

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

GUIDELINES AND APPROVAL PROCESS FOR POLICIES AT PUBLIC INSTITUTIONS REGARDING EXCEPTIONS FOR CERTAIN CONTRACTS UNDER THE CONFLICT OF INTERESTS ACT

Effective Date: June 1, 2015

Authority

§ 2.2-3106(C) of the State and Local Government Conflict of Interests Act of the *Code of Virginia* defines several exceptions to § 2.2-3106(A), which prohibits an officer or employee of a state-government agency or Eastern Virginia Medical School from having “a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment”.

Within the contract exceptions defined in § 2.2-3106(C), Subparagraph 8 permits, subject to approval by the relevant board of visitors and under four requisite conditions, “an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest”. One of the four requirements is a public institution’s establishment of “**a formal policy regarding such contracts, approved by the State Council of Higher Education**”. (Appendix A contains the full statutory language.)

Purpose

The State Council of Higher Education, in accordance with § 2.2-3106(C)(8) and the resolution approved by Council on January 14, 2014 (see Appendix B), provides these guidelines to public institutions to facilitate consistency in the format and contents of institutions’ policies relative to § 2.2-3106(C)(8) and to delineate the Council’s process for receipt, review and approval of these contract-exception policies.

Guidance on Policy Format and Contents

The policy of a public institution of higher education regarding the matter of contract exceptions covered by § 2.2-3106(C)(8) of the *Code of Virginia* should include generally, and in an order and format consistent with the institution’s other policies:

1. The title of the policy
2. A statement of the policy’s purpose
3. An attestation of the policy’s compliance with applicable laws
4. An attestation of the policy’s approval by SCHEV, with date
5. A glossary of terms and definitions
6. An outline of the process for request of the exception
7. An outline of the process for institutional review and action on the exception request, including any delegation by the board of approval authority; any appeal process; etc.
8. An identification of responsible parties (i.e., office and/or position responsible for maintenance of the policy; monitoring of the process; dissemination and explanation of the policy)
9. An FAQ (or similar informational) section (e.g., research-related contracts not covered by this exception and policy; the relevance of economic-interest statements)

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Guidance on SCHEV Approval Process

Pursuant to § 2.2-3106(C)(8), a public institution of higher education must have its relevant contract-exception policy approved by the State Council of Higher Education for Virginia (SCHEV). This guidance document represents the Council's delegation of authority to the SCHEV director for staff review and approval of public-institution policies relative to § 2.2-3106(C)(8).

To secure SCHEV approval, an institution should transmit: (i) its policy; and (ii) a cover letter from its chief executive officer that attests to its policy's compliance with all relevant laws and policies. These documents should be transmitted in digital form (the mailing of paper copies is optional) as separate files attached to an electronic message to the SCHEV director and/or the SCHEV director of policy studies.

SCHEV staff will acknowledge receipt, initiate prompt review (which may involve consultation with institutional staff) and communicate approval (or disapproval), the date of which should be reflected subsequently on the institution's policy. This approval will be communicated to Council at its next regular meeting as an item delegated to staff.

Any update, revision or change to an institution's policy will necessitate a new review and approval by SCHEV, and the date(s) of policy amendment and SCHEV re-approval should be noted as such on the policy document.

APPENDIX A

Code of Virginia

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Title 2.2. Administration of Government

Subtitle I. Organization of State Government

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Part E. State Officers and Employees

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Chapter 31. State and Local Government Conflict of Interests Act

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Article 3. Prohibited Conduct Related to Contracts

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§ 2.2-3106. Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School

A. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment.

...

C. The provisions of this section shall not apply to:

...

8. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education or the Eastern Virginia Medical School prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before December 15; **(iii) the institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education** or, in the case of the Eastern Virginia Medical School, a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its board of visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth [emphasis added].

APPENDIX B

Council resolution approved January 14, 2014:

BE IT RESOLVED that the State Council of Higher Education for Virginia grants approval of the Virginia Commonwealth University policy, "Procedures for Compliance with the Virginia State and Local Government Conflict of Interest Act Prohibited Contracts Exception" as amended by the VCU Board of Visitors on May 21, 2004. This approval is in effect for a period of two years, **pending development of a SCHEV policy to provide guidelines to institutions governed by § 2.2-3106(C)(8)** [emphasis added].

Council resolution approved May 19, 2015:

BE IT RESOLVED that the State Council of Higher Education for Virginia, in order to facilitate public institutions' compliance with § 2.2-3106(C)(8) of the *Code of Virginia*, approves and enacts "Guidelines and Approval Process for Policies at Public Institutions Regarding Exceptions for Certain Contracts Under the Conflict of Interests Act", and in so doing, delegates authority to the SCHEV director to review and approve or disapprove such institutional policies.