

 **Office of Technology
Commercialization**

**Conflict Guidance
for
University of Kentucky
Employee Entrepreneurs**

Introduction

Small businesses have unique opportunities to further develop commercialized university-originated technologies, and have been an important driver for the U.S. economy. The University of Kentucky ("UK") encourages interested employee entrepreneurs to pursue business development, consistent with their employment status and University regulations. To help entrepreneurs pursue external business interests in an ethical and appropriate way, the Office of Technology Commercialization (OTC) and the Office of Legal Counsel have prepared this guidance document in part by using relevant sections from Governing Regulation ("GR") XIV, Ethical Principles and Code of Conduct and other University policies to address frequently experienced issues.

All entrepreneurs are encouraged to read the entire [GR](#), and consult the linked [Administrative Regulations \(AR\)](#), as may be updated from time to time. For situations not specifically addressed in this document, additional assistance is available from the Office of Legal Counsel, as well as the University's Ethics Committee. For information on intellectual property, confidentiality, and any transfer of materials, assistance is available from the [Office of Technology Commercialization \(OTC\)](#).

Transparency

As you consider applicable regulations and policies regarding conflicts of interest, a key concept throughout is to ensure complete disclosure of your business interests. Several required disclosures are described in this document, but you should view these as the minimum required disclosures. When in doubt and because the University is a very large enterprise doing many different things, you should also fully disclose such interests to other offices and individuals you interact with, so that any conflicts or appearances of a potential conflict can be managed. The appearance of a potential conflict requires consideration and management to ensure that public confidence in the University and its entrepreneurial employees is not at risk.

Some transactions are not permitted even with disclosure, but with disclosure you can maximize your ability to confidently proceed with entrepreneurial activities.

Conflict of Commitment

In pursuing entrepreneurial activities, it is important to comply with your obligations as a full-time employee. Work for your company should generally be viewed as external consulting work, and should follow the applicable approval process for external consulting including completion of the online external disclosure form at <http://www.uky.edu/eForms/> (this form currently indicates it should be submitted "when monetary compensation is expected", but due to your equity interest in the company, this is a financial interest with monetary value and disclosure of your time and effort on behalf of the business should be submitted.)

At times, the company may need more of your time than consulting time can accommodate. UK policies allow faculty entrepreneurs to take full or part-time leave. See Entrepreneurial Leave policy at [GR X\(B\)\(2\)\(d\)\(7\)](#), and [Application for Entrepreneurial Leave](#). Care must be taken to ensure that work for your outside business does not adversely impact your work at UK.

UK's Ethical Principles addresses Conflict of Commitment in [GR XIV\(B\)\(9\)](#):

Decisions and the judgment upon which the decisions are based must be independent from conflicting interests and must hold the best interest of the University of Kentucky foremost. Conflicts of commitment relate to an individual's distribution of effort between University appointment and outside activities. The University of Kentucky permits external employment or self-employment in an employee's profession or specialty (with the exception of employees participating in a practice plan) where there is not a conflict of interest or commitment. Faculty and professional administrative employees are expected to devote their primary professional loyalty, time, and energy to University of Kentucky teaching, research and service endeavors; activities outside the University must be conducted without detracting from these primary commitments. A conflict of commitment generally occurs when the pursuit of outside activities interferes with obligations to students, to colleagues and to the missions of the University. These conflicts may become apparent in regular performance reviews, in connection with annual salary decisions and scheduled reviews incident to promotion, reappointment or tenure decisions and shall be addressed by the appropriate department head. The University policy and procedures on outside consulting can be found in AR 3:9.

A staff employee may be employed outside the University when the employment does not constitute a conflict with University interests and when the hours of outside employment do not coincide or conflict with hours of scheduled work or affect the employee's ability to perform

satisfactorily. A staff employee may also perform outside employment while on vacation, holiday, or special leave as long as the outside employment does not constitute a conflict of interest. Adherence with this policy is the responsibility of the staff employee who seeks outside employment; however, it is recommended the employee advise his or her department head of the outside employment.

Any staff members pursuing entrepreneurial activities should be sure to comply with [Human Resources Policy and Procedure Number 18.0, Outside Employment](#).

University Property and Resources

As a rule, your company business should be conducted outside of the University. Facilities and equipment owned by the University are not to be used for your private business activities. Limited exception may exist if your company makes a subaward to the University, or enters into other forms of agreement addressing the activity and providing full compensation to the University. Unless such agreements exist, you may not conduct company research within university facilities.

Leased space is available to companies in the ASTeCC facility. For more information on ASTeCC, see <http://www.research.uky.edu/astecc/>.

While you are at work, modest use of non-depreciable resources (e.g. telephone and computer) are permitted. You may not list a University address or telephone number as a business address.

UK's relevant Ethical Principles are provided in [GR XIV\(B\)\(12\)](#):

University members shall be responsible stewards of University property and resources. University members are entrusted with protecting the property, equipment, and other assets of the University and exercising responsible, ethical behavior when using the University's resources. University assets are intended for University activities. Limited personal use of fixed University resources, such as computers and telephones, which does not result in a charge to the University is permitted as long as the use does not interfere with assigned job duties.

University property and resources shall not be used for personal business or commercial activities. However, in some instances, when the goals of the individual and the University coincide, a University member may use University equipment outside of the realm of his or her professional

duties. Any such use must have the prior, written approval from the dean or appropriate administrator where the resources are located, and must provide that the University will be reimbursed for the full cost of the use of the property and resources. Such use must not interfere with the University of Kentucky's uses, and must occur outside of the University member's regular employment assignment. The Office of Legal Counsel may assist with an appropriate agreement.

Research Conflict of Interest and Financial Disclosure Policy

Federal law, University policies, and public expectations all require that research be conducted transparently and with integrity. The University's policy and procedure on disclosure and management of research conflicts of interest are set out in [AR 7-2](#).

Conflict of Interest

Other conflicts of interest can result when pursuing entrepreneurial interests and should always be carefully considered. UK's Ethical Principles address Conflict of Interest in [GR XIV\(B\)\(10\)](#):

The public's respect and confidence in the University of Kentucky must be preserved. Confidence in the University of Kentucky is put at risk when the conduct of University members does, or may reasonably appear to, involve a conflict between private interests and obligations to the University. All University members shall avoid conduct that might in any way lead members of the general public to conclude that he or she is using an official position to further professional or private interests or the interests of any members of his or her family. In conducting or participating in any transaction, full disclosure of any real or perceived conflict with personal interests and removal from further participation in such matters is required.

Confidentiality of Information

Remember that research results and other information generated at UK cannot automatically be shared with third parties. While you may have roles at UK and at your company, your company is a separate third party.

UK's Ethical Principles address confidentiality of information in [GR XIV\(B\)\(2\)](#):

University members are entrusted with personal and institutional information that should be treated with confidentiality and used only for conducting University business. Respect for individual and institutional privacy requires the exercise of care and judgment. Unless required or permitted by law or University regulations, personal and official information provided by and about faculty, staff and students must not be given to third parties without the consent of the individuals concerned. When doubt exists regarding the confidentiality of information, University members should presume information is confidential until determined otherwise.

Treat your business as you would any third party. Contact the Office of Technology Commercialization (OTC) as needed for Nondisclosure Agreements (NDAs) and Material Transfer Agreements (MTAs).

Intellectual Property

Intellectual property rights and ownership can become a difficult issue if overlapping research occurs both at the University and at your company, such as your company receiving a Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) award and makes a subaward to the University. In a subaward agreement, the University and your company will address intellectual property rights that might be created in performance of the project.

To avoid overlapping or competing claims, substantial care should be exercised to provide clear demarcations between University work and company work. On the front end, develop well defined and distinct areas of research. Recommendations to prevent disputes include maintaining documentation clearly outlining respective areas of work and ensuring that all parties maintain lab notebooks detailing when and where work is conducted.

Note, absent a subaward or other authorized agreement governing the parties' rights, if University resources are used to create intellectual property, the University will own such intellectual property.

According to [AR 7-6](#), as a condition of your employment, UK owns inventions made with University resources, and you are obligated to disclose inventions to the University.

UK's Ethical Principles address Intellectual Property in [GR XIV\(B\)\(8\)](#):

University members should be responsible stewards of University resources. All intellectual property conceived, first reduced to practice, written, or otherwise produced by faculty, staff, or students of the University of Kentucky using University funds, facilities, or other resources shall be owned and controlled by the University.

Financial Advantage

Some entrepreneurs envision a business model where the University is one of their clients. State law provides that no employee may have an interest, real or perceived, in a contract with the University. Under both state law and University policies, the University generally cannot buy goods or services from your company, or otherwise conduct business with it that requires expenditure of University funds. (As noted, your company can pay to have the University conduct some work for it as described above.)

There is a limited exception in state law that in certain circumstances allows the University to contract with a company owned or controlled by a University employee or their family member for goods or services. The University's procedure to follow that limited state law exception is contained in the Ethical Principles, and starts with a request directed to the University's Ethics Committee.

UK's Ethical Principles specifically applicable to financial advantage are found in [GR XIV\(B\)\(14\)](#).

Members of the University community shall exhibit personal integrity, honesty and responsibility in all actions. Official position or office shall not be used to obtain financial gain or benefits for oneself or members of one's family or business associates. Any action that creates the appearance of impropriety should be avoided. Except as specifically approved by the Board, purchases and contracts shall not be made with an employee of

the University for any item of supply, equipment, or service, nor may an employee have any interest, directly or indirectly, in any purchase made by the University. (See [BPM B.2](#), [KRS 164.131](#), and [KRS 164.367](#).) An indirect interest may be defined as a real or perceived use of a university position or office with respect to a purchase or contract, leading to financial or other benefits to the individual or a member of his or her family. An indirect interest includes situations where a business owned or controlled by a family member does business with the University area where the employee is assigned.

An employee seeking approval under this section shall first make an application to the University Ethics Committee by submitting in writing a full disclosure of all aspects of his or her relationship with the contracting company or business. The Ethics Committee shall make a recommendation to the President, who shall forward to the Board the Committee's recommendation together with his or her recommendation. In recommending approval of a contractual relationship, the Committee shall determine that:

- a. the contractual relationship is in the best interest of the University;
- b. the employee has taken whatever actions are necessary to avoid any conflict of interest or any appearance of a conflict of interest;
- c. if the conflict is subject to the provision of KRS Chapter 45A, the employee's contract shall be the lowest price bid or otherwise provides the best value to the University;
- d. the employee's interest in the contract does not present a conflict with the employee performing his or her job; and,
- e. the nature of the contract and the nature of the employee's interest in the contract or business shall be fully disclosed to the University community by as broad communications as feasibly possible.

SBIR/STTR Awards

A host of federal agencies make funds available to small businesses through Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Awards. These awards can be wonderful opportunities to find much-needed funds, but you must take the time to ensure that you and anyone working with you understand the applicable rules, including federal rules and regulations that govern where work can occur, who can be a Principal Investigator (PI), and what employment constraints exist on dual roles with the University and company including accounting and reporting obligations. Receipt of federal funds comes with substantial obligations, and penalties for violations can be serious, in some situations even criminal. Consider looking for local seminars, workshops, and reviewing materials provided by the federal agency involved in the award to ensure compliance with all applicable rules and regulations. A variety of offices on campus and around the state host information presentations.

Other Rules

Employees in healthcare and other regulated areas may be subject to additional compliance and disclosure requirements. Any research involving human subjects is of special concern, and you should consult with the Office of Research Integrity (ORI) before engaging in such research. Broad disclosures will help identify any additional concerns. As noted, the [Office of Legal Counsel](#), Ethics Committee, [Office of Technology Commercialization \(OTC\)](#), [Office of Research Integrity \(ORI\)](#), your Associate Dean for Research (ADR), the Conflict of Interest (COI) office, and others can provide additional guidance.

While this guidance has focused on conflicts of interest and compliance, the University also has a host of resources to help your new business. Consult the [OTC](#) website for additional information.