

How to Spot Conflict of Interest (COI) Issues Related to New/Affiliated Entities

By Maria Shanle, Office of the General Counsel (July, 2013)

The purpose of this Guide is to assist UC employees in identifying potential Conflict of Interest (COI) issues related to a new or affiliated entity. Consequences for failure to comply with COI laws include fines, injunctions against University actions, or even criminal prosecution. **Please contact the Office of the General Counsel** to work through details and prevent any COI problems.

The following questions will help UC employees determine whether or not potential **financial interests** in the new/affiliated entity may require the employee to **disqualify** him or herself from the planning process.

✓ **Is your unit of the University considering any of the following?**

- Creating a **new** entity to spin off UC functions?
- **Acquiring an equity interest** in an outside entity?
- **Participating** in an outside entity?
- Placing UC employees on an entity's board to act on UC's behalf?

If the answer is YES, then you need to consider **potential Conflict of Interest** issues. The earlier you do so, the better, because **UC employees with potential financial interests in the new/affiliated entity may have to disqualify themselves** - - even during very preliminary stages of the planning process.

✓ **What are some of the primary COI issues that you need to watch out for?**

1. Disqualification due to financial interests.

University employees with current or prospective financial interests in the new/affiliated entity may be disqualified from being involved with University decisions affecting the new entity. **The employee must either avoid the financial interest, or disqualify herself from University decisions affecting the new entity** (including all types of participation or influence in the decision).

Participation in a decision can include advising the decision-maker, negotiating and/or executing a contract, communicating with the decision-maker with the intent to affect the process, etc. - - even during very preliminary stages of the planning.

Common financial interests to be aware of in the context of new/affiliated entities **include:**

	Entity is Non-Profit	Entity is For Profit	Result
Disqualifying Financial Interest	<ul style="list-style-type: none"> • Board fees • Salary (unless Entity is a state government agency) • Effect on personal finances over \$250 	<ul style="list-style-type: none"> • Board fees • Travel expenses or per diem reimbursement • Salary • Effect on personal finances over \$250 • Paid or unpaid position as a board member, partner, officer, manager, etc. 	STOP. University employee must avoid having these financial interests OR must recuse himself from making, participating in, or influencing University decisions with regard to the new/affiliated Entity.
NOT a Disqualifying Financial Interest	<ul style="list-style-type: none"> • Travel expenses or per diem reimbursement • Salary from a state government agency (including UC) • Unpaid position as a board member, partner, officer, manager, etc. 		OK SO FAR. Disqualification is not required solely on this basis. But check for other potential financial interests, below.

Other financial interests that could trigger disqualification **include:** **Business investments in the entity, income from the entity, or gifts from the entity.** Financial interests include the employee’s interest *and* those of the employee’s immediate family (spouse and dependent children).

2. Ban on influencing prospective employment.

University employees are also disqualified from being involved in University decisions affecting the new/affiliated entity, even if they do not have a current financial interest, if the employee is negotiating (i.e. has an interview or discusses an employment offer), or has accepted an offer of, prospective employment with the new entity.

3. Post-employment bans.

Certain bans may apply to employees who leave the University to work for the new/affiliated entity. All former University employees are prohibited from being compensated to advise the new entity on the same matter on which they previously worked as a UC employee (the ban on “switching sides”). Former employees who were Form 700 filers are prohibited from being compensated to appear before the University on behalf

of the new entity for one year after leaving the University (the “revolving door” ban). Former employees are banned for two years from entering into a contract with UC, in which the employee participated in negotiating/planning as a UC employee. Finally, former employees who held a policymaking position are banned for one year ban from entering into a contract with the UC department which the employee used to work for.

4. Ban on employees as independent consultants to UC (or receiving compensation funded through UC).

University employees are generally prohibited from contracting with the University as an independent contractor while serving as University employees. They are also generally prohibited from receiving compensation from an activity or entity funded through a UC contract, unless it is part of their University duties.

5. Appearance of a Conflict of Interest.

The University’s Statement of Ethical Values and Standards of Ethical Conduct requires that all members of the University community, including employees, “take appropriate steps, including consultation if issues are unclear, to avoid both conflicts of interest *and the appearance of such conflicts.*” Even if there is no technical violation of law or University policy, a significant appearance of a conflict of interest can create reputational risks for the individual and the institution.

✓ Additional Resources

This tool can give you an idea of how to spot potential COI issues, but you will still need to contact the **Office of the General Counsel** to work through all the details and manage the process.

Please contact the **OGC Oakland Governance Group** (Kathleen Quenneville, Stella Ngai, Maria Shanle) or your **Campus Counsel**.