of the affected employee.

III. Situations and Activities Creating a Conflict of Interest

- A. In the following situations and activities, there is at least the appearance, and possibly the actuality, of an employee allowing personal interests, and not the best interests of the College, to affect that employee's judgment. This list is illustrative and not exhaustive:
 - 1. **Self-dealing**
 - a. Situations in which an employee can appear to influence or actually influence a College-related decision from which that person or a member of that person's immediate family stands to realize a personal financial benefit are self-dealings and conflicts of interest.
 - b. Examples of self-dealing activities include the following:
 - (1) Purchase of state-owned property by an employee absent fair and open bidding.
 - (2) College purchases from businesses in which an employee or family member

has a financial interest.

- (a) Use of educational material from which a faculty member derives financial benefit in that faculty member's teaching activities.
- (b) Any faculty member who wishes to use in his or her teaching activities educational material (e.g. a textbook) that he or she authored, or in which he or she otherwise stands to benefit financially from such use, a conflict of interest disclosure shall be made per this policy.
- (c) Whether the use of such material shall be permitted shall be evaluated by the Institutional Review Committee established in Section VII of this policy.
- (d) Such evaluation shall include consideration of suitable substitute material and ensure that the needs of students are best served by use of the material in which the faculty member has an interest.

(3) Acceptance of Gifts, Gratuities or Favors

- (a) Gifts. No employee shall knowingly solicit or accept, directly, or indirectly, on behalf of himself or herself or any member of the employee's household, for personal use or consumption, any gift, including but not limited to gratuity, service, favor, food, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value from any person or entity that:
 - (i) Has, or is seeking to obtain, contractual or other business or financial relations with the College; or
 - (ii) Has interests that may be substantially affected by the performance or nonperformance of the employee.

(4) Exceptions

- (a) The prohibition on accepting gifts in Section (4)(a) above, does not apply to:
 - (i) A gift given by a member of the employee's immediate family, or by an individual, if the gift is given for a non-business purpose and is motivated by a close personal friendship and not by the position of the employee;
 - (ii) Informational material in the form of books, articles, periodicals, other written material, audiotapes, videotapes, or other forms of communication;
 - (iii) Sample merchandise, promotional items, and appreciation tokens, if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business, including items distributed at tradeshow and professional meetings where vendors display and promote their services and products;

- (iv) Food, refreshments, foodstuff, entertainment, or beverages provided as part of a meal or other event, including tradeshows and professional meetings, if the value of such items does not exceed fifty dollars (\$50.00) per occasion, provided further, that the value of a gift made pursuant to this subsection may not be reduced below the monetary limit by dividing the cost of the gift among two or more people or entities identified in Section III.A.1.b.(4).
 - (v) There may be circumstances where refusal or reimbursement of a gift (such as a lunch or dinner) may be awkward and contrary to the larger interests of the College. In such circumstances, the employee is to use his or her best judgment, and disclose the gift including a description, estimated value, the person or entity providing the gift, and any explanation necessary to their immediate supervisor within fourteen (14) days;
 - (vi) Food, refreshments, meals, foodstuff, entertainment, beverages or intrastate travel expenses that are provided in connection with an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization that has regular meetings;
 - (vii) Participation in College or foundation fundraising and public relations activities, i.e. golf tournaments and banquets for which conflicting parties provide sponsorships; and
 - (viii) Loans from established financial institutions made in the ordinary course of business on usual and customary terms, as long as there are no guarantees or collateral provided by any conflicting party.
- b. Inappropriate use of students or support staff
1. Employees shall ensure that the activities of students and support staff are not exploited for the benefit of any external activity of the employee.
 2. Prior to assigning any such non-College related task that is more than incidental or *de minimis* in nature to a student or member of the support staff, an employee shall disclose such proposed activity and obtain approval from the College's Associate Vice-President of Human Resources or Vice-President of Academic Affairs, as applicable.
- c. Inappropriate use of state-owned resources

Employees may not make significant use of College facilities, equipment, material or other resources, not otherwise available to the public, in the course of activities that are not related to the College and that are intended for personal benefit without prior disclosure and approval of the College's Chief Administrative Officer.

d. Failure to disclose intellectual property

1. TBR Policy 5.01.06.00 governs the rights and responsibilities that people affiliated with TBR and the College have regarding intellectual property developed during the term of their affiliation.
2. Among the responsibilities enumerated in the policy is that of disclosure of inventions and those copyrightable works that may be reasonably expected to have commercial value, which they have jointly or solely developed or created during their affiliation with the TBR and the College.

IV. General Disclosure Requirements

- A. People to whom this policy applies who believe that a conflict of interest may exist personally or with respect to another person covered by this policy shall make a written disclosure of the facts and circumstances surrounding the situation.
- B. Disclosures should adequately describe the pertinent facts and circumstances. To facilitate this, the accompanying disclosure form (Exhibit 1) is attached.
- C. Disclosures shall be submitted to the employee's immediate supervisor or other person designated by the President to receive such disclosures.
- D. Disclosures made by the President shall be submitted online to the Tennessee Ethics Commission.

V. Special Disclosure Requirements for Researchers Applying for or Receiving NSF or PHS Funding, and for Employees Requesting Grants, Service, or Other Contracts with Federal Agencies

- A. Investigators seeking funding from either the National Science Foundation or the Public Health Service are required to disclose to the College all significant financial interests of the investigator:
 1. That would reasonably appear to be affected by the research or educational activities funded or proposed for funding by the NSF or PHS; or
 2. In entities with financial interests that would reasonably appear to be affected by such activities:
 - a. Such disclosures must be submitted prior to the time the proposal is submitted to the Federal agency.
 - b. Further, such disclosures must be updated during the period of the award, either annually or as new reportable financial interests arise.
 - c. The College will eliminate or manage such conflicts prior to receipt of the award.

- d. To facilitate such disclosures, a disclosure form (Exhibit 2) is attached.
3. The College, through each employee requesting a grant, service, or other contract with a federal agency, other than the Public Health Service or the National Science Foundation, is responsible for determining disclosure requirements, management of potential conflicts of interest, and for ensuring that any such requirements are met.
4. Disclosure of financial interests made pursuant to this Section does not eliminate the responsibility for making disclosures under Sections IV or VI herein when conflict of interest situations arise.

VI. Special Disclosure Requirements for the President and Certain College Employees

- A. The President, coaches, assistant coaches and employees of the athletic department who are exempt from the provisions of the Fair Labor Standards Act are required to file a financial disclosure form within one month of their initial appointment and annually thereafter in January.
- B. Disclosure of financial interests made pursuant to this Section does not eliminate the responsibility for making disclosures under Sections IV or V herein when conflict of interest situations arise.
 1. The President is required by Tenn. Code Ann. § 8-50-501(a)(15) to file an online Statement of Disclosure of Interests Form with the Tennessee Ethics Commission at <https://conflict.app.tn.gov/conflict/>, Form SS-8005 (State Officials). For the President, the Statement of Disclosure will meet the requirements of this policy.
 2. Coaches, assistant coaches, exempt employees of the athletic department and other College personnel required to complete a disclosure form shall also use the Tennessee Ethics Commission document SS-8005, titled Statement of Disclosure of Interest Form, and accompanying instructions (Exhibit 3). The form shall be submitted to the College's Associate Vice-President of Human Resource Officer or another person designated by the President.

VII. Review of Disclosures

- A. Disclosures made under Section VI of this policy by the President shall be evaluated by TBR or a duly appointed committee thereof.
- B. The College shall establish an Institutional Review Committee ("Committee") to receive and evaluate conflict of interest disclosures made under Sections IV and V herein in accordance to the following guidelines:
 1. Member Selection
 - a. The President will appoint a five-member Committee to review and consider disclosures made pursuant to this policy and will designate one of the individuals to serve as Chairperson of the Committee. Any Committee member selected who has

an interest in the outcome of a matter or is biased for or against a disclosing employee shall disclose the same to the Chairperson prior to evaluating the disclosure. The Chairperson shall advise the President and, the President shall replace the member with an alternate.

- b. At least one of the five Committee members selected by the President shall be from the faculty and at least one member selected from administrative or support staff personnel. The remaining members designated by the President shall be selected from the College's Chief of Staff, Finance, Administrative Services, Human Resources, Academic Affairs, or Student Affairs, departments.
- c. Specific departments with subject matter expertise on a given disclosure, such as Campus Police, may be brought in to advise and assist the Committee as needed.
- d. The Committee Chairperson shall serve as the liaison between the Committee and other areas of the College. The Chairperson shall have the responsibility for keeping the President and other appropriate officials informed of Committee activities.
- e. Committee members shall serve a two-year term and may serve multiple, consecutive terms, at the President's discretion.

2. Meetings

- a. The Committee shall meet as frequently as necessary to conduct its business, but no less than once per semester.
- b. The Chairperson shall be responsible for calling meetings and assuring Committee guidelines are followed.
- c. Each Committee shall select a member to serve as the Committee's secretary, who will keep the minutes of each Committee meeting.
- d. The minutes shall reflect the date and time of the meeting, members present, members absent, issues discussed, and actions taken by the Committee.
- e. Approved minutes and records generated by the Committee shall be provided to the Office of the Chief of Staff and kept in accordance with the provisions of item SW25: Administration Documents under TBR Policy 1.12.01.00, Records Retention and Disposal of Records.

3. Disclosure Evaluation and Review Process

- a. The Committee shall evaluate conflict of interest disclosures and make determinations regarding what actions should be required to manage, reduce, or eliminate conflicts of interest.
- b. The Committee shall conduct an independent and thorough review. In order to do so,

the Committee shall have the power to receive evidence and/or information from the employee with the potential conflict (“employee”) and gather evidence and/or information from other sources.

- c. If the Committee determines that the employee has a potential conflict of interest, the Committee shall notify the employee, in writing, to provide him or her an opportunity to appear before the Committee and be heard before a final determination is rendered. If the employee would like to be heard by the Committee, he or she must advise the Committee in writing.
- d. The employee will be allowed to present pertinent evidence to the Committee and to have the Committee call those witnesses who have testimony pertinent to its decision. The Committee will hear witnesses, including the employee, separately.
- e. The Committee shall forward any disclosure that indicates a violation of state or federal law to the President along with the Committee’s findings. The President will determine the appropriate action(s) to be taken.
- f. For any disclosure that indicates a conflict of interest exists but is not a violation of federal or state law, the Committee is permitted to make a finding that the conflict is de minimis and is permitted to place restrictions on the employee to manage the conflict or to instruct the employee to eliminate the conflict.
- g. The Committee shall provide its determination to the employee in writing along with a notice advising the employee of the right to appeal the Committee’s determination to the President within ten (10) working days, absent good cause, of receipt of the Committee’s determination.

VIII. Federal and State Laws on Conflicts of Interest

In addition to this policy, there are state and federal laws regarding conflict of interest that apply to employees of the College. Employees are required to comply with all applicable laws. If there is a conflict between this policy and a state or federal law, the most restrictive requirements will control. Pertinent state and federal laws are attached hereto (Exhibit 4).

IX. Sanctions

Failure to observe restrictions imposed by the Committee as a result of review of a conflict of interest disclosure or a knowing failure to disclose a conflict of interest may result in disciplinary proceedings under Southwest and/or TBR policies.

X. Appeals

A. Decisions made by the Committee may be appealed to the President.

1. The Committee shall provide written notice of the appeal process to the employee at the time that the employee is advised of the outcome of the review process.

2. The appeal process shall consist of an opportunity for the employee to provide to the President information that might change the decision.
3. The appeal process will not be a de novo review of the decision, and an employee will not be allowed to present an appeal to the President in person, unless it is determined, in the President's sole discretion, to allow an in-person appeal.
4. The appealing party may send a written appeal to the President within ten (10) working days, absent good cause, of receipt of the Committee's determination.
 - a. The appealing party must explain why, in his or her opinion, the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change the determination in the case.
 - b. Failure to do so may result in a denial of the appeal.
5. The President will issue a written response to the appeal as promptly as possible. The decision of the President shall be final and binding.

XI. Foreign Talent Recruitment Program

This portion of the policy is designed to comply with the CHIPS and Science Act, which mandates that Southwest implement a regulation that requires Individuals to disclose their participation in a Foreign Talent Recruitment Program (FTRP) on an annual basis and also upon applying for a federal grant. Disclosure shall be made through the Southwest Conflict of Interest disclosure process. Through this process it will be determined if an international collaboration is a permissible activity.

A. Definitions

Covered Individual- a College employee who is funded by a federal award and contributes in a substantive, meaningful way to the scientific development or execution of a research and development project proposed to be carried out with a research and development award from a federal research agency and is designated as a covered individual by the federal research agency concerned. A principal investigator, as well as any co-principal investigators, are Covered Individuals and must provide applicable disclosures and certifications.

Foreign Talent Recruitment Program (FTRP)- any program, position, or activity that includes compensation in the form of cash, in-kind compensation, including research funding, promised future compensation, complimentary foreign travel, things of non de minimis value, honorific titles, career advancement opportunities, or other types of remuneration or consideration directly provided by a foreign country at any level (national, provincial, or local) or their designee, or an entity based in, funded by, or affiliated with a

foreign country, whether or not directly sponsored by the foreign country, to an individual, whether or not directly or indirectly stated in the arrangement, contract, or other documentation at issue.

Malign Foreign Talent Recruitment Program- any Foreign Talent Recruitment Program that meets either one (1) of the following two (2) criteria:

1. Where compensation or remuneration from any foreign country is provided to the Covered Individual in exchange for any of the following:
 - a. Engaging in the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information owned by a U.S. entity or developed with a U.S. federal research and development award to the government of a foreign country or an entity based in, funded by, or affiliated with a foreign country regardless of whether that government or entity provided support for the development of the intellectual property, materials, or data products;
 - b. Being required by a foreign country to recruit trainees or researchers to enroll in such program, position, or activity;
 - c. Establishing a laboratory or company, accepting a faculty position, or undertaking any other employment or appointment in a foreign country or with an entity based in, funded by, or affiliated with a foreign country if such activities are in violation of the standard terms and conditions of a U.S. federal research and development award;
 - d. Being unable to terminate the FTRP contract or agreement except in extraordinary circumstances;
 - e. Through funding or effort related to the FTRP, being limited in the capacity to carry out a research and development award or required to engage in work that would result in substantial overlap or duplication with a federal research and development award;
 - f. Being required to apply for and successfully receive funding from the sponsoring foreign government's funding agencies with the sponsoring foreign organization as the recipient;
 - g. Being required to omit acknowledgment of the recipient institution with which the individual is affiliated, or the U.S. federal research agency sponsoring the research and development award, contrary to the institutional policies or standard terms and conditions of the U.S. federal research and development award;

- regulations;
- b. Providing guidance to Covered Individuals on compliance with this policy;
 - c. If potential involvement with a Malign FTRP is identified, undertaking further investigation, and taking appropriate action, which may include obtaining legal advice from TBR's Office of General Counsel, recommending suspension of certain activities, and taking corrective measures;
 - d. Maintaining accurate records of all disclosures and taking action to ensure ongoing compliance with this policy, including reviews of research activities as necessary; and
 - e. Providing training to faculty and staff about disclosure requirements, the implications of participation in a FTRP, and the implications of non-compliance.
5. Covered Individuals are prohibited from participating in a Malign FTRP program pursuant to the CHIPS and Science Act of 2022 and the National Security Presidential Memorandum-33.

C. Acceptable International Collaboration Activities

A FTRP does not include the following international collaboration activities if the activity is not funded, organized, or managed by an academic institution or a FTRP identified herein:

1. Making scholarly presentations and publishing written materials regarding scientific information not otherwise controlled under current law;
2. Participating in international conferences or other international exchanges, research projects, or programs that involve open and reciprocal exchange of scientific information, and which are aimed at advancing international scientific understanding and not otherwise controlled under current law;
3. Advising a foreign student enrolled at an institution of higher education or writing a recommendation for such a student, at such student's request;
4. Engaging in the following international activities:
 - a. Activities that are partly sponsored or otherwise supported by the United States such as serving as a government appointee to the board of a joint scientific fund (e.g., the U.S. - Israel Binational Industrial Research and Development Foundation); providing advice to or otherwise participating in international technical organizations, multilateral scientific organizations, and standards

setting bodies (e.g., the International Telecommunications Union, Intergovernmental Panel on Climate Change, etc.); participating in a Fulbright Commission program funded in whole or in part by a host country government; or other routine international scientific exchanges and interactions such as providing invited lectures or participating in international peer review panels.

- b. Involvement in national or international academies or professional societies that produce publications in the open scientific literature that are not in conflict with the interests of the federal research agency (e.g., membership in the Pontifical Academy of Sciences or The Royal Society).
- c. Taking a sabbatical, serving as a visiting scholar, or engaging in continuing education activities such as receiving a doctorate or professional certification at an institution of higher education (e.g., the University of Oxford, McGill University) that are not in conflict with the interests of the U.S. federal research agency.
- d. Receiving awards for research and development that serve to enhance the prestige of the U.S. federal research agency (e.g., the Nobel Prize).
- e. Other international activities determined appropriate by the U.S. federal research agency head or designee.

Exhibits

- Exhibit 1 - Employee Conflict of Interest Disclosure Form
- Exhibit 2 - Financial Conflict of Interest Disclosure Form
- Exhibit 3 - Statement of Disclosure of Interests Form SS-8005
- Exhibit 4 - Pertinent state and federal laws

Source of Policy: TBR **Responsible Administrator:** Chief of Staff
Related Policy: 5:01:02:00/28 **TBR Policy Reference:** 5.01.05.00; 5.01.06.00
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