

The National Optical Astronomy Observatory (NOAO) and The National Solar Observatory (NSO) Policy Governing Conflict of Interest

PREAMBLE:

The National Optical Astronomy Observatory (NOAO) and the National Solar Observatory are managed by the Association of Universities for Research in Astronomy (AURA) under NSF CA AST – 0132798 have a responsibility to ensure public stewardship of such funds and those related activities including research, observatory operations, community participation and public education and outreach. The public community should be confident that such activities remain unencumbered by potential conflicts of interest that might affect the sound judgment of the science staff, administrators, officers and other senior managers.

Developing Observatory innovations through partnerships can pose challenges. The Observatory seeks to ensure any partnerships involving a substantial technology-development element, as well as any economic activities it undertakes are consistent with the following core values.

- **Objectivity and integrity of astronomical research:** The advancement of knowledge depends on the ability of individual scholars to formulate ideas free from the influence of conflicting interests.
- **Open publication and sharing of research results:** Agreements with outside entities and other economic activities should preserve an open environment for the conduct of astronomical research and public dissemination of the results of these activities.
- **Appropriate use of sponsor or government funds:** The Observatory ensures that the institution, its leadership, scientists, committee members, and technical and administrative staff do not enter into a relationship where there may be an actual or perceived conflict of interest with their primary responsibilities and fiduciary obligations to the Observatory.
- **Integrity of administrative decision-making:** The Observatory's leadership and administration must be aware of and deal appropriately with potential conflict of interest situations, both real and perceived, which may arise.

Partnerships with outside enterprises and other economic activities of the Observatory should be constituted so as to maintain public confidence in the National Observatory as an institution committed to the advancement of astronomical science and the observatory "system".

1. PURPOSE:

This policy is established to provide appropriate institutional safeguards in order to sustain a climate in which the observatory operations, management, procurement, sponsored projects, research, and technology transfer are carried out responsibly, and in so doing foster an atmosphere of openness and integrity.

Two general types of institutional conflicts of Interest may be identified. First, the Observatory, as represented by its leaders, may find that its professional judgments with respect to its operational, scientific and public obligations may be affected by entrepreneurial and financial aspirations.

Second, Individuals with supervisory and administrative roles in the Observatory (center directors, program managers, committee members, scientists, engineers and other administrators) may become involved in situations where their administrative or supervisory functions are conflicted by, or perceived to be in conflict by, the opportunity for personal gain.

Each institutional financial interest that presents a potential for financial conflicts of interest, whether real or perceived, must be fully disclosed to the Observatory and/or various funding agencies, and managed, reduced, or eliminated before any contract, sponsored project, dedicated gift, or transaction is executed, any contractual relationship is initiated, or any action is taken that might be influenced or appear to be influenced by the conflict of interest.

2. REASON FOR POLICY

This policy was established to provide an oversight process to manage, reduce or eliminate institutional conflicts of interest.

It is critical to the mission and reputation of the Observatory to maintain the public's trust, that the operations and management, research, outreach, and other activities are not compromised, or perceived as biased by financial and business considerations. Section 510 of the NSF Grants Policy Manual requires that each grantee institution² employing more than fifty individuals to maintain an appropriate written and enforced policy on conflict of interest.

In addition, because of its numerous and complex relationships with public and private entities, the Observatory must be aware of any relationships involving financial gain that may compromise or appear to compromise its integrity.

These policies and procedures will allow the members of the scientific and administrative staff to identify, evaluate, correct and/or remove real, apparent and potential conflicts of interests and/or commitments.

3. DEFINITIONS

The Observatory: Includes the National Optical Astronomy Observatory, the National Solar Observatory and any partnerships, consortiums, affiliates or other organizations that NOAO has contractual relationships to do their business administration.

Observatory Staff: (Any individuals) holding a paid appointment, at any percentage of time, at the Observatory as defined above, regardless of their source of funding, who have the ability to influence budgets, programming, review RFP's, purchase initiation, influential committees, projection direction, and decision making opportunities which can commit the Observatory.

Conflict of Interest: A situation in which the operations, research, outreach or other activities of the Observatory may be compromised due to external financial and/or business relationships at a level that may bring financial gain to the Observatory, any of it's partnerships or individuals covered by this policy.

An individual is considered to have a conflict of interest when she/he or a member of family or associate as described below have, or appear to have, the opportunity to influence observatory

business operations, administration, outreach or research in ways which could lead to financial gain or enable them to exercise control or significantly influence policy.

Examples of conditions or restrictions that might be imposed to manage, reduce or eliminate conflicts of interest include, but are not limited to:

1. public disclosure of significant financial interests;
2. monitoring of research by independent reviewers;
3. modification of the research plan;
4. disqualification from participation in the portion of the NSF-funded research that would be affected by significant financial interests;
5. divestiture of significant financial interests; or
6. severance of relationships that create conflicts.

If the COI Officer or Review committee determines that imposing conditions or restrictions would be either ineffective or inequitable, and that the potential negative impacts that may arise from a significant financial interest are outweighed by interests of scientific progress, technology transfer, or the public health and welfare, then the COI Officer or Review committee may allow the research or operation to go forward without imposing such conditions or restrictions.

Family: The family of an individual includes his or her spouse, significant partners, parents, siblings, children or other blood relatives or extended families of those who reside in their household.

Associate: An associate includes any trust, organization, or enterprise over which the employee, alone or together with an immediate family member, exercises a controlling interest.

COI Audit File: The COI Officer will be required to keep an annual audit file which contains COI disclosure forms (Attachment A), resolutions of conflict of interest, CRC decisions and documentation for period of 3 years. The file will remain confidential for only audit and agency review.

Business: Any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, Joint Stock Company, receivership, business or real estate trust, or any other nongovernmental legal entity organized for profit, nonprofit, or charitable purposes.

Business Interest: Any individual(s) holding any executive position or membership on a board regardless of compensation.

Conflict of Interest Officer: Is the Associate Director of Administration or a senior officer of the observatory, appointed by the Director to ensure the compliance of the COI policy.

Contribution: A donation of assets to the Observatory (AURA). Assets may be in the form of cash, securities, tangible personal property, partnership interests, or pledges for acceptable assets that are assigned to AURA.

Conflict Review Committee (CRC): The committee consists of the following:

- The Observatory Conflict of Interest Officer
- The NOAO Human Resources Supervisor

- The NOAO Director
- An Administrative Authorized Representative appointed by the NOAO Director to represent the affiliate organization or committee if needed.

Executive Position: Any position that includes responsibilities for a significant segment of the operation or management of a business.

Financial Interest: (see also "Significant Financial Interest" below) anything of monetary value including, but not limited to:

1. an interest in a business consisting of any stock, stock option, or similar ownership interest in such business. Interest in business does not include any interest arising solely by reason of investment in such business by a mutual, pension, or other institutional investment fund over which the employee does not exercise control; or
2. receipt of, or the right or expectation to receive, any income in one or more of the following forms:
 - a) consulting fee, b) honoraria, c) salary, d) allowance, e) forbearance, f) forgiveness, g) interest in real or personal property, h) dividend, i) royalty derived from the licensing of technology or other processes or products, j) rent, k) capital gain, or l) any other form of compensation.

Investigator: The principal investigator, co-investigator or any other individual at the Observatory who is responsible for the design, conduct or reporting of research or educational activities funded or proposed for funding by the NSF or other funding agencies.

Observatory Participation: To be part of the Observatory activity in any capacity, including, but not limited to, serving as the principal investigator, co-investigator, research collaborator, committee member, or provider of direct administrative services or management control. The term does not apply to sub-contractors or individuals who provide primarily technical or advisory support and have no direct access to the data or control over collection or analysis, commitment of funds or influence on operations.

Significant Financial Interest: Anything of monetary value where the value equals or exceeds:

- an aggregated equity interest in a business representing ownership of five percent (regardless of worth) or a value of \$10,000, as determined through reference to public prices or other reasonable measures of fair market value;
- an aggregated annual income of all types from a business of \$10,000 over the next 12 months; or
- a commitment for future royalties from a business beyond the next 12 months that are expected to be \$10,000 in aggregated annual income.

This term does not include:

1. Salary, royalties or other remuneration from the Observatory;
2. Income from seminars, lectures, or teaching engagements sponsored by public or non-profit entities;
3. Income from service on advisory committees or review panels for public or nonprofit entities;
4. An equity interest that, when aggregated for the investigator and the investigator's spouse and dependent children, meets both of the following tests: does not exceed \$10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a 5% ownership interest in any single entity; or
5. Salary, royalties or other payments that, when aggregated for the investigator and the investigator's spouse and dependent children, are not expected to exceed \$10,000 during the twelve month period.

Sponsored Project: "Sponsored project" means research, training, and instructional projects involving funds, materials, or other compensation from outside sources under agreements that contain any of the following:

- a) the agreement binds the Observatory or an affiliate institution to a line of scholarly or scientific inquiry specified to a substantial level of detail;
- b) a line-item budget is involved; financial reports are required; the award is subject to external audit; unexpended funds must be returned to the sponsor at the conclusion of the project; or
- c) the agreement provides for the disposition of either tangible or intangible properties that may result from the activity.

Collection of COI Disclosure Statements: It is the responsibility of the Human Resources Office of NOAO, under the direction of the Conflict of Interest Officer, to annually collect completed COI Disclosure Statements and or updates from Observatory staff as defined above. (Attachment A)

Collection should begin May 1st each year. The COI Officer will audit and review each submission ensuring compliance and issuing a report is submitted to the CRC no later than October 15th of each year. All Observatory staff will be required to complete a form. It is the responsibility of the observatory staff to update the forms during the year in the event new possible conflicts arise. Such disclosures should be made directly to the COI Officer.

The CRC will meet within 30 days after submission of the report to resolve any non-submission, non-compliance or reported conflicts resulting from the annual disclosure process.

New Employees will be required to complete COI Disclosure Statements at the time of hire. The COI Officer for review and approval.

All forms, including annual update submissions and reports will kept on record in the NOAO Human Resources office.

Directors, Deputy Directors, Associate Directors, Project Managers and other designated supervisors will be responsible to ensure that their observatory staff will comply with submission of the annual disclosure.

A copy of this policy, blank COI Disclosure forms and procedures for annual updates are available on-line at <http://www.noao.edu/cas/hr/hrmain.html>.

From time to time specific Disclosure Statements for special committees, procurements or other sponsored projects may be developed for the prevention and or disclosure of specific conflicts of interests related to the special program. Alternative Disclosure Statements will be developed by the Office of Sponsored Projects and approved by the COI and, the CRC if necessary, before use. Example of Committee form (Attachment B).

4. REPORTING OF POTENTIAL CONFLICTS OF INTERESTS

The Observatory Disclosure Statements or forms developed for specific procurements or committees are the primary forms for reporting potential or actual conflicts of interest. In the case of the annual form the process for determination is stated above. In the case of RFP, the Sponsored Project Office and/or other committees, the COI or their designee will review with the chair, buyer or program manager the process for reporting and resolving possible conflicts. All resolutions whether the conflict is perceived or real must be documented in writing. In the case of committees, documentation should appear in the meeting minutes and/or final reports. In any case the COI or designee must concur with the resolution prior to continuing of the committee meeting, RFP review etc.

5. SANCTIONS FOR NON-COMPLIANCE

Definition

Non-compliance includes failure to:

- comply with this Policy
- report accurately on the designated disclosure form
- comply with decisions under the Policy.

Non-compliance may result in disciplinary action, up to and including termination from employment or removal from a committee or project and required reporting to appropriate funding agencies.

6. REPORTING OF NON-COMPLIANCE

Allegations of non-compliance must be reported to the COI. Allegations must be in writing and shall be treated as confidential. Allegations must include documentation of non-compliance. If the allegation includes the COI then it must be reported to the NOAO Director.

7. PROCEDURES FOR REVIEW OF ALLEGED NON-COMPLIANCE

The COI shall provide the individual subject to the allegation with a copy of the alleged charge. If after a preliminary review, the COI determines that there is a potential violation then it shall be referred to the COI Review Committee. The individual subject to the allegation shall have an opportunity to present materials to the CRC.

If the CRC finds no violation, it shall so inform the employee in writing, and provide a copy of the finding to the COI Audit File.

If the CRC finds either non-compliance with this Policy or a decision of the COI it shall make a written finding and send it to the employee, COI and the COI Audit File.

An Observatory staff member may appeal the decision of the Conflict Review Committee to the AURA VP for Administration for final determination.

8. SANCTIONS

Procedures for imposing sanctions and the sanctions used shall be governed by existing AURA and Observatory Policies including those regarding grievances and/or termination.

Violations of this Policy relating to participation in sponsored research shall also be reported to the employee's funding agency, if applicable. Any penalties that may be imposed by an external funding agency shall be deemed separate from any imposed by the Observatory.

9. APPOINTMENT OF THE CONFLICT OF INTEREST OFFICER (COI)

The NOAO Associate Director for Administration and Facilities, Karen M. Wilson, has been appointed as the COI for FY2007 and FY2008.

Intranet Wording for Screen for Conflict of Interest Portal to Policy and Form

The NSF GPM Policy 510 requires that non-profit institutions employing more than 50 individuals receiving federal funding maintain a written and enforced policy on conflict of interest that includes financial disclosures, institutional review of disclosures, the resolution of any problems dealing with conflict of interest, and an enforcement mechanism. Effective immediately all exempt Observatory Staff as defined in the COI policy r are required to:

1. File a conflict of interest screening form annually. This form must be filed before a proposal can be submitted or funds expended.
2. File a revised conflict of interest form whenever a new transaction or activity is proposed that might involve a conflict of interest.
3. Contact the conflict of interest officer whenever there is a change in interests that might pose a conflict of interest.

Up-to-date information, the conflict of interest screening/disclosure form and contact numbers for additional information, may be obtained through the NOAO Office of Sponsored Projects.