

## **KSU COI-Conflict of Interest Policy<sup>1</sup> FAQ<sup>2</sup>**

### **1. How does the policy define “consulting”?**

*Policy Answer:*

For purposes of this policy, the term “consulting” includes “consulting and outside activities” as defined in BOR Policy Manual 8.2.15 and means a significant activity -- professional in nature and directly related to a field or discipline in which the KSU employee has academic or professional expertise -- beyond the scope of KSU responsibilities outlined in the individual’s FPA, including teaching, speaking, and participating in business or service enterprises (Policy Part II.A., page 2, lines 9-13).

### **2. What is the advance disclosure threshold for externally funded research?**

*Policy Answer:*

In the context of externally-funded research, employees must consult with KSU’s VP-Research and Office of Grants and Contracts before applying for funding to ensure that deadlines and disclosure requirements are met (Policy Part III.B., page 6, lines 10-13).

*Editorial note:* The policy thus requires ALL research funded by ALL external sources to be disclosed to the VP-Research and Grants and Contracts. While most readers would consider it obvious, this language could and probably should make explicit a simultaneous duty to share the disclosure with the employee’s 1-st Level Supervisor.

### **3. Why does the policy create different COI disclosure thresholds and processes for externally-funded research and other activities?**

*Editorial response:* Conflicts of interest of different varieties embody differing levels of risk to employees and KSU. Externally-funded research is especially high risk. Therefore, the policy requires that all research involving external funding (whether the funds come from private sources or public/governmental sources) be vetted through KSU’s VP-Research. Conflicts of interest that do NOT involve externally funded research are best handled through initial disclosure to 1<sup>st</sup>-Level supervisors who, if they so desire, can escalate COI concerns to higher administrative levels.

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<sup>1</sup> The “Policy” referred to is the document (attached) passed by the KSU Faculty and Staff senate and agreed upon by KSU’s Provost and VP-Research. It is anticipated that after initial implementation in Spring 2012, the document will undergo minor fine-tuning.

<sup>2</sup> This FAQ document was written by Kurt S. Schulzke, Associate Professor of Accounting & Business Law, currently Chair of the KSU COI-Conflict of Interest Policy Drafting Committee, in response to questions raised during the KSU Chairs Council meeting on January 18, 2012. Except for policy material in block quotes or between quotation marks, the Committee have not reviewed, discussed or endorsed this document.

A related side note is that most consulting activities – typified by commissioned art work, vocal performance engagements, court-room translation services, expert witness engagements, educational consulting, political campaign consulting, blogging, tax return preparation, computer programming or assistance in drafting patent applications – do not embody reportable conflicts of interest because no “significant financial interest” (as defined at III.A.2.) in conflict with KSU is present.

#### **4. Why does the policy not explicitly define “conflict of commitment”?**

*Editorial Response:* Explicit reference to “conflict of commitment” would be superfluous. All employees have a clear obligation to fulfill their employment-related commitments to KSU independent of anything in the COI-Conflict of Interest Policy. What some have called “conflict of commitment” can result from any non-KSU activity that makes it impossible for the employee to deliver agreed services to KSU. Some examples could include volunteer work for a charitable organization, Facebooking, blogging, vacationing in the Belgian Congo, caring for aged relatives or external consulting activities whether or not separately compensated. In general terms, there is no principle-based reason why KSU should distinguish among these reasons for failure to deliver on the FPA. The mechanisms for dealing with such failures are embedded in the performance evaluation process. In most cases, they are best addressed at the department and college level.

#### **5. Does BOR policy impose a numeric limit on the number of KSU or personal hours employees are allowed to dedicate to consulting or other “outside activities”?**

*Editorial Response:* No. The BOR language applicable to faculty is as follows:

Professional employees are encouraged to participate in professional activity that does not interfere with the regular and punctual discharge of official duties provided the activity meets one of the following criteria: (1) is a means of personal professional development; (2) serves the community, state or nation; or (3) is consistent with the objectives of the institution.<sup>3</sup>

Some USG-system units have on their own initiative chosen to articulate an official numeric limit (GA Tech’s limit is one day per week for faculty) while other units have not (West Georgia). While Tech’s policy states an official numeric limit, an informal 2011 survey of Tech personnel indicated that the limit is “more honor’d in the breach than the observance.”<sup>4</sup>

Note also that any partition of faculty hours between “KSU” and “personal” would be arbitrary because of KSU’s policy decision to schedule classes and other official KSU activities outside of “normal” business hours and on weekends.

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<sup>3</sup> [http://www.usg.edu/hr/manual/conflict\\_of\\_interest/](http://www.usg.edu/hr/manual/conflict_of_interest/).

<sup>4</sup> *Hamlet*, Act I, Scene IV.

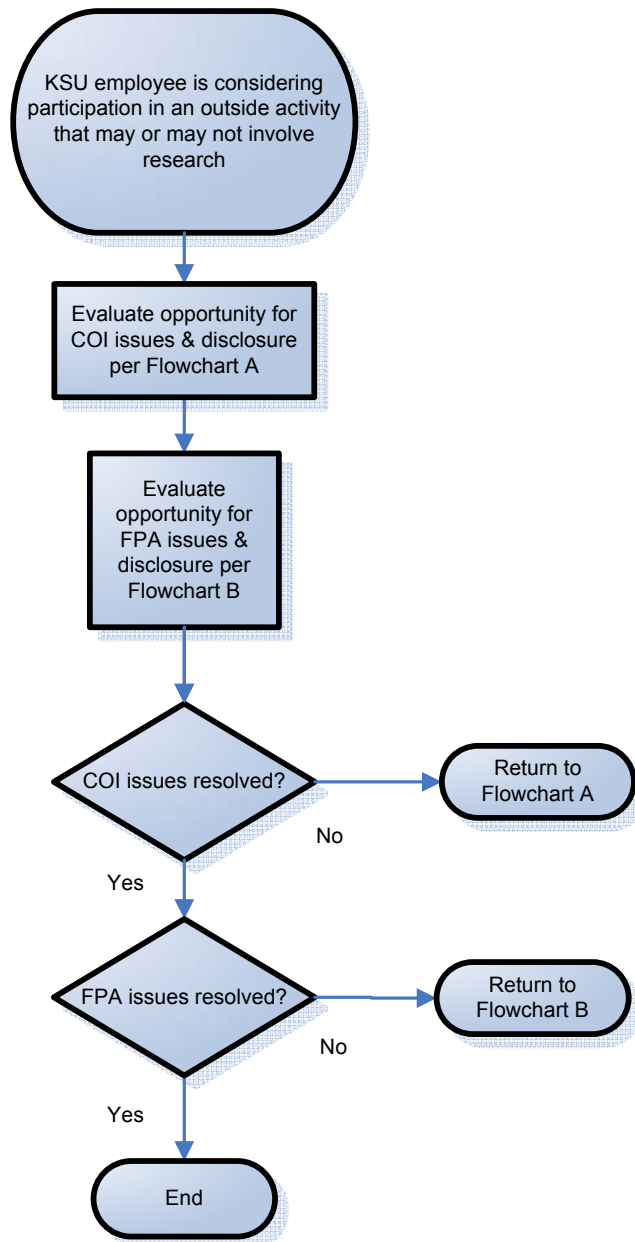
**6. Should the annual performance evaluation process correct for perceived unfairness between employees who engage in consulting and those who do not?**

*Editorial Response:* This question raises a host of related “fairness” issues present at KSU and in the academic system generally. Example: If two faculty members, A and B, have equal rank, seniority, teaching loads and KSU salary, how should KSU respond (if at all) if A publishes three PRJs while putting in only 35 KSU hours per week while B publishes only one PRJ while working 70 KSU hours per week? Should A’s KSU salary be reduced? Should A be required to take on another committee assignment to fill out a 40-hour KSU week? Or should KSU focus on the values agreed in the FPA and celebrate diversity by recognizing that faculty who come to KSU with differing aptitudes and work habits will spend differing amounts of time in delivering their FPA-agreed values?

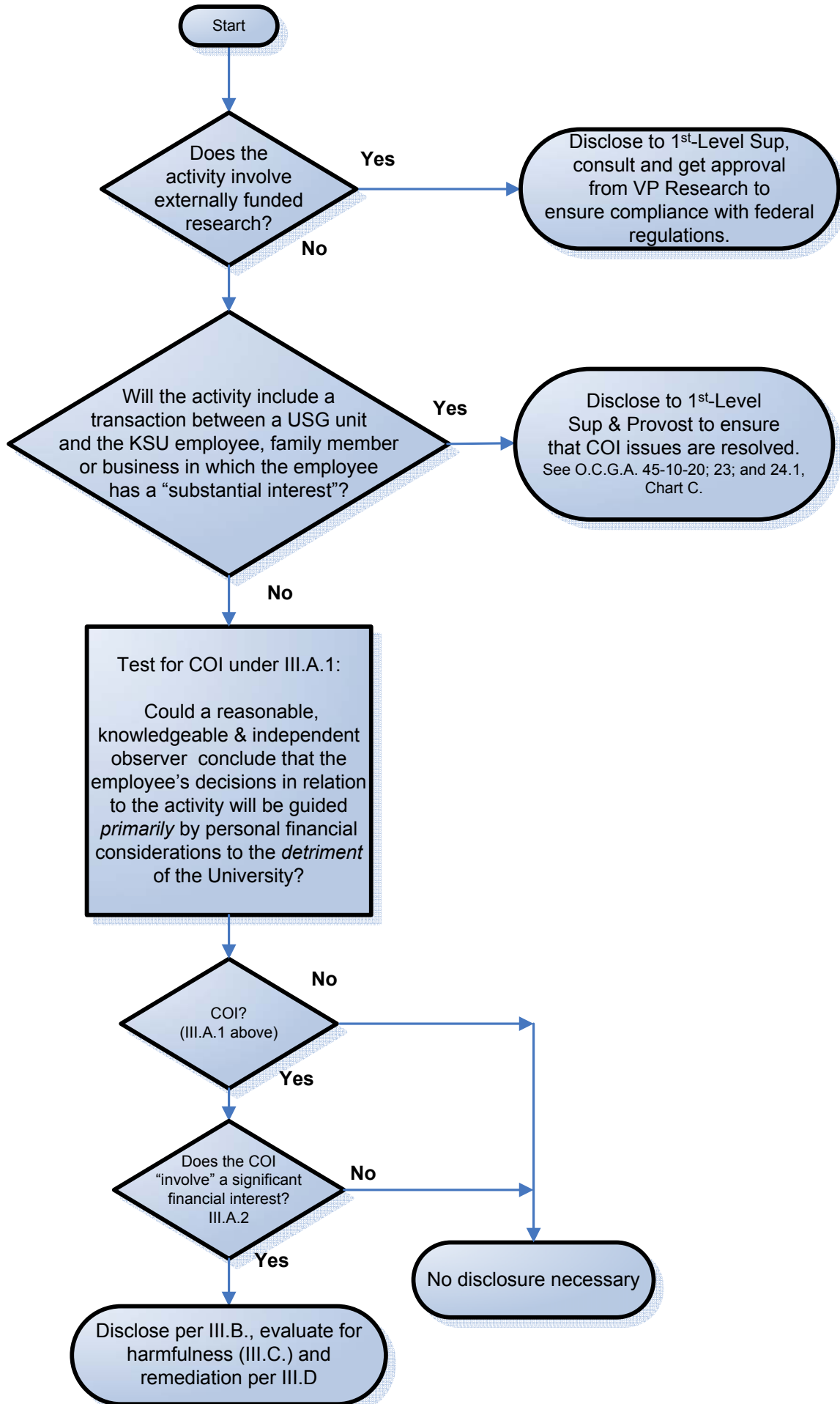
Related example: What if all factors between A and B – other than KSU salary and seniority – are equal but A has 15 more years of KSU service than B but A receives only 70% of B’s salary because of “salary compression”. Because KSU is perennially short of resources to correct this inequity, should A’s department chair adjust A’s FPA-prescribed obligations downward to reflect the salary inequity? Should senior KSU faculty be encouraged to seek employment elsewhere to restore salary parity?

The COI-Conflict of Interest Policy takes no position on these issues. Nevertheless, it is fair to say that they are important policy questions that merit candid consideration by faculty and administration.

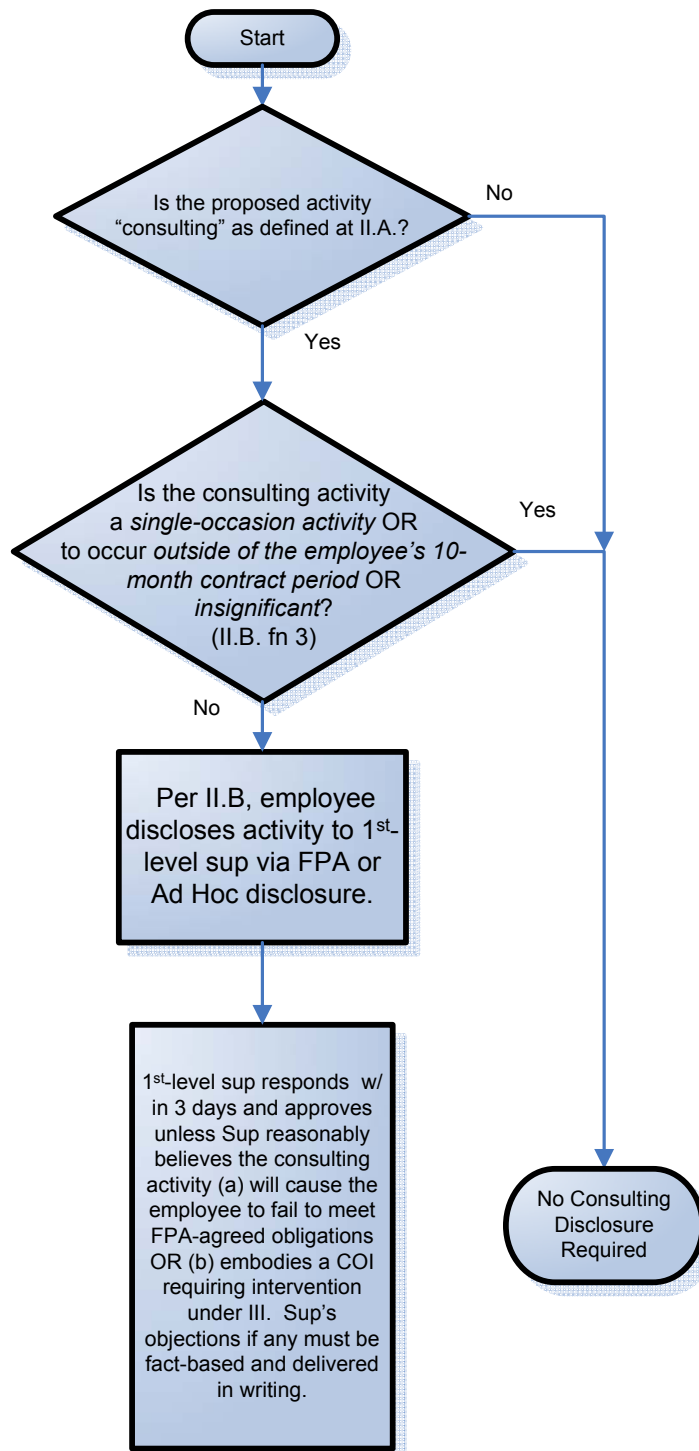
Kennesaw State University  
Proposed Consulting – COI Policy Flowchart



# Chart A Conflict of Interest Flowchart



# Chart B Consulting Flowchart



**Chart C**  
**Conflicts of Interest**  
**Key Georgia Code Provisions**

**§ 45-10-20. Definitions.**

(4) "Family" means spouse and dependents.

(11) "Substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

**§ 45-10-23. Full-time employees prohibited from transacting business with own state agency; exception to prohibition for Board of Regents employees**

(a) It shall be unlawful for any full-time employee, for himself or on behalf of any business, or for any business in which such employee or member of his family has a substantial interest to transact any business with the agency by which such employee is employed; provided, however, that neither this Code section nor any other provision of law shall prevent full-time employees of the Board of Regents of the University System of Georgia from serving as members of the governing boards of private, nonprofit, educational, athletic, or research related foundations and associations which are organized for the purpose of supporting institutions of higher education in this state and which in furtherance of this purpose may transact business with such institutions or with the Board of Regents of the University System of Georgia.

**§ 45-10-24.1. Exemption for transactions by family owned business where university system employee has interest; requirements**

Subsection (a) of Code Section 45-10-23 and paragraph (2) of subsection (a) of Code Section 45-10-24 shall not apply to a transaction with a unit of the University System of Georgia by a family owned business in which an employee of the university system or a member of the employee's family has an ownership interest where all of the following apply:

(1) The employee or one or more members of the employee's family or both have an ownership interest in a family owned business, but the employee is not actively engaged in the day-to-day management of the business;

(2) The employee is employed by a department of the unit of the university system in a position below that of department head; and

(3) The transaction is:

(A) With a unit of the university system different than the unit employing the employee; or

(B) With a department of the employing unit of the university system different than the department employing the employee.

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PROPOSED DRAFT

INTRODUCTORY NOTE

The drafting Committee’s charge from the University Council was to propose revisions to the University’s policies governing outside employment, use of University property for consulting purposes, and conflicts of interest, consistent with Board of Regents policies.<sup>1</sup> In response to its charge, the Committee recommends that Section 7, Part XXXIII of KSU’s Faculty Handbook (Outside Employment Policy) and Section 101.7 (Conflict of Interest/Outside Employment) of KSU’s Employee Handbook be replaced in their entirety with this Draft. To the extent that the Draft refers to University committees or forms that do not currently exist, the Committee recommends that such committees and forms be created.

# # #

Kennesaw State University  
Consulting and Conflict of Interest Policy

This statement approved on \_\_\_\_\_ by the Kennesaw State University Council contains KSU’s policy and procedures regarding conflicts of interest and consulting activities applicable to all KSU staff and faculty members including faculty members serving as University officers or administrators. To the extent that provisions of this policy conflict with other sections of the KSU Employee Handbook or Faculty Handbook, this policy shall control. The provisions of this policy may be modified or otherwise affected only through consultation with faculty and staff stakeholders through KSU’s shared governance process.

I. GENERAL PRINCIPLES

KSU’s full-time faculty and staff owe their primary professional allegiance to the University. Therefore, teaching, research, professional service and the administrative support thereof are the core professional responsibilities of full-time KSU personnel. Nevertheless, KSU encourages faculty to engage in consulting because of the many benefits – in terms of curriculum development, research, funding and branding – that accrue to KSU and its stakeholders through employee involvement in consulting activities.

KSU is a university dedicated to intellectual exploration and experimentation. We place a high value on academic freedom. In relation to consulting, diversity of interest and diversity of practice are also valued. At the same time, harmful financial conflicts of interest must be identified and addressed through an approval process that includes ex ante disclosure and transparency in a collegial atmosphere that emphasizes shared governance and decision-making.

The specific responsibilities and professional activities that constitute an appropriate set of core KSU responsibilities will differ across colleges, schools, departments and among

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<sup>1</sup> The BOR’s policies on Conflict of Interest and Outside Employment are found, respectively, at BOR Human Resources Administrative Practice Manual: Employee Relations, [Conflicts of Interest](#); [BOR Policy Manual 8.2.15](#); and [BOR Policy Manual 8.2.13](#).



1 individual faculty and staff members and should be reflected in the applicable FPA.<sup>2</sup> Even with  
2 the FPA in place, however, attempts to balance University responsibilities and outside interests  
3 can be challenging. This policy offers guidelines to assist faculty, staff and administrators in  
4 balancing the equities and resolving questions related to consulting and to conflicts of interest.  
5 A step-by-step summary of the process to be followed in analyzing consulting and conflict-of-  
6 interest situations is provided in Section IV, below.

## 7 II. CONSULTING

### 8 A. Definition and Scope

9 For purposes of this policy, the term “consulting” includes “consulting and outside activities”  
10 as defined in BOR Policy Manual 8.2.15 and means a significant activity -- professional in  
11 nature and directly related to a field or discipline in which the KSU employee has academic or  
12 professional expertise -- beyond the scope of KSU responsibilities outlined in the individual’s  
13 FPA, including teaching, speaking, and participating in business or service enterprises.

### 14 B. Disclosure

15 Consistent with BOR policy, faculty and staff must disclose in advance the intention to  
16 engage in significant, non-single-occasion<sup>3</sup> consulting activities. Disclosures may be made  
17 through either of two mechanisms, as appropriate:

18  
19 1. *FPA Disclosure.* This is advance disclosure, attached to the FPA, of non-single-  
20 occasion consulting activities planned for the period covered by the FPA.<sup>4</sup>

21  
22 2. *Ad Hoc Disclosure.* Disclosure through submission of a Consulting Activity Form, to  
23 the first-level supervisor of previously undisclosed, non-single-occasion consulting  
24 activities that arise between submission of FPAs.

25  
26 For this purpose, the term “activity” shall normally mean a class or category of activities  
27 rather than a single project or engagement within such a class or category.

28  
29 Disclosure, whether attached to the FPA or ad hoc, shall be promptly reviewed and  
30 responded to by the approving official (preferably within three (3) business days of submission  
31 and sooner if practicable) consistent with BOR policy. A faculty or staff member’s level of  
32 involvement in consulting shall be considered acceptable so long as it does not cause the faculty

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<sup>2</sup> Throughout this policy document, the acronym “FPA” shall mean the Faculty Performance Agreement or, for staff and administrators, the equivalent staff or administrator performance planning document.

<sup>3</sup> For purposes of this policy “single-occasion consulting activities” shall mean consulting events – whether presentations, meeting appearances, speeches or consultative phone calls -- that require a single, unbroken material expenditure of time to perform after appropriate pre-event preparation. Common non-single event activities might include an ongoing consulting relationship or membership on a board of directors or advisors. For 10-month faculty, disclosure of consulting activities taking place outside of the 10-month contract period is not required; however, faculty are encouraged to request conflict-of-interest review of such activities. Significance of non-single event activities should be evaluated in relation to the employee’s FPA-agreed service obligation to KSU.

<sup>4</sup> This advance disclosure of consulting activities is consistent with and similar to NIH regulations regulating conflicts of interest.

1 or staff member’s failure to meet their official University obligations as agreed upon in the  
2 relevant FPA and does not cause an impermissible conflict of interest.

3 *C. Use of University Property in Consulting*

4 Faculty may use University resources and/or property if the use is approved in advance and  
5 arrangements are made to reimburse the University for the use of University resources  
6 consistent with Board of Regents’ requirements as negotiated between the individual and his or  
7 her 1<sup>st</sup>-level supervisor.

8 *D. Dispute Resolution*

9 Any dispute, controversy, sanction or appeal in relation to disclosure or approval of  
10 consulting activities or conflicts of interest shall be resolved in the first instance by the  
11 employee’s 1st level supervisor with further appeal to the KSU Consulting & COI Committee<sup>5</sup>  
12 the decision of which shall be considered final, subject to review and modification by the  
13 VPAA/Provost, President and the Board of Regents.

14  
15 Sanctions, if any, for non-compliance with this Policy shall be reasonably calibrated to  
16 remedy resulting harm to the University.

17 III. CONFLICTS OF INTEREST

18 *A. Definition and Scope*

19 Conflicts of interest often arise and may be unavoidable under some circumstances in a  
20 university setting. Hence, KSU’s goal is not to eliminate all conflicts but to identify, mitigate,  
21 manage, or eliminate as necessary those conflicts of interest<sup>6</sup> that violate applicable laws or  
22 regulations or are otherwise likely to significantly harm the University.

23  
24 All KSU employees have an obligation to understand and comply with the provisions of  
25 this policy. This policy highlights situations that may harbor conflicts of interest, and provides  
26 mechanisms for employees and the University to manage those conflicts. Employees are  
27 encouraged to discuss conflict of interest questions with colleagues and supervisors.

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<sup>5</sup> The KSU Consulting & COI Committee is a standing committee charged by the University Council consisting of one faculty member from each degree-granting college, one chair or director, one college dean, one staff representative, and one representative of the Vice President for Research. The roles of the KSU Consulting & COI Committee are to oversee the implementation and fine-tuning of this Policy and to act as the appellate-level panel responsible for resolving related disputes.

<sup>6</sup> The Committee considered expanding the definition of “conflict of interest” to non-financial conflicts, such as reputation or political position, but found it impossible to articulate an objective standard that would provide sufficient notice to employees as to which non-financial conflicts require disclosure and which do not. The Committee notes that its conclusion matches that reached by the NIH in drafting the new NIH COI rules: “A few respondents suggested that the regulations should also address nonfinancial conflicts of interest. While we acknowledge that non-financial conflicts of interest can influence the scientific process, we chose to retain the focus of these regulations on FCOIs because we believe this is a discrete area in which there is a heightened need to strengthen management and oversight...” (Federal Register, Aug. 25, 2011, 53256 at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-25/pdf/2011-21633.pdf>).

1           1.       Generally

2           KSU occupies a position of public trust. Employees must respect that trust by managing  
3 consulting activities and conflicts of interest to protect the University’s integrity and reputation.  
4 A conflict of interest may arise when an employee’s financial interest in an outside activity  
5 affects the employee’s decision-making or services performed on behalf of the University.

6           In general terms, a conflict of interest consists in an opposition between an individual's  
7 personal financial interests and his or her professional obligations to the University such that a  
8 reasonable, independent observer with professional knowledge in the field could conclude that  
9 the individual's professional actions or decisions will be, are, or have been guided primarily by  
10 personal financial considerations to the detriment of the University.

11          Employees are required to disclose only those conflicts of interest that meet the criteria  
12 specified below for KSU Reportable Conflicts or External Reportable Conflicts. Reportable  
13 conflicts that are likely to result in significant harm to the University may also require public  
14 disclosure, management or elimination. Most consulting activities do not give rise to any  
15 conflict of interest, but some may do so.

16           2.       KSU Reportable Conflicts of Interest

17          KSU reportable conflicts of interest are conflicts of interest (as defined in subsection  
18 III.A.1.above) that involve one or more of the following significant financial interests<sup>7</sup> of the  
19 Employee, the Employee’s spouse or dependent.<sup>8</sup>

20  
21           (i) With regard to any publicly traded entity, a significant financial interest exists if the  
22 aggregate value of any remuneration received from the entity in the twelve months  
23 preceding the disclosure and any equity interest in the entity as of the date of disclosure  
24 exceeds \$5,000. For this definition, remuneration includes salary and any payment for  
25 services not otherwise identified as salary (e.g., consulting fees, honoraria, paid authorship,  
26 travel reimbursement); equity interest includes any stock, stock option, or other ownership  
27 interest, as valued through reference to public prices or other reasonable measures of fair  
28 market value; or

29           (ii) With regard to any non-publicly traded entity, a significant financial interest exists if  
30 the value of any remuneration received from the entity in the twelve months preceding the  
31 disclosure, when aggregated, exceeds \$5,000, or the Employee (or the Employee’s spouse  
32 or dependent children) holds any equity interest (e.g., stock, stock option, or other  
33 ownership interest).

34  
35          (2) Except as otherwise required by Georgia law or USG policy, the term “significant  
36 financial interest” does not include the following types of financial interests: Salary, royalties,  
37 or other remuneration paid by KSU to the Employee; income from seminars, lectures, or  
38 teaching engagements sponsored by a federal, state, or local government agency, or an

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<sup>7</sup> The definition that follows, including the \$5,000 threshold, is a near-verbatim excerpt from the NIH’s [Final Rule § 50.603](#) discussed in more detail below in relation to External Reportable Conflicts. More information about NIH Conflict of Interest policies can be accessed at <http://grants.nih.gov/grants/policy/coi/>.

<sup>8</sup> See O.C.G.A. § 45-10-20.

1 institution of higher education as defined at 20 U.S.C. 1001(a);<sup>9</sup> or income from service on  
2 advisory committees or review panels for a federal, state, or local government agency, or an  
3 institution of higher education as defined at 20 U.S.C. 1001(a).

### 4 3. External Reportable Conflicts of Interest

5 External Reportable Conflicts of Interest are conflicts of interest that may require  
6 management or elimination under external laws or regulations that apply to the particular  
7 activity, transaction or enterprise in relation to which the conflict arises. Examples include (a)  
8 the general rule under Georgia law<sup>10</sup> which bars business transactions between the USG and  
9 USG employees and their family members,<sup>11</sup> and (b) U.S. federal regulations requiring  
10 monitoring and disclosure of financial conflicts of interest in relation to government-funded  
11 research.

12  
13 Research funded or sponsored by federal or state government agencies – including but not  
14 limited to the National Institutes of Health, Centers for Disease Control, Department of  
15 Education, National Endowment for the Arts, National Oceanic and Atmospheric  
16 Administration, Environmental Protection Agency, and National Science Foundation<sup>12</sup> – is  
17 typically subject to agency mandated, project-specific conflict of interest regulations. The same  
18 may be true of research funded by private entities but used for regulatory decision-making as in  
19 the case of pharmaceutical trials funded by a corporation in pursuit of FDA approval.

20  
21 In the context of such externally-sponsored or -funded research activities, significant  
22 harmful conflicts of interest requiring KSU’s management or elimination include only  
23 “financial conflicts of interest” as defined at § 50.603 of 42 CFR Subpart 50,<sup>13</sup> contextualized  
24 as necessary to fit the circumstances of the specific sponsoring organization.

25  
26 In the case of conflict between this Policy and the policies of an external sponsoring  
27 organization, the policies of the sponsoring organization shall take precedence. Any

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<sup>9</sup> The acronym “USC” means United States Code which is the body of U.S. federal statutory law. The United States Code is accessible through the Cornell Law School website at [http://www.law.cornell.edu/uscode/html/uscode20/usc\\_sec\\_20\\_00001001----000-.html](http://www.law.cornell.edu/uscode/html/uscode20/usc_sec_20_00001001----000-.html).

<sup>10</sup> Georgia’s statutory law is found in the Official Code of Georgia (O.C.G.A.) which can be accessed at <http://www.lexis-nexis.com/hottopics/gacode/>.

<sup>11</sup> This rule under O.C.G.A. § 45-10-23 is subject to an exception under O.C.G.A. § 45-10-24.1 allowing family-owned businesses to engage in such transactions under specified conditions with disclosure thereof required by January 31 of each year on the [State Business Transaction Disclosure Report](#). For conflict of interest purposes, O.C.G.A. § 45-10-20 defines “family” as the employee’s “spouse and dependents.” To the extent that a transaction is within the scope of O.C.G.A. § 45-10-23 or O.C.G.A. § 45-10-24.1, the O.C.G.A. shall preempt anything in this Policy to the contrary.

<sup>12</sup> The NSF’s conflict of interest rules, found in the Chapter IV of the NSF’s Award & Administration Guidelines available at [http://www.nsf.gov/pubs/policydocs/pappguide/nsf10\\_1/aagprint.pdf](http://www.nsf.gov/pubs/policydocs/pappguide/nsf10_1/aagprint.pdf), are nearly identical to those of the NIH.

<sup>13</sup> The acronym “CFR” means “Code of Federal Regulations” which is the body of law written by U.S. federal agencies. In 42 CFR Part 50, [§ 50.603](#) defines a “financial conflict of interest” as a “significant financial interest that could directly and significantly affect the design, conduct, or reporting of research” in which the investigator is involved. The corresponding [§ 50.603](#) definition of “significant financial interest” is incorporated in this Policy by reference. Full text of the related NIH regulations and accompanying explanatory material is available at <http://grants.nih.gov/grants/policy/coi/>.

1 University employee who participates as a project director or principal employee, as defined by  
2 Proposed § 50.603, in externally-funded or -sponsored research is required to know and follow  
3 the laws and regulations that apply to the specific research project.

#### 4 *B. Conflict of Interest Disclosure Process*

5 KSU employees must annually certify their knowledge of and ongoing compliance with this  
6 policy on the standard KSU Annual Conflict of Interest Compliance Certification form. On an  
7 ad hoc basis employees must also disclose reportable conflicts of interest to their first-level  
8 supervisor, on the KSU Disclosure of Reportable Conflict of Interest form, not later than the  
9 earlier of (a) the 30th day<sup>14</sup> after the employee first actually believes the conflict is reportable or  
10 (b) the reporting deadline imposed by applicable external rules or regulations. In the context of  
11 externally-funded research, employees must consult with KSU's VP-Research and Office of  
12 Grants and Contracts before applying for funding to ensure that deadlines and disclosure  
13 requirements are met.

14  
15 For KSU Reportable Conflicts, disclosure shall be considered effective immediately upon  
16 the faculty member's delivery of the Disclosure form to the employee's 1<sup>st</sup>-level supervisor.  
17 No further disclosure shall be required unless the 1<sup>st</sup>-level supervisor responds in writing within  
18 three business days of delivery expressing a preliminary reasonable, fact-based need for deeper  
19 review. Required additional disclosure or management steps, if any, will depend on the facts  
20 and circumstances and should be considered and undertaken in the spirit of shared governance  
21 and collegiality.

#### 22 *C. Determining Harmfulness*

23 KSU's institutional policy is to encourage faculty and staff to actively collaborate with  
24 colleagues at other institutions and the business community. Those involved in evaluating the  
25 possible harmfulness of reportable conflicts of interest and crafting responses to them are  
26 cautioned to exercise care in balancing the costs and benefits of such collaboration. Whenever  
27 possible, ambiguity should be resolved in favor of collaboration.

#### 28 *D. Dealing With Financial Conflicts of Interest*

29 Where a conflict of interest is evaluated as clearly harmful to KSU, the employee's 1st-level  
30 supervisor must propose actions to manage or eliminate the conflict. Possible approaches  
31 include, but are not limited to the following:

- 32
- 33 1. Public disclosure of significant financial interests;
- 34 2. Monitoring of research by independent reviewers;
- 35 3. Modification of the research plan;
- 36 4. Disqualification from participation in all or a portion of the related project or research;
- 37 5. Divestiture of significant financial interests; or
- 38 6. Severance of relationships that create actual or potential conflicts.
- 39 7. Appointing a manager to manage a conflict of interest plan.
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<sup>14</sup> The 30-day reporting window is consistent with NIH requirements for new conflicts arising during the implementation of NIH-sponsored research grants.

1 Where external regulations apply, those regulations must be followed in managing or  
2 eliminating External Reportable Conflicts consistent with KSU's institutional policy of  
3 encouraging faculty and staff to actively engage in consulting and collaborative research.

#### 4 *E. Dispute Resolution*

5 Any dispute, controversy, sanction or appeal in relation to disclosure, management or  
6 elimination of conflicts of interest shall be resolved in the first instance by the 1st level  
7 supervisor with further appeal to the KSU Consulting & COI Committee. The Committee's  
8 decision shall be considered final subject to review and modification by the VPAA/Provost,  
9 President and the Board of Regents.

10  
11 Sanctions, if any, for material non-compliance with this Policy shall be reasonably  
12 calibrated to remedy resulting harm to the University and shall be imposed only if supported by  
13 a written justification thereof that identifies specific evidence documenting the non-compliance  
14 and the necessity and fairness of the proposed sanction.

#### 15 IV. CONSULTING & CONFLICT OF INTEREST POLICY SUMMARY

16 Faculty and staff are urged to read this document in its entirety to understand its provisions  
17 and exceptions.

18  
19 1. Employees must not allow consulting activities to interfere with the execution of their  
20 core responsibilities to KSU and must reimburse the University for the use of University  
21 property in consulting activities.

22  
23 2. University employees must disclose consulting activities and agree to management, if  
24 appropriate, of reportable conflicts of interest that clearly result in harm to KSU or that must be  
25 managed under external regulations.

26  
27 3. In each case involving consulting or a potential conflict of interest, this Policy should be  
28 applied to the facts by asking the following questions in this sequence:

29 a. Do the facts suggest an obligation to report a consulting activity or use of University  
30 resources under Section II?

31 b. Do the facts present a conflict of interest under Subsection III.A.1?

32 c. Do the facts present a KSU Reportable Conflict under Subsection III.A.2? If yes, is  
33 the conflict likely to harm KSU? If yes, what additional steps under III.D. should be  
34 taken to mitigate the expected harm?

35 d. Do the facts present an External Reportable Conflict under Subsection III.A.3? If  
36 yes, what disclosure and/or management steps are required by applicable external  
37 rules and regulations?

38 4. It is in the best interests of KSU that its employees honor their professional ethical duties  
39 regarding client and patient confidentiality and privilege. In this context, nothing in KSU's  
40 policies or procedures shall require that any KSU employee violate any professional code of

1 conduct, state or federal law, attorney-client privilege, attorney work-product immunity,  
2 accountant-client privilege or similar privilege or immunity applicable to the consulting  
3 engagement.

#### 4 V. CONSULTING & CONFLICT OF INTEREST SCENARIOS

5 The following non-comprehensive collection of scenarios illustrates some situations  
6 involving consulting and/or conflicts of interests. This is not an exhaustive set of illustrations.

##### 7 8 **A. Competitive RFP**

9  
10 KSU has assembled a team to respond to a competitive RFP issued by a federal agency. A  
11 KSU employee helps another institution, University X, prepare its competing proposal in  
12 exchange for a consulting fee of \$5,000. As a result, the KSU employee's expertise is not  
13 available to KSU's RFP team and, at the same time, the employee is able to share his inside  
14 knowledge of KSU with the University X team thus potentially placing KSU at a disadvantage  
15 in the RFP process.

16  
17 *Comments:* While this scenario presents a conflict of interest, it is not reportable because the  
18 consulting fee does not exceed \$5,000.<sup>15</sup> If the fee were in excess of \$5,000, it would be  
19 significant and would need to be disclosed and evaluated to determine its level of harm to  
20 KSU and whether it should be managed. Likewise, if University X is a USG institution, the  
21 employee should first determine whether the arrangement violates USG policy or Georgia  
22 law. If the fee were greater than \$5,000, then the conflict should be reported and evaluated  
23 for harmfulness and possible mitigation in light of the benefits to KSU from collaboration  
24 with other institutions.

##### 25 26 **B. Consulting expense reimbursement**

27  
28 Faculty member owns a consulting firm the profits of which accrue solely to the faculty  
29 member. On one occasion, the faculty member entertains potential consulting firm clients but  
30 does not discuss or deal with University business while entertaining. She requests  
31 reimbursement from the University Foundation for meals and expenses claiming they are  
32 related to University business.

33  
34 *Comments:* This scenario does not present a reportable conflict of interest. However, it  
35 appears to involve illegal misappropriation of University funds. If the primary purpose of  
36 the event were to promote the University's mission and the consulting purpose were merely  
37 incidental, the result may be different but should be discussed and cleared in advance with  
38 the 1<sup>st</sup>-level supervisor.

##### 39 40 **C. Foreign language text translation**

41  

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<sup>15</sup> The \$5,000 threshold is based on the NIH's [Proposed § 50.603](#).

1 A faculty member in Foreign Languages translates a text as part of his/her FPA-specified  
2 scholarship load. Upon publication of that translation, the publisher asks if the faculty member  
3 would be interested in doing a paid translation for a longer book-length work. The faculty  
4 member agrees and performs the translation, receiving a fixed payment for this service.

5  
6 A year later, the same publisher asks the faculty member to translate a much lengthier and  
7 more difficult book. The pay is substantially more, and the faculty member agrees; however,  
8 the faculty member must complete the translation before a fixed date (three months from  
9 contract signing) and will need at least 10 hours a week to complete the translation.

10  
11 *Comments:* This scenario probably involves no financial conflict of interest. As long as the  
12 consulting activity is properly disclosed and approved, and the faculty member fulfills  
13 his/her FPA-agreed responsibilities, no other action should be required.

#### 14 **D. Summer theater**

15  
16  
17 (1) A 10-month contract faculty member directs an annual summer theater festival at a  
18 different institution which directly financially compensates her for her service. This theater  
19 festival includes the production of three concurrent plays and runs through the summer between  
20 the faculty member's 10-month KSU contract periods. KSU has no summer theater program.

21  
22 (2) The outside theater festival adds a new fall season and the faculty member continues her  
23 involvement with fall theater productions which occur during her 10-month KSU contract  
24 period all under a contract signed by the faculty member and the non-KSU institution before the  
25 beginning of KSU's fall semester. The theater festival fall season is concurrent with the KSU  
26 Theater Department's fall season.

27  
28 (3) Same facts as (2) except that KSU runs a competing theater festival.

29  
30 *Comments:*

31  
32 (1) This scenario involves no conflict of interest and requires no consulting or conflict of  
33 interest disclosure because it occurs during the summer between 10-month contract periods.  
34 Additionally, the theater festival does not conflict with any competing KSU program.

35  
36 (2) This consulting activity should be disclosed and approved in accordance with  
37 established policy because it meets the definition of "consulting" and the services are  
38 delivered during the 10-month contract period. However, the scenario embodies no  
39 discernible conflict of interest given the facts as stated.

40  
41 (3) This scenario should involve a conflict of interest review to ensure that a harmful  
42 conflict, if any, is appropriately mitigated.

#### 43 **E. Faculty consultant**

44  
45



1 A faculty member serves as a consultant to a private education consulting group. In  
2 preparing workshop materials, the faculty member makes photocopies with KSU equipment  
3 and supplies. At the workshop, the faculty member is introduced as a KSU professor and as a  
4 consultant affiliated with the consulting group. The workshop is delivered using a KSU laptop.  
5 All travel expenses are reimbursed by the consulting group.  
6

7 *Comments:* This scenario involves no discernible conflict of interest. The faculty member's  
8 use of KSU property for non-KSU purposes should be dealt with in accordance with  
9 Section II.C. of this policy.  
10

## 11 **F. Online course development**

12  
13 (1) Professor X, who performs her FPA-agreed KSU responsibilities, is compensated by a  
14 competing non-USG university for assisting that university in developing an online bachelor's  
15 program. She uses her KSU desktop computer and KSU-acquired software to develop the  
16 program.  
17

18 *Comments:* This scenario embodies both (a) a potentially reportable conflict of interest  
19 which may require management, and (b) a non-KSU use of KSU property that should be  
20 dealt with in accordance with Section II.C. of this policy.  
21

22 (2) Same as above except that Prof. X was previously paid by KSU on an overload basis to  
23 help develop a similar program. She "exports" the materials produced for KSU directly into the  
24 competing institution's program database.  
25

26 *Comments:* This scenario embodies the concerns in (1) above plus the potential  
27 misappropriation of University intellectual property (the materials produced for KSU's  
28 program). The intellectual property aspects of the scenario should be evaluated in  
29 accordance with the KSU Intellectual Property Policy and Section II.C. of this policy.  
30

## 31 **G. FDA drug testing<sup>16</sup>**

32  
33 Dr. Jones is an investigator in a study testing a drug in human subjects for regulatory  
34 approval by the Food and Drug Administration (FDA). The study is a Phase II randomized,  
35 placebo-controlled, double-blinded study; that is, neither the investigator nor the subject knows  
36 if the subject is receiving the drug or a placebo. The sponsor of the study is a pharmaceutical  
37 company whose stock is publicly traded. Dr. Jones has consulted for the sponsor of the study  
38 on the development of protocols for clinical studies of this or other products. For her consulting  
39 services the sponsor has paid her \$6,000. She also serves on the sponsor's Scientific Advisory  
40 Board without compensation.  
41

42 *Comments:* This scenario presents a conflict of interest (as defined above in III.A.1)  
43 because in light of Dr. Jones' financial interest (the \$6,000 consulting payment) a  
44 reasonable, independent observer could conclude that Jones' decision-making in relation to

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<sup>16</sup> This scenario is borrowed with thanks from Stanford University's conflict of interest policy accessible at <http://dor.stanford.edu/Resources/coil.html>.

1 the study will be guided primarily by her desire to continue receiving the Board fee in the  
2 future. This kind of decision bias could be detrimental to the University in a variety of  
3 ways especially if Dr. Jones' consulting compensation and Board position are not publicly  
4 disclosed.

5  
6 This conflict would be a KSU Reportable Conflict of Interest, even in the absence of  
7 external agency (FDA) disclosure or management requirements, because it meets the  
8 significant financial conflict of interest criteria outlined in III.A.2. Likewise, because the  
9 research is externally sponsored (by the pharmaceutical company) and is almost certainly  
10 subject to FDA conflict of interest regulations, the conflict appears to meet the Externally  
11 Reportable Conflicts criteria of III.A.3. Because of the external funding and government  
12 agency overtones of this scenario, Dr. Jones and her 1<sup>st</sup>-level supervisor should consult on  
13 further steps with the college dean, KSU's Vice President for Research and Office of Grants  
14 and Contracts.

15  
16 Dr. Jones and others involved in the disclosure and conflict-management decision should  
17 also consider the following additional issues: If scholarly publication will flow from the  
18 study, Jones' paid Advisory Board position should be disclosed in any publication. How  
19 will the study sponsor respond to findings that conflict with the sponsor's commercial  
20 objectives? For example, can the sponsor control the publication of the results and  
21 underlying data? Can the study sponsor's objectives be reconciled with the objectives and  
22 ethical obligations of Dr. Jones and KSU?

### 23 24 **H. Independent LLC**

25  
26 Professor X is approached by a member of the departmental advisory board with an offer to  
27 do a project for the board member's company. The project would involve the professor  
28 supervising some students to create a product for the company. The professor would create an  
29 LLC through which he/she would manage the project. Both the professor and the students  
30 would be paid by the LLC for their work.

31  
32 *Comments:* This scenario does not embody a reportable financial conflict of interest.  
33 However, because of the involvement of KSU students, Professor X should disclose the  
34 project to his/her first-level supervisor in order to manage the appearance of an academic  
35 conflict of interest, particularly if the students are enrolled in a class taught by Professor X  
36 or if Professor X has some responsibility over these students (e.g., as their thesis director).

### 37 38 **I. Convention presentation yields consulting**

39  
40 A faculty member presents at a national conference which results in offers for consultation  
41 activities. All travel for the conference is reimbursed by KSU. Although the primary role of  
42 employment with KSU is highlighted in the conference materials, the faculty member's  
43 consultation activities are noted in the introduction. During the conference, faculty recruitment  
44 efforts are made and a KSU brochure distributed.

1 *Comments:* This scenario embodies significant branding advantages for KSU and presents  
2 no conflict of interest worthy of note.

3  
4 **J. Full-time faculty working as adjunct**

5  
6 (1) During a fall or spring semester, a full-time, 10-month KSU faculty member teaches  
7 his/her FPA load but simultaneously teaches as an adjunct at another institution.

8  
9 *Comments.* If both institutions are USG units, normally this arrangement is prohibited by  
10 USG policy. In extraordinary situations, a dual USG appointment may be cleared in  
11 advance per BOR policy. If the other school is a non-USG unit, this scenario raises only  
12 potential workload issues that should be disclosed and negotiated through the FPA process.

13  
14 (2) Same as (1) except that the non-KSU teaching takes place during summer semester.

15  
16 *Comments.* This scenario raises no conflict of interest or other disclosure issues in part  
17 because the services are delivered between 10-month contract periods.

18  
19 (3) Same as (2) except that during the same summer semester, the faculty member also  
20 teaches at KSU or performs compensated committee work for KSU.

21  
22 *Comments.* This scenario raises no conflict of interest or other disclosure issues in part  
23 because the services are delivered between 10-month contract periods.

24  
25  
26 **K. Speaker for outside agency**

27  
28 A KSU faculty member is a speaker for a national speaking agency which books him/her to  
29 speak at another USG institution (X). X pays the agency for the faculty member's appearance  
30 and the agency, in turn, pays the faculty member.

31  
32 *Comments:* This scenario may involve a violation of either USG policy or O.C.G.A. § 45-  
33 10-23 discussed above in relation to External Reportable Conflicts. The faculty member  
34 should disclose this speaking opportunity in advance to ensure compliance with BOR policy  
35 and O.C.G.A. § 45-10-23.

36  
37 **L. Keep or donate consulting fees**

38  
39 A faculty member consults for entities unrelated to KSU in his/her area of expertise on  
40 nights, weekends and lunches. The faculty member is paid by the outside sources but donates  
41 the money to non-profits and shelters.

42  
43 *Comments:* Nothing in this scenario suggests a conflict of interest unless the entities are  
44 Georgia State agencies. However, the faculty member should consider disclosing the  
45 consulting arrangement. When the consulting is done is irrelevant because KSU offers

1 classes nearly around the clock and on weekends. The ultimate recipient of the  
2 compensation is irrelevant to the faculty member's consulting activity disclosure obligation.

3  
4 **M. Teaching a non-KSU class on KSU property**

5  
6 A KSU faculty member conducts training sessions for a fee on KSU property. Participants,  
7 who are not KSU students, pay fees directly to the faculty member. Marketing materials for the  
8 class indicate that the sessions are held at KSU and are taught by a KSU professor but do not  
9 specifically state that KSU sponsors the sessions.

10  
11 *Comments:* This scenario does not embody a conflict of interest. However, the faculty  
12 member must disclose this use of KSU property and reimburse KSU in accordance with  
13 University policy.

14  
15 N. Professor X, identifying herself as affiliated with KSU, speaks out on a radio talk show,  
16 writes a newspaper op-ed, or authors a paper in which she takes the position that (a)  
17 multiculturalism is destroying western civilization; or (b) Sharia law should be adopted in the  
18 United States; or (c) man cannot significantly affect climate.

19  
20 *Comments:* This scenario does not embody a conflict of interest. Ethical considerations  
21 suggest that the faculty member indicate that the views expressed are his or her own, and that  
22 they are not speaking on behalf of Kennesaw State University.

VI. FORMS

A. *Annual Conflict of Interest Compliance Certification*

ANNUAL CONFLICT OF INTEREST  
COMPLIANCE CERTIFICATION

DATE:

NAME OF EMPLOYEE:

DEPARTMENT:

I hereby certify that I understand KSU's policies and procedures regarding conflicts of interest and that I am currently in compliance with them.

Signature of Employee:

\_\_\_\_\_

\_\_\_\_\_ Date

B. Consulting Activity Disclosure

CONSULTING ACTIVITY DISCLOSURE

DATE:

NAME OF FACULTY MEMBER:

DEPARTMENT:

GENERAL DESCRIPTION OF ACTIVITY:

APPROXIMATE START DATE: FROM \_\_\_\_\_ TO \_\_\_\_\_

Will this project involve any University resources and/or use of the University name, and/or will it conflict with or cause you to modify any of your employment obligations to the University? YES / NO (CIRCLE ONE)

If "YES," please explain:

Do you perceive that this activity could create an actual or apparent conflict of interest?

YES/NO (Circle One)

If "YES", explain:

Signature of Faculty Member: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by 1-st Level Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

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C. *Reportable Conflict of Interest Disclosure*

REPORTABLE CONFLICT OF INTEREST  
DISCLOSURE

DATE:

NAME OF EMPLOYEE:

DEPARTMENT:

GENERAL DESCRIPTION OF THE REPORTABLE CONFLICT:

(Please describe why you believe the conflict is reportable. Disclosure of specific dollar amounts is not required.)

Signature of Faculty Member: \_\_\_\_\_ Date: \_\_\_\_\_

Received by Immediate Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_