

BOWLING GREEN STATE UNIVERSITY

Sponsored Programs and Research

Policies:

Frequently Asked Questions

Table of Contents

CHAPTER ONE	
Introduction	1
CHAPTER TWO	
CONFLICT OF INTEREST AND COMMITMENT:	
Financial Interest	2
CHAPTER THREE	
CONFLICT OF INTEREST AND COMMITMENT:	
Commitment to Employer	5
CHAPTER FOUR	
INTELLECTUAL PROPERTY:	
Ownership	8
CHAPTER FIVE	
COMPANIES COMMERCIALIZATION BGSU IP:	
Involvement	11

Introduction

Statement of General Policy

Bowling Green State University actively encourages and participates in interaction with both the public and private sectors as an important component of its research, education, and public service activities. The University encourages the recruitment, retention, and recognition of individuals with creative abilities who can contribute to building a strong research environment, to developing technology and transferring it to the marketplace as well as to productive involvement with the private and public sectors consistent with the employees' primary commitment to the University.

Individuals involved in such interactions might engage in activities that could result in possible conflicts with state law and university regulations. It is necessary for the institution to have in place certain policies to guide this activity and to protect itself and its employees.

Activities supported by grants and contracts from public and private entities provide a valuable source of funds and equipment for the University. Professional interactions with public entities and private businesses advance the University's ability to provide a high quality research and educational experience for students and enhance employment opportunities for students. University licensing of technology, assisting in new business start-ups, and other forms of technology transfer to both public and private entities are critical to meeting society's needs. The University is committed to fostering the welfare of the State of Ohio through interaction by the University with other public and private entities.

Policies that support such activities are found at the following website:
<http://www.bgsu.edu/offices/spar/policies-procedures/>

These include:

- Commercialization of BGSU Products
- Conflict of Interest Policy
- Copyright Policy
- Invention Disclosure
- Patent Policy
- Supplemental Pay

Conflict of Interest and Commitment

Financial Interest

What is the purpose of this policy?

The policy is intended as a safeguard to protect you and the institution from engaging in activities that violate Ohio law, university regulations, and that might jeopardize the integrity of both you and the university.

The intention is to protect the integrity of the design, conduct, and reporting of project activities by effectively managing, reducing, or eliminating those significant financial interests which cause or appear to cause conflict of interest on the part of the investigator. To accomplish this, it is necessary for the institution to have in place a process by which conflicts of interest may be determined and, if they do exist, such conflicts can be managed.

Need for this policy is based on statutory requirements for Public Officials in Ohio and on federal mandate as of October, 1990. The Ohio Revised Code (ORC 2921.42 aka criminal code) forbids any Public Official (defined as "...any elected or appointed officer, or employee, or agent of the state..." ORC 2921.01) from having an unlawful interest in a public contract.

What constitutes a "conflict of interest?"

A conflict of interest occurs when an employee compromised his/her professional judgment in carrying out University teaching, research, outreach, or public service activities because of an external relationship that directly or indirectly affects the significant ***financial interest*** of the employee, an immediate family member, or any associated entity.

According to the Academic Charter, there are two types of conflict situations in research and consulting: favoring outside interests and consulting for government agencies in the same field as one might seek funding.

Is the disclosure of potential conflicts of interest only required for external grants and contracts?

Beginning in 1990, all federal agencies began to require institutions that received federal funding to develop and adopt policies to identify and manage possible conflicts of interest. Most institutions took this opportunity to revise and refine existing policies and required disclosure of possible conflict of interest on any request for research or sponsored program support sent from their universities.

Does BGSU require disclosure on all external proposals?

When employees are involved with transferring technology through patents, copyrights covered by the Copyright Policy, or licensing to a business in which the employee has a significant financial interest or other external relationships covered by this policy, the employee must disclose the financial interest to the Vice Provost for Research.

When submitting a paper for publication, an employee must disclose to the editor any significant financial interest that may be affected by the publication. This provision also applies to release of information to the media.

Is the disclosure only required for federal grants?

Disclosure of potential conflicts of interest is required by BGSU for ALL external grants and contracts, including, but not limited to, proposals to federal, state, and local government agencies, private and corporate foundations, contracts with private industry, and in the case of student internships.

What constitutes a "significant financial interest?"

For the purposes of the Conflict of Interest Policy, a financial interest is significant, and thus disclosure is required, when the interest in a business by an employee or by an immediate family member exceeds \$10,000 in annual income of all types, or when there is equity of ownership interest valued at five (5) percent or more. Disclosure is also required when an extended family member holds a financial interest valued at ten (10) percent or more in an external entity.

A financial interest is an interest in an external entity consisting of: (1) any stock, stock option, or similar ownership interest in such business, but excluding any interest arising solely by reason of investment in such business by a mutual, pension, or other institutional investment fund over which the employee does not exercise control; or (2) receipt of, or the right or expectation to receive, any income from an external entity whether in the form of a fee (e.g., consulting), salary, allowance, forbearance, forgiveness, interest in real or personal property, dividend, royalty derived from the licensing of technology or other processes or products, rent, capital gain, real or personal property, or any other form of compensation, or any combination thereof.

POLICIES: FREQUENTLY ASKED QUESTIONS

Who are immediate family members?

Immediate family includes the employee's spouse or domestic partner and children who qualify as dependents for tax purposes.

Who are extended family members?

Extended family of an employee includes children who do not qualify as dependents for tax purposes, parents and siblings.

Can a potential conflict of interest arise only from financial interests?

There is also potential for a conflict of interest when an employee, or any family member, serves on the board of directors or the advisory board of a business, or holds an executive position in a business. This does not mean that direct involvement in a company is necessarily precluded. But, service on boards or in executive positions does create the potential for a conflict of interest. Thus, it is imperative that service in these capacities be disclosed, and, if necessary, appropriate steps taken to ensure that the employee's professional judgment is not compromised.

Will a potential conflict of interest prevent me from submitting my proposal?

No.

At the time of submission of a proposal, any potential conflicts are identified. Once alerted, the Office of Sponsored Programs will initiate the process as described in the Academic Charter. Before the award is accepted, the chair/dean/Vice Provost for Research will determine if the conflict can be appropriately managed.

Conflict of Interest and Commitment

Commitment to Employer (Conflict of Commitment)

What is a conflict of commitment?

A conflict of commitment could arise from consulting activities if such activities interfered, or appeared to have potential to interfere, with an employee's University responsibilities. For faculty this would encompass research, teaching, and service. For staff this would encompass those responsibilities outlined in the employee's job description. For students this would encompass those responsibilities outlined in their employment contracts or assistantships, as well as regulations governing maintenance of acceptable academic standards.

Can I teach at another institution if it does not interfere with my BGSU schedule?

It is inappropriate and in most circumstances presents a conflict of interest for full-time faculty members to become employed by other external organizations to teach courses.

Prior approval is needed from the Provost/VPAA before such commitments are made.

How does the university's "Conflict of Interest Policy" affect faculty consulting and supplemental pay?

A faculty member is permitted to engage in a reasonable amount of consultation or other work, or to have business interests outside the University, provided that such activities do not interfere with the person's University responsibilities. In light of the Conflict of Interest policy, such consulting activities also need to be disclosed in order for the University to determine if a conflict of interest may exist, and what action should be taken.

Can I seek or obtain external grants or contracts which will provide me with supplemental pay?

Only under exceptional circumstances may BGSU faculty receive supplemental pay directly from grants and contracts. Grant and contract funded work is considered to be part of routine faculty assignments at BGSU. Normally, faculty must first use grant and contract awards to REPLACE time and salary for standard allocations for research and service. Next faculty must seek to be released from teaching responsibilities. Finally, faculty must consider whether such activities could also be conducted in the summer and use the grant or contract award for summer salary. In most cases, only after at least these circumstances have been explored will supplemental pay from grants and contracts be considered.

When should I begin to pursue requests for supplemental pay as a result of an external grant or contract?

You should submit your request at the time you submit the external grant or contract. Failure to make timely requests for supplemental pay consideration could jeopardize the proposed project in the event that it is awarded and sufficient resources are not available to fully execute the project.

May I work outside the university, as a consultant?

“A faculty member is permitted to engage in a reasonable amount of consultation or other work, or to have business interests outside the university, provided that such activities do not interfere with the person’s university commitments.

“Established policy is that, on average, no more than one day per week be contributed to outside interests. Sporadic or short-term arrangements shall be reported to the member’s departmental Chair or school Director. Contractual relationships also shall be endorsed by the Dean of the candidate’s college.” (Academic Charter B-II.E.2.b)(1))

If I am working as a private consultant, may I use my university office, university equipment, and BGSU students?

NO.

If university resources are required to complete such work, this project is no longer a consultancy but becomes a sponsored research project and must conform to the university regulations pertaining to sponsored programs.

Since my consulting work is “outside” the institution, it really has no impact on BGSU, does it?

Outside consulting agreements may contain language regarding claims to discoveries or other intellectual property that may be in direct conflict with obligations made by the institution or the sponsors of previously conducted research. Such language might also impact future research and discoveries yet to be made. When in doubt about conflicting language or unusual terms of agreement, contact the SPAR office for immediate assistance.

Intellectual Property

Ownership

What is intellectual property?

Discoveries, inventions, patents and products of Bowling Green State University:

Intellectual property is comprised of the legal rights in patents, copyrights, trademarks, trade secrets, know how, and other ideas, expressions, formulas, or other products of the mind.

Who owns the intellectual property at BGSU?

Pursuant to Section 3345.14 of the Ohio Revised Code, and as a condition of university employment, all right, title and interest in discoveries or inventions, including patents thereon resulting from any research or investigation conducted in whole or in part in any laboratory or facility of BGSU, shall be the sole and exclusive property of BGSU. Assignments or waivers of such rights, titles and interests may be made by BGSU to external sponsoring agencies or others, as provided in BGSU's Patent Policy.

What is the Bayh-Dole Act and what does it have to do with university technology?

The Bayh-Dole Act is a federal law enacted July 1, 1981 that provides intellectual property guidelines for universities engaging in technology commercialization. Among its directives are the following:

- Universities may elect title to inventions developed through federal funding;
- Universities must file patents on inventions they elect;
- Universities must have written agreements with faculty and staff requiring disclosure and assignment of inventions; Universities must share a portion of [invention] revenue with the inventors;
- Excess revenue must support research and education;
- Federal government retains non-exclusive license to the invention;
- Government retains march-in rights;

- Preference must be given in licensing to small businesses;
- There is a requirement for substantial U.S. manufacture.

Patents, copyrights—they're basically all the same, right?

Although there may be some similarities among these kinds of intellectual property protection, they are different and serve different purposes.

What is a patent?

A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions. Under certain circumstances, patent term extensions or adjustments may be available.

Who is an inventor?

For the purposes of intellectual property, “inventorship” is a legal concept of patent law defined as: one who conceived, or contributed to the conception of, a solution to a problem, and the means to that solution. Someone is not considered an inventor if they are merely performing experiments at the direction of another and not participating in the conception.

BGSU inventors could include faculty, staff and students

How do I disclose an invention?

Timely disclosure is very important. The university’s “Invention Disclosure” form is found at http://www.bgsu.edu/offices/spar/policies_procedures/.

Once you have completed the form, deliver it to the SPAR office where it will be dated and time stamped marking the beginning of the patent process.

Where does it go from there?

Once the invention disclosure has been dated and time stamped, the document is scanned and sent electronically to all of the members of the Patent Advisory and Technology Development Oversight Committee (PATDOC) for review.

Within two weeks, the committee is called to meet and discuss the disclosure, and if enough information is provided through the disclosure and presentation by the faculty member to the committee, a recommendation to the Vice Provost for Research may be made. The committee may request further development and later consideration, or that further information be supplied before a recommendation can be made.

Who pays for the patent?

BGSU offers two options: a faculty member may elect to pay all expenses involved in patenting and licensing the invention, or the faculty member may elect to have the institution pay all fees. Royalties are distributed according to an established schedule.

In either case, final decision to patent is made by the President of the university based on recommendation by the Vice Provost for Research and General Counsel.

I have an invention I thought up over the weekend in my basement. Why can't I patent this myself?

You probably can IF the invention is outside the scope of and totally unrelated to your line of research or any work for which you are funded. The burden of proof is on you to provide convincing evidence that this invention did not require the use of any university resources or concepts from your research.

What is a copyright?

Copyright is a form of protection provided to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. The 1976 Copyright Act generally gives the owner of copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies or phonorecords of the copyrighted work, to perform the copyrighted work publicly, or to display the copyrighted work publicly.

Software and rights to on-line courses comprise a great deal of the activity at BGSU.

Who retains rights to the copyright?

Ownership of copyrighted materials is retained by university faculty, staff and students in the matters of publications. The university retains ownership in the cases where such material is "work for hire", works substantially assisted by the university, works done under a sponsorship agreement with an external agency, and works contributed to the university.

Who reviews university copyright disclosure?

The Copyright Committee formed by the Vice Provost for Research reviews and makes recommendations in the cases where the university retains ownership of copyrights.

Commercialization

Companies Commercializing BGSU's IP: Involvement

How does the university's "Conflict of Interest Policy" affect the university's policy governing the commercialization of intellectual property?

The University is obligated by State of Ohio law to protect intellectual property resulting from the research of faculty, staff and students, and to promote its full development and public use. §3345.14 of the Ohio Revised Code states that

All rights to and interests in discoveries or, inventions, including OR patents thereon, which result from research or investigation conducted in, OR BY EMPLOYEES OF, any experiment station, bureau, laboratory, or research facility, OR OTHER FACILITY of any state college or university shall be the sole property of such college or university. No person, firm, association, corporation, or governmental agency which uses the facilities of such college or university in connection with such research or investigation and no faculty member, employee, or student of such college or university participating in or making such discoveries or inventions, shall have any rights to or interests in such discoveries or inventions, including income therefrom, except as may, by determination of the board of trustees of such college or university, be assigned, licensed, transferred, or paid to such persons or entities

Why does BGSU have this policy?

The policy is in response to the passage of Senate Bill 286, which was signed into law on June 7, 2000. The modifying bill aims to increase Ohio's competitiveness in the high-tech business and research environment. Under the new law it will be easier for state college or university employees to have a financial interest in companies based on research they developed.

Why was a modification of the law adopted?

Ohio law limited the amount of equity that faculty or research scientists at public institutions could own in a technology start-up. In addition, universities found the law confusing and subject to various and inconsistent interpretations. SB286 expands the ownership rights and interests of state colleges and universities over products of research or investigation to include (1) products of research or investigation conducted in any facility of the institution and (2) products of research or investigation conducted by employees acting within the scope of their employment with funding, equipment, or infrastructure provided by or through the institution. It allows the Board of Trustees of state colleges and universities to adopt rules setting forth the circumstances under which employees may acquire financial interests in companies to which the colleges and universities have assigned, licensed, transferred, or sold rights to the products of the employees' research or investigation.

What is a commercialization company?

A commercialization company is a private, commercial entity that is owned in whole or in part by a university employee and that has as its purpose, the development and commercialization of university owned intellectual property created by that employee.

What about employee-owned intellectual property? Does the Commercialization Policy apply in those circumstances, too?

The policy applies only to BGSU employees and students engaged in research and development activities who create intellectual property owned by BGSU and desire to hold ownership interest in a commercialization company.

Who is responsible for ensuring that faculty, center members, and staff members who participate in commercialization comply with applicable university policies?

Chairs, Center Directors, and Staff supervisors are responsible for ensuring that their faculty, center members, and/or staff members comply with the applicable university policies. These policies include those governing terms and conditions of employment, and academic and research activities. Chairs, Center Directors, and Staff supervisors are also responsible for ensuring compliance with the policies on consulting and conflict of interest, and for reviewing and making recommendations as to the propriety of private business activities as reported by their faculty or staff in disclosure forms required by those policies.

What are the responsibilities of faculty and staff seeking to engage in commercialization activities based on their research?

Faculty and staff must ensure that their interest in a financial opportunity arising out of their research efforts NOT result in a potential for either conflict of interest or conflict of commitment

to the institution, or the misuse of students, employees or other resources of the university, for the benefit of the company. Authorized private business activities must be undertaken in accordance with the BGSU policy on consulting and pursuant to formal consulting and conflict of interest management plans, signed by the faculty, the commercialization company, and the university, and approved by the department chair, center director, Vice Provost for Research, Office of Sponsored Programs and Research, and the General Counsel.

Can students be employed by a commercialization company in which a faculty member has an ownership interest?

Students may be employed by a commercialization company, subject to the limitations below. PRIOR TO THE EMPLOYMENT the student, the faculty or staff member, the chair of the student's department and/or school or center director, the chair of the graduate studies committee, and a company representative must sign an agreement disclosing the student's rights and obligations.

A student MAY NOT be employed by a commercialization company in which a faculty member has an ownership interest if:

- 1) the student is enrolled in a course taught by the faculty member;
- 2) the faculty member is a member of the student's thesis or dissertation committee; or
- 3) the faculty member is the student's advisor or the director of his or her thesis or dissertation research.

Such students may perform research benefiting a commercialization company only pursuant to a sponsored research agreement or other formal internship agreement through the university.

Can faculty or staff hold management positions in commercialization companies?

As a general rule: "NO." While they may initially find it necessary to play a management role in the newly formed company, it is expected that their management responsibilities will decrease as the company develops. Professional management should be brought in at the earliest opportunity. In order to ensure the application of this principle, agreements between BGSU and a commercialization company should contain enforceable milestones for the reduction of these management responsibilities.

SPONSORED PROGRAMS AND RESEARCH

Policies: Frequently Asked Questions

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