



OFFICE OF  
COMPLIANCE, ETHICS  
& EQUAL OPPORTUNITY

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**TO:** President Garnett Stokes  
**FROM:** Francie Cordova, Chief Compliance Officer  
**DATE:** April 29, 2022  
**SUBJECT:** Ethics Task Force Report

In support of your charge to formulate campus-wide ethics-related initiatives, training, and best practices through the Ethics Task Force, I present the proposals of the Ethics Task Force sub-committees for your review. Below, you can find a report introduction as well as sub-committee reports. If any questions arise, the Ethics Task Force Chair, Francie Cordova, may be contacted at [fcordova3@unm.edu](mailto:fcordova3@unm.edu).

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## Introduction

On September 9, 2019, President Garnett A. Stokes announced the President's Task Force on Institutional Ethics and Integrity (Task Force). The general charge of the Task Force is to formulate a campus-wide proposal of ethics-related initiatives, training, and best practices with the goal of creating and maintaining an ethically inspired environment at UNM, based on strong moral conduct and compliance with applicable laws, rules, and guidance. The task force completed its report on May 8, 2020. The taskforce report recommended policy and training work in several key areas. The Task Force decided to create sub-committees that would work independently on 9 key topics.

The Ethics Task Force subcommittees are comprised of nine working groups:

1. Code of Conduct and/or Ethical Behavior policy/statement
2. Conflict of Interest Policy and Disclosure Tools
3. Conflict of Commitment Policy Creation/Alignment and Disclosure Tools
4. Conflict of Interest and Commitment Training Development
5. Foreign Gifts and Contracts Policy and Reporting Tools
6. Data Privacy Policy Updates
7. Human Trafficking
8. Limited English Proficiency Policy
9. Diversity commitment preferred criteria in hiring faculty/staff/student employee

The Task Force subcommittees were given the following specific duties:

1. Conduct literature and research reviews to identify best practices for creating a campus culture that upholds the mission and values of the university and encourages ethical and professional behavior.
2. Review current UNM policies and procedures regarding ethics, professional boundaries and conduct, conflicts of interest and reporting mechanisms and possibly recommend changes, amendments, or the creation of new policies or procedures.
3. Determine whether sub-committees should be created to focus on specific topics (i.e., academics, finance, diversity, student, fair dealing, and respect for others).
4. Explore offering "Ethics" training for all employees or subsets of employees and identify online and live options.
5. Prepare a final proposal/report regarding its findings.

The subcommittees met several times during 2020 and 2021.

The subcommittees had several overarching key observations about compliance at UNM:

- The cost of compliance at UNM has not been fully accounted for and should be captured as an enterprise
- Compliance work is siloed and should be considered more holistically
- Compliance polices and technology are siloed

### Cost of Compliance and the Need for Enterprise Oversight

Important progress has been made in understanding the impact of federal compliance on higher education. Several surveys and studies have looked at the impact of federal compliance and their overall cost to universities. In 2015 for example, Vanderbilt University commissioned a study of the cost and impact of federal compliance in higher education. The study included 13 universities across the United States. The study found that universities report to 18 federal agencies, have approximately 30 areas of regulation and follow more than 200 federal laws and guidelines. The study also found that an average of 3-11% of non-hospital operating expenditures were compliance related. Research compliance was 11-25% of this total average and non-research compliance was 2-8% of this total average. [Regulatory-Compliance-Report-Final.pdf](#)

This study reaffirms that need for UNM to conduct similar reviews of the “cost of compliance” and discern areas.

Other studies in this area similarly have identified best practices for considering compliance at universities:

1. The complexity and ever-changing focus of federal compliance is costly. UNM should review its risk appetite in each area and create enterprise budgeting that focuses on compliance as an enterprise.
2. Siloed compliance work increases costs. UNM compliance work is siloed, specifically because each of the areas are complex and require focused compliance officials. However, a more comprehensive look at compliance that strategically plans for compliance costs and efforts, will reduce compliance costs, and eliminate overlap.
3. Policies and procedures across UNM are not uniform. A strategic plan for policy development will prevent the proliferation of inconsistent policy.
4. Compliance technology is not uniform. Compliance areas use distinct types of technology to capture compliance work. A compliance strategic plan will prevent this in the future (or determine when it is necessary). This will allow UNM to develop better data and metrics that reduce compliance costs.
5. Compliance officers and committees and internal auditor functions are essential for doing business and should be better integrated into the enterprise.
6. Federal grantors and agencies are more focused on recipients demonstrating compliance with specific policies and further require universities to have robust educational plans around these policies. These polices include some in this document, including conflict of interest and commitment, foreign gifts, human trafficking, and data privacy. These also include bribery and corruption, sexual harassment, and several other

areas. A compliance strategic plan will allow UNM to “stay ahead of the game” to ensure compliance with federal requirements and prevent interruption of federal monies.

The Task Force strongly recommends that UNM survey and document the cost of compliance to the enterprise and create a compliance strategic plan that will reduce compliance costs, reduce risk, and create an enterprise vision of compliance that moves UNM toward “one university.”

The Task Force also made several general observations and recommendations related to improving Ethics and Integrity:

- Most faculty, staff, and students at UNM strive to do the right thing. There should be enhanced opportunity for faculty, staff, and students to seek guidance on specific decisions to ensure that they receive proper guidance regarding a specific choice. At least one committee member stated, “It is better to seek permission than to seek forgiveness.”
- Policies regarding ethics and integrity are outdated, often conflicting, and not easy to navigate using the current tracking system. A complete policy review is needed so that policies align enterprise wide.
- Broaden our communication about our UNM values and our policies that are in line with ethical behavior.
- Education/training should be created and/or updated.
- Incentives and rewards for ethical conduct should be developed.
- Unethical conduct should be penalized and/or corrected. Everyone is accountable.

The subcommittees met and developed materials in support of the Ethics Task Force’s 9 goals and working groups.

## **Code of Conduct & Ethical Behavior Policy and Statement**

Committee Composition:

Chair: Sidney Mason Coon – University Policy Officer [smason@unm.edu](mailto:smason@unm.edu)

1. Jonathan Bolton [jwbolton@salud.unm.edu](mailto:jwbolton@salud.unm.edu)
2. Amy Levi [AmyLevi@salud.unm.edu](mailto:AmyLevi@salud.unm.edu) , Arthur Culpepper [ACulpepper@salud.unm.edu](mailto:ACulpepper@salud.unm.edu)
3. Sarah Smith – Anderson Faculty [sdsmith05@unm.edu](mailto:sdsmith05@unm.edu)
4. Francie Cordova – Compliance Staff [FCordova3@unm.edu](mailto:FCordova3@unm.edu)
5. Marleen Martinez – HR Staff [marleen@unm.edu](mailto:marleen@unm.edu)
6. Dan Primozić - Gallup Faculty [dprimozi@unm.edu](mailto:dprimozi@unm.edu)
7. Angela Vigil – Compliance Staff [AngMVigil@salud.unm.edu](mailto:AngMVigil@salud.unm.edu)
8. Austin Megli – Distance Learning Staff [amegli@unm.edu](mailto:amegli@unm.edu)
9. Greg Romero – ASUNM President [asunmprz@unm.edu](mailto:asunmprz@unm.edu)

The overarching Statement on Standards of Ethical Conduct will be finalized once we have final versions of policy drafts for the additional sections of the subcommittees. The committee composition will include the members listed above, and the chairs of each of the taskforce subcommittees.

The Statement on Standards of Ethical Conduct reflects UNM's Vision 2040 and creates a connection between our vision, our shared values, our ethical standards (newly defined), and our policies. The recommendation is to publish the Standards at the beginning sections of the various published policies (UAP, Faculty Handbook, Pathfinder), as a statement of applicability to the entire University community, and a testament to our commitment to a culture and environment that aligns with the University mission.

### **University of New Mexico Statement on Standards of Ethical Conduct**

Members of the University of New Mexico community are committed to the highest ethical standards in our daily work towards achieving our vision of being a global leader in realizing human potential, addressing critical community challenges, and demonstrating the power of inclusive diversity. Our policies, procedures, published guidelines, and standards of ethical conduct illustrate our commitment to our shared values stated below.

#### **We are committed to the following shared values:**

Excellence: We value excellence in all our work, and we strive to perform and achieve at the highest levels.

Inclusion: We respect and celebrate the difference of all persons, and value working in a collaborative environment where diversity is cherished and there is a shared sense of belonging.

Environment: We are dedicated to the protection of our planet to ensure the health, well-being, and success of future generations.

Integrity: We value fairness, honesty, and transparency. We are good stewards of the resources that have been given to us.

Place: UNM is dedicated to the peoples and places of New Mexico even as we reach for global impact for the benefit of humanity.

#### **Standards of Ethical Conduct**

**Applicability:** The Standards of Ethical Conduct apply to all members of the University community, including faculty, staff, students, volunteers, contractors, agents, and others associated with UNM.

*Sample standards to include* (with descriptions and explanations of each, based on current and proposed UNM policies):

- Fairness
- Individual Rights and Responsibilities
- Respect for All
- Reporting Violations and Protection from Retaliation
- Compliance with Applicable Laws and Regulations
- Compliance with Applicable Regents' Policies, University Administrative Policies and Procedures, Faculty Handbook, Pathfinder, and Other Forms of Published Guidelines
- Conflicts of Interest and Commitment
- Ethical Conduct of Research
- Privacy
- Use of University Resources
- Financial Reporting

## **Conflict of Interest Draft Policy and Disclosure Tools**

Committee Composition:

Chair: Patrick Hart – OUC staff [phart@salud.unm.edu](mailto:phart@salud.unm.edu)

1. Christine Landavazo – Staff/OUC [CmLandavazo@salud.unm.edu](mailto:CmLandavazo@salud.unm.edu)
2. Angela Vigil – Compliance Staff [AngMVigil@salud.unm.edu](mailto:AngMVigil@salud.unm.edu)
3. Heather Jaramillo – CEEO Staff [hjaramillo@unm.edu](mailto:hjaramillo@unm.edu)
4. Jason Galloway – HSC Contracts and Grants [JGalloway@salud.unm.edu](mailto:JGalloway@salud.unm.edu)
5. Michael Schwantes – HSC Chief Financial Services [mschwan@unm.edu](mailto:mschwan@unm.edu)
6. Tim Gutierrez – Interim President – Student Affairs [tguttierr@unm.edu](mailto:tguttierr@unm.edu)

Conflict of Interest (COI) is an increasingly important compliance issue. Federal government agencies and grantors expect a recipient to ensure a strong COI program including policies, tracking tools, management plans, and education. COI has also been a high-profile topic at the state level, with several well-known political figures being subject to scrutiny (and even criminal indictments) for COI violations.

Currently, UNM has a limited comprehensive policy as to Conflict of Interest, no overall set notification requirement for disclosing conflict, and no uniform method for tracking disclosures or management plans.

### **Disclosures/Management Plan Tracking**

This draft policy recommends annual disclosure and written management plans that document how a conflict will be managed if one is presented. Currently, UNM utilizes the EthicsPoint tracking system as its compliance hotline. The system is utilized by main, HSC, and branch campuses and the hospital system and tracks complaints regarding personnel, academic affairs, privacy, patient issues, hospital issues, financial issues, civil rights issues, and conflicts of interest. As the system is utilized by university stakeholders, continued usage of Ethics Point for COI/COC disclosures makes sense.

EthicsPoint now has COI/COC disclosure tracking and reporting capabilities. The system will automatically remind employees to make disclosures via email. The system tracks academic conflict, financial conflict, family, and other relationship conflict, (and can be used to track consensual relationships) and is customizable to track clinical and research conflict. HR has already populated Ethics Point with Banner feed, linked to every employee's banner number. The system has custom analytics that allow reports to be run on each type of conflict, by employee name, and by management plan. The system allows assignees for investigations and management plans. The assignee section allows tracking of outcomes and allows uploads of relevant documents. Finally, the system is HIPAA compliant and secure. The system will also track management plans.

The committee recommends that UNM explore the EthicsPoint disclosure and tracking capabilities and require university stakeholders to utilize the selected system to promote enterprise-wide disclosure, consistent tracking, and useful data. The Ethics Point/CEEO will be demonstrating the product to interested stakeholders to determine the next course.

## **Draft Policy**

### **I. Policy Statement**

It is the policy of the University of New Mexico ("University") to provide a transparent system of disclosure, approval, and documentation of its employees' activities outside of the University which might otherwise raise concerns about conflicts of interest or conflicts of commitment. This policy serves to provide the framework for permissible non-University activities.

### **II. Reason for Policy**

To provide the institutional framework to protect the credibility and reputation of the University and its faculty and staff when those employees are engaged in non-University activities.

### **III. Scope & Audience**

This policy applies to all University employees.

### **IV. Definitions (specific to this policy)**



**Business Entity:**

Any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust.

**Compensation:**

Any form of benefit including but not limited to salary, retainer, honoraria, intellectual property rights or royalties, or promised, deferred, or contingent interest. It also includes sponsored travel or reimbursement.

**Conflict of Interest:**

A significant outside interest of a University employee or one of the employee's immediate family members could directly or significantly affect the employee's performance of the employee's institutional responsibilities. The proper discharge of an employee's University responsibilities could be directly or significantly affected if the employment, service, activity, or interest: (1) might tend to improperly influence the way the employee performs his or her University responsibilities, or the employee knows or should know the interest is or has been offered with the intent to influence the employee's conduct or decisions; (2) could reasonably be expected to impair the employee's judgment in performing his or her University responsibilities; or (3) might require or induce the employee to disclose confidential or proprietary information acquired through the performance of University responsibilities.

**Immediate Family Members:**

Includes:

- a spouse or domestic partner
- a dependent child, a stepchild or other dependent, for purposes of determining federal income tax liability during the period covered by the disclosure statement; and
- a related or non-related unmarried adult who resides in the same household as the individual and with whom the individual is financially interdependent as evidenced, for example, by the maintenance of a joint bank account, mortgage, or investments.

**Management Plan:**

A management plan is a written agreement that may impose conditions and prescribe actions necessary, including reduction or elimination, to manage conflicts of interest, conflicts of commitment, or outside activities.

**Nature and Extent:**

Includes a description of the activity, the time commitment, and anticipated length of time the commitment is expected to continue.

**Outside Board:**

The board, council, or other governing or advisory body of a business, civic, professional, social, or religious organization, whether for profit or nonprofit.

**Outside Employment:**

Any activity performed by an employee, other than fulfilling employment obligations at the University, for which remuneration is received, including distance teaching.

**Professional and Administrative Staff:**

Employees who have been determined to be exempt from the Fair Labor Standards Act (FLSA) and are, therefore, not entitled to overtime pay. It also includes employees who are not exempt from the FLSA if they are authorized to execute contracts on behalf of the University or who because of their job duties at the University have authority to exercise discretion regarding the award of contracts or other financial transactions. This definition includes staff assigned to professional and administrative positions and staff assigned to classified positions.

**Range of Compensation:**

Includes a range of outside compensation as follows:

1. \$0 - \$4,999;
2. \$5,000 - \$9,999;
3. \$10,000 - \$19,999;
4. amounts between \$20,000 - \$100,000 by increments of \$20,000; or
5. amounts above \$100,000 by increments of \$50,000.
6. if compensated in the form of stock options, the number of shares represented by those options, the value of the stock if the options are exercised, and percentage of ownership in the company that would result from exercising those options.

**Substantial Interest in a Business Entity:**

For purposes of this policy, means:

1. a controlling interest;
2. ownership of more than 10 percent of the voting interest;
3. ownership of more than \$5,000 of the fair market value;
4. a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10 percent of the profits, proceeds, or capital gains; or

5. service as an officer.

It does not include investments in widely held investment funds or retirement accounts, so long as the individual does not directly control the investment decisions made in those vehicles.

### **University Time:**

For faculty, this time is defined by the number of hours per week necessary for the performance of job duties, which include teaching, research, service, and patient care. In general, it is assumed this is a forty-hour week Monday through Friday. For some staff, this time is defined by a workday with set hours, and for other staff this time is defined as a workday with set hours plus on call service as needed.

### **V. Website (for policy)**

<https://policies.unm.edu/policies/hop/5-2011>

### **VI. Contacts**

Contact these areas for guidance on compliance with this policy:

Main Campus Compliance - CEO [compliance@unm.edu](mailto:compliance@unm.edu)

HSC Compliance [compliance@salud.unm.edu](mailto:compliance@salud.unm.edu)

Main Campus Research Compliance [coiresearch@unm.edu](mailto:coiresearch@unm.edu)

HSC Research Compliance [HSC-COI@unm.edu](mailto:HSC-COI@unm.edu)

### **VII. Responsibilities & Procedures**

#### **A. Primary Responsibility**

The primary responsibility of employees of the University is the accomplishment of the duties and responsibilities assigned to one's position of appointment.

#### Outside Activities

1. University employees are permitted to engage in outside work or activities if the work or activity complies with state laws and University rules or policies governing the conduct of employees.
2. Certain outside activity clearly enhances the mission of the University and/or provides crucial elements of faculty or staff development related to their University responsibilities. The following activities are encouraged:
3. Outside employment during those months in which a member of the faculty appointed on a 9-month basis is not appointed is considered pre-approved, requiring no further approval, unless the outside employment reasonably appears to create a conflict of

interest, in which case prior approval is required. Such activity is required to be disclosed in accord with Section D below.

## B. Conflicts of Interest Prohibited

University employees may not have a direct or indirect interest, including financial and other interests, nor engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the employee's duties for the University.

## C. Disclosure and Approval

### 1. Support Requirements

- a. Approval requirements shall apply, at a minimum, to:
  - i. All full-time members of the faculty employed on a 12-month or 9-month basis;
  - ii. Part-time members of the faculty, only if the activity reasonably appears to create a conflict of interest;
  - iii. Full-time professional and administrative employees (as defined above)
  - iv. Part-time professional and administrative employees only if the activity reasonably appears to create a conflict of interest.
- b. Graduate student academic employees including, but not limited to, teaching assistants, instructional assistants, and research assistants.
- c. Approval is required prior to engaging in the following activities, except as noted at (d), below, for:
  - i. All outside employment or other compensated activities;
  - ii. All service on outside boards (see below, for details, including exclusions); and
  - iii. Any uncompensated activity by the employee that reasonably appears to create a conflict of interest.
- d. Pre-Approved Activities. The following activities are "pre-approved," such that approval need not be obtained prior to engagement in the activity.
  - Serving on a federal, state, or local government agency committee, panel, or commission;
  - Acting in an editorial capacity for a professional journal;
  - Reviewing journal manuscripts, book manuscripts, or grant or contract proposals;
  - Attending and presenting talks at scholarly colloquia and conferences;
  - Developing scholarly communications in the form of books or journal articles, reviews, movies, television productions, and similar works, even when such activities result in financial gain, consistent with intellectual property and other applicable University policies and guidelines; and

- Serving as a committee member, an officer, or board member of a professional association or scholarly society.
2. Each full-time faculty, as well as full-time professional and administrative staff, are required to disclose annually, or more frequently as may be required by their department or work area.

*(Note: When in doubt in determining whether an activity or interest should be disclosed, the individual should resolve the doubt in favor of disclosure.)*

- a. A description of the nature and extent of all outside employment or other compensated activity;
  - b. A description of the nature and extent of any outside activity, regardless of compensation, that reasonably appears to create a conflict of interest or a conflict of commitment;
  - c. A description of the nature and extent of any outside (onsite or distance) teaching that is in, or related to, the same discipline as one's area of University teaching responsibilities;
  - d. The range of total annual compensation received for any compensated activity, or total annual compensation from a single entity, if it is greater than \$5,000 and the activity reasonably appears to create a conflict of interest or a conflict of commitment;
  - e. A description of the nature and extent of outside board service, regardless of compensation;
  - f. A description, including the range of compensation or interest, of any substantial interest in a business entity that reasonably appears to create a conflict of interest, which should be provided no later than 30 days after acquiring the interest;
  - g. A description of gifts over \$250 to the individual or his or her immediate family members, but only if they reasonably appear to create a conflict of interest, which should be provided no later than 30 days after acquiring the gift. Do not include gifts received from one's parent, child, sibling, grandparent, or grandchild; one's spouse or the spouse of anyone mentioned above; or the parent, child, sibling, grandparent, or grandchild of one's spouse;
  - h. A description of the nature and extent of any activity of immediate family members that reasonably appears to create a conflict of interest and a description of any substantial interest of immediate family members in a business entity (as defined above) that reasonably appears to create a conflict of interest, which should be provided no later than 30 days after acquiring the interest; and
  - i. outside activity disclosed under other University policies need not be re-disclosed.
3. Part-Time Employees

Part-time members of the faculty and part-time members of the professional and administrative staff are required to disclose the nature and extent (but not compensation range) of any outside activity and any Substantial Interest in a Business Entity (as defined above) that reasonably appears to create a conflict of interest. Part-time employees are not required by this policy to disclose for family members.

#### D. Guidelines for Reviewing and Approving Requests to Engage in Outside Activity

1. Approval Authorities - The UNM President appoints the following individuals as approval authorities under this policy:
  - a. For members of the faculty: the department chair (or the dean for non-departmentalized schools/colleges)
  - b. For department chairs: the dean
  - c. For deans: the provost
  - d. For executive officers: the president
  - e. For the president: the provost
  - f. For professional and administrative staff: their supervisor
  - g. For other employees: their supervisor
2. Management Plans

Management plans must be in place for all faculty and professional and administrative staff for outside activities that may create a conflict of interest or conflict of commitment before the activity begins. All management plans related to research will be developed by the employee in conjunction with the Vice-Presidents for Research at HSC or Main Campus. Management plans unrelated to research must be developed by the employee in conjunction with the employee's director, department chair or head, dean, or vice president as appropriate. Management plans shall be maintained via technology selected by UNM.

#### E. Appeals

Employees whose request for approval of outside activity is denied may request the denying authority reconsider and provide an explanation of the decision in writing. If the employee remains unsatisfied with the decision, he or she may appeal up one level of approval authority. For example, if approval is denied by a department chair, a faculty member could appeal to the dean. If the employee is still unsatisfied, he or she may access standard grievance procedures to the extent they are applicable.

#### F. Prospective and Retrospective Approval

In rare instances, outside activity may be approved retrospectively when the employee is called upon in an emergency or urgent situation where it would be impossible or unreasonable to obtain advance approval. In such cases, the activity must be fully disclosed, and approval sought from the appropriate authority as soon as reasonably possible.

Some activity may also be prospectively approved, for up to one year, when an employee fully describes to the approving authority the general nature and extent of anticipated, but not confirmed, outside opportunities.

In any event, whether previously approved or not, employees should ensure they notify their chair, dean, or supervisor in advance when they will be missing specific responsibilities.

#### G. Confidential Outside Activity

If an employee wishes to engage in an activity for which some or all of the relevant information is confidential, the approving authority may approve the activity without requiring full written disclosure if the approver is satisfied there is a compelling reason to treat the information confidentially and the activity is fully compliant with applicable laws, University policies, and UNM Hospital System rules and policies.

#### H. Rescinding Approvals

An approving authority may rescind an approved outside activity upon receipt of information indicating the activity is not consistent with this policy or any applicable law, University policy, or UNM System rule or policy. The individual for whom the activity may be rescinded shall be given notice in writing and have an opportunity to respond.

## **Conflict of Commitment Policy Creation, Alignment, and Disclosure Tools**

Committee Composition:

Chair: Ana Andzic Tomlinson - Staff – Research Compliance Office [aandzict@unm.edu](mailto:aandzict@unm.edu)

1. Janice Ruggiero – Staff - Athletics [ruggiero@unm.edu](mailto:ruggiero@unm.edu)
2. Michelle Cassias – Staff - Sponsored Projects [mcasias1@unm.edu](mailto:mcasias1@unm.edu)
3. James MacFarlane – Staff- HSC Research Office [jmacfarlane@salud.unm.edu](mailto:jmacfarlane@salud.unm.edu)
4. Kathy Agnew – Staff – HR (Human Resources) [agnewk@unm.edu](mailto:agnewk@unm.edu)
5. Grace Faustino – Staff – Staff Council [gfaustin@unm.edu](mailto:gfaustin@unm.edu)
6. Liz Hutchison –Faculty and Staff – Division for Diversity, Equity & Inclusion [ehutch@unm.edu](mailto:ehutch@unm.edu)
7. Melissa Gonzales – Faculty and Staff – HSC School of Medicine & HSC Office for Diversity, Equity & Inclusion [mgonzales@salud.unm.edu](mailto:mgonzales@salud.unm.edu)
8. Barbara Rodriguez –Faculty and Staff – Provost’s Office & Academic Affairs [brodrig@unm.edu](mailto:brodrig@unm.edu)
9. Charles Fleddermann –Faculty - Engineering [cbf@unm.edu](mailto:cbf@unm.edu)

10. Brady Horn – Faculty – Arts & Sciences [bhorn@unm.edu](mailto:bhorn@unm.edu)
11. Peter Pribis – Faculty – Education & Human Sciences [pribis@unm.edu](mailto:pribis@unm.edu)
12. Alex Webb – Faculty – Architecture & Planning [awebb4@unm.edu](mailto:awebb4@unm.edu)
13. Josh Kastenbergl – Faculty – Law [joshua.kastenbergl@law.unm.edu](mailto:joshua.kastenbergl@law.unm.edu)
14. Shawn Berman – Faculty – Anderson - [sberman@unm.edu](mailto:sberman@unm.edu)
15. Barry Bleske – Faculty – Pharmacy [bbleske@salud.unm.edu](mailto:bbleske@salud.unm.edu)
16. Gail Hammer – Staff – HSC Medical Group Policy Office [ghammer@unmmg.org](mailto:ghammer@unmmg.org) [joined in December of 2021 per request by the Chief Compliance Officer]

The committee considered the increasingly important issue of Conflict of Commitment (COC). "Conflict of Commitment" involves a situation in which an employee engages in an outside professional activity, paid or unpaid, that involves a commitment of time that may interfere, or appear to interfere, with fulfillment of the employee's obligations to the University, even if the outside activity is valuable to the University or contributes to the employee's professional development and competence. This may include COC by a researcher, a clinician, a faculty member, a staff member, or any other UNM employee who may place more time or loyalty to engagements outside of their primary UNM responsibilities.

The COC committee met at least five times for many hours to dialogue about COC, how it can best be managed and what differences exist in COC depending on the employee's UNM responsibilities.

The Committee's work product includes:

1. An overarching UAP Conflict of Commitment policy,
2. Conflict of Commitment Standards and Principles applicable to faculty (for Faculty Handbook policy mechanism), and
3. Conflict of Commitment Standards and Principles applicable to staff (for UAP policy mechanism).

The standards and principles documents are quite comprehensive, in hopes of easing the policy writing processes but also to capture many discussions and deliberations of pivotal concepts involved in COC redress.

### **Conflict of Commitment Committee's Proposed Overarching UNM UAP Policy Statement on Conflict of Commitment:**

The University of New Mexico ("UNM" or "University") permits and in some cases encourages its constituents' engagement in professional activities outside of UNM. However, such engagement by certain UNM employees is governed by UNM policies addressing conflict of commitment. UNM full-time exempt staff and full-time faculty members are subject to specific



and more granular UAP and Faculty Handbook policies governing their engagement in professional activities outside of UNM. Those policies are listed at the end of this policy and are hereby incorporated by reference.

Engagement by all UNM employees, including both staff and faculty employees, in professional activities external to UNM must be consistent with all applicable UNM policies. All UNM employees must maintain their professional obligations to UNM and its mission and must not neglect their UNM duties.

This policy and associated policies on conflict of commitment and conflict of interest are intended to assist employees, including administrators and staff with faculty appointments, in avoiding these conflicts and in finding a balance between activities that enhance the University's core purpose, to advance the well-being of the people of New Mexico and the global community through the creation and dissemination of knowledge, and those that detract from it.

Employment as a full-time exempt staff member or a full time tenured, probationary, research, or clinician educator faculty member at UNM requires an individual's full-time professional commitment and expertise.

Federal regulations require the University to adopt a policy governing conflicts of commitment. In addition, employees should be aware that they are also subject to various provisions of New Mexico and federal laws governing ethics and conflicts of interest in public employment.

For purposes of this policy, *Conflict of Commitment* exists when UNM's full time exempt staff member or UNM's full time faculty member engages in outside (activity/ies), either paid or unpaid, that (interfere/s) with that individual's fulfillment of his/her UNM employment responsibilities. Conflict of commitment relates to such individual's distribution of time and effort between obligations to University employment and participation in other professional activities outside of University employment.

*Institutional Responsibilities* are responsibilities expected and performed on behalf of UNM for which a full-time exempt staff or full-time faculty member is employed and compensated by UNM. Activities which demonstrate active participation in a profession relevant for the UNM position held are encouraged, provided they do not conflict or interfere with the timely and effective performance of the individual's primary University duties or University policies.

*External Professional Activity or Outside Professional Activity* is any paid or volunteer activity undertaken or planned that falls outside the scope of one's employment at UNM. Outside or External Professional Activities are not deemed prohibited unless they result in the neglect of University duties, creation of conflicts of interest, involve inappropriate use of the University name or resources, or include claims of University responsibility for the activity.

Any contracts signed by a UNM employee in support of the *External or Outside Professional Activity* must be in compliance with UNM policies, such as policies addressing intellectual property or disclosure of entities involved in the activity. Individuals should consult UNM Rainforest Innovations and UNM Office of University Counsel for further guidance about specific clauses. Individuals should avoid signing contracts which limit their ability to share information with UNM as their primary employer.

Outside or External Professional Activities may not involve use of University resources, facilities, and equipment unless adequate exceptions have been pre-approved in accordance with more detailed policies and procedures referenced at the end of this Policy. Use of UNM name and insignia is prohibited in Outside or External Professional Activities except to cite UNM title and affiliation. None of the references to UNM and its affiliation are intended to represent UNM or its interests as an institution.

Norms that govern conflict of commitment and engagement in professional activities external to or outside of UNM are specified primarily in UNM Faculty Handbook policy C130/XXX and UAP policy YYYY and they constitute binding obligations for UNM employees.

Other applicable UNM policies of relevance include:

UNM Code of Conduct

UNM Regents' Policy 1.8

UNM Regents' Policy 6.4

UNM UAP policy 3720

UNM Faculty Handbook policy C140

UNM Faculty Handbook policy E110

UNM Faculty Handbook policy E70

*COMMENT:*

*The above UAP policy on Conflict of Commitment (COC), along with documents embodying COC principles and standards applicable to faculty and staff, respectively, are a result of the work by the COC Committee in Phase II of the President's Ethics Task Force. This work occurred from September of 2021 through January of 2022. The COC Committee included:*

- *Faculty representatives from the College of Arts and Sciences, School of Engineering, College of Education and Human Sciences, School of Architecture and Planning, School of Law, Anderson School of Management, College of Pharmacy, and College of Medicine;*

*[the remaining colleges and schools (Nursing, University College, & Fine Arts) were also invited to participate]*

- *Faculty and staff representatives from the Division for Equity and Inclusion, HSC Office for Diversity, Equity & Inclusion, and Provost's Office & Academic Affairs; and*
- *Staff representatives from the Staff Council, Human Resources, Athletics Department, Office of Sponsored Projects, HSC/Medical Group Policy Office, HSC Research Office, and Office of Research Integrity and Compliance (ORIC).*

*[The COC Committee was chaired by Ana Andzic Tomlinson, J.D., Executive Director of ORIC ([aandzict@unm.edu](mailto:aandzict@unm.edu); 505-277-1502 or 505-249-8474). The COC Committee was administratively supported by Ms. Yvonne Marrero of ORIC.]*

### **Conflict of Commitment Committee's Recommendations on Standards Applicable to Faculty:**

#### **COMMENT:**

*This document memorializes standards and principles that the President's Ethics Task Force Committee addressing conflicts of commitment (COC Committee) recommends for UNM faculty. Below standards and principles, if adopted by the President's Ethics Task Force and the President, will be provided to the Faculty Senate Policy Committee and other relevant Faculty Senate committees, through the University Secretary, with a request for development of a faculty policy on conflicts of commitment and outside employment.*

*UNM's current Faculty Handbook policy C130 "Conflict of Commitment and Outside Employment" does not address the process for redress of conflict of commitment. Upon careful deliberation, the COC Committee decided to recommend the standards and principles stated below. The COC Committee recommends extension of conflict of commitment mandates to full time exempt staff and another UAP (sub)policy is also being recommended by the COC Committee for UNM staff through the UNM Policy Office.*

*Lastly, a general overarching policy statement has been recommended by the COC Committee, through the UAP policy mechanism, to embody general principles and definitions on conflicts of commitment and professional activities outside of UNM. This overarching UAP policy statement will be applicable to both faculty and staff and will be general in nature.*

*All future COC policies will need to factor in and comport with the applicable portions of the UNM's contract(s) with the Union(s).*

*The COC Committee considered iterating UNM's commitment to academic freedom through an affirmative statement and a potential citation to Principles 2 and 7 of the 2012 AAUP report on "56 Principles to Guide Academy-Industry Engagement": <https://www.aaup.org/media-release/report-academic-industry-partnerships#.Yexazf7MKUk>. Because these principles constitute recommendations only, the Committee decided not to include such an affirmation as*

*mandatory through the principles and standards stated below. Such affirmation may be included in the final version of the policy that gets promulgated by the Faculty Senate, following deliberation by UNM faculty through the Faculty Senate mechanisms.*

## **Conflict of Commitment Standards & Principles Applicable to Faculty:**

### 1. Definitions

*Conflict of Commitment* is a situation where an individual engages in professional activity outside of the University of New Mexico (“UNM” or “University”), either paid or unpaid, that interferes with that individual’s fulfillment of his/her UNM employment responsibilities. For purposes of this policy, a conflict of commitment exists when external or other activities interfere with the individual’s teaching, research, scholarship, or service responsibilities to UNM or its students. Conflict of commitment relates to an individual’s distribution of time and effort between obligations to University employment and participation in other professional activities outside of University employment.

*Institutional Responsibilities* are responsibilities expected and performed on behalf of UNM for which a faculty member is employed and compensated by UNM. Institutional Responsibilities include assigned teaching, scholarship, research, institutional service requirements, administrative duties, and other assigned employment duties. They may include professional affiliations and activities traditionally undertaken by UNM faculty which fall outside of the immediate University employment context. Such duties may include membership in and service to professional associations and scholarly societies; membership on professional review or advisory panels; presentation of lectures, papers, concerts or exhibits; participation in seminars and conferences; reviewing or editing scholarly publications and books; and service to accreditation bodies. These activities, which demonstrate active participation in a profession, are encouraged provided they do not conflict or interfere with the timely and effective performance of the individual’s primary University duties or University policies.

*External Professional Activity or Outside Professional Activity* is any paid or volunteer activity undertaken or planned by a faculty member outside the scope of one’s employment at UNM. Outside or External Professional Activities could include consulting, working as a professional advisor or practitioner, or holding a part-time job with another employer, whether working in one’s occupation or another. Outside or External Professional Activities are not deemed prohibited unless they result in the neglect of University duties, creation of conflicts of interest, involve inappropriate use of the University name or resources, or include claims of University responsibility for the activity.

*[COMMENT: the final version of the COC policy may merit inclusion of the definition of Conflict of Interest (COI), for comparison & contrast purposes (between COC and COI). However, the COI definition will need to comport with applicable definition of COI under impending UNM COI*

*policy drafts which are being developed as of the time of issuance of the COC Sub\_Committee report on 2/1/22. Also, it will merit and necessitate updates if those COI definitions get updated in the future.]*

## 2. Applicability / Who is Governed by This Policy

All units of the University are governed by this Policy. This Policy shall apply to, and be uniformly applied by, all schools, colleges, and divisions of the University. Its mandates are applicable to full time faculty at UNM, including administrators and staff with faculty appointments.

Professional faculty's contract and Chair expectations, as captured in faculty member's personnel file, may be used as baseline guidance in determining if their External/Outside Professional Activity falls under the auspices of the staff- or faculty-related Conflict of Commitment policy.

## 3. Engagement in Outside/External Professional Activities

UNM permits faculty who are subject to this Policy to engage in External Professional Activities on the condition that such activities are consistent with faculty members' obligations under University policies, all required approvals have been obtained pursuant to processes described in this policy, and the activities are appropriately disclosed and reported in compliance with all applicable policies and regulatory and legal obligations. Faculty must maintain their professional obligation to UNM and its mission and must not neglect their UNM duties due to performance of their External Professional Activities. All Outside or External Professional Activities and associated financial interests which interfere with this obligation must be avoided.

*[COMMENT: Although the COC policy should not prohibit or otherwise limit the type or nature of professional activities outside of UNM, preservation of UNM's reputation and prohibition of unlawful activities needs to be also addressed through UNM's Code of Conduct, which is being drafted by another committee of the Ethics Task Force.]*

The supervising Chair may grant permission to a full time faculty member to engage in Outside or External Professional Activities only if they are of an extent that does not interfere with the discharge of the faculty member's full obligation to the University and if they do not violate any conflict of interest or other applicable policies and regulations such as, but not limited to, those addressing intellectual property, procurement, compensation, technology transfer and startups, use of UNM facilities and resources, sponsored grants, and contracts. Engagement in activities which are illegal or otherwise barred by regulations applicable to UNM is prohibited.

Faculty subject to this Policy who engage in University approved sabbaticals and/or joint appointments at other institutions must be mindful that they continue to be University

employees during their sabbatical and joint appointment periods and shall comply with all applicable University, college/school, department, and divisional policies, including the University intellectual property policies. In particular, faculty shall not assign UNM's or UNM Rainforest Innovations' intellectual property, as defined under UNM intellectual property policies, to outside entities during the sabbatical or joint appointment nor otherwise. Faculty shall comply with all applicable UNM, divisional and college/school sabbatical and joint appointment policies.

Outside or External Professional Activities may not involve use of University personnel, buildings, facilities, and equipment unless adequate exceptions have been pre-approved in writing by the head of the unit responsible for the facilities or personnel as well as the immediate supervisor of the faculty member seeking such use. Use of UNM name and insignia is prohibited in Outside or External Professional Activities except to denote UNM affiliation for autobiographical purposes, to cite UNM title and affiliation. None of the references to UNM and its affiliation are intended to represent UNM or its interests as an institution and it is the sole responsibility of the faculty member to clearly establish this with external constituencies and entities.

If all other criteria have been met, the recommended maximum amount of University time that can be approved for such outside activities is the equivalent of 52 days per year for 12-month faculty members or 39 workdays for faculty members with nine-month contracts. The recommended numeric limits can be deviated from or modified by individual UNM departments provided appropriate approvals are secured as described under the procedural section below and if they are consistently applied within that same department.

Faculty receiving extramural funding may not exceed limitations on professional activities imposed by the funding sources, including effort rules.

#### 4. Procedures

Although faculty employment is not amenable to precise time analysis and monitoring, Chairs regularly evaluate the work of faculty within their units. The formal occasions for determining whether a faculty member is devoting sufficient time and effort to UNM employment include regular reviews of performance in connection with annual salary decisions and scheduled reviews incident to promotion, reappointment, merit reviews, or tenure decisions. If, under processes referenced below, it is determined that a faculty member is not meeting full-time Institutional Responsibilities to the University, neglect of UNM duty is a ground for disciplinary action, including the possibility of discharge.

In addition to the Procedures outlined below, individual schools, colleges, divisions, and departments may have processes and procedures related to review and management of Conflicts of Commitment. All such additional processes and procedures must be in

writing. Also, they will need to be communicated in writing prior to making an offer to faculty being recruited. All impending and current faculty will be given 60 calendar days to bring their situations into compliance with those additional departmental rules so that intended enforcement does not take effect until faculty members have the opportunity to properly divest themselves from the activities that pose the irreconcilable Conflict of Commitment.

#### a. When to Disclose

Full-time faculty must timely disclose all Outside or External Professional Activities at the following trajectories:

1. **At the time of recruitment**, if informed in writing of this Policy prior receiving the UNM offer, through a reference to the Code of Conduct or otherwise in the job posting or on Faculty Contracts job postings web site. At this trajectory, if the faculty applicant is informed in writing of this Policy, the applicant is required to disclose in writing all of applicant's Outside/External Professional Activities and explain whether the Outside/External Professional Activities would interfere with the future performance of faculty's UNM Institutional Responsibilities;
2. **At the time of onboarding, the new UNM faculty member is required to disclose in writing all activities that fall under the definition of** Outside/External Professional Activities under this Policy. The faculty member is expected to completely fill out a Conflict of Commitment form and/or answer written questions specifically provided to the new employee by the supervising Chair;
3. **Annually** through either review of performance in connection with annual salary decisions or through scheduled reviews incident to promotion, reappointment, or tenure decisions. The supervising Chair will be required to document the disclosure and discussion in the faculty member's official personnel record; and
4. Disclosures must also be made in writing, as appropriate, to relevant UNM officials at any time if advance approval of the proposed Outside or External Professional Activity is required.

#### b. How to Disclose

All UNM faculty who are subject to this Policy must timely disclose all External/Outside Professional Activities to their supervising Chairs in writing and, where applicable, do so through forms provided for that purpose by cognizant UNM official(s), through an established electronic disclosure system, or as specified by the applicable divisional policy or procedure.

*[COMMENT: COC training needs to be made a part of Chair onboarding and/or training so they can adequately address it at relevant trajectories and properly document it.]*

#### c. Review of Disclosed Outside/External Professional Activities



Disclosures will be reviewed by the supervising Chair, who may consult in writing the cognizant Dean. Faculty members will be notified of their decision in writing. In the event faculty member disagrees with the decision, either the Chair, Dean, or the faculty member may engage Conflicts of Commitment Committee for the final decision. The decision of the Conflicts of Commitment Committee will be implemented by the faculty member's host department and Chair.

Appeals of the Conflict of Committee's decisions will be done through mechanisms established under UNM FHB policy C07.

*[COMMENT: Decision on whether the Conflict of Commitment Committee should be standing or ad hoc (or a combination) and its composition will need to be determined once other Ethics Task Force Committees recommendations on point are considered, especially by the Committees addressing potential revisions of UNM policies on conflicts of interest. In any case, the COC Committee will need to have adequate expertise to evaluate academic, research, and/or clinical COC matters involved.]*

Review will generally occur in the division or college/school of an individual's primary appointment or employment. In some cases, however, additional review may also occur in the division and/or the committee with the primary responsibility for the affected university research. The University may conduct additional review as it deems appropriate.

Disclosures will be reviewed for the following:

- Presence of a Conflict of Commitment.
- Impact on integrity and objectivity of academic scholarship and research data and outputs.
- Risk to the rights and obligations of UNM students.
- If applicable, risk to the rights and safety of human and animal subjects in research.
- Risk to University independence and objectivity in business transactions.
- Impact on the independence of clinical care or other professional practice judgments.
- Impact on a faculty member's ability to devote professional loyalty, time, and energy to faculty member's Institutional Responsibilities.
- Adverse reputational impact to UNM.

Outcome of Review:

If it is determined that a Conflict of Commitment exists, the relevant University official(s) shall determine whether the Conflict Commitment can be sufficiently managed, or whether the Conflict of Commitment can only be mitigated by terminating the relationship, activity, or associated financial interests. If the University official/s determine/s that the Conflict of Commitment cannot be managed, that decision shall be communicated to the faculty member in writing.



## Management of Conflicts of Commitment:

When a Conflict of Commitment is deemed manageable by the relevant University official, s/he shall create a plan to manage the Conflict of Commitment in a way that allows the faculty member to pursue the Outside/External Professional Activity while protecting the integrity of the University.

Management plan conditions may include:

- Public disclosure of the Outside/External Professional Activity;
- Disclosure of the Outside or External Professional Activity to those who have the-need-to-know to ensure proper effectuation of faculty member's Institutional Responsibilities or to effectuate required (pre)approvals within UNM;
- Oversight, including appointment of a disinterested individual to monitor the faculty member's Outside or External Professional Activity;
- Limitations on University business activity, which may require prohibiting the faculty member from negotiating on behalf of the University, participating in certain UNM transactions, and/or receiving certain confidential or proprietary University information.
- Severance or limitation of Outside or External Professional Activities and/or associated financial Interests that create Conflicts of Commitment.

Once the University official has created a management plan, that management plan shall be conveyed to the faculty member in writing. All arrangements may be reviewed again if circumstances change or there is new information.

The University shall monitor compliance with faculty management plans. Supervising Chairs shall have the primary responsibility of monitoring compliance with faculty management plans. Central or divisional monitoring may additionally occur through mechanisms established under policies governing UNM research, fiscal activity, or clinical care.

### d. Record Retention

All disclosures of Conflict of Commitment shall be retained by faculty member's host department for a period of at least three years following termination of UNM employment. In the event the faculty member is engaged in UNM research, the retention period shall be extended to at least 7 years following the termination of the last sponsored project the faculty member was involved in while at UNM. Other additional retention requirements may apply under UNM policies on record retention.

## 5. Policy Enforcement

a. Policy Holders/Process Owners

Provost / EVP HSC

Policy Holders/Process Owners determine procedures needed to implement this Policy so long as they do not contradict this Policy and the additional procedures are written and published. Policy Holders/Process Owners can change procedures based on this faculty Policy only and so long as implementing procedures do not contradict this faculty Policy. In the event the implementing procedures applicable to faculty through UAP policies may contradict this Policy, the procedures promulgated under the Process section of this FHB policy shall preempt UAP procedures.

b. Policy Enforcers/Investigators

Appropriate officials under UNM FHB C07. Absent clarity or in the event of multiple enforcers, then Provost / EVP HSC. Under all circumstances, the deciding official (Chair or Dean) shall not make any determinations about appropriateness of their original decisions.

Policy Enforcers investigate malfeasance or problems that occur under the policy.

6. Other Provisions and Caveats

a. Public interest and unique caveats

Work of a routine or repetitive nature such as tests, assays, chemical analyses, bacteriological examinations, etc. which involve use of UNM property is prohibited except where it is considered in the public interest and where facilities or personnel for doing such work exist only at UNM.

b. Disclaimer of UNM's liability caveat

Faculty members who are subject to this Policy must make it clear to outside employers that the work to be undertaken has no official connection with the University of New Mexico. UNM cannot and shall not assume any responsibility in connection with Outside or External Professional Activities provided by UNM faculty members.

Other applicable UNM policies of relevance include:

UNM Code of Conduct

UNM Regents' Policy 1.8

UNM Regents' Policy 6.4

UNM UAP policy XXYY (overarching UAP policy statement on COC)

UNM UAP policy 3720

UNM Faculty Handbook policy C140

UNM Faculty Handbook policy E110

UNM Faculty Handbook policy E70

### **Conflict of Commitment Committee's Recommendations on Standards Applicable to Staff:**

#### **COMMENT:**

*This document memorializes standards and principles that the President's Ethics Task Force Committee addressing conflicts of commitment (COC Committee) recommends for UNM staff. Below standards and principles, if adopted by the President's Ethics Task Force and the President, will be provided to the UNM Policy Offices, for development of a detailed UAP policy on conflicts of commitment and outside employment applicable to UNM staff.*

*Also, a general overarching policy statement has been recommended by the COC Committee, through the UAP policy mechanism, to embody general principles and definitions on conflicts of commitment and professional activities outside of UNM. This overarching UAP policy statement will be applicable to both faculty and staff and will be general in nature.*

*All future COC policies will need to factor in and comport with the applicable portions of the UNM's contract(s) with the Union(s).*

### **Conflict of Commitment Standards & Principles Applicable to Staff:**

#### **1. Definitions**

*Conflict of Commitment* is a situation where an individual engages in professional activity outside of the University of New Mexico ("UNM" or "University"), either paid or unpaid, that interferes with that individual's fulfillment of his/her UNM employment responsibilities. Conflict of commitment relates to an individual's distribution of time and effort between obligations to University employment and participation in other professional activities outside of University employment.

*Institutional Responsibilities* are responsibilities expected and performed on behalf of UNM for which a staff member is employed and compensated by UNM. They may include professional affiliations and activities traditionally undertaken by staff in analogous roles even if they fall outside of the immediate University employment context. Such duties may include membership in and service to relevant professional associations and societies, membership on professional review or advisory panels, participation in seminars and conferences, and service

to accreditation bodies. These activities, which demonstrate active participation in a relevant profession, are encouraged provided they do not conflict or interfere with the timely and effective performance of the individual's primary University duties or University policies.

*Full-time staff* commitment is defined for purposes of this Policy to equal to at least 40 hours per week.

*External Professional Activity or Outside Professional Activity* is any paid or volunteer activity undertaken or planned by a staff member outside the scope of one's employment at UNM. Outside or External Professional Activities could include consulting, working as a professional advisor or practitioner, or holding a part-time job with another employer, whether working in one's occupation or another. Outside or External Professional Activities are not deemed prohibited unless they result in the neglect of University duties, creation of conflicts of interest, involve inappropriate use of the University name or resources, or include claims of University responsibility for the activity.

*[COMMENT: The final version of the COC policy may merit inclusion of the definition of Conflict of Interest (COI), for comparison & contrast purposes (between COC and COI). However, the COI definition will need to comport with applicable definition of COI under impending UNM COI policy drafts which are being developed as of the time of issuance of the COC Subcommittee report on 2/1/22. Also, it will merit and necessitate updates if those COI definitions get updated in the future.]*

## 2. Applicability

All units of the University are governed by this Policy. This Policy shall apply to, and be uniformly applied by, all schools, colleges, and divisions of the University. Its mandates are applicable to full time exempt staff at UNM, including administrators and staff with faculty appointments.

*[COMMENT: Full-time effort needs to be clearly defined under the COC policy applicable to staff as equal to least 40 hours per week.]*

Professional faculty's contract and Chair expectations, as captured in faculty member's personnel file, may be used as baseline guidance in determining if their External or Outside Professional Activity falls under the auspices of the staff- or faculty-related Conflict of Commitment policy.

## 3. Engagement in Outside or External Professional Activities

UNM permits staff who are subject to this Policy to engage in External Professional Activities on the condition that such activities are consistent with staff members' obligations under University policies, all required approvals have been obtained pursuant to the processes

described in this policy, and the activities are appropriately disclosed and reported in compliance with all applicable policies and regulatory and legal obligations. Staff must maintain their professional obligation to UNM and its mission and must not neglect their UNM duties due to the performance of their External Professional Activities. All Outside or External Professional Activities and associated financial interests which interfere with this obligation must be avoided.

*[COMMENT: Although the COC policy should not prohibit or otherwise limit the type or nature of professional activities outside of UNM, preservation of UNM's reputation and prohibition of unlawful activities needs to be also addressed through UNM's Code of Conduct, which is being drafted by another committee of the Ethics Task Force.]*

The immediate supervisor may grant permission to a full time exempt staff member to engage in Outside or External Professional Activities only if they are of an extent that does not interfere with the discharge of the staff member's full obligation to the University and if they do not violate any conflict of interest or other applicable policies and regulations such as, but not limited to, those addressing intellectual property, procurement, compensation, technology transfer and startups, use of UNM facilities and resources including computer use, sponsored grants, and contracts. Engagement in activities which are illegal or otherwise barred by regulations applicable to UNM is prohibited.

Staff subject to this Policy who engage in University approved sabbaticals and/or joint appointments at other institutions must be mindful that they continue to be University employees during their sabbatical and joint appointment periods and shall comply with all applicable University, college/school, department, and divisional policies, including the University intellectual property policies. In particular, staff shall not assign UNM's or UNM Rainforest Innovations' intellectual property, as defined under UNM intellectual property policies, to outside entities during the sabbatical or joint appointment nor otherwise. Staff shall comply with all applicable UNM, divisional and college/school sabbatical and joint appointment policies.

Outside or External Professional Activities may not involve use of University personnel, buildings, facilities, and equipment unless adequate exceptions have been pre-approved in writing by the head of the unit responsible for the facilities or personnel as well as the immediate supervisor of the staff member seeking such use. Use of UNM name and insignia is prohibited in Outside or External Professional Activities except to denote UNM affiliation for autobiographical purposes, to cite UNM title and affiliation. None of the references to UNM and its affiliation are intended to represent UNM or its interests as an institution and it is the sole responsibility of the faculty member to clearly establish this with external constituencies and entities.

Staff receiving extramural funding may not exceed limitations on professional activities imposed by the funding sources, including effort rules.

#### 4. Procedures

Although full-time exempt employment is not amenable to precise time analysis and monitoring, supervisors regularly evaluate the work of employees within their units. The formal occasions for determining whether an individual is devoting sufficient time and effort to UNM employment include regular annual performance reviews. If, under processes referenced below, it is determined that the staff member is not meeting full time Institutional Responsibilities to the University, neglect of UNM duty is a ground for disciplinary action, including the possibility of discharge.

In addition to the Procedures outlined below, individual schools, colleges, divisions, and departments may have processes and procedures related to review and management of Conflicts of Commitment.

##### a. When to Disclose

Full-time exempt staff must timely disclose all Outside or External Professional Activities in the following trajectories:

1. **At the time of hire, the new UNM employee is required to disclose in writing all activities that fall under the definition of** Outside or External Professional Activities under this Policy. The new employee is expected to completely fill out a Conflict of Commitment form and/or answer written questions specifically provided to the new employee by UNM Human Resources;
2. **Annually** through performance review process or another process promulgated by UNM Human Resources; and
3. Disclosures must also be made in writing, as appropriate, to relevant UNM officials at any time if advance approval of the proposed Outside or External Professional Activity is required.

##### b. How to Disclose

All UNM employees who are subject to this Policy must timely disclose all External or Outside Professional Activities to their supervisors in writing and, where applicable, do so through forms provided for that purpose by cognizant UNM official(s), through an established electronic disclosure system, or as specified by the applicable divisional policy or procedure.

*[COMMENT: COC training needs to be made a part of training of UNM supervisors so they can adequately address it at relevant trajectories and properly document it.]*

### c. Review of Disclosed Outside or External Professional Activities

Disclosures will be reviewed by the immediate supervisor, who may be consulted in writing with the Supervisor in charge of the relevant UNM division. The staff member will be notified of the Supervisors' (decision/s) in writing. In the event the staff member disagrees with the decision, either the immediate supervisor or the staff member may engage the Conflicts of Commitment Committee for the final decision. The decision of the Conflicts of Commitment Committee will be implemented by the staff member's host department and supervisor.

**Implementation** of the Conflict of Commitment Committee decision will be made in accordance with UNM policy UAP 3215.

*[COMMENT: Decision on whether the Conflict of Commitment Committee should be standing or ad hoc (or a combination) and its composition will need to be determined once other Ethics Task Force Committees recommendations on point are considered, especially by the Committees addressing potential revisions of UNM policies on conflicts of interest. The COC Committee will need to have adequate expertise to evaluate academic, research, and/or clinical COC matters involved.]*

Review will generally occur in the division or college or school of an individual's primary appointment or employment. In some cases, however, additional review may also occur in the division and/or the committee with the primary responsibility for the affected university research. The University may conduct additional review as it deems appropriate.

Disclosures will be reviewed for the following:

- Presence of a Conflict of Commitment.
- Impact on integrity and objectivity of academic scholarship and research data and outputs.
- Risk to the rights and obligations of UNM students.
- If applicable, risk to the rights and safety of human and animal subjects in research.
- Risk to University independence and objectivity in business transactions.
- Impact on the independence of clinical care or other professional practice judgments.
- Impact on a staff member's ability to devote professional loyalty, time, and energy to staff member's Institutional Responsibilities.
- Adverse reputational impact to UNM.

Outcome of Review:

If it is determined that a Conflict of Commitment exists, the relevant University official(s) shall determine whether the Conflict Commitment can be sufficiently managed, or whether the Conflict of Commitment can only be mitigated by terminating the relationship, activity, or

associated financial interests. If the University (official/s determine/s) that the Conflict of Commitment cannot be managed, that decision shall be communicated to the staff member in writing.

#### Management of Conflicts of Commitment:

When a Conflict of Commitment is deemed manageable by the relevant University official, shall create a plan to manage the Conflict of Commitment in a way that allows the staff member to pursue the Outside or External Professional Activity while protecting the integrity of the University.

#### Management plan conditions may include:

- Public disclosure of Outside or External Professional Activity;
- Disclosure of the Outside or External Professional Activity to those who have the-need-to-know to ensure proper effectuation of staff member's Institutional Responsibilities or to effectuate required (pre)approvals within UNM;
- Oversight, including appointment of a disinterested individual to monitor the staff member's Outside or External Professional Activity;
- Limitations on University business activity, which may require prohibiting the staff member from negotiating on behalf of the University, participating in certain UNM transactions, and/or receiving certain confidential or proprietary University information.
- Severance or limitation of Outside or External Professional Activities and/or associated financial Interests that create Conflicts of Commitment.

Once the University official has created a management plan, that management plan shall be conveyed to the staff member in writing. All arrangements may be reviewed again if circumstances change or there is new information.

The University shall monitor compliance with staff management plans. Immediate supervisors shall have the primary responsibility of monitoring compliance with staff management plans. Central or divisional monitoring may additionally occur through mechanisms established under policies governing UNM research, fiscal activity, or clinical care.

#### d. Record Retention

All disclosures of Conflict of Commitment shall be retained by staff member's host department for a period of at least three years following termination of UNM employment. In the event the staff member is engaged in UNM research, the retention period shall be extended to at least 7 years following the termination of the last sponsored project the staff member was involved in



while at UNM. Other additional retention requirements may apply under UNM policies on record retention.

## 5. Policy Enforcement

### a. Policy Holders or Process Owners

HR VP or HSC HR VP

Policy Holders and Process Owners determine procedures needed to implement this Policy so long as they do not contradict this Policy and the additional procedures are written and published.

### b. Policy Enforcers or Investigators

Appropriate officials under UNM UAP 3215. Absent clarity or in the event of multiple enforcers, then Chief Compliance Officer or HSC Chief Compliance Officer. Under all circumstances, the deciding supervisor or manager shall not make any determinations about appropriateness of their original decisions.

Policy Enforcers investigate malfeasance or problems that occur under the policy.

## 6. Other Provisions and Caveats

### a. Public interest and unique caveats

Work of a routine or repetitive nature such as tests, assays, chemical analyses, bacteriological examinations, etc. which involve use of UNM property is prohibited except where it is considered in the public interest and where facilities or personnel for doing such work exist only at UNM.

### b. Disclaimer of UNM's liability caveat

Staff members who are subject to this Policy must make it clear to outside employers that the work to be undertaken has no official connection with the University of New Mexico. UNM cannot and shall not assume any responsibility in connection with Outside/External Professional Activities provided by UNM staff members.

Other applicable UNM policies of relevance include:

UNM Code of Conduct

UNM Regents' Policy 1.8

UNM Regents' Policy 6.4

UNM UAP policy XXY (overarching UAP policy statement on COC)

UNM UAP policy 3720

UNM Faculty Handbook policy C140

UNM Faculty Handbook policy E110

UNM Faculty Handbook policy E70

## **Conflict of Interest and Commitment Training Development**

Committee Composition:

Chair: Beck Rivera, CEEO Compliance Programs Manager, [barivera@unm.edu](mailto:barivera@unm.edu)

1. Angela Vigil, Executive Director Compliance, HSC (Health Science Center) Manager, Compliance: UNMMG Admin, [angmvigil@salud.unm.edu](mailto:angmvigil@salud.unm.edu)
2. Deb Kuidis, Industrial Security Officer: Provost Office Staff, [dkuidis@unm.edu](mailto:dkuidis@unm.edu)
3. Bonnie Minkus-Holmes, EOD Manager, [bminkusholmes@unm.edu](mailto:bminkusholmes@unm.edu)
4. Kate Williams, EOD Senior Consultant, [kwill07@unm.edu](mailto:kwill07@unm.edu)

The Conflicts of Interest and Commitment Training Development Sub-committee (COICTD) of the Ethics Task Force was tasked with developing a training module providing an overview of conflicts of interest and commitment concepts.

The COICTD researched various organizations' conflicts educational materials, discussed University needs in conflicts understanding, and compiled existing UNM conflicts policies and resources. From the information gathered, the COICTD developed a script for the training, including definitions, test questions, visuals, and audio cues. Following approval of the script, it will be forwarded to the Employee Organizational Development (EOD) office for technical development and implementation.

The COICTD envisions this training will be assigned to all staff and faculty at UNM, including student-employees, for completion on a regular basis. The frequency of training will be determined following development and review of training.

The COICTD welcomes feedback on the following materials. If anyone would like to meet with the COICTD, please contact Beck Rivera, COICTD Chair, at [barivera@unm.edu](mailto:barivera@unm.edu).

## CONFLICTS OF INTEREST AND COMMITMENT TRAINING COURSE

*[FOR INTERNAL USE] Purpose: For participants to understand what conflicts of interest and conflicts of commitment are, identify conflicts of interest and conflicts of commitment types, learn where to locate conflicts of interest and conflicts of commitment law and policies, and understand disclosure obligations and process.*

*Audience: UNM staff and faculty. This training may also be applicable to student athletes and student employees.*

*Authors: Angela Vigil, Deb Kuidis, and Beck Rivera, with support and assistance from Bonnie Minkus-Holmes and Kate Williams of EOD.*

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[AUDIO] Welcome to the Conflicts of Interest and Commitment training course. In this course, you will learn how to identify conflicts of interest and commitment, the applicable laws and policy, and how to disclose when a possible conflict of interest or commitment arises. During this course, you will have the opportunity to apply the skills you have learned with scenarios and quizzes.

[VISUAL – image of UNM logo and/or professional environment]

[AUDIO] Conflicts of interest can occur anywhere: the courtroom, academia, corporations, sports enterprises, and city, state, or national offices. A simple internet search can pull up the latest allegation in seconds. Interestingly, we tend not to hear about conflicts of interest until someone's actions or relationships are called into question. Do we know what a conflict of interest is?

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[VISUAL AND AUDIO] **Conflicts of interest** arise when personal interests, such as family, friends, business, or social relationships, compromise someone's judgment or actions in the workplace.

[AUDIO] Click on the below tiles to see examples of conflicts of interest.

[VISUAL TILES, CAN BE MARKED #1, #2, #3 OR HAVE PICTURES]

#1 – Starting a company that provides services similar to your full-time employer.

#2 – Failing to investigate a subordinate or coworker's wrongdoing because they are your friend.

#3 – Sharing confidential information about your employer with a competitor.

[Additional examples: Other examples: (1) hiring an unqualified relative or spouse to provide services the organization needs, (2) failing to disclose a relationship with a job candidate to the organization, (3) offering paid services on your time off to your organization's customer, vendor, or contractor, (4) making a purchase or business choice to boost a business that you have a stake in, (5) sharing information about your organization's plans or activities to someone outside of the organization.]

[VISUAL AND AUDIO] A **potential** conflict of interest is one that is not actual but, in time, could be. Let's say you work in the IT (Information Technology) section of an agency and your brother has opened a computer store in the area. You have no tenders out now for IT equipment, but it is possible you will hold one in the future which your brother might want to bid for.

A perceived conflict is trickier. In these situations, there may be no actual or potential conflict, but someone could think (reasonably, of course) there is one and this can have its own ramifications.

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[VISUAL AND AUDIO] **Conflicts of commitment** are situations in which an employee is dedicating time to personal activities more than the time permitted by University policy, or to other activities that may detract from their primary responsibility to the institution.

[VISUAL TILES, CAN BE MARKED #1, #2, #3 OR HAVE PICTURES]

#1 – Spending your work hours on other business.

#2 – Working so many hours for another employer that you cannot meaningfully work at your primary employment.

#3 – Using institution resources to support personal business.

[Additional examples: Other examples: (1) Conducting professional society or organization membership during work hours, (2) Pursuing a hobby during work hours.]

[VISUAL AND AUDIO] **Conflict of Interest vs. Conflict of Commitment.** The difference between a conflict of interest and a conflict of commitment is that a conflict of commitment is not necessarily financial or bias in one's judgment, but rather, whether one's commitment of time and effort are inconsistent with one's commitment to the institution and its interests.

[AUDIO] We will first review conflicts of interest.

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[VISUAL AND AUDIO] When recognizing conflicts of interest, it is important for us to identify the different areas of conflict, which can be broken down as:

- Financial;
- Outside Relationships and/or Employment; and
- Research

It is crucial for university longevity and risk mitigation to disclose conflicts of interest, which we will discuss further on in this training. But first, let's break down the various areas of conflict of interest.

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[This section is all definitions. We can do definitions with related images or hovering over the terms to make the definition pop up.]

[AUDIO] Let's familiarize ourselves with some terms that arise when discussing conflicts of interest.

[VISUAL AND AUDIO] **Corruption** is the wrongful use of influence to procure a benefit for the actor or another person, contrary to the duty or rights of others. Corruption includes bribery and kickbacks, illegal gratuities, and economic extortion.

**Bribery** occurs when someone is offering, giving, receiving, or soliciting anything of value to influence an official act or business decision, or as a reward for a decision already made.

[Example: The owner of ABC Company offers a hiring manager concert tickets if the hiring manager hires the owner's relative.]

**Kickbacks** are improper, undisclosed payments to obtain a favorable result.

[Example: The Best Construction Company (BCC) gives the UNM project manager \$1,000 for hiring BCC to repair Mesa Vista Hall.]

**Illegal gratuities** are something of value given to another party to reward someone for a decision after it was made, rather than influence a decision to be made. The distinction between bribery and illegal gratuities is that bribery requires "quid pro quo" or "something for something," whereas an illegal gratuity can be given for an act the decision maker would have already made.

[Example: All Board of Regents members who voted "yes" on a proposal receive a gift in the mail from Lobo Design Inc., who benefited from the proposal's passage.]

**Economic extortion** occurs when an employee or official, through the wrongful use of actual or perceived force or fear, demands money or other consideration to make a particular business-related decision.

[Example: The UNM project manager demands that Bob & Sons Plumbing take the manager to a fancy dinner for Bob & Sons to win the plumbing bid.]

**Gifts and donations** become a conflict of interest when the gifts or donations are inappropriate or excessive, or used to influence a favorable result, like a bribe. This also includes receiving personal benefits such as meals or event passes that could be perceived as a potential conflict of interest.

[Example: UNM's most utilized food vendor drops off free coffee, donuts, and gift certificates at the office on a weekly basis.]

[AUDIO] There are numerous University policies that address these issues, all of which you can access at the end of this training.

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[AUDIO] UNM expects employees to disclose when there is a financial interest that may create a conflict of interest for the University and/or its employees.

[AUDIO AND VISUAL] **What is a financial interest?**

Under [University Administrative Policy 3720](#), financial interest includes:

1. any direct or indirect financial interest;
  2. any transaction between the University and the employee or a member of the employee's immediate family (immediate family includes the employee's spouse, domestic partner, brother, sister, parent, child, or in-law); or
  3. any transaction between the University and a business entity (business entity means corporation, sole proprietorship, partnership, LLC, or similar entity) if the employee or a member of the employee's immediate family meets one or more of the five criteria listed below:
    - a. has an ownership interest (other than as owner of less than one percent (1%) of the stock of a publicly traded corporation) in the business entity of a University vendor or contractor;
    - b. is an employee, partner, officer, director, trustee, or paid consultant to such business entity;
    - c. has received grant support or benefited from a donation from such business entity;
    - d. has received support for travel expenses, honoraria, or similar forms of remuneration from such business entity; or
    - e. has a right to receive royalties from such business entity.
-

[AUDIO] The University may enter into a contract in which an employee has a financial interest if the transaction is one at "arm's length." What is an arm's length transaction?

[AUDIO AND VISUAL] An **arm's length transaction** refers to a business deal in which buyers and sellers act independently without one party influencing the other. The main purpose of the arm's length transaction is to ensure there are no hints of a conflict of interest that would give one or both companies an undue advantage in the market.

[AUDIO] Transactions in which employees have any financial interest that do not meet the narrow definition of "arm's length" transactions are not normally permissible. However, New Mexico law permits such transactions to be approved by the University President in limited circumstances if all the factors listed below are considered.

[AUDIO AND VISUAL] To qualify as an arm's length transaction:

1. The employee with the financial interest must not be in a position to exert influence over the transaction because of their UNM employment; **and**
2. The employee must not have participated directly or indirectly in the transaction such as:
  - a. Helping prepare the specifications of the transaction; or
  - b. Having input or influence in deciding who is awarded the contract.

[AUDIO AND VISUAL] For example, if you are working with your supervisor to solicit bids for a construction project and the supervisor's sibling's construction company submits a bid, this is not an arm's length transaction. Why? Because your supervisor is in a position to influence the bidding process and assisted in soliciting bids. Additionally, your supervisor may have a financial interest in their cousin winning the bid given their familial relationship.

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### [VISUAL] **Disclosing Financial Interests**

[AUDIO] All employees and all vendors or other contractors with the University must disclose any financial interest a University employee may have in a proposed contract or other business transaction with the University in advance and in writing to the employee's dean or director and the University Purchasing Department or University Hospitals Purchasing Office, as applicable.

[AUDIO AND VISUAL] **University units:** university units proposing a contract or other business transaction in which they know or reasonably believe that a University employee has a financial interest must also disclose that fact to the dean or director to whom the unit reports and the University Purchasing Department or University Hospitals Purchasing Office, as applicable.

**Contractors:** any contractor proposing a contract or other business transaction with the University involving \$20,000 or more must fill out and sign this form and submit it to the University Purchasing Department or University Hospitals Purchasing Office, regardless of whether a University employee has a financial interest.

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[VISUAL AND AUDIO] **Do I need to disclose gifts and grant support?**

For transactions in which the financial interest is in the form of a donation or grant support, and the transaction is a **procurement** pursuant to University Policy definition, the reviewing officials and the President shall review the transaction to structure an appropriate conflict of interest management plan, when necessary, to ensure the integrity of the procurement and that the existing relationship between the University and the donor or grantor does not impact the procurement or the likelihood that the donor or grantor will be selected as the vendor.

[Procurement definition to pop up: Definition: the action or process of finding and agreeing to terms, and acquiring goods, services, or works from an external source.]

[AUDIO ONLY] Let's test your knowledge in the following scenarios.

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[VISUAL AND AUDIO] Sam applies for a faculty position in the UNM Engineering Department. As part of the interviewing process, Sam is to meet with a panel of engineering faculty members and discuss their interest and qualifications for the position. The night before the panel, Sam invites several panel members to dinner and drinks.

[Add a picture of someone sitting before a panel.]

Is there a conflict of interest for the faculty members to accept Sam's offer for dinner and drinks?

Yes  No

Is there still a potential conflict of interest if Sam does not discuss their application at the dinner?

Yes  No

What type of conflict of interest does Sam's offer pose?

Illegal gratuity     Economic Distortion     Kick back     Bribery

[Let's have the questions pop up one at a time.]

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[VISUAL AND AUDIO] You are working with your supervisor to solicit bids for an art installation in the student union building. Your supervisor's daughter submits a bid.

Is this an arm's length transaction? [ ] Yes [X] No

If your supervisor has no ability to participate (directly or indirectly) in UNM's decision on which art installation bid is selected. Could this be an arm's length transaction? [X] Yes [ ] No

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### [VISUAL] **Unauthorized Use of UNM Information and Resources**

[VISUAL AND AUDIO] UNM staff and faculty must avoid situations where someone wants to:

- Use privileged or proprietary information for personal gain or other unauthorized purposes
- Use University-supported work, products, results, materials, property records, or information without prior authorization
- Define contract terms or specifications, obtain sensitive information, or serve as an evaluator or initiator relating to a requisition where an employee has a personal interest
- Directly participating in career-related decisions of a relative, spouse, or member of one's household who is also a UNM employee

[AUDIO ONLY] Conflicts of interest may also occur in research situations where financial or other personal considerations may compromise or have the appearance of compromising a researcher's professional judgment when conducting or reporting research. Conflicts of interest in research may occur through the different types of conflicts we discussed earlier, such as bribery, gifts, and outside relationships or employment; but may also involve foreign influence. It is not illegal to collaborate with foreign nationals or get foreign support, but it is important to understand vulnerability and risk of research loss by failing to disclose relationships or support to a researcher's funding agency.

[AUDIO] What does UNM mean by inappropriate use of UNM resources?

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### [VISUAL] **Unauthorized Use of UNM Information and Resources Continued**

[AUDIO AND VISUAL] Inappropriate use of UNM resources can look like:

- A faculty member assigning students, staff, or postdoctoral scholars UNM tasks to advance the faculty member's own monetary interest rather than to advance the scholarly field or educational needs.
- Granting external entities access to UNM programs, resources, services, information, or technology for purposes outside UNM's mission.

- Offering inappropriate favors to outside entities in an attempt to unduly influence them in their dealings with UNM.
- Using UNM resources for personal gain or granting others unauthorized access to confidential information acquired through conduct of UNM business or research activities.

[AUDIO] Faculty use of staff and students in outside UNM professional activities must be approved by the department chair/dean or provost.

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### [VISUAL] **Section 117 Reporting Requirements**

[AUDIO AND VISUAL] Over 30 years ago, Congress enacted Section 117 of the Higher Education Act of 1965 (HEA) considering concerns about the growing financial relationship between U.S. universities and foreign sources.

This act mandates financial transparency through required reporting of contracts with and gifts from a foreign source that, alone or combined, are valued at \$250,000 or more in a calendar year.

In the event a foreign source gift or contract is received directly by a department or Principal Investigator (PI), in connection with research done at UNM, and wasn't first routed or approved by a UNM Accounting Office, UNM requires that information be disclosed using the newly created Section 117 Disclosure Submission Form.

[https://forms.unm.edu/forms/disclosure\\_questionnaire](https://forms.unm.edu/forms/disclosure_questionnaire)

Information regarding Section 117 Reporting can be found at <https://research.unm.edu/section-117> or you can contact **Jeremy Hamlin** [email: [jhamlin@unm.edu](mailto:jhamlin@unm.edu)], Associate Controller in Contract and Grant Accounting.

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### [VISUAL] **Who Do I Talk to If I Have Questions About Conflicts of Interest?**

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### Questions on "What", "Where and "When" to disclose

Main campus Office of Sponsored  
Projects  
[osp@unm.edu](mailto:osp@unm.edu)

Health Sciences Center Office of  
Sponsored Projects  
[hsc-preaward@salud.unm.edu](mailto:hsc-preaward@salud.unm.edu)

Faculty Research Development  
Office  
[frdo@unm.edu](mailto:frdo@unm.edu)

### Questions on Conflict of Interests(COI) in Research or Waivers for Technology Transfer or Start Ups

Office of Research & Compliance for Conflict of Interest in Research  
[coiresearch@unm.edu](mailto:coiresearch@unm.edu), 505-277-1045

### Questions on Export Control / Industrial Security including other General Disclosure questions

Export Control for Export Control Regulations  
[export@unm.edu](mailto:export@unm.edu), 505-277-2968

Industrial Security Department  
[dkuidis@unm.edu](mailto:dkuidis@unm.edu), 505-277-2058

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### [VISUAL] Conflict of Commitment

[AUDIO] Faculty and staff owe their primary professional allegiance to UNM; their primary professional commitment of time and intellectual energies is to the education, research, and other programs supporting UNM's mission. In this section, we will discuss conflicts of commitment. What is a conflict of commitment?

[AUDIO] A conflict of commitment may arise when an individual engages in outside activities, either paid or unpaid, that interferes with or is similar to the individual's primary professional obligation and commitment to UNM.

[VISUAL] **Conflict of Commitment: A situation where an individual engages in outside activities, either paid or unpaid, that interferes with or is similar to the individual's primary professional obligation and commitment to UNM.**

[AUDIO] Faculty and staff intending to engage in an external activity that involves significant effort outside of UNM and that may present a Conflict of Commitment must have written approval from the relevant department chair and dean, staff supervisors, or provost.

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[AUDIO for this section, visual for the bolded terms (not descriptions?)]

[VISUAL AND AUDIO] **Outside Employment** – Conflicts of interest or commitment regarding **outside relationships and employment** can occur when an employee's outside activities could

influence their professional conduct, including time and energy, due to considerations of personal gain, which could be financial or in other forms.

[AUDIO ONLY] For example, if an employee has full-time employment outside of UNM, they may not have sufficient time and energy to fulfill their full-time position at UNM.

### **Outside Organizational Commitments**

Conflicts of commitment arise if a staff or faculty member's outside organizational commitments interfere with the performance of regular employment; competes with coursework offered by the University; or competes with services offered by the employee's unit.

### **Outside Professional Activity**

Any paid or volunteer activity undertaken by a staff or faculty member outside the scope of one's employment at UNM is considered an outside professional activity. Outside professional activities may include consulting, participation in civic or charitable organizations, working as a technical or professional advisor or practitioner, or holding a part-time job with another employer, whether working in one's occupation or another.

Faculty and staff can have outside professional activities but may not use UNM resources, including facilities, personnel, equipment, or confidential information, as part of their outside consulting activities or for any other non-UNM purposes.

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[AUDIO] The UNM community has a wealth of experience and expertise, so it is common for those outside the University to request a staff or faculty member's knowledge or insight. Therefore, it is important for our staff and faculty to know when consulting with other entities may create a conflict of commitment.

[VISUAL] **Consulting** [Verify if information is applicable to both main campus and HSC. <https://hsc.unm.edu/research/compliance/coi/media/docs/10.1.20-conflict-of-commitment-conflict-of-interest-and-outside-activity-guidance.pdf>]

[AUDIO AND VISUAL] Staff and faculty members should not provide consulting or other services to an outside entity when those services would conflict or be in competition with services offered by the University itself.

A Staff member wishing to engage in an Outside Professional Activity that may present a Conflict of Commitment or Conflict of Interest must provide a written request to the staff member's immediate supervisor or department/unit head prior to engaging in the activity. Permission is left to the discretion of the supervisor or department/unit head and may be given

if the proposed activity does not compete with UNM activities and does not interfere with or detract from the performance of the staff member's UNM duties.

A faculty member's full-time appointment conveys an obligation for the faculty member to have a significant physical presence on campus, to be accessible to students and staff, to carry the member's share of committee responsibilities, to meet any assigned obligations, and to be available to interact with UNM colleagues, unless the relevant department chair and/or school dean has granted specific prior approval for extended or frequent absences from campus. Activities such as pro bono work, government service in the public interest, and any outside employment unrelated to the faculty member's UNM responsibilities must be managed so they do not take precedence over a faculty member's primary professional commitment to the UNM.

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**[VISUAL] Faculty Use of Students in Outside Professional Activities**

[AUDIO AND VISUAL] Student involvement in faculty enterprises may provide the potential for substantial benefits to the education and career development of the student. Such involvements need to be guided to avoid Conflicts of Interest or interference with the student's primary educational and research duties. Before engaging in these activities, whether paid or unpaid, Students and Faculty must seek approval from the school's dean or the dean's designee prior to presenting the request to the conflict of interest committee.

**[VISUAL] Faculty Use of Staff in Outside Professional Activities**

[AUDIO AND VISUAL] Faculty and others in a supervisory capacity may not require those they supervise to perform services outside those related to their UNM positions. It may be appropriate for staff to assist faculty members in their Outside Professional Activities, depending upon the nature and extent of the staff involvement and whether it is on an incidental or infrequent basis. However, because such involvement is a potential source of conflict between Faculty members and their Staff, any Staff involvement must be approved by the relevant department chair, dean or vice chancellor and discussed with the staff member.

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**[VISUAL] Sponsored projects:** [AUDIO AND VISUAL] All proposed transactions involving an entity in which a University employee has a financial interest that do not qualify as "arm's length" and that are related to sponsored projects, must be approved by the UNM Vice President for Research, as required under UNM policies for COI applicable to research, such as

UNM Faculty Handbook policies E110 and E80. Transactions related to sponsored projects include, but are not limited to, sponsored project agreements, including contracts and grants; contracts for the use of UNM research facilities; and contracts involving the expenditure of sponsored project funds such as procurements and leases. **Pursuant to University policies applicable to COI in research, researchers must disclose certain significant financial interests prior to submitting a proposal for sponsored research and prior to applying for either internally allocated research funding or human and animal subject research approval.**

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### Foreign Collaboration Disclosures

[AUDIO] At the University of New Mexico, we know that free and open exchange of information and ideas improves the work that our faculty, staff, and students do to advance discovery, creativity, and innovation. This openness includes international collaboration, which extends our reach in research and educational opportunities to a global community and brings the knowledge and talents of the world to New Mexico.

Over the last decade, and with growing frequency, federal agencies that support research, as well as federal intelligence and security agencies, have expressed concern about systematic programs mounted by some foreign governments to unduly influence and capitalize on U.S. taxpayer funded research to obtain a competitive advantage in critical areas of research and innovation. These concerns include some foreign talent programs run by countries seeking to exploit U.S. technology by recruiting faculty from U.S. institutions to share appointments with institutions abroad.

To protect US interests, many agencies, including NSF (National Science Foundation), NIH (National Institutes of Health), DOE (Department of Education), and DOD (Department of Defense), have issued revised requirements and guidance for disclosing potential conflicts of commitment and conflicts of interest related to support from foreign governments or other foreign entities. Failure to observe these regulations can have, and in some high-profile cases has had, significant legal consequences for individual researchers and for the university.

[Have the audio voiceover for the above with a picture on this slide?]

[VISUAL] For more information on disclosures, refer to <https://research.unm.edu/foreign-influence>

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### Section 117 Reporting Requirements

[AUDIO AND VISUAL] Over 30 years ago, Congress enacted Section 117 of the Higher Education Act of 1965 (HEA) considering concerns about the growing financial relationship between U.S. universities and foreign sources.

This act mandates financial transparency through required reporting of contracts with and gifts from a foreign source that, alone or combined, are valued at \$250,000 or more in a calendar year.

In the event a foreign source gift or contract is received directly by a department or PI, in connection with research done at UNM, and wasn't first routed or approved by a UNM Accounting Office, we require that information be disclosed using the newly created Section 117 Disclosure Submission Form. [https://forms.unm.edu/forms/disclosure\\_questionnaire](https://forms.unm.edu/forms/disclosure_questionnaire)

Information regarding Section 117 Reporting can be found at <https://research.unm.edu/section-117> or you can contact Jeremy Hamlin, Associate Controller in Contract and Grant Accounting.

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[VISUAL] **FINAL QUIZ** [We can implement four questions and keep the remainder to cycle in as questions stale.]

1. Is assigning a book as the required text for a course for which you receive royalties considered a conflict of interest?  Yes  No
  2. Is holding office or membership on a board or committee of an entity supporting your University research a conflict of interest?  Yes  No
  3. Is receiving royalties or other licensing proceeds from intellectual property you invented or further developing a conflict of interest?  Yes  No
  4. Can you use students to perform services for a company in which you have a financial interest?  Yes  No
  5. Can you use UNM's name, marks, or logos for advertising purposes?  Yes  No
  6. Are transactions involving technology created or developed at UNM considered "arm's length."  Yes  No
  7. Is participating in a foreign talents program considered consulting?  Yes  No
- 

[AUDIO] To learn more about the applicable laws and policies on conflicts of interest and commitment, check out the links below.

[VISUAL] University Administrative Policy: [Let's have the policies have drop downs to individual links]

[UAP 2215: Consensual Relationships and Conflicts of Interest](#)

[UAP 3210](#): Recruitment and Hiring

[UAP 3720](#): Employee Code of Conduct and Conflicts of Interest

[UAP 4000](#): Allowable and Unallowable Expenditures

[UAP 4320](#): Purchasing Goods Off Campus

[UAP 4325](#): Purchasing Services from Independent Contractors

[These policies are currently being worked on and are subject to change.]

Regents' Policy Manual

[RPM 1.8](#): Regent Code of Conduct and Conflicts of Interest Policy

[RPM 5.5](#): Outside Employment

[RPM 5.6](#): Extra Compensation Paid by the University

[RPM 5.10](#): Conflict of Interest in Research

[RPM 5.17](#): Conflict of Interest Waiver Policy for Technology Transfer

[RPM 6.4](#): Employee Code of Conduct and Conflicts of Interest Policy

Faculty Handbook:

[C130](#): Conflict of Commitment

[C140](#): Extra Compensation Paid by the University

[E40](#): Research Misconduct

[E70](#): Intellectual Property Policy

[E80](#): Conflict of Interest Waiver Policy for Technology Transfer

[E110](#): Conflicts of Interest in Research

[New Mexico Governmental Conduct Act](#) (Sec. 10-16-1 through 10-16-18, NMSA 1978)

[New Mexico Procurement Code](#) (Sec. 13-1-1 through 13-1-199, NMSA 1978)

[Section 117 of Higher Education Act](#)

[AUDIO] This concludes our training. Thank you for your participation!



## Foreign Gifts and Contracts Policy and Reporting Tools

Committee Composition:

Chair: Francie Cordova, Chief Compliance Officer [fcordova3@unm.edu](mailto:fcordova3@unm.edu)

1. Victor Griego – Internal Audit Director/Staff [griego14@unm.edu](mailto:griego14@unm.edu)
2. Bruce Cherrin – Chief Procurement Officer Staff [cherrin@unm.edu](mailto:cherrin@unm.edu)
3. Rosa Gonzalez-Rosenblatt – Sponsored Projects [rosag@unm.edu](mailto:rosag@unm.edu)
4. James McFarlane – HSC Office of Research Staff [jmacfarl@salud.unm.edu](mailto:jmacfarl@salud.unm.edu)
5. Brie Devlin – Compliance Staff [BDelvin@salud.unm.edu](mailto:BDelvin@salud.unm.edu)
6. Stacy Catanach – Sponsored Projects Staff [scatanach@unm.edu](mailto:scatanach@unm.edu)
7. Jeremy Hamlin – Contracts and Grants Staff [jhamlin@unm.edu](mailto:jhamlin@unm.edu)
8. Deb Kuidis – Export Control [dkuidis@unm.edu](mailto:dkuidis@unm.edu)

Over 30 years ago, Congress enacted Section 117 of the Higher Education Act of 1965 (HEA) in light of concerns about the growing financial relationship between U.S. universities and foreign sources. Congress balanced academic freedom and national security by mandating financial transparency through required reporting of contracts with and gifts from a foreign source that, alone or combined, are valued at \$250,000 or more in a calendar year. [USCODE-2018-title20-chap28-subchapl-partB-sec1011f.pdf \(govinfo.gov\)](#)

In 2020, the DOE published a study indicating that universities were failing to comply with Section 117 and announced they would be seeking information from specific universities about their reporting compliance. DOE also unveiled a portal in which universities will be required to submit bi-annual reports of contracts and gifts that meet Section 117 definitions. [institutional-compliance-section-117.pdf \(ed.gov\)](#)

Portal [College Foreign Gift Reporting \(ed.gov\)](#)

In 2021, DOE reached out to UNM to seek information on foreign contracts. [new-mexico-20210115.pdf \(ed.gov\)](#) UNM compiled information for DOE. Most UNM contracts did not meet the threshold level for reporting to DOE.

UNM currently has a process for reporting foreign contracts, gifts and donations but no policy regarding reporting them. The foregoing draft policy is broad and overarching and leaves development of specific processes to individual areas that may have foreign financial engagement (research, procurement, financial aid, etc.).

The committee also developed a draft reporting form utilizing SMARTsheets. The form can be utilized by areas that have contracts or gifts they must report, the responsible area designees can receive the SMARTsheet form for tracking purposes, and to determine if it must be reported pursuant via the federal portal.

Draft Reporting Tool:

### [Reporting Foreign Gifts and Contracts at UNM](#)

Finally, many grantors (NIH, etc.) have begun requesting certification that universities have policies and processes that are in compliance with the foreign gift reporting law. UNM has responded by saying that the policy is in process. This draft policy is very important.

#### **DRAFT POLICY:**

### **Reporting Foreign Gifts and Contracts at University of New Mexico**

#### Scope:

This policy covers UNM's reporting obligations under [Section 117](#) of the Higher Education Act 20 U.S.C. § 1011(f) (hereinafter, "Section 117"). It applies to all UNM individuals, departments and units involved in receiving Gifts and Contracts from Foreign Sources.

#### Policy Statement:

UNM is committed to complying with the reporting requirements for certain financial transactions with Foreign Sources, pursuant to [Section 117](#). In support of this commitment, UNM shall file annual reports with the U.S. Department of Education (ED) on January 31, or July 31, whichever is sooner.

#### Reason for the Policy:

Title IV of the Higher Education Act requires all institutions that process U.S. federal student aid to disclose semiannually to the U.S. Department of Education (Ed) specific financial transactions with Foreign Sources, pursuant to [Section 117](#). The requirement states, in relevant part:

"Whenever any institution is owned or controlled by a Foreign Source or receives a Gift from or enters into a Contract with a Foreign Source, the value of which is \$250,000 or more, considered alone or in combination with all other Gifts from or Contracts with that Foreign Source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner."

This policy establishes the roles and responsibilities for UNM individuals supporting the University's semiannual reporting obligations.

This policy applies to the following:

- Sponsored projects (including any office responsible for receiving sponsored research agreements, industry Contracts, and clinical trial Contracts)
- Business Contracts

- Technology Transfer or Licensing
- University Affiliated Foundations
- Education Abroad
- Financial Aid
- Real Estate
- Departments, units, and central administrators
- Individuals responsible for university subsidiaries.

## COMPLIANCE WITH POLICY

### Reportable data:

To comply with federal law and reporting requirements, UNM must collect and properly evaluate all Gifts and Contracts it receives from Foreign Sources to determine if federal reporting thresholds have been met. All individuals, departments, and units must submit semiannually via the reporting form, accurate and timely reporting of Gifts or Contracts from any Foreign Source at the time the Gift or Contract is finalized.

Gifts must be recorded at the time the Gift is received. Contract values must be recorded at the time the Contract is executed or, if the Contract amount is not determinable at the time the Contract is executed, then amounts must be recorded at the time they are received.

Units are responsible for recording the following information at a minimum:

- Dates of transactions
- Values
- Amounts
- Source name and type
- Source address (including country)
- Type of transaction (i.e., Gift or Contract)
- Intermediaries (for Gifts) or domestic parties (for Contracts); and
- Start and end date(s) for Contracts.

Since the annual \$250,000 threshold may be triggered by a combination of Gifts or Contracts from a single Foreign Source, and that such Gifts or Contracts may be administered in several disparate offices, individuals or units and departments shall submit information for all Foreign Sources Contracts and Gifts received via the UNM reporting tool (link when tool chosen).

### Application:

All departments listed in this policy are responsible for creating, maintaining, and communicating standard procedures for collecting, recording, maintaining, and producing the

data for which they are responsible and by which they review all reports submitted via the reporting tool for their area, and determine in conjunction with University Counsel, if they must be reported to the Department of Education portal.

#### Definitions:

The following definitions apply for the purposes of this policy and compliance with Section 117.

#### **Contract has the meaning given at 20 U.S.C. §1011(f)(h)(1)**

Any agreement for the acquisition by purchase, lease, or barter of property or services by the Foreign Source, for the direct benefit or use of either of the parties.

#### **Foreign Source has the meaning given at 20 U.S.C. §1011(f)(h)(2)**

Any one of the following: 1) a foreign government, including an agency of a foreign government; 2) a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states; 3) an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and 4) an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a Foreign Source.

#### **Gift has the meaning given at 20 U.S.C. §1011(f)(h)(3)**

The voluntary transfer of money or property by a Foreign Source made without consideration.

#### **Subsidiary**

Any entity that is owned or majority controlled by UNM.

### **Appendix A**

1. Office of Postsecondary Education Identification (OPEID)
  - a. List all campuses.
  - b. Is the institution, or any part thereof, owned or substantially controlled by a foreign source? (Y/N)
    - i. If yes, then identify:
      1. The foreign source
      2. The date on which the foreign source assumed ownership or control
      3. Any changes in program or structure resulting from the change in ownership or control
2. Gifts from a foreign source.
  - a. Name of foreign source.

- i. Is the gift from a foreign government, including but not limited to, any agency of a foreign government? (Y/N)
      - 1. If yes, provide the name of the foreign government
    - ii. Is the gift from a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)
    - iii. Is the gift from an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)
    - iv. Is the gift from a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)
      - 1. If yes, provide the name of the foreign government, legal entity, individual, or person.
  - b. Foreign source address including country of origin
    - i. For gifts received from a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.
  - c. Gift terms.
    - i. Amount.
    - ii. Date received.
  - d. Recipient, including any and all intermediaries.
- 3. Contracts with a foreign source.
  - a. Name of the foreign source.
    - i. Is the contract with a foreign government, including but not limited to any agency of a foreign government? (Y/N)
      - 1. If yes, provide the name of the foreign government.
    - ii. Is the contract with a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)
    - iii. Is the contract with an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)
    - iv. Is the contract with a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, legal entity created solely under the laws of a foreign state or states, or individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)
      - 1. If yes, provide the name of the foreign government, legal entity, individual, or person.
  - b. Foreign source address including country of origin.

- c. For contracts with a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.
  - d. Domestic party
  - e. Contract terms.
    - i. Amount.
    - ii. Contract start date.
    - iii. Contract end date.
4. Restricted or conditional gifts from a foreign source.
- a. Name of the foreign source.
    - i. Is the gift from a foreign government, including but not limited to any agency of a foreign government? (Y/N)
      - 1. If yes, provide the name of the foreign government.
    - ii. Is the gift from a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)
    - iii. Is the gift from an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)
    - iv. Is the gift from a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)
      - 1. If yes, provide the name of the foreign government, legal entity, individual, or person.
  - b. Foreign source address including country of origin.
    - i. For gifts received from a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.
  - c. Restricted or conditional gift terms.
    - i. Amount.
    - ii. Date received.
    - iii. Detailed description of all conditions or restrictions.
  - d. Specific restricted or conditional gift provisions.
    - i. Do the restrictions or conditions concern or relate to the employment, assignment, or termination of faculty? (Y/N)
    - ii. Do the restrictions or conditions concern or relate to the establishment of departments, centers, research or lecture programs, or new faculty positions? (Y/N)

- iii. Do the restrictions or conditions concern or relate to the selection or admission of students? (Y/N)
    - iv. Do the restrictions or conditions concern or relate to the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion? (Y/N)
  - e. Recipient, including any and all intermediaries.
- 5. Restricted or conditional contracts with a foreign source.
  - a. Name of the foreign source.
    - i. Is the contract with a foreign government, including but not limited to any agency of a foreign government? (Y/N)
      - 1. If yes, provide the name of the foreign government.
    - ii. Is the contract with a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)
    - iii. Is the contract with an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)
    - iv. Is the contract with a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)
      - 1. If yes, provide the name of the foreign government, legal entity, individual, or person.
  - b. Foreign source address including country of origin.
    - i. For contracts with a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.
  - c. Domestic party.
  - d. Restricted or conditional contract terms.
    - i. Amount.
    - ii. Contract start date.
    - iii. Contract end date.
    - iv. Narrative description of all conditions or restrictions
  - e. Specific restricted or conditional contract provisions.
    - i. Do the restrictions or conditions concern or relate to the employment, assignment, or termination of faculty? (Y/N)
    - ii. Do the restrictions or conditions concern or relate to the establishment of departments, centers, research or lecture programs, or new faculty positions? (Y/N)

- iii. Do the restrictions or conditions concern or relate to the selection or admission of students? (Y/N)
  - iv. Do the restrictions or conditions concern or relate to the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion? (Y/N)
6. Acknowledgement: This information collection is subject to 18 U.S.C. §1001, which provides that whoever knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, may be subject to fines and imprisonment. (Y/N)

## Appendix B

**Q1:** Are institutions required to report contracts involving purchases *made by* institutions from foreign sources, such as equipment purchased by an institution from a foreign source?

**A1:** Section 20 U.S.C. §1011(f)(h)(1) defines “contract” as “any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties.” The Department is bound by the statutory text, construed in context and with a view to the words’ place in the statutory scheme. Although the Department must follow statutory text and not legislative history, we note the legislative history provides an example of a type of contract that would not have to be reported: an arms-length transaction in which an institution purchased equipment from a foreign source or leased property from a foreign source. Based on the language “any agreement for the acquisition...by the foreign source [...]” the Department interprets the definition to exclude a contract involving the transfer of funds from an institution to a foreign source. We note, however, that each transaction should be evaluated independently.

**Q2:** Are institutions required to disclose payments of tuition and fees for foreign students paid directly by the student, or under certain circumstances, paid by other individuals, institutions, or governments?

**A2:** We generally consider instances where a foreign source pays tuition for a student or students to meet the definition of a “contract” under Section 117(h)(1). An institution would only need to report this type of contract if the \$250,000 threshold is met by a given foreign source. We note the threshold would likely be met in situations where a foreign source pays tuition for multiple students, and the aggregate amount exceeds the \$250,000 threshold.

**Q3:** Are institutions required to report contracts involving an intellectual property license fee from a foreign licensee of a University patent or data or materials to be transferred for use in research?



**A3:** While each transaction should be evaluated independently, intellectual property license fees from a foreign licensee of a University patent and data or materials to be transferred via purchase, lease, or barter for use in research would generally be included in the statutory definition of “contract.”

**Q4:** Is an institution required to report the maximum potential amount of the contract once it is executed or wait to report the contract once the institution receives payments that reach the \$250,000 reporting threshold?

**A4:** Section 117(a) requires that whenever an institution “*enters* into a contract with a foreign source, the *value* of which is \$250,000 or more, considered alone or in combination with all other contracts with that foreign source within a calendar year,” it must be disclosed. (emphasis added). Therefore, whether a particular contract must be reported by an institution depends upon whether the value of the contract when it is signed, combined with the value of all other gifts and contracts with that foreign source, meets or exceeds the statutory threshold. Given the valuation challenges presented by certain contracts (e.g., indefinite delivery/indefinite quantity contracts), institutions may wish to consider simply reporting contracts whose values could meet or exceed the statutory threshold to avoid potential non-compliance.

**Q5:** How should institutions value property?

**A5:** In general, the value of property should be the fair market value of the property.

**Q6:** Are institutions required to report gifts and contracts involving organizations outside of the direct control of an institution, such as alumni associations, athletic booster clubs, student clubs, and affiliated groups?

**A6:** An institution receiving the benefit of a gift from or a contract with a foreign source, even if through an intermediary, must disclose the gift or contract. Additionally, where a legal entity (e.g., a foundation) operates substantially for the benefit or under the auspices of an institution, there is a rebuttable presumption that when that legal entity receives money or enters into a contract with a foreign source, it is for the benefit of the institution, and, thus, must be disclosed. Institutions have a duty, under Section 117, to conduct reasonable due diligence when they receive the benefit of a contract or gift from any entity to determine whether the gift or contract is from or with a foreign source. If they do receive such a benefit and it meets the threshold amount, they must report the item to the Department. However, institutions are not required to report any gift to or contract between a foreign source and an entity if the institution did not receive a benefit from the gift or contract.

**Q7:** How is the term “intermediary” defined?

**A7:** For purposes of Section 117 reporting, an intermediary is an entity other than an institution that receives a gift originating from a foreign source or enters into a contract with a foreign source.

**Q8:** How must an institution report the names and addresses of anonymous donors when it is nearly impossible for an institution to obtain the name or address of an anonymous donor?

**A8:** An institution is required to report the names and addresses of anonymous donors to the extent that the institution has or could reasonably obtain the donor's identity. However, in all instances, including gifts and contracts involving anonymous parties, the Department will withhold a party's name and address (excepting country) from becoming part of the public disclosure report. Institutions must make a reasonable effort to obtain a donor's identity. The reasonableness standard is well established by law.

## Data Privacy Policy Updates

Chair: Jeff Gassaway, IT Security Staff [base@unm.edu](mailto:base@unm.edu)

1. Assata Zerai, Vice President for Diversity, Equity, and Inclusion [zerai@unm.edu](mailto:zerai@unm.edu)
2. Ari Vazquez, Senior Deputy Counsel, Office of University Counsel  
[AriVazquez@salud.unm.edu](mailto:AriVazquez@salud.unm.edu)
3. Laura Soito, Associate Professor, College of University Libraries and Learning Sciences  
[isoito@unm.edu](mailto:isoito@unm.edu)
4. Eugene Rooney, Programmer Analyst, Anderson School of Management  
[erooney@unm.edu](mailto:erooney@unm.edu)
5. Laura Putz, HIPAA Privacy Officer, UNM Health Sciences Center [lputz@salud.unm.edu](mailto:lputz@salud.unm.edu)
6. Heather Mechler, Director of Institutional Analytics [hsmechler@unm.edu](mailto:hsmechler@unm.edu)
7. Sidney Mason-Coon, University Policy Officer [ismason@unm.edu](mailto:ismason@unm.edu)
8. Sheila Jurnak, University Registrar [sjurnak@unm.edu](mailto:sjurnak@unm.edu)
9. Todd Hynson, Registrar, Health Sciences Center [hynson@unm.edu](mailto:hynson@unm.edu)
10. Victor Griego, Director of Internal Audit [griego14@unm.edu](mailto:griego14@unm.edu)
11. Elisha Allen, Director of Online Strategies and Academic Technologies [elisha@unm.edu](mailto:elisha@unm.edu)

In addition to reviewing existing UNM policies that address or intersect with privacy, as an operational or as a regulatory matter, the privacy sub-committee also reviewed the privacy policies and statements of 16 institutions, including Columbia, Cornell, Indiana University, UCSD, and UC Berkeley, among others. Some of those institutions are comparable in size and mission to UNM, and some are considered leaders in privacy.

The Privacy Sub-committee looked at a variety of issues, including:

- Where Privacy reports, as a practical matter, from Compliance and Legal, to Audit and IT;
- If the Policy was very detailed, which privacy regulations are addressed by the policy, including the Family Education Rights and Privacy Act (FERPA) and the Gramm, Leech, Bliley Act (GLBA), which apply to nearly every US Higher Education Institution, to Health

Insurance Portability and Accountability Act (HIPAA), the European Union's General Data Protection Regulation (GDPR), among others;

- What level the Policy is written for (from Academic or Administrative, to System-wide or Boards of Regents, in scope and authority), and whether the policy is more aspirational, more operational, or both;
- What communities are underserved by institutional privacy policies and practices
- If the Policy was more aspirational, the sub-committee reviewed accompanying Privacy Programs, or other published operational details, including the scope of any Privacy Program, Privacy metrics and where those metrics are presented, the privacy resources made available under the program, and to which communities those are provided.

UNM does not currently have an institution-wide privacy policy, or an equivalent privacy statement to our diverse communities, about the care we take with their Personally Identifiable Information (PII), and what choices they have with the information entrusted to us. There are areas of excellence, led by our Registrar and our HIPAA Privacy Officer, among others, that UNM should build on.

Institutional gaps exist which are fundamental. For example, PII for the same individuals may have a high bar of regulatory privacy protections when collected for one purpose, in a single area. However, the same information collected in other areas, or for other purposes, may not. Helping improve privacy practices to better balance the tensions between various regulations for the ways in which UNM uses PII, is one way in which a privacy program can help address privacy gaps.

To some degree, this disparity can be anticipated, as regulations related to the purposes for PII collection will have different privacy requirements. However, a strong privacy policy and program would create a foundation for privacy values and practices across the institution, for all purposes of collection, and to the benefit of all of our communities.

To the greatest degree possible, Privacy should be handled consistently, and in the most coordinated manner possible. All areas that may have access to PII should be included, to create the most robust privacy program reasonably possible for our communities.

Whether in person, or online, privacy training should be mandatory, annually. While the sub-committee is aware that there may be criticism for additional mandatory trainings, the sub-committee also recognizes that the most important relationships UNM has with the communities it serves, are based on trust. One key component to maintaining such trust, is to ensure that all members of our communities, employees, patients, students, and volunteers, are exposed to reasonable and appropriate trainings, so that they aware of their responsibilities in protecting the privacy of information entrusted to the University.

If UNM were reduced to a single primary purpose, that purpose would likely be that we provide higher education. However, Outside of the UNM Health Sciences Center (HSC), while FERPA training is required for certain employees in certain roles, it is not required for all employees, nor for all students. The UNM HSC requires FERPA training for all students and employees. Recent regulations may shift this privacy “best practice” to a requirement, but at present, such training is not required for all. This is a good example of the occasional differential in privacy practices: HIPAA training is required for all students and employees who may be exposed, even incidentally, to Protected Health Information (PHI) at our Health Sciences Center; however, there is not an equivalent student privacy training, even though many of our employees, and all of our students, are highly likely to be incidentally exposed to students’ data.

One founding element of a UNM-wide Privacy Program, would be consistent training for our communities, so that we may reasonably expect consistent practices across all of our communities – and so that we may hold each other accountable, if we err.

An additional founding element of an institutional Privacy Program, is that it must look to the horizon of privacy issues, especially where privacy and technology intersect. Many recent major privacy issues involving technology, could perhaps have been avoided, if only privacy, diversity, and other core University values (and associated privacy analyses) had been programmatically integrated into technology goods and services.

Educators, medical experts, privacy experts, researchers, students, technology experts – all better serve the institution and our communities, when they deliberately include members from outside of their core constituencies. This inclusiveness is fundamental to any privacy policy and program, and to the successful navigation of the many future privacy issues we can anticipate in an information-driven economy.

#### Recommendations:

1. The Sub-committee recommends mandatory annual FERPA privacy training for all employees and students. This training is already available in Learning Central for employees, and a student training system should be implemented to manage and track student trainings, if Learning Central is cost-prohibitive as a standard training platform.
2. The Sub-committee proposes an aspirational Regents Privacy Policy, to set expectations for our communities regarding how UNM protects the privacy of the information entrusted to us to complete our missions, and to provide our services. A discussion draft of this policy is included. A final policy, if approved, should also initiate campus conversations regarding privacy practices in all areas where we collect and use the PII of others.
3. The Sub-committee proposes ongoing sub-committee work if the President agrees with Recommendation 2. Specifically, the sub-committee recommends that it continue its work to develop a draft privacy program, including privacy objectives and measurable

privacy deliverables, to present to the President for her consideration as a complement to this Privacy Policy, and to deepen this campus conversation on privacy issues.

## **Discussion Draft University Information Privacy Policy**

**Date Originally Issued \*Proposed\*: 7/1/2022**

### **Revised:**

Authorized by Regents' Policy 3.1

Process Owner **\*Proposed\***: University Chief Information Privacy Officer

### **Applicability**

This Policy applies to Personal Data, or Personally Identifiable Information (PII), that UNM collects, creates, processes, stores, or transmits (“Collects” and “Uses”). This policy applies to all members of UNM communities: Regents, executives, faculty, staff, student employees, students, public and student members of University advisory boards and committees, research collaborators, and other volunteers serving in any official capacity with respect to their access to the Personal Data of others.

### **Policy**

UNM strives to protect the Personal Data entrusted to it, to fulfill UNM’s missions and to provide services to UNM’s communities, while respecting and protecting the privacy of the Personal Data of others. UNM strives to be transparent to the communities it serves regarding privacy principles and practices, such as notice and choice; to be transparent regarding the mechanisms through which our community members can enforce their privacy rights; and to be transparent when incidents occur that involve Personal Data.

UNM strives to anticipate and evaluate future privacy problems, especially where information, privacy, and technology intersect. As part of this effort, UNM strives to ensure that privacy, information security, risk management, diversity, and other core UNM values are integrated into UNM’s business-as-usual activities, and particularly, are integrated into the development or procurement of information and technology goods and services that use or involve Personal Data.

UNM also recognizes that inclusiveness is fundamental to the analysis of privacy problems, and to the successful navigation of the kinds of privacy problems that arise in an information-driven ecosystem. On matters of privacy, UNM will deliberately engage with experts and with diverse UNM stakeholders across the institution to help ensure that information and technology

intersections are informed by UNM's best privacy thinking to help reduce and manage privacy-related risks.

Finally, UNM recognizes that it is subject to numerous laws and regulations, to contractual obligations, and to professional ethics when collecting Personal Data. While the Use of Personal Data is critical to the success of UNM's Academic, Administrative, Clinical, and Research missions, UNM recognizes that lasting harm to individuals or communities could occur, in the event of unauthorized access to Personal Data. Therefore, the University strives to protect the privacy of Personal Data that it Collects and Uses.

## References

### Privacy-related Policies

- Regents Policy Manual 2.18 Guiding Principles
- Regents Policy Manual 3.7 HSC Institutional Compliance Program
- Regents Policy Manual 3.8 Institutional HIPAA Compliance Program
- Regents Policy Manual 7.2 Internal Auditing and Compliance Committee
- University Administrative Policy 2030 Social Security Numbers
- University Administrative Policy 2040 Identity Theft Prevention Program
- University Administrative Policy 2300 Inspection of Public Records
- University Administrative Policy 2500 Acceptable Computer Use
- University Administrative Policy 2520 Computer Security Controls and Access to Sensitive and Protected Information
- University Administrative Policy 2550 Information Security
- University Administrative Policy 2580 Data Governance
- University Administrative Policy 6020 Records Management, Retention, and Disposition
- University Administrative Policy 7215 Credit Card Processing

### Related Links

<https://www.ala.org/aboutala/governance/policymanual/updatedpolicymanual/section2/40corevalues>

<https://www.ala.org/advocacy/privacy/toolkit/policy>

<https://www.ala.org/advocacy/privacy/toolkit>

<https://privacy.unm.edu>

<https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/audit/protocol/index.html>

<https://www.hhs.gov/sites/default/files/hipaa-future-research-authorization-guidance-06122018%20v2.pdf>

<https://www.ecfr.gov/cgi-bin/text->

[idx?c=ecfr&sid=1e9a81d52a0904d70a046d0675d613b0&rgn=div5&view=text&node=16%3A1.0.1.3.38&idno=16](https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=1e9a81d52a0904d70a046d0675d613b0&rgn=div5&view=text&node=16%3A1.0.1.3.38&idno=16)

<https://library.educause.edu/~media/files/library/2016/8/cpoprimerpart1.pdf>

<https://library.educause.edu/~media/files/library/2017/8/cpoprimerpart2.pdf>  
<https://evc.ucla.edu/reports/DGTF-report.pdf>  
<https://asilomar-highered.info>  
<https://sites.stanford.edu/asilomar>  
<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53Ar4.pdf>  
[https://www.osec.doc.gov/opog/privacy/laws\\_and\\_regs.html](https://www.osec.doc.gov/opog/privacy/laws_and_regs.html)

## Human Trafficking

Committee Composition:

Chair: Josh Kastenberg, Faculty [jkastenberg@law.unm.edu](mailto:jkastenberg@law.unm.edu)

1. Bruce Cherrin - Chief Procurement Officer Staff [cherrin@unm.edu](mailto:cherrin@unm.edu)
2. Francie Cordova – Compliance Staff [fcordova3@unm.edu](mailto:fcordova3@unm.edu)
3. Angela Catena – Title IX Coordinator/Staff [acatena@unm.edu](mailto:acatena@unm.edu)

Human Trafficking, also known as trafficking in persons, involves the recruitment, transportation, transfer, harboring, or receipt of persons through force, fraud, or coercion for the purposes of exploitation in forced labor or commercial sexual exploitation. Human trafficking is the second largest criminal industry worldwide and affects the most vulnerable in our societies, with more than 25 million people enslaved. Seventy percent of identified victims are women and girls.

The United States has long had a policy prohibiting Government employees and contractor personnel from engaging in trafficking in persons activities, including severe forms of trafficking in persons. “Severe forms of trafficking in persons” is defined in section 103 of the Trafficking Victims Protection Act of 2000 (TVPA) [22 U.S.C. §7102](#) to include the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, using force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, and sex trafficking.<sup>[1]</sup>

On January 29, 2015, the U.S. Government released a final rule amending the Federal Acquisition Regulation (“FAR”). The final rule reflects changes to proposed amendments originally released in September 2013. The final rule is intended to implement Executive Order 13627 (“Strengthening Protections Against Trafficking in Persons in Federal Contracts”) and Title XVII of the National Defense Authorization Act for Fiscal Year 2013 (“Ending Trafficking in Government Contracting”). The stated purpose of the new regulation is to create a stronger framework for compliance by imposing additional requirements for awareness, compliance, and enforcement.

In addition, the state of New Mexico created the Human Trafficking Task Force in the New Mexico Attorney General’s Office. This task force is a federally funded collaborative task force

of local, state, tribal, and federal law enforcement agencies from around the state. The purpose of the task force is to combat all forms of human trafficking within New Mexico.<sup>[2]</sup>

Finally, the U.S. Department of Education recognizes these facts and stands ready to support America's schools in preventing, responding to, and helping students recover from human trafficking. It is fitting that schools take on this challenge; of all social institutions, schools are perhaps the best positioned to identify and report suspected trafficking and connect affected students to critical services.<sup>[3]</sup>

DRAFT POLICY:

### **University of New Mexico Anti-Trafficking Policy**

#### Reason for Policy

Federal law, state law, and the University of New Mexico (UNM) policy prohibit human trafficking in all forms. Federal law requires that an anti-trafficking compliance program be in place for any federal contractors and sub-contractors where the estimated value of the supplies acquired, or services required to be performed outside the United States exceeds \$500,000. This policy was derived from the federal government's zero tolerance policy for human trafficking (48 FAR 52.222-50).

#### Applicability

All UNM employees must read and adhere to this policy. In addition, UNM contracted consultants and subcontractors are required to adhere to this policy to the extent required by contract of law.

#### Policy Statement

The University of New Mexico has a zero-tolerance policy on trafficking in persons. Trafficking of people includes:

- Recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, or practices similar to slavery, servitude, or the removal of organs.

UNM employees are prohibited from engaging in any of the following types of trafficking-related activities:



1. Engage in any form of trafficking in persons during the performance of their employment or contract with UNM;
2. Procure commercial sex acts during the performance of their employment or contract with UNM;
3. Used forced labor in the performance of the contract or subcontract;
4. Using misleading or fraudulent recruitment practices during the recruitment of employees, such as failing to disclose basic information or making material misrepresentations regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, living conditions and housing (if employer provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;
5. Charging employees recruitment fees;
6. Destroying, concealing, confiscating, or otherwise denying employees access to their identity documents, such as passports or drivers' licenses;
7. Providing or arranging housing that fails to meet the host country house and safety standards;
8. For portions of contracts and subcontracts:
  - a. Performed outside the United States, failing to pay return transportation costs upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract;
  - b. Failing to pay return transportation costs upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee;
  - c. Other specific activities that the Federal Acquisition Regulation (FAR) Council identifies as directly supporting or promoting trafficking individuals, the procurement of commercial sex acts, or the use of forced labor in the performance of the contract or subcontract;
  - d. The requirements set forth in 8(a) and 8(b) above shall not apply to the following:
    - i. An employee who is legally permitted to remain in the country of employment and who chooses to do so; or
    - ii. An employee who is a victim of trafficking and is seeking victim services or legal redress in the country of employment, or an employee who is a witness in a trafficking-related enforcement action.

## Policy Violations

The University is required to and will act on violation of the U.S. Government's and State of New Mexico's zero tolerance policy, including, but not limited to:

- Removing the violating employee from working on any applicable contract;
- Reduction in benefits for the violating employee; or
- Imposing actions related to employment, up to and including the termination of employment with UNM, in accordance with University Administrative Policies 3215 and Faculty Handbook Policy C09.

## Reporting

UNM Employees may report without fear of retaliation, activity inconsistent with this policy, by contacting UNM's Compliance Reporting Hotline **call 1-888-899-6092**, by visiting the UNM Compliance Hotline Website at, <http://compliance.unm.edu/compliance-hotline/>, or by visiting UNM's Office of Compliance, Ethics & Equal Opportunity (CEEO). All Hotlines are anonymous reporting as permitted by applicable law.

<sup>[1]</sup> <https://www.federalregister.gov/documents/2015/01/29/2015-01524/federal-acquisition-regulation-ending-trafficking-in-persons>

<sup>[2]</sup> <https://www.nmag.gov/human-trafficking-task-force.aspx>

<sup>[3]</sup> <https://www.ed.gov/human-trafficking>

## **Limited English Proficiency Policy (to be added to UAP 2720)**

Committee Composition:

Chair: VACANT

1. Stephen Bishop – Faculty, [sbishop@unm.edu](mailto:sbishop@unm.edu)
2. Beck Rivera – CEEO Staff, [barivera@unm.edu](mailto:barivera@unm.edu)
3. Nicole Tami – GEO Director Staff, [ntami@unm.edu](mailto:ntami@unm.edu)
4. Blaine Moffatt – CEEO Compliance Coordinator, [bmoffatt@unm.edu](mailto:bmoffatt@unm.edu)

There is currently no office or department that services LEP, creating a gap within the institution. In the idea that UNM should be more centralized and wholistic, the Limited English Proficiency Policy Committee recommends we follow the policy outlined here.

Add the following to the interim Equal Opportunity Policy

It is the policy of the University of New Mexico, to the extent required under Title VI of the Civil Rights Act of 1964 § 2000d and Executive Order 13166, to ensure that our programs and

activities, normally provided in English, are accessible to Limited English Proficiency (“LEP”) persons. Consistent with the law, the University will provide appropriate alternative non-English formats for persons with limited proficiency in English upon request.

#### Additional Guidelines

### **Limited English Proficiency – DOJ Guidelines**

Conducting Self-Assessment: the self-assessment identifies language service needs, and evaluates the bilingual, translation, and interpretation resources already available to help LEP individuals access the recipient’s benefits, programs, services, information, or other operations.

The primary goal is to effectively communicate with LEP individuals. The order in which each element is achieved may differ from recipient to recipient. While it may be helpful to identify and assess your LEP communities before providing language assistance services, this should not stand in the way of providing meaningful access to LEP Individuals.

### **SELF-ASSESSMENT**

1. Understanding how LEP Individuals Interact with the Recipient
  - a. Program applicants or participants
  - b. Hotline or information line calls
  - c. Outreach programs
  - d. Public meetings and hearings
  - e. Public access to recipient websites
  - f. Written materials or complaints sent to a recipient
  - g. Recipient brochures intended for public distribution
  - h. Contacts with potential witnesses, victims, defendants
  - i. Interactions with detainees or prisoners.
2. Identification and Assessment of LEP Communities
  - a. Persons in a geographic service area with whom the recipient comes into contact while carrying out recipient functions.
  - b. Include all communities who are eligible for services or are likely to be directly affected by programs or activities.
  - c. Review of available data from federal, state, and local government agencies, community, and faith-based organizations.
    - i. Department of Education – required to have a record of diversity and national origin.
3. Providing Language Assistant Services
  - a. Effective communication with LEP individuals requires the recipient to have language assistances services in place.
  - b. Interpreter:

- i. Renders a message spoken in one language into one or more other languages
    - ii. An interpreter must be competent and have knowledge in both languages of the relevant terms or concepts particular to the program or activity and the dialect and terminology used by the LEP individual.
    - iii. Interpreter competency requires more than self-identification as bilingual.
  - c. Translation:
    - i. The replacement of written text from one language into another.
    - ii. Must be qualified and trained
    - iii. Translate **vital** written documents, including but not limited to:
      - 1. Consent and complaint forms;
      - 2. Intake and application forms with the potential for important consequences;
      - 3. Written notices of rights;
      - 4. Notices of denials, losses, or decreases in benefits or services;
      - 5. Notice of disciplinary action;
      - 6. Signs; and
      - 7. Notices advising LEP individuals of free language assistance services.
    - iv. Proactively translate vital written documents into the frequently encountered languages of LEP groups eligible to be served or likely to be affected by the benefit, program or service.
    - v. When the Recipient has reason to believe that an individual is and LEP, the Recipient **must** respond to that LEP individual in a language he or she understands.
- 4. Training of Staff on Policies and Procedures
  - a. Training on language access policies and procedures, including how to access language assistance services.
  - b. Mandatory for staff who have the potential to interact or communicate with LEP individuals, staff whose job it is to arrange for language assistance services, and managers.
  - c. Explain how staff can identify the language needs of an LEP individual, access and provide the necessary language assistance services, work with interpreters, request document(s) translations, and track the use of language assistance services.
  - d. Bilingual Staff Members
    - i. Those who communicate “in-language” to LEP individuals, or who serve as interpreters or translators, should be assessed and receive regular

training on proper interpreting and translation techniques, ethics, specialized terminology, and other topics as needed.

5. Providing Notice of Language Assistance Services
  - a. **Must** inform LEP individuals of their eligibility for benefits, programs, and services in a language they understand.
  - b. Applicants or beneficiaries of your programs or services should receive notice and information about available language assistance services.
    - i. Use of effective, program specific notices such as:
      1. Forms,
      2. Brochures,
      3. Language access posters placed in conspicuous locations describing in multiple languages the availability of language assistance services,
      4. "I Speak" language identification cards, and
      5. By including instructions in non-English languages on telephone menus.
6. Monitoring, Evaluating, and Updating the Language Access Policy Directives, Plans, and Procedures.
  - a. A recipient **must** periodically monitor, evaluate, and update the plan, policies, and procedures.
  - b. Monitoring the effectiveness of your program may include:
    - i. Surveying staff on how often the use language assistance services, if they believe there should be changes in the way services are provided or the providers that are used, and if they believe that the language assistance services in place are meeting the needs of the LEP communities in the service area.
    - ii. Conducting customer satisfaction surveys of LEP applicants and beneficiaries based on their actual experience of accessing the recipient's benefits, programs, information, or services
    - iii. Observing and evaluating recipient interactions with LEP individuals
    - iv. Soliciting feedback from community-based organizations and other stakeholders about the recipient's effectiveness and performance in ensuring meaningful access for LEP individuals
    - v. Keeping current on community demographics and needs by engaging school districts, faith communities, refugee resettlement agencies, and other local resources
    - vi. Considering new resources including funding, collaborations with other agencies, human resources, emerging technology, and other mechanisms for ensuring improved access for LEP individuals.

- vii. Monitoring the recipient’s response rate to complaints or suggestions by LEP individuals, community members, and employees regarding language assistance services provided.

Developing Language access policy directives, implementation plan, and procedures:

1. Language Access Policy Directives – set forth standards, operating principles, and guidelines that govern the delivery of language appropriate services.
  - a. *General Policy Statement*
    - i. “It is the policy of [] to provide timely meaningful access for LEP person to all recipient programs and activities. All personnel shall provide free language assistance services to LEP individuals whom they encounter or whenever and LEP person requests language assistance services. All personnel will inform members of the public that language assistance services are available free of charge to LEP persons and that the recipient will provide these services to them.”
  - b. *Purpose and authority*
    - i. “The purpose of this policy is to establish effective guidelines, consistent with Title VI of the Civil Rights Act of 1964 and Executive Order 13166, for recipient personnel to follow when providing services to, or interacting with, individuals who have Limited English Proficiency (LEP). Following these guidelines is essential to the success of our mission to[...].”
  - c. *Language assistance Measures*
    - i. Sets forth standards for language assistance services to be provided to LEP individuals.
  - d. *Staff Compliance*
    - i. The responsibility of each division, unit, or staff member.
  - e. *Definitions*
    - i. Bilingual Staff
    - ii. Interpreter
    - iii. Language Assistance Services
    - iv. LEP
    - v. Primary Language
    - vi. Translation
    - vii. Vital Documents
  - f. *Staff Training*
    - i. May dictate the frequency, curriculum, and target personnel for ongoing training.
  - g. *Bilingual Staff*
    - i. State bilingual characteristics are desired



- f. How staff will procure in-person interpreter services.
- g. How staff will access telephone or video interpreter services
- h. How to use bilingual staff for LEP services and which staff are authorized to provide in-language service
- i. How to obtain translations of documents
- j. How staff will process language access complaints.

### **Frequently Asked Questions about the Protection of Limited English Proficient (LEP) Individuals under Title VI of the Civil Rights Act of 1964 and Title VI Regulations**

#### 1. Why are LEP individuals protected from national origin discrimination under Title VI?

The Supreme Court decided over three decades ago that a federal fund recipient's denial of an education to a group of non-English speakers violated Title VI and its implementing regulations. *Lau v. Nichols*, 414 U.S. 563, 569 (1974)<sup>[1]</sup>. As the Court explained, “[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by” Title VI regulations. *Id.* at 568; see also *id.* at 570-71 (Stewart, J., concurring in result).

#### 2. Does the failure by a recipient to provide meaningful access to LEP persons constitute national origin discrimination?

Since the Supreme Court’s decision in *Lau*<sup>[2]</sup>, other courts have found that the failure by a recipient to provide meaningful access to LEP persons constitutes national origin discrimination. See, e.g., *Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999)<sup>[3]</sup> (holding that English-only policy for driver’s license applications constituted national origin discrimination under Title VI), *rev’d on other grounds*, 532 U.S. 275 (2001); *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003)<sup>[4]</sup> (holding that allegation of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI).

#### 3. Do Department of Justice (DOJ) Title VI implementing regulations prohibit both intentional discrimination and practices that have a discriminatory impact?

Yes. DOJ’s Title VI implementing regulations prohibit not only intentional discrimination but also facially neutral practices that have a discriminatory impact, see 28 C.F.R. §42.104(b)(2). The “failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities” may constitute national origin discrimination. U.S. Dept. of Justice, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455, 41,457 (June 18, 2002).



4. Do other federal agencies have Title VI regulations that prohibit both intentional discrimination and practices that have a discriminatory impact?

Yes. Federal agencies have implemented Title VI regulations that follow the DOJ regulations and have consistently construed Title VI's prohibition on both intentional and disparate-impact discrimination to require that recipients of federal financial assistance provide meaningful access for LEP persons. See, e.g., 28 C.F.R. §42.405(d)(1); Department of Health and Human Services (HHS) Notice, 35 Fed. Reg. 11,595 (1970); 45 Fed. Reg. 82,972 (1980); Executive Order 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

<sup>[1]</sup> [Lau v Nichols 414 U.S.563 \(1974\)](#)

<sup>[2]</sup> *Id.*

<sup>[3]</sup> [Sandoval v. Haqan, 197 F.3d 484, 510-11 \(11th Cir. 1999\)](#)

<sup>[4]</sup> [Almendares v. Palmer, 284 F. Supp. 2d 799, 808 \(N.D. Ohio 2003\)](#)

## Diversity Commitment Preferred Criteria in Hiring

Committee Composition:

Chair: Lindsay Smart, Director for Leadership, HSC DEI, [LSmart@salud.unm.edu](mailto:LSmart@salud.unm.edu)

1. Kathy Agnew - Assistant Vice President, Human Resources, [agnewk@unm.edu](mailto:agnewk@unm.edu)
2. Jason Galloway - Associate Controller, [JGalloway@salud.unm.edu](mailto:JGalloway@salud.unm.edu)
3. Gail Hammer - Senior Quality Administrator, [ghammer@unmmg.org](mailto:ghammer@unmmg.org)
4. Elizabeth Hutchison - Associate Vice President of Equity & Inclusion, [ehutch@unm.edu](mailto:ehutch@unm.edu)
5. Austin Megli - Strategic Support Manager, [amegli@unm.edu](mailto:amegli@unm.edu)
6. Brandi Stone - AASS Director of Student Services, [bcw29@unm.edu](mailto:bcw29@unm.edu)

### Issue and Research Overview

UNM demonstrates its commitment to diversity, equity, and inclusion through UNM Division for Equity and Inclusion, UNM Staff Council's Diversity, Equity, and Inclusion Committee, resources for Underrepresented Minority Graduate Students, Diversity Education, and numerous groups focused on assuring diversity, equity and inclusion initiatives are present throughout the university. This includes UNM's Health Sciences, which has an established Health Sciences Office for Diversity, Equity & Inclusion, and an HSC Inclusive Excellence Council (IEC).

The UNM Division of Student Affairs and the Student Affairs Core Values further demonstrate an institutional commitment to diversity, equity and inclusion:

Student Affairs Core Values (<http://studentaffairs.unm.edu/who-we-are/mission.html>)

- Academic Success: recruitment, retention & graduation, career development

- Leadership: accountability, opportunity, sustainability
- Community: civility, health & safety, respect
- Excellence: diversity, equity, integrity

Faculty Handbook (FHB) Policy A20 includes the value statements:

- To **offer New Mexicans access** to a comprehensive array of high quality educational, research, and service programs,
- **Diversity Within the Academic Community:** The University **values the diversity of its students, faculty, staff,** and the other people with whom it interacts.

Health Sciences Vision and Mission include:

- Vision: To make more progress in New Mexico's health and **health equity** than any other state, in collaboration with community partners.
- Mission 6. Nurture and embrace an **environment of diversity, integrity, and transparency**
- Respect and compassion for all people add in from the HSC webpage.  
<https://hsc.unm.edu/about/vision-mission-values.html>
- 2040 strategic plan has aligned diversity, equity and inclusion mission statement

The 22 documents identified in the table below, reflecting recruitment and hiring policies, procedures and/or guidelines at UNM have been identified. There may be other documents, however, these are the documents that have been found to date. The table is color coded to reflect which stakeholder group in a general sense (Faculty, Staff, or other), the document applies to.

	Document Owner	Blue highlight reflects Recruitment and Hiring documents for Faculty Orange highlight reflects Recruitment and Hiring documents for staff Green highlights reflect other applicability as noted	Document Type	Effective Date/ Last Update
1.	Board of Regents Policy Manual	6.2 Hiring, Promotion and Transfer This policy applies to all staff employees of the University, but does not apply to faculty, athletic coaches, or student employees	Policy	9/12/1996
2.	Board of Regents Policy Manual	5.3 Employment of UNM Graduates This policy applies to regular members of the University faculty.	Policy	12/09/2020
3.	Board of Regents Policy Manual	2.3: Equal Opportunity, Affirmative Action, Anti-Harassment and Anti-Retaliation	Policy	8/13/2019

		This policy applies to all University students, employees, and applicants.		
4.	University Administrative Policy	3210: Recruitment and Hiring This policy describes recruitment and hiring policies and employment restrictions for all University staff employees.	Policy	12/5/2018
5.	University Administrative Policy	2720: Prohibited Discrimination and Equal Opportunity (Interim) This policy covers nondiscrimination in both employment and access to educational opportunities. Any member of the UNM community who acts to deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the UNM community, guest, or visitor on the basis of actual or perceived membership in a protected class is in violation of this policy. This policy applies to the programs and activities of UNM, to conduct that takes place on the campus or on property owned and controlled by UNM, a UNM sponsored events, or in buildings owned or controlled by UNM or UNM's recognized student organizations. This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to UNM work or educational programs including cyber harassment	Policy	8/14/2020
6.	University Administrative Policy	3110: Reasonable Accommodation for Employees, Job Applicants and Participants with Disabilities Under the ADA, the University must provide reasonable accommodations to qualified individuals with a disability who are applicants for employment, active employees, and beneficiaries of University programs, services, and activities, as described in this policy.	Policy	2/20/2019
7.	Faculty Handbook	Faculty Handbook C-20 Employment of Graduates Prohibits hiring of candidates with terminal UNM degrees in positions "which may lead to permanent tenure" at UNM and establishes procedures for the administrative review and approval of standard exceptions to this prohibition.	Policy	11/28/2017
8.	Faculty Handbook	Faculty Handbook C-30 Employment of Relatives	Policy	1/08/2008
9.	UNM Office of Compliance, Ethics, and Equal	Staff Hiring Audit Instructions and Tips	Instructions	2018

	Opportunity (CEEO)			
10.	UNM Office of Compliance, Ethics and Equal Opportunity (CEEO)	Internal Auditing Checklists - Faculty Hiring - UNM Jobs	Checklist	1/24/2014
11.	UNM Office of the Provost & EVP for Academic Affairs	Preferred Qualification Memo For faculty appointments This memo applies to Main and Branch Community College tenure-track faculty hires.	Memo	6/13/2014
12.	Office of Faculty Affairs & Services, UNM Office of the Provost & EVP for Academic Affairs	Faculty Hiring Guidelines These guidelines apply to Main and Branch Community College tenure-track faculty hires.	Guidelines	Not Provided
13.	Office of Faculty Affairs & Services, UNM Office of the Provost & EVP for Academic Affairs	Faculty Hiring Procedures These guidelines apply to Main and Branch Community College tenure-track faculty hires.	Procedures	Not Provided
14.	HSC Faculty Contracts Office	Key Hiring Guidelines	Guidelines	2/21/2018
15.	HSC Faculty Contracts Office	Faculty Hiring Guidelines	Guidelines	7/27/2011
16.	Health Sciences	HSC Implicit Bias Training Policy 111 All voting members of faculty and staff search committees within UNM Health Sciences	Policy	8/02/2020
17.	UNM Hospitals	HR 340- Staff Recruitment and Hiring Policy For all hospital employees	Policy	9/04/2019
18.	SRMC	Pre-Employment Policy 2.7 For all SRMC employees	Policy	1/1/2020
19.	Medical Group	MG Recruitment and Hiring Policy 3310 For all UNMMG employees	Policy and Procedures	04/01/2019
20.	Health Sciences Library and Informatics Center	Staff Recruitment and Hiring Guidelines and Recruitment Form HSLIC Staff	Guidelines	Not provided
21.	Health Sciences Library and Informatics Center	Faculty Recruitment & Hiring Guidelines and Recruitment Form HSLIC Faculty	Guidelines	Not provided
22.	Health Sciences Library and Informatics Center	Student Employee Recruitment & Hiring Guidelines and Recruitment Form HSLCI Students	Guidelines	Not provided

## **Best Practices Based on #1**

Recruitment and hiring best practices, including the foundational requirements for diversity commitment preferred criteria in hiring should be standardized for all UNM's various stakeholder groups (faculty, staff and students).

To improve diversity, equity, and inclusion in hiring practices at UNM we need to reduce variation in the system. Clear, well-articulated requirements need to flow down from the highest-level documents. How those requirements are fulfilled may vary due to entity or stakeholder group, but the overriding requirements must be executed enterprise wide. Reducing the number of Recruitment and Hiring documents by identifying and synthesizing best practices will produce better clarity and compliance. Regular audits can then occur providing knowledge for leaders in process effectiveness and allowing outcomes to be better analyzed and understood.

## **Draft Policy**

Scope: This policy applies to all UNM Workforce (e.g., faculty, staff, student employees)

Content: A position announcement outlines the responsibilities of the position and desired skills, experience, and abilities to complete a job effectively, but it also communicates the values of UNM. As such, the following language will be added to all postings for faculty, staff, and student employee positions as a Preferred Qualification: "A demonstrated commitment to diversity, equity and inclusion and student success, as well as well as working with broadly diverse communities." The Hiring Official and Human Resources staff shall be responsible for enforcement and verification that this language has been included in the position announcement.

## **Reporting Tool possibilities if applicable**

1. Compliance Reviews and Internal Audits: The plethora of recruitment and hiring documents has made the Audit Function of the hiring and recruitment practices difficult at best. Thus, no recent audit results regarding adherence to diversity, equity, and inclusion requirements have been provided. Without compliance reviews and audits and a clear understanding whether requirements are being met, leaders do not have the knowledge as to what is working well, not working or needed improvements or training. A diversity, equity, and inclusion compliance review and internal audit should be established and implemented to provide knowledge of recruitment and hiring requirement effectiveness.

## **Recommendations**

1. A process document needs to be created for this policy.

2. The definitions section in the policy needed to define what is a “demonstrated commitment to diversity, equity, and inclusion.”
  - a. Local guidance or administrative documents by employment area about what demonstrated commitment to diversity, equity, and inclusion look like.
  - b. Hiring checklists need to be created with specific links as well as checklists need to be developed for each type of hire (e.g., faculty, staff, student employee).
3. Prevention of human error in editing of the preferred qualifications need to consider how this can be made more formalized in the job posting creation system.
  - a. Institute placement of statement of commitment to diversity, equity, and inclusion on the UNMJobs webpage (near the EEOC statement at bottom of page).
4. Search or recruitment training needed for faculty, staff, and student employees
5. Consider whether exemptions are possible (needed?) for certain hiring grades
6. Standardized minimum set of hiring process requirements that all must do as related to how demonstrate commitment to diversity, equity, and inclusion.
7. Gaps. Regents Policy 6.2 *Hiring, Promotion and Transfer* clearly states it does not apply to faculty, athletic coaches or student employees and points to UAP 3210 for Recruitment and Hiring of the university workforce but does not point to a similar FHB policy for recruitment and hiring of faculty. In addition, the Regents Policy Manual (RPM) does not address recruitment, except the one requirement in Regents Policy 2.3 Equal Opportunity, Affirmative Action, Anti-Harassment, and Anti- Retaliation, which forbids unlawful discrimination of any type in Recruitment and Hiring, thus leaving a gap in highest level document hierarchy guidance.
8. Staff. Since the UAPPM provides the highest-level documents relative to recruiting and hiring Staff, and University Administrative Policy 3210 provides dozens of requirements that guide the recruitment and hiring practices throughout the enterprise, it is a clearer document hierarchy for subsequent recruitment and hiring staff documents. Yet, few staff related recruitment and hiring documents (found lower in the document hierarchy) reference the UAPPM policies and their requirements.