



## **Section E: Research**

February 16, 2017

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# E10: Classified Research Policy

## *Policy*

*Approved by the University Faculty on March 13, 1973*

This document concerns the rights and obligations of faculty members and students insofar as they relate to research done on the UNM campus. Consideration of faculty members' and students' rights and obligations as consultants to off-campus agencies, individuals, or other parties is specifically excluded.

It is recognized that, in certain areas of research, the association of faculty members with off-campus facilities has provided access to expensive and sophisticated types of equipment not available at the University and has consequently contributed toward the training and development of students. However, in order to preserve as open a University society as possible, faculty members should attempt to obtain support for unclassified research.

1. In preservation of academic freedom, the right of every faculty member to solicit, conduct or participate in privately and governmentally sponsored research of his/her choice is recognized, whether such research is classified or not, so long as it is within the limits of existing University of New Mexico policies as detailed in the *Faculty Handbook*. Sponsored research at the University of New Mexico is justified only when it contributes toward the professional development of the faculty and also provides opportunities for the development of students. Classified research is no exception to the validity of these two criteria. Consequently, when a research project is proposed, the University, on behalf of the proponents and/or principal investigators-to-be, will inform the potential sponsor of UNM's policies relating to classified research. Simultaneously, the University will request from the potential sponsor unrestricted dissemination of the procedures and the results of the research. In the event of denial of such request by the potential sponsor, the proponents will still be free to proceed with the implementation of the contract, so long as it is not in violation of the following guidelines.

2. Students may participate in research projects of their interest, whether classified or not, within the limits of UNM policies, but they may not use classified data for course credit, theses or dissertations. If a student intends to use material from a classified project for her/his thesis or dissertation, the supervising faculty member must advise her/him that he/she will not be permitted to use any data that would cause the thesis or dissertation to be restricted from dissemination. Dissemination is interpreted to mean "availability to anyone without restriction."

3. With the exception of the Campus Security Office, the existence on campus of areas restricted because of classified research is prohibited.

4. In the event that a conflict arises concerning the interpretation of existing University policies and rules with respect to classified research, an appeal will be heard by the chairperson of the Research Policy Committee and the Vice President for Research. At their discretion, they may request the Research Policy Committee to appoint an ad hoc committee to further deal with the problem. If the conflict cannot be resolved, the route of further appeals would be the President and the Regents.

# E20: Overseas Research: Guidelines

## *Policy*

The following statement, formulated by Education and World Affairs, was adopted in its entirety by the University Faculty on December 12, 1967, as official policy in matters pertaining to the overseas research of the University and its faculty members. The topic sentences of the EWA Guidelines are reproduced below. The full statement is on file in the Office of the University Secretary.

1. The universities must assume an active and effective role in providing safeguards and setting high standards for U S. study and research undertakings overseas.
2. The university must take the lead in insisting on the rule of candor and full disclosure in connection with all overseas research.
3. The university should reject covert funding of overseas research and at the same time press for an enlargement in the grant-making capacity of those government agencies which are not part of the military and intelligence complexes. It should seek to assure that faculty members applying for funds are aware of the full range of possibilities, public and private.
4. The university should use all available means to assure that suitable academic quality standards are met with respect to overseas research projects and the scholars who will carry them out.
5. The university should seek to assure that the overseas research of its faculty members enhances the American academic presence abroad and projects the best qualities of our educational community. It can do so partly by encouraging its scholars who are going abroad to take active account of the other country's developmental needs in education and research.
6. The university should lend its support to the strengthening of our educational representation abroad as a basis for more effective cooperation with the academic communities of other countries.
7. Through its graduate faculties and professional schools, the university should begin to build into the training of students an appreciation of the types of problems that are involved in overseas research.

# E40: Research Misconduct

## *Policy*

*(Research Fraud Policy approved by UNM Faculty Senate, September 10, 1996; approved by the UNM Board of Regents, October 10, 1996; revised as "Research Misconduct Policy" approved by the UNM Faculty Senate, April 23, 2002; approved by the UNM Board of Regents, May 10, 2002; approved by the Faculty Senate, April 22, 2003 and February 24, 2004; approved by UNM Board of Regents, April 13, 2004.)*

## **1. INTRODUCTION AND SCOPE**

Integrity, trust, and respect are important elements in an academic research environment. Investigators typically conduct research and explain findings and theories with painstaking diligence, precision, and responsibility. However, research misconduct threatens both to erode the public trust and to cast doubt on the credibility of all researchers.

Because the University of New Mexico as well as the general public and government are affected by this issue, the faculty and administration have created a process to deal with research misconduct if it arises and to ensure the credibility and objectivity of research activities. In broad terms this process is to:

- Ensure that ethical standards for research at UNM are clearly stated and applied.
- Promptly inquire into allegations of misconduct and, where appropriate, initiate formal investigations and advise sponsors of action taken.
- Ensure that each investigation is properly documented to support findings and carefully conducted to protect any person whose reputation may be placed at risk during the process.
- Respect the principles of academic freedom.

The policy and procedures regarding research misconduct are intended to protect the integrity of the University's research enterprise and not hinder the search for truth or interfere with the expansion of knowledge.

This policy applies to all individuals who may be involved with a research project, including, but not limited to, faculty, graduate/undergraduate students, staff, employees, contractors, visiting scholars, and any other member of the University's academic community.

## **2. DEFINITIONS**

**2.1** "Complainant" means a person who makes an allegation of research misconduct. There can be more than one complainant in any inquiry or investigation.

**2.2** "Fabrication" is making up data or results and recording or reporting them.

**2.3** "Falsification" is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

**2.4** "NSF" means the National Science Foundation. The NSF has adopted rules establishing standards for institutional responses to allegations of research misconduct.

**2.5** “ORI” means the Office of Research Integrity, an office within the U.S. Department of Health and Human Services that is responsible for overseeing the implementation of PHS policies and procedures on research misconduct.

**2.6** “PHS” means the Public Health Service, a component of the U.S. Department of Health and Human Services. The PHS has adopted rules establishing standards for institutional responses to allegations of research misconduct.

**2.7** “Plagiarism” is the appropriation of another person’s ideas, processes, results or words without giving appropriate credit.

**2.8** “Recklessly” means that a person acts in such a manner that the individual consciously disregards a substantial and unjustifiable risk or grossly deviates from the standard of conduct that a reasonable individual would observe.

**2.9** “Research misconduct” is defined as fabrication, falsification or plagiarism in proposing, conducting, reporting or reviewing sponsored or unsponsored research. The misconduct must have been committed intentionally, knowingly or recklessly. Research misconduct is further defined to include gross carelessness in conducting research amounting to wanton disregard of truth or objectivity, or failure to comply or at least attempt to comply with material and relevant aspects of valid statutory or regulatory requirements governing the research in question. Research misconduct is more than a simple instance of an error in judgment, a misinterpretation of experimental results, an oversight in attribution, a disagreement with recognized authorities, a failure in either inductive or deductive reasoning, an error in planning or carrying out experiments, or a calculation mistake.

**2.10** “Respondent” means the person against whom an allegation of research misconduct is directed or the person who is the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation.

### **3. GENERAL PRINCIPLES**

**3.1** Research misconduct cannot be tolerated and will be firmly dealt with when found to exist.

**3.2** For purposes of resolving allegations of research misconduct, the process established by this policy shall apply to allegations of fabrication, falsification or plagiarism. All other allegations of research misconduct shall be resolved utilizing other applicable University policies and procedures.

**3.3** Charges of research misconduct shall be promptly reviewed and a copy of this policy shall be made available to the complainant. Allegations must be made in writing, and signed and dated by the complainant. If health or safety is involved, prompt remedial action shall be taken.

**3.4** Every effort shall be made to protect the rights and the reputations of everyone involved, including the individual who in good faith alleges perceived misconduct as well as the alleged violator(s). A good faith allegation is made with the honest belief that research misconduct may have occurred. Persons making a good faith allegation shall be protected against retaliation. However, persons making allegations in bad faith will be subject to disciplinary action, up to and including termination or expulsion. An allegation is made in bad faith if the complainant knows that it is false or makes the allegation with reckless disregard for or willful ignorance of facts that would disprove it.

**3.5** All members of the University community are expected to cooperate with committees conducting inquiries or investigations.

### **3.6 Confidentiality**

Care will be exercised at all times to ensure confidentiality to the maximum extent possible and to protect the privacy of persons involved in the research under inquiry or investigation. The privacy of those who report misconduct in good faith will also be protected to the maximum extent possible. Files involved in an inquiry or investigation shall be kept secure and applicable state and federal law shall be followed regarding confidentiality of personnel records.

### **3.7 Conflict of Interest**

If the Provost, the Vice Provost for Research, or Vice President for Health Sciences, as appropriate, has any actual or potential conflict of interest, the persons shall recuse themselves from the case. The President of the University shall appoint designates to act instead.

When a case continues to the Inquiry and Investigation stages (Sections 5.3 and 6.3), if the President of the Faculty Senate has any actual or potential conflict of interest, the person shall recuse him/herself from the case and the Senate President-Elect shall appoint a designate to act instead.

If any member of the Faculty Senate Operations Committee or the Chair of the Research Policy Committee has any actual or potential conflict of interest, the persons shall recuse themselves from the case. The Faculty Senate President, or designate as appropriate, shall appoint faculty members to act instead.

## **4. PRELIMINARY ASSESSMENT OF ALLEGATIONS**

**4.1** An initial report of alleged research misconduct shall be treated and brought in a confidential manner to the attention of the faculty member or other person (e.g., chairperson, supervisor, director, principal investigator) responsible for the researcher(s) whose actions are in question, or to the dean of the researcher's college, or to the Vice Provost for Research (for allegations concerning a main campus researcher) or Vice President for Health Sciences (for allegations concerning a HSC researcher). The person receiving the initial report shall, in turn, make an immediate confidential report of the allegations to the Vice Provost for Research or Vice President for Health Sciences, as appropriate.

**4.2** An initial report of research misconduct might arise as part of an administrative review. Such a report will be acted upon in accordance with this policy. The report should be brought confidentially to the Vice Provost for Research or Vice President for Health Sciences, as appropriate.

**4.3** Upon receipt of an initial report of alleged research misconduct, the Vice Provost for Research or Vice President for Health Sciences, or designee, shall conduct a preliminary assessment within seven (7) working days. The purpose of the preliminary assessment is to determine whether the allegation falls within the definition of research misconduct and whether there is sufficient evidence to warrant an inquiry. If both conditions are met the inquiry process shall be initiated. If the allegation is vague, an effort should be made to obtain more information before deciding whether there is sufficient evidence to warrant an inquiry. If the preliminary assessment finds insufficient information to allow specific follow-up or the allegation falls outside the definition of research misconduct, the matter will not proceed to an inquiry, and the Vice

Provost for Research or Vice President for Health Sciences shall so inform the respondent and complainant in writing. The allegation may be referred for review under another University policy, as appropriate.

## **5. INQUIRY**

### **5.1 Purpose and Initiation**

If the preliminary assessment reveals that the allegation falls within the definition of research misconduct and there is sufficient information to allow specific follow-up, the inquiry process shall be initiated by the Vice Provost for Research or Vice President for Health Sciences, as appropriate. The initiating official will clearly identify the original allegation and any related issues that should be evaluated in the inquiry. The purpose of the inquiry is to make a preliminary evaluation of the available evidence to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct occurred. The findings of the inquiry shall be set forth in an inquiry report.

### **Securing Research Records**

After determining that an inquiry will occur, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, will direct the process whereby all original research records (or copies if originals cannot be located) and materials which may be relevant to the allegation are immediately secured. Prompt securing of records is in the best interests of both the respondent and UNM. Immediately upon ensuring that the research records are secure, the respondent shall be notified that an inquiry is being initiated and an inventory of the secured records shall be provided him/her. As soon as practicable, a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record is taken if not the respondent, if requested. The respondent shall be notified of the charges and the procedures to be followed.

### **Inquiry Committee**

The inquiry shall be carried out by a committee of three persons appointed by the Vice Provost for Research or Vice President for Health Sciences, as appropriate, in consultation with the President of the Faculty Senate, or his/her designate. At least two Inquiry Committee members shall be tenured faculty. One of the tenured faculty members shall chair the committee. Committee members should be selected on the basis of relevant research background and experience. Faculty members from other universities may be named to the Inquiry Committee if a sufficient number of qualified UNM faculty members are not available. Members of the committee shall have no actual or potential conflicts of interest in the case, shall be unbiased, and shall, together, possess sufficient expertise to enable the committee to conduct the inquiry.

The respondent and the complainant shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Vice Provost for Research or Vice President for Health Sciences, as appropriate, in consultation with the President of the Faculty Senate, or his/her designate, will



consider the objection and if it has merit, shall make appropriate substitution(s). In the case of disagreement regarding appointments, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall designate an official to assist the committee in conducting the inquiry. The committee shall receive a written charge from the Vice Provost for Research or Vice President for Health Sciences, as appropriate, defining the subject matter of its inquiry prior to beginning its work.

### **Inquiry Process**

The respondent and complainant shall be given an opportunity to interview with the Inquiry Committee. The committee may interview others and examine relevant research records, as necessary, to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. University legal counsel shall be available to the committee for consultation.

The length of the inquiry shall not exceed sixty (60) days unless prior written approval for a longer period is obtained from the Vice Provost for Research or Vice President for Health Sciences as appropriate. If the period is extended, the record of the inquiry shall include documentation of the reasons for exceeding the sixty-day period.

### **Inquiry Report**

The Inquiry Committee shall prepare a report that includes:

- (1) the names and titles of the committee members, and experts consulted, if any;
- (2) the allegations;
- (3) the PHS support, if any;
- (4) a summary of the inquiry process;
- (5) a summary of the evidence reviewed;
- (6) a summary of any interviews;
- (7) the conclusions of the inquiry as to whether an investigation is recommended; and
- (8) whether any other action should be taken if an investigation is not recommended.

The respondent shall be given fourteen (14) days to review the report and to add his or her comments, which will become part of the final inquiry report and record. Based upon the respondent's comments, the Inquiry Committee may revise its report.

### **Inquiry Determination**

The Inquiry Committee final report will be sent to the Vice Provost for Research or Vice President for Health Sciences, as appropriate, who will determine whether the results of the inquiry provide sufficient evidence of possible research misconduct to warrant conducting an investigation or whether the matter will not be pursued further. The respondent and complainant shall be notified in writing of the decision.

## **6. INVESTIGATION**

### **6.1 Purpose and Initiation**

The purpose of the investigation is to explore the allegations in detail, examine the evidence in depth, and determine specifically whether research misconduct has been committed, by whom, and to what extent. If instances of possible misconduct involving a different respondent are uncovered, the matter should be sent to the Vice Provost for Research or Vice President for Health Sciences, as appropriate, to initiate a preliminary assessment.

The Investigation Committee will be appointed and the process initiated within thirty (30) days after the conclusion of the inquiry. If required by sponsoring agency regulations, the office of the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall notify the agency of its decision to commence an investigation on or before the date the investigation begins.

### **Securing Research Records**

Any additional pertinent research records that were not previously sequestered during the inquiry will be immediately sequestered when the decision is made to conduct an investigation. The Vice Provost for Research or Vice President for Health Sciences, as appropriate, will direct this process. This sequestration should occur before or at the time the respondent is notified that an investigation will begin. The need for additional sequestration of records may occur for any number of reasons, including a decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. As soon as practicable, a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record is taken if not the respondent, if requested.

### **6.3 Investigation Committee**

The investigation shall be conducted by a committee of five persons appointed by the Faculty Senate Operations Committee, in consultation with the Chair of the Research Policy Committee or his/her designate. Committee members should be selected on the basis of relevant research background and experience. All persons appointed from UNM shall be tenured faculty. Tenured faculty members from other universities or senior researchers from research institutions may be named to the Investigation Committee if a sufficient number of qualified UNM faculty members are not available. Members of the committee shall have no actual or potential conflicts of interest in the case, shall be unbiased, and shall, together, possess sufficient expertise to enable the committee to conduct the investigation. No more than two members of the Inquiry Committee may be appointed to serve on the Investigation Committee.

The respondent and the complainant shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Faculty Senate Operations Committee will consider the objection and if it has merit, shall make appropriate substitution(s), in consultation with the Chair of the Research Policy Committee or his/her designate. In the case of disagreement regarding appointments made by the Faculty Senate Operations Committee, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Vice Provost for Research or Vice President for Health Sciences shall

designate an official to assist the committee in conducting the investigation. The committee shall receive a written charge from the Vice Provost for Research or Vice President for Health Sciences, as appropriate, defining the subject matter of its investigation prior to beginning its work.

#### **6.4 Investigation Process**

The investigation will normally involve examination of all relevant documentation. The committee shall make diligent efforts to interview the complainant, the respondent, and other individuals who might have information regarding aspects of the allegations. The interviews will be recorded on a recording device provided by the office of the Vice Provost for Research or Vice President for Health Sciences as appropriate. A verbatim written record shall be made of all interviews. A transcript of his/her interview shall be provided to each witness for review and correction of errors, which shall be returned and become part of the investigatory file. University legal counsel shall be available to the committee for consultation.

#### **6.5 Investigation Report**

The Investigation Committee shall prepare a draft of the final report that includes:

- (1) the names and titles of the committee members, and experts consulted, if any;
- (2) the allegations;
- (3) the PHS support, if any;
- (4) a summary of the inquiry process;
- (5) a summary of the evidence reviewed;
- (6) a summary of any interviews;
- (7) findings and basis for each finding;
- (8) conclusion(s) as to whether research misconduct occurred; and
- (9) recommendations for institutional action.

Copies of all significant documentary evidence that is referenced in the report should be appended to the report.

A finding of research misconduct requires that four conditions be met:

- (1) the conduct at issue falls within this policy's definition of research misconduct;
- (2) the misconduct be committed intentionally, or knowingly, or recklessly;
- (3) there be a significant departure from accepted practices of the relevant research community; and
- (4) the allegation be proven by a preponderance of the evidence. This means that the evidence shows that it is more likely than not that the respondent committed research misconduct.

The respondent will be provided with a copy of the draft investigation report for review and comment. The respondent will be allowed fourteen (14) days for review and any comments will be attached to the final report. The findings of the final report should take into account the respondent's comments in addition to all of the other evidence. The complainant may be provided with those portions of the draft investigation report that address the complainant's role and opinions in the investigation, and the complainant will have fourteen (14) days to review and submit any comments to the Investigation Committee. The report may be modified, as appropriate, based on the complainant's comments.

If the Investigation Committee puts forward a final report with a finding of research misconduct, the respondent has 14 days to elect a hearing before the Provost or Vice President for Health Sciences, as appropriate. The hearing will allow for argument, rebuttal, cross-examinations and a written record of the proceedings.

## **6.6 Institutional Review and Determination**

The Investigation Committee final report will be forwarded to the Vice Provost for Research or Vice President for Health Sciences, as appropriate. The Vice Provost for Research will transmit the report to the Provost who is the University deciding official for cases where the respondent is not a Health Sciences Center employee. The Vice President for Health Sciences is the deciding official for cases where the respondent is a Health Sciences Center employee. The deciding official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions.

If the respondent has elected a hearing, the deciding official will conduct the hearing following the University model hearing procedure, available from the University Counsel's office. The Investigation Committee presents the case consistent with its report. The respondent presents the rebuttal. The respondent may have an advisor present.

The deciding official's decision should be consistent with the definition of research misconduct, the University's policies, and the evidence reviewed and analyzed by the Investigation Committee. The deciding official may also return the report to the Investigation Committee with a request for further fact-finding or analysis. The deciding official's final determination will be sent to the respondent and complainant. If the deciding official's decision varies from that of the Investigation Committee, the basis for rendering a different decision will be explained in the report to ORI and other agencies as appropriate.

Respondent may appeal the final determination to the University President. An appeal is limited to: (1) a claim of procedural error; and/or (2) a claim that the sanction imposed as a result of a finding of research misconduct is inappropriate.

The investigation shall be completed within 180 days of the first meeting of the Investigation Committee. However, if PHS sponsored the research, the investigation shall be completed, with the final investigation report and final determination submitted to ORI, within 120 days of the first meeting of the Investigation Committee, unless ORI grants an extension.

## **7. ACTIONS FOLLOWING INVESTIGATION**

### **7.1 Finding of Research Misconduct**

If the final determination is that research misconduct occurred, UNM shall take appropriate action, which may include but is not limited to:

- (1) notifying the sponsoring agency;
- (2) withdrawal or correction of all pending or published abstracts and papers emanating from the research;
- (3) removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, rank reduction or termination of employment in accordance with UNM policies and procedures. In cases involving faculty, implementation must be consistent with the Policy on Academic Freedom and Tenure;

- (4) determining whether law enforcement agencies, professional societies, professional licensing boards, collaborators of the respondent, or other relevant parties should be notified; and
- (5) any other steps deemed appropriate to accomplish justice and preserve the integrity of UNM and the credibility of the sponsor's program.

## **7.2 Restoration of Respondent's Reputation**

If the final determination is that no research misconduct occurred, efforts shall be undertaken to the extent possible and appropriate to fully protect, restore, or maintain the credibility of the research project, research results, and the reputation of the respondent, the sponsor and others who were involved in the investigation or deleteriously affected thereby. Depending on the circumstances, consideration should be given to notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in forums in which the allegation of research misconduct was previously publicized, expunging all reference to the research misconduct allegation from the respondent's personnel files, or reviewing negative decisions related to tenure or advancement to candidacy that occurred during the investigation. Any institutional actions to restore the respondent's reputation must first be approved by the Vice Provost for Research or Vice President for Health Sciences, as appropriate.

## **7.3 Protection of the Complainant and Others**

Regardless of whether UNM determines that research misconduct occurred, reasonable efforts will be undertaken to protect complainants who made allegations of scientific misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations. The Vice Provost for Research and Vice President for Health Sciences, or designee, will also take appropriate steps during the inquiry and investigation to prevent retaliation against the complainant. If a complainant believes that retaliation was threatened, attempted or occurred, he or she may file a complaint with the UNM Audit Department.

## **7.4 Allegations Made in Bad Faith**

If relevant, the Vice Provost for Research or Vice President for Health Sciences will determine whether the complainant's allegation of research misconduct was made in good faith. If an allegation was made in bad faith, appropriate disciplinary action will be taken in accordance with UNM policies and procedures. If the complainant is not associated with UNM, appropriate organizations or authorities may be notified and administrative or legal action considered.

## **8. OTHER CONSIDERATIONS**

### **8.1 Requirements for Reporting to ORI When Funding from PHS Is Involved**

**8.1.1** The decision to initiate an investigation must be reported in writing to the Director, ORI, on or before the date the investigation begins. The notification must include at a minimum the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved.

**8.1.2** If UNM plans to terminate an inquiry or investigation without completing all relevant requirements of the PHS regulation, a report of such planned termination shall be made to ORI, including a description of the reasons for the proposed termination.

**8.1.3** If UNM determines that it will not be able to complete the investigation within 120 days, a written request for an extension shall be submitted to ORI that explains the delay, reports on the progress to date, estimates the date of completion and describes other necessary steps to be taken. If the request is granted, UNM must file periodic progress reports as requested by ORI.

**8.1.4** UNM will keep ORI apprised of any developments during the course of an investigation that may affect current or potential Department of Health and Human Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.

**8.1.5** ORI shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:

- (1) there is an immediate health hazard involved;
- (2) there is an immediate need to protect federal funds or equipment;
- (3) there is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s)

who is the subject of the allegations as well as his/her co-investigators and associates, if any;

- (4) it is probable that the alleged incident is going to be reported publicly;
- (5) the allegation involves a public health sensitive issue (e.g. a clinical trial); or
- (6) there is reasonable indication of possible criminal violation in which case UNM must inform ORI within 24 hours of obtaining that information.

## **8.2 Requirements for Reporting When NSF Funding Is Involved**

**8.2.1** The decision to initiate an investigation must be reported immediately in writing to NSF.

**8.2.2** NSF shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:

- (1) public health or safety is at risk;
- (2) NSF's resources, reputation, or other interests need protecting;
- (3) there is reasonable indication of possible violations of civil or criminal law;
- (4) research activities should be suspended;
- (5) federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or
- (6) the scientific community or the public should be informed.

**8.2.3** NSF shall be provided with a copy of the final investigation report.

**8.2.4** The inquiry shall be completed within 90 days and the investigation completed within 180 days of its initiation. If completion of an inquiry or investigation will be delayed, NSF shall be notified and may require submission of periodic status reports.

## **8.3 Interim Administrative Action**

UNM officials will take interim administrative actions, as appropriate, to protect federal funds and insure that the purposes of the federal financial assistance are carried out.

## **8.4 Termination of UNM Employment**

The termination of the respondent's UNM employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the misconduct procedures. If the respondent refuses to participate in the process after termination of employment, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the committee's review of all the evidence.

### **8.5 Record Retention**

All documentation of an inquiry that does not lead to an investigation shall be maintained in University Counsel Office files for at least three (3) years after the conclusion of the inquiry. All documentation of an investigation shall be maintained in University Counsel Office files for five (5) years after the end of the investigation. Documentation shall be provided to the sponsoring agency and ORI upon request or if required by the agency's regulations. Documentation shall be treated as confidential personnel information to the extent provided for by law.

### **8.6 Reimbursement**

If requested, the Board of Regents in the pursuit of justice and fairness may, in its sole discretion, fully or partially reimburse the respondent and/or the complainant for legal fees in cases of unusual hardship.

### **8.7 Federal Regulatory Changes**

If PHS, ORI, NSF or any other federal agency amends its requirements on research misconduct, those amendments shall govern where applicable and shall be incorporated into this policy by reference herein. Such changes in federal requirements shall supersede all relevant portions of this policy.

### **8.8 Revision**

The Faculty Senate is authorized to make minor technical and implementing modifications to the detailed Research Misconduct Policy subject to approval of the President of the University.

# E60: Sponsored Research

*(Approved by the Faculty Senate, October 27, 2015)*

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate.

## Policy Rationale

It is the policy of the University of New Mexico (UNM) to encourage faculty members to participate in research sponsored by outside agencies when such research is consistent with the basic aims of UNM in regard to the education of students, the extension of knowledge, and the broadening of man's horizon in the sciences, engineering, arts, and humanities. To ensure the most effective administration of UNM's sponsored research, this policy document provides policies and procedures for the submission of proposals, approval of research contracts and grants, budgeting of facilities and administrative (F&A) expenditures, and reporting of actual F&A expenditures.

## Policy Statement

1. The Vice President for Research (VPR) has been designated by the President as UNM's reviewing, certifying, and negotiation coordinating officer for all main-campus and branch-campus research proposals submitted to outside agencies. The Senior Executive Officer for Finance & Administration (SEOFA), Health Sciences Center (HSC), has been designated by the President as UNM's reviewing, certifying, and negotiation coordinating officer for all HSC research proposals submitted to outside agencies. The VPR and SEOFA HSC have also been designated the approval authority for any modifications to awards, in response to research proposals.

Final authority for accepting and signing research contracts and grants is vested in the President of UNM, and has been delegated as indicated in UAP Policy 2010, "Contracts Signature Authority and Review," University Administrative Policies and Procedures Manual.

2. On an annual basis the Vice President for Research shall consult with the Research Council of the UNM Faculty Senate to discuss research priorities of, and adjustments to, the F&A distribution algorithm for main-campus and branch-campus sponsored research. These discussions shall reflect input articulated to the Faculty Senate by its various committees and individual faculty members involved in sponsored research.

Similarly, on an annual basis, the Vice Chancellor for Research (VCR) shall consult with the HSC Council of the Faculty Senate and other HSC research committees concerning research priorities of, and adjustments to, the F&A distribution for HSC-sponsored research.

## Applicability

All academic and research UNM units, including the Health Sciences Center and Branch Campuses.



Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Policy and Operations Committee in consultation with the responsible Faculty Senate Committee listed in Policy Heading.

## Definitions

**Facilities and Administrative (F&A) Expenditures.** F&A expenditures reflect costs associated with providing and maintaining the infrastructure that supports the research enterprise (buildings and their maintenance, libraries, etc.) and which cannot easily be identified with a specific project. F&A expenditures are calculated using rates determined in conjunction with auditors from the applicable federal agency. The rate is calculated and charged as a percentage of modified total direct costs (MTDC).

**Sponsored Research:** Sponsored research shall be construed to include sponsored research, service, training projects, and other categories of awards for all except basic capital construction and maintenance projects.

## Who should read this policy

- Faculty and staff conducting sponsored research
- Members of the Faculty Senate and the Research Policy Committee
- Academic deans or other executives, department chairs, directors, and managers
- Administrative staff responsible for sponsored research management.

## Related Documents

*UNM Regents' Policy Manual*, **Policy 5.9** (<https://policy.unm.edu/regents-policies/section-5/5-9.html>) "Sponsored Research"

*Faculty Handbook*, **Policy E70** (</policies/section-e/e70.html>) "Intellectual Property"

*University Administrative Policies and Procedures Manual*

Policy 2010 "Contracts Signature Authority and Review,"

**Policy 2425** (<https://policy.unm.edu/university-policies/2000/2425.html>) "Recovery of Facilities and Administrative Costs"

*Office of the Vice President for Research*, "Proposal Development and Award Guide"

## Contacts

Direct any questions about this policy to Office of the Vice President for Research or the HSC Office of the Vice Chancellor for Research.

## Procedures

1. Faculty shall follow procedures for proposal preparation and submission as outlined, from time to time, in the procedures promulgated by the Office of the VPR, for main-campus and branch-campus sponsored research, and the VCR-HSC for HSC sponsored research.

1a. Faculty Research Support Services (FRSS), under the direction of the VPR, provides assistance to non-HSC faculty and staff by:

- Finding funding sources matching research interests and project development.
- Developing and preparing proposals (including budget).
- Navigating UNM's proposal process.
- Planning, coordinating, and supporting large and complex proposal efforts requiring numerous partnerships and multidisciplinary collaborations.

FRSS also acts as liaison between the sponsor agency and the faculty when requested to do so.

1b. The Office of the VCR- HSC provides services similar to those described in 1a above to HSC faculty and staff.

2. The office of the VPR will coordinate closely with the main-campus and branch-campus principal investigators and appropriate members of the Contract and Grant Accounting Office to ensure that the prior approval function, of modifying grant and contract budgets in force, is in accordance with the regulations of the sponsoring agencies or foundations. Similarly the office of the VCR-HSC will coordinate closely with the principal investigators and appropriate members of the HSC sponsored research management teams to ensure that the prior approval function, of modifying grant and contracts budgets in force, is in accordance with the regulations of the sponsoring agencies or foundations.

3. In consultation with the Provost, the OVPR, and the Faculty Senate Research Council, a formula (or algorithm) for the distribution of the main campus and branch campus F&A funds to units and centers, shall be developed by the OVPR and posted on the OVPR's website on an annual basis for main-campus sponsored research. The annual budget shall also be posted on the OVPR's website

Similarly, in consultation with the OVCR-HSC and the Faculty Senate HSC Council, a formula (or algorithm) for the distribution of the HSC F&A funds to units, centers, and institutes, shall be developed by the OVCR, approved by the Chancellor, and posted on the OVCR's website on an annual basis for HSC sponsored research. The annual budget shall also be posted on the OVCR's website.

4. Actual F&A distributions for main campus sponsored research, for each fiscal year shall be documented and posted on OVPR's website no later than three months after the end of the fiscal year. Similarly, actual F&A distributions shall be posted on the website no later than three months after the end of the fiscal year.

5. During the regular academic year when the contract or grant calls for released time from regular UNM duties, the basic nine-month salary from the instructional budget will be reduced proportionally. The released time will be compensated from contract or grant funds at the basic salary rate.

## History

### Effective:

October 27, 2015—Approved by the Faculty Senate

# E70: Intellectual Property Policy

## *Policy*

*Approved by the Faculty Senate 2/23/99 and the Board of Regents 6/8/99. Revisions to IPP Section 2.7 approved by the Faculty Senate on February 26, 2002; approved by the Regents May 10, 2002; Revision of entire policy approved by the Faculty Senate April 27, 2010; approved by the Regents September 14, 2010.*

## **Foreword**

In the course of conducting their University-administered activities, the faculty, staff, and students often create intellectual property that may be protectable by patent, copyright, or other means. The University wants a policy that encourages the treatment of such property in ways beneficial to the creators of such works, as well as to the University and to the public. To these ends, the University and the creators should assist each other in identifying, evaluating, protecting, and exploiting such property. Such efforts will also help in recognizing the creation of intellectual property as a significant academic achievement.

Accordingly, this Policy seeks to recognize such achievements; to provide advice and assistance to faculty, staff, and students; to promote a clear understanding of legal relationships; and to realize and optimize the benefits of potentially valuable intellectual property to the creators as well as to the University. A feature of this Policy is to encourage creators to perform key roles in the utilization of intellectual property.

This Policy governs the ownership, protection, and transfer of Scholarly/Artistic Works (as defined in Section 2.2) and Technological Works (as defined in Section 2.3) created by University faculty, staff, and students. Inventors and authors are referred to in this Policy as creators. It is the purpose of this Policy to encourage, support, and reward scientific research and scholarship, and to recognize the rights and interests of creators, the University, and the public.

However, the University's commitment to teaching and research is primary and this Policy does not diminish the right and obligation of faculty, staff, and students to disseminate research results for scholarly purposes. The latter is considered by the University to take precedence over the commercialization of Scholarly/Artistic and Technological Works.

## **Summary**

This summary of the Intellectual Property Policy is intended only as an aid to reading the Policy. Wording in the summary should not be relied upon as a substitute for the Policy.

1. The Policy applies to all University faculty, staff, and students, hereafter referred to as creators. (See Article 1.)
2. The University's commitment to teaching and research is primary, and the right and obligation of creators to disseminate research results for scholarly purposes takes precedence over the

commercialization of Scholarly/Artistic and Technological Works.

3. Faculty members working with students on research projects must inform students in advance of the terms of this Policy and of any obligations of nondisclosure or confidentiality.

4. All inventions, tangible research results, and artistic and literary works are subject to this Policy and to federal and state laws and regulations governing intellectual property. (See Sections 2.2 and 2.3.)

5. All Scholarly/Artistic Works are owned by creators unless they were created with substantial directed investment of University facilities or funds or capitalize on affiliation with the University. (See Section 2.2.)

6. Technological Works (inventions and tangible research results) that are owned by the University under this Policy are:

\* those created using University facilities or funds;

\* and those created without University facilities or funds but within the scope of the creators' employment (determined by the creators' recent teaching, research, or other University activities).

Exception is made for inventions and tangible research results that were assigned by creators to an outside entity pursuant to a consulting agreement that is consistent with other University policies (including conflict of interest) and that has received prior approval by the creators' department Chair and Dean or Unit Director. (See Sections 2.3, 2.4, and 2.5.)

7. The Policy is administered by the Provost or the Executive Vice President for Health Sciences for their, respective, reporting units. (See Article 3.)

8. Royalties from commercialization by STC.UNM (formerly known as Science & Technology Corporation @ UNM) (the main commercialization arm of the University) of inventions, tangible research results, and other types of intellectual property are allocated (see Section 2.6):

40% equally among the creators

40% to STC.UNM.

20% to the University.

9. Standard procedures for review are described in Article 4. 10. Appeal of University Ownership is covered in Article 5.

## **1 Scope**

This Policy applies to all University faculty, staff, and students (hereafter referred to as creators). Reference to this Policy should be made in the University's Business Policies and Procedures Manual as well as in the University's Pathfinder. Faculty members working with students on research projects must inform students in advance of the terms of this Policy and of any obligations of nondisclosure or confidentiality.

## **2 Rights in Scholarly/Artistic and Technological Works**

## **2.1 Commercialization**

The term Commercialization shall mean the entire process of gaining commercial value for intellectual property, from seeking intellectual property protection to licensure of, granting of access to, or sale of said intellectual property.

## **2.2 Scholarly/Artistic Works**

### **2.2.1**

Scholarly, artistic, literary, and musical works in any medium are collectively referred to as Scholarly/Artistic Works. This category includes all materials developed by faculty and other personnel directly involved in instruction.

### **2.2.2 All rights in Scholarly/Artistic Works are owned by the creators, with three exceptions:**

1) Works created by pre-arranged contractual obligation with substantial directed investment of University facilities or funds (exclusive of creators' salary) or in the performance of a written university work assignment or commission to create such a work. All rights in such works are owned by the University.

2) Works that capitalize on an affiliation with the University by explicit labeling of the work to gain a market advantage, beyond the noting of the creator's affiliation. Such uses of the University's name, seal, or logo are regulated by Section 1010 of the University Business Policies and Procedures Manual (see also Section 2.5). All rights in such works are owned by the University.

3) Works created under a sponsored agreement that requires rights to be relinquished to the sponsor.

## **2.3 Technological Works and Technical Information**

### **2.3.1**

The term Technological Works means all inventions, discoveries, and other innovations that are protectable by patents, copyrights, mask works, or other means. Innovations include, for example, computer programs, integrated circuit designs, databases, and other technical creations..

### **2.3.2**

The term Technical Information means all tangible and intangible research results, including data, graphs, charts, lab notebooks, technical drawings, biogenic materials, and samples..

### **2.3.3**

All rights in Technological Works and Technical Information created by University creators with the use of University facilities or funds administered by the University are owned by the University, with income from commercialization of Technological Works distributed in accordance with this Policy.

### **2.3.4**

All rights in Technological Works and Technical Information created by creators without the use of University facilities (with the exception of the University libraries) or funds administered by the University, but that fall within the creators' scope of employment (see Section 2.3.5) at the University are owned by the

University. However, the University ordinarily will assert no ownership rights or interests in the following two instances:

1) Technological Works and Technical Information created pursuant to outside employment (see the Faculty Handbook) under a consulting agreement between a faculty member and an outside entity in which Technological Works and Technical Information are assigned to said entity. The consulting agreement must be consistent with University policies, including conflict of interest policies, and must be disclosed in writing and agreed to by the creators' Chair and Dean or Unit Director in advance of execution of the consulting agreement. (Contracts in existence at the time of adoption of this Policy must be disclosed within sixty (60) calendar days.)

2) Technological Works and Technical Information created pursuant to independent research or other outside activity that is consistent with University policies, including conflict of interest policies, and that was disclosed in writing and agreed to by the creators' Chair and Dean or Unit Director at the beginning phase of this research activity.

### **2.3.5**

For purposes of this Policy, factors considered in determining the scope of a creator's employment normally shall include the relationship of the Technological Works and Technical Information to that creator's recent teaching, research, and other University activities, as well as activities stipulated in any appointment contract.

### **2.3.6**

Disagreements concerning ownership can be appealed as described below in Article 5.

## **2.4 UNM Intellectual Property (UNM IP)**

For purposes of this Policy, UNM IP means Scholarly/Artistic Works, Technological Works, or Technical Information deemed to be owned by the University. (See Sections 2.2 and 2.3.)

## **2.5 Use of UNM Name, Logos, or Trademarks**

Commercial use of the University's name, seal, logos, or trademarks requires prior written approval from the Office of the Vice President for Institutional Advancement or (for the logo) the Director of Marketing and Licensing in the Athletic Department. (See Section 1010 in the University Business Policies and Procedures Manual.)

## **2.6 Costs, Royalties, and Other Commercialization Income**

### **2.6.1**

In the case of collaborations between the University and outside entities, the provisions of Section 2.6 are applicable only to the ownership interests of the University.

### **2.6.2**

The University and/or the STC.UNM shall normally bear the costs they have elected to incur in securing protection for intellectual property (including evaluation, prior art searches, preparation, filing, and prosecution of any patent application, and issuance and maintenance of patents issuing therefrom) and commercializing said property, until said property is licensed, assigned, or otherwise commercialized.

### **2.6.3**

Prior to distribution of royalties (which, for purposes of this policy, are deemed to mean all income received by the University or the STC.UNM for a license of UNM IP, but does not include payments for research, development, or reimbursement of patent costs), the STC.UNM shall be reimbursed for all unreimbursed or non-contractually reimbursable costs incurred in securing intellectual property protection and any litigation costs.

### **2.6.4**

Royalties received by the University from commercialization of UNM IP by the STC.UNM shall be divided as follows:

- Forty percent (40%) to be divided equally (unless otherwise unanimously agreed to and represented on the submitted invention disclosure form) among the creators;
- Forty percent (40%) to the STC.UNM; and
- Twenty percent (20%) to the University to be invested and administered by the Vice President for Research (on main campus) or the Vice President for Research (at the Health Sciences Center (HSC)), generally, in amounts consistent with the source(s) of the UNM IP. Accrued revenues will be used, in consultation with faculty, to support University units involved in ongoing research and educational pursuits relevant to commercialization efforts or will otherwise be administered as required by sponsor(s).

### **2.6.5**

In any case where royalties shall be represented by shares of stock or other intangible assets, these assets shall be held in the name of the University or the STC.UNM and managed by them. At the discretion of the managing unit (the University or the STC.UNM), such stock or other intangible assets may be divided prior to liquidation and distributed in the proportions specified in Section 2.6.4.

## **2.7 Duties of Creators**

### **2.7.1**

All provisions of Section 2.7 apply to individual efforts of creators and to collaborative efforts with outside entities.

### **2.7.2**

The University's commitment to teaching and research is primary, and the right and obligation of creators to disseminate research results for scholarly purposes take precedence over the commercialization of Scholarly/Artistic and Technological Works.

### **2.7.3 Disclosure and Reporting Requirements Imposed by Agreements Sponsoring and Facilitating Research**

Sponsored research agreements often carry requirements that any inventions or other intellectual property created in the performance of the agreement must be reported to the sponsor. Such agreements often also impose other requirements pertaining to commercialization of such intellectual property. Upon execution of any sponsored research agreement, the Office of Research Services, or the HSC Pre-Award Office, as appropriate, shall inform the principal investigator of any such requirements pertaining to intellectual property resulting from the work. In addition to sponsored research agreements from industry and government, other agreements facilitating research may impose intellectual property disclosure requirements, such as grants, equipment loan and transfer agreements, and material transfer agreements.

When UNM IP results from work under an agreement creating reporting obligations to sponsors or other third parties, then the Principal Investigator shall be responsible for ensuring disclosure of the UNM IP to the University by submitting a Copyright or Invention Disclosure Form to STC.UNM. Such disclosures shall be made as soon as possible and at least within two months of creation.

The University, and in some cases, STC.UNM shall in turn report UNM IP to research sponsors and other third parties as required by federal and state laws and regulations, and by third party agreements of which the University or STC.UNM has been made aware.

#### **2.7.4. Voluntary Disclosure**

If the invention is not subject to third party disclosure obligations, then the creators have the choice as to whether to disclose the UNM IP to the University or to STC.UNM. Any disclosures shall be made on forms provided by the University or STC.UNM. Creators may consult with either the OUC or STC.UNM as to the advisability of disclosure. Creators who choose not to disclose their UNM IP have no obligation to participate in the commercialization process outlined herein. Creators who chose to disclose thereby agree to participate in the commercialization process outlined herein.

Creators may not commercialize UNM IP created by them except by following the procedures outlined herein.

#### **2.7.5**

During as well as after their association with the University, creators of UNM IP shall assist and cooperate with efforts by the University and STC.UNM to secure intellectual property protection and to pursue commercialization by executing all appropriate legal documents, including assignments, to perfect the University's legal rights.

**2.7.5.1** Creators shall make available to the University and STC.UNM all Technical Information necessary to support intellectual property protection.

**2.7.5.2** Creators may, at their discretion, retain a copy of any Technical Information to use in scholarly pursuits.

#### **2.7.6**



In the event the University or the STC.UNM takes legal action against a creator who refuses to execute necessary documents pertaining to disclosed UNM IP or otherwise fails to act in accordance with this Policy, any costs reasonably and necessarily incurred by the University and/or the STC.UNM as a direct result thereof shall be deducted from that creator's share of royalties.

### **3 Administration of the Intellectual Property Policy**

#### **3.1 Provost of the University**

The Provost, or designee, shall be responsible for the interpretation, implementation, and enforcement of this Policy on main campus; the Executive Vice President for Health Sciences, or designee, shall be responsible for the interpretation, implementation and enforcement of this Policy on the Health Sciences Center campus. The Provost and/or Executive VP for Health Sciences shall be responsible for University relations in areas where this Policy affects the University community, governmental authorities, private research sponsors, industry, and the public.

#### **3.2 Office of University Counsel (OUC)**

##### **3.2.1**

The OUC shall provide legal advice to the University on issues related to UNM IP.

##### **3.2.2**

The OUC is authorized with the prior approval of the Provost, Executive Vice President for Health Sciences and the RPC, to promulgate and publish information and procedures to implement this policy.

#### **3.3 STC.UNM (formerly known as Science & Technology Corporation @ UNM) (STC.UNM)**

##### **3.3.1**

STC.UNM was granted by the University a right to take assignment of UNM IP pursuant to a Memorandum of Agreement (MOA) between the University and the STC.UNM, for the purpose of active support by the STC.UNM for commercialization of UNM IP. The mission of the STC.UNM is to serve the University of New Mexico by facilitating University inventors' commercialization of UNM IP, increasing the University's non-governmental sponsored research, and contributing to economic development in New Mexico.

##### **3.3.2**

STC.UNM, among other duties as described in the MOA, pursues the licensing of UNM IP by assessing the market for the IP, selecting the best means to commercialize the IP, negotiating commercialization agreements, overseeing commercialization activity, and receiving and distributing royalties to creators and the University in accordance with this Policy.

##### **3.3.3**

The full text of the MOA can be obtained from the STC.UNM or the OUC.

### **4 Review of Disclosures and Commercialization**

The University and the STC.UNM shall expedite processing of reviews of disclosures and commercialization decisions.

#### **4.1 Review of Disclosures**

The specific implementation of the items under Article 4 will be determined under written regulations agreed upon by STC.UNM and the University.

##### **4.1.1**

The University or STC.UNM may require creators to consult with STC.UNM prior to publishing for a reasonable period not to exceed ninety (90) calendar days from the date of disclosure, in order to enable a sponsor or the University or STC.UNM to evaluate a UNM IP and determine whether to pursue any form of intellectual property protection. In some cases, STC.UNM may require creators to refrain from publishing certain materials within the said 90-day period. The University and the STC.UNM shall cooperate in accelerating commercialization review to enable creators to publish their work in theses and dissertations or to pursue patent protection in cases of statutory bars.

##### **4.1.2**

When the OUC has accepted an appropriately completed disclosure as specified in Section 2.7.3, the OUC shall forward a copy to the STC.UNM within one (1) week. The creators may submit disclosures directly to STC.UNM, in which case STC.UNM shall forward a copy to the OUC within one (1) week of receipt.

##### **4.1.3**

STC.UNM shall make a written determination as to whether or not commercialization is to be pursued within 120 calendar days from the date of disclosure of the IP to STC.UNM.

(a) If STC.UNM determines to pursue commercialization, it will make a decision about intellectual property protection within the 120 days from the date of disclosure delineated above.

(b) The STC.UNM may find the work described in the disclosure to be of significant interest, but insufficiently developed or documented for commercialization. In that case, the STC.UNM may recommend that the disclosure be returned to the creator(s), with suggestions for further development or requests for additional documentation. The creator(s) may then submit a new disclosure on the more fully developed or documented work.

(c) In certain cases, the STC.UNM may determine that a disclosure should be held in abeyance because further similar inventions are anticipated within nine (9) months. In such cases, the STC.UNM may delay processing the disclosure for up to nine (9) months, or even longer with the consent of the creator(s).

##### **4.1.4**

If no determination is made by the STC.UNM within the deadline, the creator(s) shall have the option of extending the deadline or of sending a written letter to the STC.UNM requesting a determination within ten (10) UNM business days. If the STC.UNM does not respond within this period or responds that it will not pursue commercialization the University shall release the intellectual property to the creator pursuant to Section 4.4.2 .

#### **4.1.5**

If, at any step during the process, both the University and the STC.UNM determine not to pursue the commercialization of a particular UNM IP, the University shall release the intellectual property to the creator, subject to sponsor approval. .

#### **4.1.6**

If the University or the STC.UNM shall have expended funds for prior art search and patent prosecution, reimbursement shall be in the manner described in Section 2.6.2 and 2.6.3 . .

### **4.2 Reporting**

Reporting Within twelve (12) months of a complete disclosure, and at 18 months and 24 months, respectively thereafter, the STC.UNM shall provide to the University and to each creator whose disclosure is in the hands of the STC.UNM a report detailing the current state of commercialization of the disclosure, including patenting, marketing, and licensing efforts. Any UNM creator may request and obtain from STC.UNM access to STC.UNM's current activity related to the disclosures for which he or she is the creator or co-creator.

### **4.3 Commercialization**

In the event the STC.UNM has not made a reasonable effort to commercialize the UNM IP within two (2) years of its decision to commercialize (as per Section 4.1.3 ), the University or the creator(s) may request the STC.UNM to return the UNM IP to the University. If the UNM IP is returned to the University, the University and the creator(s) will attempt to commercialize the UNM IP within a mutually agreeable period; if these efforts are unsuccessful, the creator(s) may require that the UNM IP be released to them, subject to sponsor approval.

### **4.4 Filing Deadlines**

#### **4.4.1**

At least 90 calendar days in advance, STC.UNM shall advise the University and the creator(s) of Technological Works of the following three deadlines:

- A statutory bar to filing a U. S. patent application or provisional application;
- Initiation of filing for foreign patent rights under the Patent Cooperation Treaty(PCT); and
- Entry into national status under the PCT. Any exceptions in meeting the 90-day deadline shall be promptly communicated by STC.UNM to OUC and the creators.

#### **4.4.2**

In the event STC.UNM does not intend to continue commercialization efforts and does not commit itself to meeting the above deadlines, the University shall release the intellectual property rights to the creator(s), subject to sponsor approval, within 30 days of STC.UNM's notification to the University.

## **5 Appeal of University Ownership**

### **5.1**

In the event a creator does not believe the University is entitled to the rights in a Work, the creator may seek a determination or a waiver of the University's interests in said Work. The OUC will provide the creator with a Determination of Rights Form which must then be completed and returned to the OUC, with all documents supporting the creator's claim. The OUC will forward a copy of the Form and supporting documentation to the STC.UNM for comments.

### **5.1.2**

The OUC shall forward the Determination of Rights Form with attachments and the OUC's and the STC.UNM's written comments (the "Record") to the Vice President for Research - main campus or Vice President for Research - HSC, as appropriate, who will form a three person advisory committee in consultation with the President of the Faculty Senate, or his/her designee. At least two advisory committee members shall be tenured faculty. One of the tenured faculty members shall chair the committee. Committee members should be selected on the basis of relevant research background and experience. The creator shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Vice President for Research - main campus or Vice President for Research - HSC, as appropriate, in consultation with the President of the Faculty Senate, or his/her designee will determine whether the objection has merit, and, if so, will make appropriate substitution(s). In the case of disagreement regarding appointments, the Vice President for Research - main campus or Vice President for Research - HSC, as appropriate, will make a final decision on the matter.

### **5.1.3**

The advisory committee will endeavor to review the Record and hear all evidence within thirty (30) calendar days of receipt of the Record and will issue a written recommendation to the Vice President for Research - main campus or Vice President for Research - HSC, as appropriate, within thirty (30) calendar days of hearing the last evidence. The committee will keep written minutes of all its meetings.

### **5.1.4**

The Vice President for Research - main campus or Vice President for Research - HSC will issue his/her ownership determination within thirty (30) calendar days of receiving the advisory committee's recommendation.

### **5.1.5**

Participation in an appeal of ownership as described herein does not prevent the creator from pursuing other remedies.

### **5.1.6**

The creator may appeal the ownership determination made by the VP for Research - main campus or the VP for Research - HSC to the Provost or Executive Vice President for Health Sciences (based on the department of the creator(s)) by written request to the Provost or Executive Vice President for Health Sciences within ten (10) UNM business days of receiving notice of the ownership determination. The Provost/EVP HSC will meet with all interested persons. Within sixty (60) calendar days of receiving the creator's written request, the Provost/EVP HSC will make a final decision.

### **5.1.7**

If the dispute involves rights in Works being claimed by the Provost/EVPHS, only the President shall have authority to review the ownership determination and make a final decision.

### **5.1.8**

If the dispute involves rights in Works being claimed by the President, only a designee of the Board of Regents shall have authority to review the ownership determination and make a final decision.

#### **5.1.8.1**

Nothing in this section is in derogation of the Regents' discretionary right of review.

### **5.1.9**

All materials produced by the creator and the University under this section shall be retained as a permanent University record. This record shall be made available by the OUC to any party upon consent of the owners of the intellectual property.

## **5.2 Determination of Inventorship or Authorship among Creators**

In the event individuals believe they are creators of UNM IP, and have not been adequately acknowledged as such at any point in the protection and commercialization process, they may petition the University or STC.UNM to assess their claim. The OUC will provide the petitioners with a Determination of Inventorship/Authorship Form which must be completed and returned with any relevant attachments for review. The University or STC.UNM will seek the opinion of outside patent counsel for determination. Any further inventorship or authorship dispute among creators shall fall outside the scope of this policy.

## **6 Related Provisions**

### **6.1 Flexibility**

The University may accept, on terms beneficial to the University, a voluntary assignment of a Scholarly/Artistic or Technological Work. It may waive, assign or grant (subject to the MOA with the STC.UNM) all or part of its rights in any Scholarly/Artistic or Technological Work under terms and conditions deemed appropriate and beneficial for the University.

### **6.2 Legal Actions**

The University or STC.UNM may take such action as it deems appropriate to defend or enforce any patent, copyright, or other intellectual property right. In the case of claims against the University, settlement of a claim or conduct of litigation shall be within the exclusive control of the University.

# E80: Conflict of Interest Waiver Policy for Technology Transfer

## *Policy*

*Approved by the Faculty Senate 8/24/99 and Board of Regents 10/12/99*

This Policy is adopted pursuant to § 21-28-25 NMSA 1978. Under certain circumstances this Policy will permit an officer or employee of the University to establish and maintain a substantial interest in private entity that provides or receives equipment, materials, supplies or services under contract with the University in order to facilitate the transfer of technology developed by the officer or employee from the University to commercial and industrial enterprises for economic development.

## **IMPLEMENTATION**

**1. Approval Authority.** The President of the University, or a designee of the President ("President"), may grant permission for an officer or employee of the University to establish and maintain a substantial interest in a private entity which contracts with the University for the purpose of providing goods and/or services to the University, or receiving goods and/or services from the University, in accordance with the following procedures. It is acknowledged that each request will be unique and therefore each request must be dealt with on a case by case basis at the discretion of the President.

**2. Application Requirement.** An officer or employee seeking the permission of the President in accordance with this policy, shall submit a written application for such permission to the President, with copies to the UNM Conflict of Interest Committee [the Committee], and to the Provost (main campus) or Vice President for Health Sciences (HSC). The application shall contain the following:

- a. A detailed description of the officer or employee's interest in the private entity
- b. A full description of the nature of the proposed undertaking.
- c. Factors that demonstrate that the proposed undertaking will benefit the economy of the State of New Mexico.
- d. Factors that demonstrate that the proposed undertaking will not adversely affect research public service or institutional activities at the University.
- e. Factors that demonstrate the officer's or employee's interest in the private entity or benefit from the interest, will not adversely affect any substantial interest of the State of New Mexico.

**3. Committee Recommendation.** The Committee shall issue its recommendation on the application to the President within one month of receipt of the application. Unless the Committee fails to issue a recommendation within the timeline, the President shall give full consideration to the Committee recommendation prior to issuing a decision.

**4. Approval Criteria.** If the President determines that the application meets the requirements stated above and that the proposed undertaking is in the best interest of, or does not adversely affect, the interest of the University and that it will benefit the economy of the State and not adversely affect research, public service or instructional activities at the University, nor adversely affect any substantial State interest, the

President may grant permission to the individual or entity as requested. As part of any approval, the President may impose such additional limitations or conditions on the approval as the President may deem appropriate.

**5. Advance Approval Required.** Such approval must be received prior to conducting or formally offering to conduct business with the University.

**6. Compliance with Law and UNM Procedures.** Permission granted by the President pursuant to this Policy authorizes the employee or officer to simultaneously hold an interest in a private entity and in a contract with the University that might otherwise be prohibited by conflict of interest laws or procedures. It does not, however, eliminate the requirement for any such contracts to be entered into and carried out in compliance with other federal and state laws, and University policies and procedures.

# E90: Human Beings as Subjects in Research

## *Policy*

The following operating policy governs the participation of human beings as subjects in research:

### POLICY AND PROCEDURES CONCERNING RESEARCH INVOLVING HUMAN SUBJECTS

*(Revised November 15, 1966)*

The University of New Mexico recognizes research as one of its chartered enterprises and shares with its individual faculty members responsibility for promoting and defending this activity when conducted under its auspices. The following policy is not intended to relieve the individual scientist of his/her ultimate responsibility for moral and ethical conduct nor to deny her/him the right to reasonable freedom of inquiry. The policy does make explicit the criteria, largely self-evident, by which the propriety of an action should be judged; the procedure is designed to protect the University (including faculty, students and the administration) against alleged violation of these criteria.

## **Policy**

1. In considering the participation of humans as subjects, the guiding principle is that no one should be exposed to risk to health or well-being without being given all reasonable protection and without being adequately informed.
2. In general, the purpose of the study, the procedures to be followed, and the possible risks involved must be explained to the subject. The investigator must be satisfied that the explanation has been understood, and consent must be obtained without duress or deception. Such an explanation may be postponed or even omitted where there are no risks to the subject, and a full account of the purposes and procedure in advance might bias the results.
3. It is the responsibility of the individual investigator to have adequate knowledge of the possible consequences of his research, or of research done under his direction.
4. Whenever possible, any hazards to health or well-being of each procedure must first be investigated with animals.
5. Whenever medication or physical intervention is used, or whenever the subject is exposed to unusual environmental conditions, proper protection and supervision must be provided.
6. The individual's personal privacy and the confidentiality of information received from her/him must be protected.
7. An individual's time should not be invaded to the extent that the participation creates conflict with other obligations.
8. Remuneration may be offered for the time involved in a study, provided the remuneration is not so large as to constitute an improper inducement to participate.
9. Any individual may request termination of his/her participation at any time and this request will be honored promptly and without prejudice.



10. The review procedures as described below are intended to help maintain a positive attitude toward scientific research. Unless there are reliable indications to the contrary, all University of New Mexico faculty members are presumed to behave responsibly, and all experimental subjects should be willing to contribute to the advancement of knowledge, provided their personal rights are respected.

## **Procedures**

The policy described above shall be implemented as follows.

1. Several Human Research Review Committees shall be established in the manner described below:

(a) The dean of each school or college, or the chief administrative officer of each UNM division or agency involved in research of this type, is directly responsible that a Human Research Review Committee exist to evaluate proposals which may come from her/his faculty or professional staff.

In carrying out this responsibility, the administrative officer may establish a Human Research Review Committee to serve his/her particular school, college or agency. Or, if deemed desirable and feasible, she/he may cooperate with another dean or administrative officer in setting up a joint committee to serve more than one group. (In any case, any proposed research involving human beings as subjects would have to be reviewed in advance by some Human Research Review Committee.)

(b) The number of persons to serve on a Human Research Review Committee, the term of office, and the type of faculty representation on such a committee would be at the discretion of those responsible for establishing these committees. However, each Human Research Review Committee must include in its membership one or more persons outside the college, school, or agency it specifically serves. Projects involving investigational new drugs (INDS) must be reviewed by a committee quorum that includes not less than two members who are licensed to administer drugs, and one who is not so licensed.

2. The Human Research Review Committees shall evaluate procedures against the Policy described above and the specific standards described in item 4 below, as well as such additional standards as may be appropriate to the research area. In so doing, they shall call upon specialists, including, where appropriate, consultants not on the University faculty, and may interview the investigator and his/her staff. Decisions shall be reached in executive session by the MANN rule (majority aye, no nay).

3. Each Human Research Committee shall maintain formal records of its decisions for at least five years. It shall receive and, where deemed appropriate, verify reaffirmations by the researcher that her/his methods are essentially unchanged and that no adverse consequences have occurred. Such reaffirmation must be made at six-month intervals, although the committee may require more frequent reporting on some research and may make inspections or take such other actions as found necessary to insure compliance with the policy and procedures herein stated.

4. The investigator shall be responsible for obtaining approval from a Human Research Review Committee prior to conducting any research involving human subjects. Application for approval is submitted in the form of a memorandum approved by the department chairperson or other appropriate person and must contain complete and explicit information concerning each of the following:

(a) Name of the responsible faculty member.

(b) Name(s) of any others who will make contact with human subjects. In the case of continuing research programs with standard procedures, it may be sufficient to indicate the type of assistants to be used (e.g., graduate research assistant) and the method used to insure that they are properly trained.

(c) Title of the research. Also indicate its status (e.g., grant supported dissertation, independent study, etc.).

(d) Objectives of the research. Indicate the type of conclusions anticipated. Especially when any risks are involved, the description of the objectives should be sufficiently detailed so that the potential benefits of the research can be weighed against those risks.

(e) Methods of procedure. Interest here is in those procedures that make actual contact with the human subject. Specifically, if any medications are to be used, list their names and dose ranges. If "deception" is involved, describe the extent of deception and why it is deemed necessary. If remuneration is involved, state how the level was arrived at. In general, describe the nature of the experiences that the subjects will encounter. Include also the methods for selecting and screening subjects, and the amount of time expected of them.

(f) Protection measures. Give the techniques used to protect the subject against unnecessary risk in relation to the procedures just described. For example, if medication is used, for how long will observation be maintained to insure that no residual effects are present? If electric stimulation is involved, how will the subject be protected from the chance of a serious shock? If deception or stress is involved, how will the subject be relieved of these after the experiment? If personal or private information is to be revealed, how will security of such information be guaranteed? In general, describe the precautions that will be taken to preclude physical, social, or psychological harm. Where possible, include reference to similar procedures previously used either by the investigator or in other laboratories.

(g) Consent. The matter of consent involves three issues: 1) is consent necessary? 2) if so, who is the appropriate consenting agent? and 3) what information is necessary to insure that consent is adequately "informed"? In her/his application, the investigator must deal with these issues so as to justify the procedure according to the following guidelines:

(1) Where no risks or harmful disclosures are involved, where the research is a by-product of ordinary training or treatment, and where no permanent effect upon the subject is anticipated, consent is not required. Where some degree of deception, stress, or discomfort is involved, where the research requires specific participation, or where significant changes in health or well-being are intended by the use of procedures that are controversial, or not proved, consent may or may not be required depending upon the particular study proposed. Where risk or invasion of privacy is involved, where abnormal conditions will be encountered, or where treatment is proposed by new methods, consent is required.

(2) The consenting agent shall normally be the parent or guardian of minors, except that the consent of college students may in some cases be acceptable. Consent by an adult is acceptable provided there is no question about the soundness of her/his understanding of the

information given in obtaining consent; where such question exists, the next-of-kin or legal guardian is appropriate.

(3) The amount of information necessary for consent to be adequately "informed" varies with the nature of the research and the amount of risk involved. The investigator must submit in writing an account in lay language of what he/she intends to tell the subjects in soliciting their participation, in instructing them as to procedures, and in insuring them their right to withdraw without prejudice. The experimenter may, but is not required to, obtain consent in writing from the subjects. In any event, she/ he is required to maintain a record identifying the subjects, to note therein that each subject was informed in the manner described in the written account, and to sign his/her name indicating that the subject understood the research to the extent indicated and agreed to participate.

(h) Changes. Any changes in methods or procedure from those described above or any unexpected consequences adversely affecting the subjects will be brought promptly to the attention of the Human Research Review Committee involved.

5. Continuing approval may be granted when the essentials of methods of procedure remain unchanged over an extended series of studies; in this case, reassurance must be provided at six-month intervals. Minor modifications of procedure may be approved as a supplement to prior general approval.

6. Where relatively standardized methods and procedures have been developed (e.g., ethnographic field studies, learning of paired associates, etc.), the appropriate department chairperson or other persons responsible for the agency or division in which the research is being conducted may, on application, be granted blanket authorization to approve such studies without further review. The semi-annual report must include a listing of specific approvals granted in sufficient detail to permit the Human Research Review Committee to review this standing authorization.

7. A student's advisory committee may authorize preliminary pilot research.

8. A faculty member must retain adequate records concerning the procedures described above. Specifically, records indicating informed consent should be held for at least three years after a subject has participated, and especially where invasion of privacy might be at issue, after the results have been published and the final disposition of the original protocols has been made.

9. Whenever a procedure has been disapproved by either a department chairperson or a Human Research Review Committee, the investigator may appeal to the department chairperson, or the college dean, as appropriate. The mechanism for reconsideration, if warranted, is discretionary. The committee may be asked to reconsider; an ad hoc committee of the faculty may be appointed to act as an appeal group; experts not on the faculty may be consulted. The final decision should rest with whatever appeal mechanism is established in the individual case. If the appeal should result in approval, the records of the disapproval shall be retained but, in the case of an application for grant support, only the record of approval shall be forwarded to the granting agency.

10. All faculty members share the responsibility for compliance with the policy as herein stated, but first-line responsibility resides with the individual faculty member for all work done under his/her direction and second-line responsibility resides with the department chairperson who should remain cognizant of the research activities within her/his department.

# **E100: Policy Concerning Use of Animals**

## *Policy*

*Approved by Faculty Senate, May 8, 1990; Ratified by Regents, September 11, 1990.*

The University of New Mexico has long recognized both a scientific and an ethical responsibility for the humane care and use of all animals utilized in our educational and research activities. It is also recognized that all University personnel who care for or use animals in educational or research activities must assume responsibility for the animal's general welfare. Obviously, investigators involved in open field research, such as ecology or animal behavior, do not control the animal environment and cannot be held responsible for animal welfare. The intent of these educational and/or research activities is to provide experience and data that will advance knowledge of immediate or potential benefit to humans and animals. The University faculty, students and administration shall continue to develop and use scientifically valid adjunct or alternative methods which can refine, reduce and/or replace the use of animals. Some situations exist which still require the use of animals. Therefore, the University of New Mexico supports the continued and judicious use of animals in our educational and research programs.

The University of New Mexico Animals Care and Use Programs will provide optimal care to all animals and will conform to all federal, state and local laws. The Programs will comply with the provisions of the Animal Welfare Act of 1960 "Public Law 89-544" and all subsequent amendments; The Public Health Service Policy on Humane Care and Use of Laboratory Animals "Health Research Extension Act of 1985, Public Law 99-158;" and the Guide for the Care and Use of Laboratory Animals "HHS Publication Number 'NIH' 85-23." All educational and/or research projects involving animals will be reviewed and approved by the University's respective Animal Care and Use Committees. Students who think they have been unfairly treated by the decisions of any professor or department regarding decisions concerning animal use shall have the right of appeal according to the due process procedures appropriate to the college in which the action was taken.

# E110: Conflict of Interest in Research

## *Policy*

*Adopted by the Regents April 11, 2000; revised by the Faculty Senate April 22, 2003; approved by the President May 12, 2003*

## **I. INTRODUCTION**

The purpose of this policy is to protect the integrity, trust and respect of UNM, its academic community and its research activities. The policy is intended to enable compliance with applicable laws and other regulatory requirements and to protect investigators who may be exposed to conflict of interest situations. It is designed to inform investigators of their disclosure responsibilities, provide an efficient method for making disclosures, and facilitate effective identification and management of conflicts of interest.

Members of the University of New Mexico community are engaged in many contractual, consulting and advisory relationships with other universities, government agencies and private sector entities. UNM encourages these relationships for their contributions to research, education, technological advancement and professional development. UNM members must be cautious, however, to prevent unresolved conflicts of interest in these relationships that might undermine the credibility of their work or damage their reputation. Additionally, full-time faculty members and researchers must be mindful of their obligation to devote their primary professional efforts and allegiance to UNM. Other activities should not interfere or significantly conflict with this responsibility.

Conflicts of interest may occur when an investigator's research responsibilities compete with his or her private interests, such as financial interests, raising questions of objectivity and improper gain. Conflicts of interest are inevitable in modern research universities and do not imply any impropriety on the part of the investigator. A conflict of interest may exist despite the highest standards of conduct and candor. Most conflicts can be successfully resolved without impeding research activities.

Disclosing the required information at the earliest possible time will afford the best protection of an investigator's interests. Disclosure early in the UNM research is a key factor in protecting an investigator's reputation and career from potentially embarrassing or harmful allegations of inappropriate behavior. Investigators are encouraged to disclose any situation that could conceivably be viewed as a conflict of interest or a reportable financial interest, and to favor more rather than less disclosure. The Conflicts of Interest Committee will assess whether an actual or potential conflict exists and work with the investigator to determine how it should be resolved or managed.

Individuals who are uncertain about the policy's application to their situation should contact the Office of Research Services (ORS) for assistance.

## **II. APPLICABILITY**

### **A. Overall Policy**

This policy applies to all investigators, including non-UNM investigators. The policy covers actual and potential conflicts of interest associated with participation in UNM research, which includes:

1. Research funded by or through UNM (including outside sponsored funding).
2. Research conducted at UNM, regardless of funding.
3. Nonsponsored research conducted off campus by UNM employees.

## **B. Disclosure Requirements**

The conflict of interest disclosure requirements apply to all investigators who work on:

1. Sponsored UNM research.
2. Nonsponsored UNM research that is:
  - a) Human subject research;
  - b) Animal subject research; or
  - c) Research funded by a formal award from internal UNM sources based on submission of a proposal.

## **III. DEFINITIONS**

### **A. Conflict of Interest**

1. Conflict of interest means a situation associated with an investigator's participation in UNM research where it reasonably appears, on an actual or potential basis, that:

- a) The investigator's significant financial interest could directly and significantly affect the design, conduct or reporting of UNM research activities; or
- b) The investigator's situation could directly and significantly compromise his or her professional commitments or allegiance to UNM.

2. Examples of the types of situations that may come within this definition include:

- a) Holding a direct or indirect interest in an outside entity that conducts business in an area closely related to the UNM research or serving as a director, officer, partner, trustee, manager or employee in such an entity.
- b) Undertaking or steering UNM research to serve the research or other. needs of an outside entity, without approval of UNM or the research sponsor.
- c) Directing potential research efforts away from UNM and toward the investigator's outside entity, or an outside entity in which the investigator has a financial interest.
- d) Transmitting to an outside entity without the sponsor's consent, or otherwise using for personal gain, sponsored work products, results, materials, records or information that are not generally made available. This does not necessarily preclude contracts between faculty start-ups and either UNM or the Science & Technology Corporation @ UNM, although these contracts may give rise to conflict of interest situations.
- e) Using privileged information acquired in connection with the investigator's sponsored UNM research activities for personal gain or for unauthorized purposes. Privileged information includes medical, personnel or security records of individuals, anticipated material requirements or price actions, possible new sites for government operations, and knowledge of forthcoming programs or selection of

contractors or subcontractors in advance of official announcements.

f) Negotiating or influencing the negotiation of contracts related to the investigator's sponsored UNM research between UNM and outside entities with which the investigator has consulting, equity or fiduciary relationships.

g) Accepting gratuities or special favors from entities with which UNM does or may conduct business in connection with sponsored UNM research, or extending gratuities or special favors to employees of the sponsor, under circumstances that reasonably might be interpreted as an attempt to influence the recipients in the conduct of their duties.

**B. Investigator** means the principal investigator, the co-principal investigator and any other person (including faculty, staff and students) who is responsible for the design, conduct or reporting of UNM research. Any individual responsible for a task that could have a significant effect on the research design, conduct or reporting is considered to be an investigator, even if the individual does not have sole or primary responsibility for the task or the research.

**C. Non-UNM Investigator** means any person who is:

1. Responsible for the design, conduct or reporting of UNM research; and
2. Employed by an entity other than UNM, working pursuant to a sub-award with another entity, working as an independent contractor or collaborator, or otherwise not employed by UNM.

**D. Significant Financial Interest**

1. Significant financial interest means anything of monetary value belonging to the investigator and his or her spouse or domestic partner and dependent children, including but not limited to:

- a) Salary, royalties or other payments for services, such as consulting fees or honoraria, unless they are expected to total \$10,000 or less over the next 12 months when aggregated for the investigator and his or her spouse and dependent children.
- b) Equity interests, such as stocks, stock options or other ownership interests, unless they amount to \$10,000 or less in value and represent a 5% or less ownership interest in a single entity when aggregated for the investigator and his or her spouse and dependent children.
- c) Intellectual property rights, such as patents and copyrights, and royalties from these rights.

2. Significant financial interest does not include the following:

- a) Salary, royalties or other remuneration from UNM (including payments or other technology commercialization proceeds through the Science & Technology Corporation @ UNM).
- b) Income from seminars, lectures or teaching engagements sponsored by public or nonprofit entities.
- c) Income from service on advisory committees or review panels for public or nonprofit entities.
- d) Interests in widely held investment funds if:

(1) The investigator does not exercise control over or have the ability to exercise control over the fund's financial interests; and



(2) Either

(a) The fund is publicly traded or available, or

(b) Its assets are widely diversified; for example, if the fund holds no more than 5% of its portfolio value in the securities of anyone issuer, other than the federal government, and no more than 20% of its portfolio value in any particular economic or geographic sector.

(e) Interests in blind trusts if the investigator has no knowledge of the trust assets.

**E. UNM research** means a systematic investigation designed to develop or contribute to generalizable knowledge, including basic and applied investigations and product development, that is:

1. Funded by or through UNM (including outside sponsored funding);
2. Conducted at UNM, regardless of funding; or
3. Nonsponsored and conducted off campus by UNM employees.

#### **IV. CONFLICTS OF INTEREST COMMITTEE**

##### **A. Purpose**

1. The purpose of the Conflicts of Interest Committee is to protect the integrity of investigators, UNM, and UNM research by identifying and resolving conflicts of interest when they exist. The Committee carries out this charge in a manner that is intended to foster, not hinder, research relationships.

2. In addition to reviewing conflict of interest disclosures, the Committee may offer advice on general questions concerning conflicts of interest.

##### **B. Composition**

1. There will be one or more Conflicts of Interest Committees formed at the Provost's discretion. The membership of each committee will comprise six faculty members, two people not primarily employed by UNM, and two UNM officials with administrative responsibility for contracts. Notwithstanding the formation of two or more committees, these conflict of interest committees will be referred to collectively as "the Conflict of Interest Committee" in all other sections of this Policy.

Half of the members selected by the Provost in each category will be based on recommendation from the Vice President for Health Sciences, and half will be based on recommendation from the Vice Provost for Research.

2. Each Committee member will serve a three-year, renewable term. The terms will be staggered to allow for continuity and rotation of members. Upon adoption of this policy, the members of the Conflicts of Interest Committees established under UNM's Policy and Procedures on Conflicts of Interest in Sponsored Research (1992) will continue to serve their appointed terms as members of this Committee.

Terms shall begin July 1 and will end on June 30, three years later. If more than one committee has been formed, the Provost will periodically switch some members among the committees in order to promote integration of viewpoint between the committees. The Provost may rearrange membership in this manner annually, at the time of formation of a new committee, or at other times as necessary to promote the goals of this paragraph. In the event of a vacancy, the replacement committee member will be appointed by the same method and from the same category as the departing member, and shall serve for the remaining duration of the departing member's term.

## **C. Decision Making**

A quorum of six members is required for the Committee to perform its functions. Each member has one vote and decisions are to be made by majority vote. The Committee may develop guidelines for reviewing and assessing disclosures. When more than one committee has been formed, any such guidelines must be approved by all committee members.

## **D. Disqualification of Committee Members**

1. Under certain circumstances, Committee members may be disqualified from reviewing a disclosure. The standard for disqualification is a reasonable belief that a member may be unable to make a decision based solely on the evidence. Examples of situations that would warrant disqualification include:

- a) The member is directly involved in the disclosure under review.
- b) The member has a prior relationship with the investigator that would interfere with the member's objectivity.
- c) The member's objectivity or ability to serve reasonably appears to be adversely affected by the circumstances.

## **E. Removal of Committee members**

1. A member will be removed only for good cause and only by the Provost upon recommendation of a majority of a quorum of the committee on which the member sat. Good cause will include:

- a) Change in eligibility status.
- b) Insufficient attendance at committee meetings.

2. Committee members may self-recuse at any stage in the review process.

3. An investigator may request recusal of a member at any stage in the review process. The Committee will deliberate and decide on this request in the absence of the member whose disqualification is sought.

4. If the Committee is unable to form a quorum upon recusal of a member, the Committee will randomly select a former member to serve on the Committee on an interim basis for the remainder of the disclosure review and assessment.

## **V. DISCLOSURE REQUIREMENTS**

### **A. General**

The disclosure requirements of this policy apply to all UNM investigators working on:

1. Any sponsored UNM research.
2. Any nonsponsored UNM research that is:
  - a) Human subject research;
  - b) Animal subject research; or
  - c) Research funded by an award from internal UNM sources based on submission of a proposal.

### **B. Sponsored Research Proposals: UNM Investigators**

1. At the time a sponsored research proposal is submitted to ORS or the Health Sciences Center Pre-Award Administration Office (HSC-PAA), all UNM individuals who will serve as investigators on the proposed research must concurrently submit a completed conflict of interest form that discloses the following, among other things:

- a) Any significant financial interest that would reasonably appear to be affected by the research.
- b) Any significant financial interest in an entity whose financial interests would reasonably appear to be affected by the research.
- c) Any other situation that could call into question the investigator's professional commitments in undertaking the research or the investigator's primary allegiance to UNM.

2. The principal investigator, and any co-principal investigator, are responsible for identifying the research investigators, informing them of the requirements of this policy, and providing a list of their names to ORS or HSC-PAA. ORS or HSC-PAA should receive completed disclosure forms from each investigator prior to the proposal's submission to the funding source.

3. The same procedures apply for proposals submitted to ORS or HSC-PAA for renewal funding. Any new investigators must provide a completed conflict of interest form, and continuing investigators who provided a conflict of interest form with the original proposal must confirm or revise their form at the time of submission.

### **C. Sponsored Research Proposals: Non-UNM Investigators**

For non-UNM investigators who will work on sponsored UNM research, the following conditions must be satisfied when the proposal is submitted to ORS or HSC-PAA:

- 1. If the research will involve a sub-award with an entity that employs the non-UNM investigator, that entity must provide adequate assurances to UNM that its system for compliance with federal conflict of interest requirements will address the proposed research. If the entity is unable to provide these assurances in a timely fashion, the non-UNM investigator must follow the disclosure requirements and procedures specified for UNM investigators.
- 2. All other non-UNM investigators must follow the disclosure requirements and procedures specified for UNM investigators.

### **D. Nonsponsored Research**

- 1. Each UNM investigator whose UNM research involves human subject research, animal subject research or research funded by a formal award from internal UNM sources based on submission of a proposal must submit a completed conflict of interest disclosure form to ORS or HSC-PAA. The disclosure form must be submitted to ORS or HSC-PAA before the nonsponsored proposal is submitted to the human or animal subject research review committee or the Research Allocation Committee.
- 2. Investigators working on other types of non sponsored UNM research are encouraged to voluntarily submit disclosure forms to ORS or HSC-PAA, as appropriate.
- 3. UNM employees working on nonsponsored research at other institutions are encouraged for their self-protection to follow the conflicts of interest procedures of their host institution.

## **E. Ongoing Disclosure Responsibility**

1. Disclosure requirements apply for the duration of the UNM research. Investigators must disclose any of the following, among other things, that occur during the sponsored UNM research:

- a) A new significant financial interest that would reasonably appear to be affected by the research.
- b) A new significant financial interest in an entity whose financial interests would reasonably appear to be affected by the research.
- c) A new situation that could call into question the investigator's professional commitments in undertaking the research or the investigator's primary allegiance to UNM.
- d) A significant change to a previously reported disclosure.

2. Investigators must submit updated disclosure forms to ORS or HSC-PAA within 30 days after the disclosable situation arises.

3. All newly-added investigators on UNM research must submit a completed conflict of interest disclosure form to ORS or HSC-PAA within 30 days after beginning work on the research. The principal investigator, and any co-principal investigator, are responsible for informing newly-added investigators of this requirement and ensuring that they submit disclosure forms. Newly-added investigators are subject to the ongoing disclosure requirements of this section.

## **F. Confidentiality of Disclosures**

All individuals involved in handling a disclosure should exercise care at all times to protect the confidentiality of the disclosed information and the privacy of the investigator, to the extent permitted by law.

## **VI. REVIEW AND MANAGEMENT OF CONFLICT OF INTEREST DISCLOSURES**

### **A. Initial Screening**

1. ORS or HSC-PAA is responsible for initial screening of conflict of interest disclosure forms. ORS or HSC-PAA will refer all disclosure forms that indicate a possible conflict of interest to the Conflicts of Interest Committee, unless otherwise specified in any screening guidelines provided by the Committee. In addition, if the research involves human or animal subjects, or research funded by a formal award from internal UNM sources based on submission of a proposal, ORS or HSC-PAA will send copies of disclosure forms that indicate a possible conflict of interest to the human or animal subject research review committee or the Research Allocation Committee, as appropriate.

2. If the referred disclosure form was submitted by an investigator other than the principal investigator, ORS or HSC-PAA will notify the principal investigator of the general nature of the referral without divulging the particulars of the disclosed information.

### **B. Determination of Conflicts of Interest**

1. The Conflicts of Interest Committee will regularly review and assess conflict of interest disclosure forms referred by ORS or HSC-PAA. If the Committee determines after initial review of a disclosure that no conflict of interest exists, it will conclude its assessment. If the Committee is unable to make this determination, it will invite the investigator who submitted the disclosure to meet with the Committee and

explain the circumstances of the UNM research and the possible conflict of interest. The Committee will determine whether a conflict of interest exists, and if so, work with the investigator to determine how it might be managed or resolved to best protect the investigator, the institution and the research results.

2. On occasion, circumstances may require the Provost or designee to make an expedited decision to accept funding for UNM research before the Conflicts of Interest Committee has had an opportunity to review a disclosure related to the research. In that event, the Committee subsequently will review and assess the disclosure according to its regular process. No research expenditures will be made pending Committee review.

### **C. Role of Principal Investigator**

1. When the investigator whose disclosure is reviewed by the Conflicts of Interest Committee is not the principal investigator for the UNM research, the privacy of the investigator must be balanced with the principal investigator's need for sufficient information to manage the research responsibly. Accordingly, if the Committee believes upon initial review of the disclosure that a conflict of interest may exist, the Committee will ask the investigator for consent to reveal the disclosure to the principal investigator and to invite the principal investigator to meet with the Committee and participate in discussion of the research circumstances.

2. If the investigator consents to the principal investigator's participation, the Committee will proceed accordingly. If the investigator refuses consent, the Committee will keep the disclosure details confidential and proceed in its assessment of the disclosure with the investigator's participation. Despite the refusal, the Committee may confer generally with the principal investigator about the research and the investigator's role in it, revealing no more than the overall nature of the possible conflict.

3. If the Committee finds that an investigator who did not consent to the principal investigator's participation in the review process has a conflict of interest, the Committee will try to manage the conflict in a manner that does not involve the principal investigator. The principal investigator should be involved in the conflict management plan only if the plan would affect the conduct of the research. Without the involvement of the principal investigator, the Committee cannot remedy the conflict by recommending modification of the research protocol or oversight of the research. Consequently, refusal to involve the principal investigator may prevent the effective management of a conflict. If the investigator and the Committee cannot agree on a resolution that would not affect the research, the investigator must either consent to involvement of the principal investigator in managing the conflict or withdraw from the research.

### **D. Management of Conflicts of Interest**

1. If the Conflicts of Interest Committee determines that an investigator has a conflict of interest in UNM research, it will decide how the conflict should be managed so the research may proceed if at all possible. The Committee may impose conditions or restrictions to control, reduce or eliminate the possibility that the conflict will affect the objectivity of the research. The Committee may designate other UNM officials to assist in this process. Examples of conflict of interest management options include:

- a) Public disclosure of the conflict.
- b) Monitoring of the research by independent reviewers.
- c) Modification of the research plan.
- d) Divestiture of the investigator's conflicting financial interests or placement in a blind trust.

- e) Escrow of an equity interest until certain triggering conditions are met.
- f) Prohibition on the investigator's involvement in contract negotiations for the research.
- g) Severance of the investigator's relationships that create the conflict.
- h) Disqualification of the investigator from participation in part of the research.

2. All conflicts of interest must be managed to the satisfaction of the Committee for the UNM research to proceed and for funding, if any, to be accepted. This applies to all UNM research that is subject to the disclosure requirements of this policy, regardless of whether the research is funded. No conflicts may be waived. If a conflict of interest cannot be managed, the investigator must withdraw from the research and UNM may need to decline acceptance of the award or terminate the sponsored agreement.

### **E. Notification of Committee Decisions**

1. If the Conflicts of Interest Committee determines that an investigator's disclosure does not constitute a conflict of interest, the Committee will provide written notification of its decision and rationale to the investigator, the principal investigator if different from the investigator, the Chair of the investigator's department, and the Director of the Center, if appropriate.

2. If the Committee finds that a conflict of interest does exist, the Committee will notify the same individuals, with the addition of the appropriate Dean, of the existence of the conflict and the management plan.

3. The Committee will provide copies of all of its decisions to the Provost and to either the Associate Provost for Research or the Vice President for Health Sciences.

### **F. Appeals**

An investigator may appeal a Committee decision to the Provost or designee, who will meet with the investigator and the Committee (or its representative) prior to making a final decision on the appeal. No research expenditures will be made pending appeal.

## **VII. REPORTING AND RECORDS REQUIREMENTS**

### **A. Reports to Research Sponsors**

The Conflicts of Interest Committee, ORS and HSC-PAA will work to ensure that UNM complies with the research sponsor's requirements for reporting conflicts of interest. As of the date of enactment of this policy, for example, UNM must inform the Public Health Service, prior to the expenditure of research funds, of the existence of any actual conflicts of interest in the funded research and provide assurances of their management in accordance with federal requirements. UNM also must report and handle subsequently arising conflicts in PHS-funded research within 60 days after their identification. UNM is required to report to the National Science Foundation only conflicts of interests that have not been managed prior to expenditure of award funds, and keep the agency informed if a conflict cannot be managed successfully.

### **B. Records Retention**

ORS will keep records of all conflict of interest disclosures and all actions taken with respect to those disclosures for at least three years after the later of these events:

- 1. Termination or completion (the date the final expenditures report is submitted) of the UNM research;

2. Resolution of any government action involving the records; or
3. As otherwise provided by law.

## **VIII. POLICY ENFORCEMENT**

### **A. Types of Noncompliance**

Noncompliance with this policy can occur through the following actions:

1. Failure to disclose required information.
2. Failure to follow a conflict of interest management plan.

### **B. Enforcement Responsibility**

The Provost or designee is responsible for enforcing this policy, including investigating and sanctioning noncompliance. The Conflicts of Interest Committee is responsible for reviewing and managing conflicts of interest referred to it during an enforcement process. The Provost or designee may consult with the Committee during this process.

### **C. Reporting Noncompliance**

1. Anyone who suspects that an investigator has not complied with this policy may bring the matter to the attention of the principal investigator, if different from the investigator. If this is not feasible or does not resolve the matter, individuals should report their concerns to the Provost or designee. The Committee may likewise report its own concerns about an investigator's noncompliance.
2. UNM encourages good faith reporting of conflict of interest concerns. UNM prohibits retaliation against a person who reports under this policy in good faith. Retaliation for good faith reporting may result in disciplinary action up to and including dismissal. Similarly, UNM does not tolerate bad faith reporting. Reporting an individual in bad faith may result in disciplinary action up to and including dismissal.

### **D. Investigation**

1. The Provost or designee will investigate allegations of policy noncompliance. The procedures in UNM's Research Fraud Policy may be used for guidance, although investigations under this policy may be handled less formally than specified in the Research Fraud Policy.
2. Any information that arises from the investigation that is disclosable under Section V will be referred to the Conflicts of Interest Committee for review and management.

### **E. Sanctions**

The Provost or designee may employ a range of options and sanctions in handling investigator noncompliance, including disciplinary and legal action and refusing or rescinding acceptance of an award.

### **F. Notification of Research Sponsors**

If an investigator's noncompliance with this policy may have biased the design, conduct or reporting of the UNM research, UNM will promptly notify the funding agency. Research sponsors may impose additional restrictions, including suspension of funding. For example, if clinical research funded by the Public Health

Service on the safety or efficacy of a drug, medical device or treatment was designed, conducted or reported by an investigator with an undisclosed or unmanaged conflict of interest, the investigator will be required to disclose the conflict in each public presentation of the research results.

#### **IX. APPLICABILITY OF FEDERAL RULES**

If a federal agency issues rules governing conflicts of interest in sponsored UNM research, those rules will govern where applicable. Proposals submitted for funding to the Public Health Service and the National Science Foundation are subject to specific legal requirements concerning financial conflicts of interest. This policy is intended to comply with those requirements. Any changes in the federal requirements will supersede the relevant provisions of this policy.

Every investigator is responsible for being familiar with and following the provisions of governing laws and rules related to conflicts of interest.

#### **X. EFFECTIVE DATE**

This policy will become effective three months after approval by the UNM Board of Regents.



# E120: Effort Reporting Policy

## *Policy*

*(Approved by the Faculty Senate, February 23, 2010; Approved by Provost Chaouki Abdallah 3/28/12)*

### **Purpose:**

Conduct of research is a primary mission of the University of New Mexico. The University is committed to ensuring that effort expended on federally sponsored agreements is appropriately documented, that salaries and wages charged to sponsored agreements reasonably reflect the effort expended on those agreements, that effort is certified by authorized personnel in a timely manner, and that effort certifications comply with sponsor requirements and federal regulations.

### **Policy:**

Certification of effort is an OMB Circular A-21 requirement that the University of New Mexico agrees to when a contract or grant is accepted that is fully or partly funded by the federal government. Timely effort reports, generated by the University, are used to document the certification of effort. The OMB requirement is designed to ensure that:

- a) The percent of effort expended on each project is not less than the percent of effort committed to the sponsor to spend on the project.
- b) The percent of effort expended on each project is not less than the percent of salary charged to the project.

To comply with OMB A-21, an individual with first-hand knowledge of the work performed and the benefitting sponsored project shall certify effort reports in a timely manner.

### **Monitoring Uncertified Effort Reports:**

The University of New Mexico is committed to ensuring that effort reports made in connection with federally sponsored projects are accurate, timely, reasonably reflect the actual level of effort expended, and comply with all agency requirements. It is each department's responsibility to ensure that a process has been appropriately established to certify effort reports on a timely basis. Effort reports that are outstanding at the certification deadline may result in salary and related costs being disallowed by the federal funding agency. Principal Investigators, department chairs or equivalent, and deans/directors or above, as appropriate, will be notified of effort reports that have not been certified.

### **Independent Evaluation:**

The University President or designee will ensure that there are periodic reviews of the effort reporting system.

### **Rules, Procedures, Guidelines, Forms, and other related resources:**

1. Rules *[reserved]*
2. Procedures *[reserved]*
3. Guidelines *[reserved]*
4. Forms *[reserved]*
5. Other Related Resources *[reserved]*

**References:**

United States Office of Management and Budget CIRCULAR A-21,

[http://www.whitehouse.gov/omb/circulars\\_a021\\_2004/](http://www.whitehouse.gov/omb/circulars_a021_2004/) ([http://www.whitehouse.gov/omb/circulars\\_a021\\_2004/](http://www.whitehouse.gov/omb/circulars_a021_2004/))

# E30: Reprints of Scholarly Research Publications

## *Information*

Recognizing the importance of disseminating faculty research findings, the University supports the publication of scholarly research by underwriting the purchase of reprints, in accordance with the following policy.

As funds remain available during the fiscal year:

1. An author may apply for a maximum of \$300 per year for page costs and reprints irrespective of the number of publications during that year.
2. A request written by the author and endorsed by the chairperson attached to the appropriate payment documents, shall be directed to the Vice President for Research.
3. The request must include the following information:
  - a. Author's name
  - b. Title of article
  - c. Date of acceptance for publication
  - d. Publisher and address
  - e. Number (normal maximum = 100) and cost of reprints
  - f. Page costs (if applicable)
4. Funds cannot be furnished when publication costs can be covered from contracts or grants.