

3359-11-18 Conduct and ethics policy: employee financial interests in companies licensed under university intellectual property.

(A) Policy Statement

The Board of Trustees has determined that the best interests of The University of Akron will be served if employees who create new technology are afforded the opportunity to hold personal financial interests in companies that are engaged in commercializing their inventions. Employee participation with outside companies in technology development activities will facilitate the University's goal of making its research available for use in the private marketplace by giving researchers an incentive to develop inventions with commercial applications. The opportunity to participate in commercialization activities is also essential to the University's efforts to attract and retain highly qualified researchers. The procedures and guidelines set forth in this policy are intended to enable the University to realize the benefits of such entrepreneurial activities while protecting the integrity of its research and educational mission and to comply with university policies and with applicable federal and state laws.

(B) Applicability

(1) Scope and Definitions.

- (a) This policy applies to any faculty, staff or student employee who is the creator of a discovery, invention, work or trade secret information that is owned by The University of Akron through the operation of Rule 3359-2-05 (University research, copyright and patent policy) of the Administrative Code ("Inventor") and who desires to acquire an equity or other financial interest ("Financial Interest") in a firm, corporation, or other association ("Company") to which the University of Akron or the "University of Akron Research Foundation" (collectively, "University") has assigned, licensed, transferred or sold its interests in the discovery, invention, work or trade secret information made or created by that employee or in a patent or copyright issued to that employee ("Intellectual Property").
- (b) This policy deals only with the acquisition by an Inventor of a Financial Interest in an entity that is developing and/or using technology based on Intellectual Property that was created by that inventor; accordingly, the term "Company" refers only to such an entity. For purposes of this policy, "Inventor" includes the Inventor's spouse and members of his or her immediate family and any firm, corporation or other association controlled by the Inventor; and "Financial Interest" includes any stock, bond, warrant, option, loan or other equity or debt interest in a Company, or promise of the same, as well as paid consulting or employment with a Company.

(2) Relation to the Ohio Ethics Laws.

- (a) This policy creates an exception to Chapter 102 and Sections 2921.42 and 2921.43 of the Revised Code (collectively, the "Ohio Ethics Laws"). Among other things, these laws prohibit public officials from having an interest in the profits or benefits of a public contract entered into by or for the use of the governmental unit with which he/she is connected, or from soliciting or accepting anything of value that is of such character as to manifest a substantial and improper influence upon him/her with respect to the performance of his/her duties. Compliance with this policy will provide an Inventor who acquires a Financial Interest in a Company with an exemption from these and other possibly applicable provisions of the Ohio Ethics Laws. A failure to comply with this policy could result in a violation of the Ohio Ethics Laws.
- (b) This policy applies only to Inventors, as defined. Consequently, employees other than Inventors who acquire a Financial Interest in a company that is developing University-owned Intellectual Property should consult their own legal advisers to determine whether the transaction violates the Ohio Ethics Laws.

(3) Relation to Other University Rules.

Inventors seeking to comply with this policy should also consult other rules of the Administrative Code on related subjects. It is the intent of this policy that it be administered consistently with all other University rules and policies that may apply to the same circumstances.

(4) Other Matters Not Covered.

This policy does not deal with the terms and conditions under which the University will assign, license, transfer or sell Intellectual Property to an entity that will become a Company upon acquisition of rights in the Intellectual Property, or with the terms and conditions upon which the University will require or accept an equity interest in a licensee company. These and all other terms and conditions of licensing agreement will be determined pursuant to other University policies. Generally, such transfers and/or equity participations will not be made or entered into unless it is determined both that the proposed Company has the resources (or a reasonable plan to obtain the resources) necessary for development of the technology, and that it has a satisfactory business plan for such development.

(5) Effective Date.

This policy shall apply only to acquisitions of Financial Interests or licenses, assignments, transfers or sales of Intellectual Property that occur on or after the date of this initial adoption.

(C) Policy Requirements.

(1) An Inventor may solicit or accept a Financial Interest in a Company if, but only if, he or she has first complied with the requirements of this policy.

(2) It should be noted that an entity organized for the purpose of commercializing Intellectual Property will not become a Company until the University has assigned, licensed, transferred or sold its interest in the Intellectual Property to the Company. Consequently, an inventor who is participating in the organization of a company that expects to license Intellectual property from the University should comply with this policy before the Intellectual Property has been licensed to the company, or before soliciting or accepting a Financial Interest in the Company if it already has acquired the license.

(3) The University will not knowingly license Intellectual Property to an entity in which an Inventor has Financial Interests until there has been compliance with this policy. It may, however, grant an option to acquire the license conditioned on compliance with the policy. This will protect the entity's interest in obtaining the necessary license while the Inventor seeks approval for the proposed Financial Interest.

(4) Employees who wish to participate in a start-up company may discuss initial company formation with the Office of the Vice President for Research. However, negotiations between the University and a company seeking to license its Intellectual Property should, to the extent possible, be conducted by company representatives other than the Inventor.

(D) Approval Process.

(1) Compliance With Collateral Employment Requirements.

An Inventor seeking approval to hold a Financial Interest in an existing or proposed Company shall first comply with Rule 3359-11-17 of the Administrative Code, as applicable, relating to consulting and collateral employment. This requirement applies regardless of the nature of the Financial Interest involved, and thus must be met even in cases where no consulting will occur and the only Financial Interest is a passive equity interest in the company. In addition to the conflict of interest and commitment reports that are required by the applicable rule, the Inventor shall submit a supplemental report containing:

- (a) A complete disclosure of the Inventor's proposed Financial Interest in the Company; and
- (b) A conflicts management plan that addresses the following issues:

- (i) Management of University Obligations. The conflicts management plan shall describe the Inventor's University duties (e.g., teaching loads, committee assignments, etc.) and explain how potential conflicts of commitment will be managed so that these University duties can continue to be fully performed. Inventors who are unable to perform the full range of their University duties must request a reduction of appointment or other approved leave. Professional improvement leave authorized under Section 3345.26 of the Revised Code may not be used for private business purposes.
- (ii) Proposed Participation in Management of the Company. Inventors may hold temporary management positions in a Company that is in the start-up phase. However, it is expected that the Company will obtain professional management as soon as this is practical, and that the Inventor's participation in the Company's management will decrease as the Company develops. The conflicts management plan must describe the contemplated participation in management and provide enforceable milestones for the reduction of the participation. As a general rule, Inventors should not hold management positions in established Companies.
- (iii) Limitation of Equity Ownership. Although an Inventor may hold a significant equity interest or debt position in a Company in its initial stages of development, it is expected that the Inventor's percentage of ownership will decrease as the company develops and attracts additional investment. The conflicts management plan must describe the Inventor's contemplated initial equity and/or debt participation in the Company and provide enforceable milestones for reduction of that interest to not more than twenty-five percent of the Company's total equity or debt, as the case may be, or such other level of financial interest as the Inventor and University may mutually agree.
- (iv) Use of University Facilities. The conflicts management plan shall describe any proposed use of University facilities, equipment or other resources to further the business interest of the Company. No such use will be permitted except pursuant to a sponsored research agreement or a facilities use agreement with the Company that is approved by the Office of Research and processed in accordance with the University's contracting procedures.
- (v) Student Employment. The conflicts management plan shall describe any proposed use of University students to further the business interest of the Company. The Inventor may not use University students for this purpose as part of a student's assigned academic work, but the Company may employ students pursuant to an employment plan that has been approved by the chair of the student's department and, if applicable, the chair of the graduate studies committee. Students may perform research that benefits the Company when the work is being performed pursuant to a sponsored research agreement or a formal internship agreement between the Company and the University.

(2) Approval By Research Office.

Upon compliance with the applicable collateral employment procedures, the approved collateral employment form and conflicts management plan that has been approved by the appropriate chair(s) and dean(s) shall be forwarded to the Office of Research for final approval by the Vice President for Research. In granting such approval, the Vice President may consult with the Provost and the Office of General Counsel and may make such additional conflict management requirements as are deemed necessary to approval of the Inventor's proposed Financial Interest in the Company.

(3) Compliance.

Compliance with an approved conflicts management plan shall be the responsibility of the Inventor's academic unit head/chair and dean or staff supervisors, as the case may be, in consultation with the Office of Research. Violations of the conflicts management plan may subject

the Inventor to University discipline, or deprive the Inventor of the exception to the Ohio Ethics Laws that would otherwise be applicable. In addition, the University's license agreement, facilities use agreement, sponsored research agreement or other agreement with the Company may provide for termination or other remedy if the Inventor fails to comply with the conflicts management plan.

(4) Annual Review.

To assure continued compliance with the plan, the Office of Research shall annually conduct an assessment of the Inventor's performance under the conflicts management plan. Such assessment shall include a report from the Inventor's academic unit head and dean or staff supervisors respecting the adequacy of the Inventor's performance of his or her assigned University duties and a review by the Office of Research of the extent to which the milestones that are contained in the conflicts management plan have been met. Any deficiencies that are noted shall be discussed with the Inventor with a view to achieving compliance or modifying the plan or the related agreement with the Company. A failure to reach agreement on compliance can result in one or more of the consequences described in Paragraph (D)(3) of this policy.

(5) Freedom from Conflicts in the Administration of this Policy.

University Officers and employees shall not participate in the approval process or in the administration or enforcement of this policy with respect to a Company in which they have a Financial Interest.