

Policy 1106

Title: Conflict of Interests

Date of Current Revision: November 2023

Primary Responsible Officer: Director of Human Resources

Secondary Responsible Officer: Associate Vice President for Finance

1. PURPOSE

The purpose of this policy is to maintain the public's highest trust in public officers and employees of the university and to provide procedures for employees to abide by state law.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia § 23.1-1600; § 23.1-1301. The Board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND/OR REGULATION

State and Local Government Conflict of Interests Act (Code of Virginia, § 2.2-3100 et seq., hereafter "the Act") and Virginia Executive Order 8.

3. DEFINITIONS

For more definitions see Code of Virginia, [§ 2.2-3101](#).

Business

Corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

Conflict of Interests (COI)

A conflict of interests occurs when a university employee or a member of the employee's immediate family has a personal interest, or benefits or suffers from the employee's participation in a contract or transaction considered by JMU.

Conflict of Interests Online Disclosure System

A restricted online system implemented by the Virginia Conflict of Interest and Ethics Advisory Council for employees working in disclosure-designated positions to electronically submit a Statement of Economic Interests.

COI Agency Coordinator

The person in JMU's Office of the Associate Vice President for Human Resources, Training and Performance designated to manage employee access to the Virginia Conflict of Interest and Ethics Advisory Council's online Conflict of Interests Disclosure System.

COI Designated Positions

University vice presidents are tasked with determining which positions are designated to file a Statement of Economic Interests based on guidance from the Governor's office, to include the

president, vice presidents, provosts, deans, and those persons with approval authority over contracts or audits.

Contract

Any agreement to which JMU is a party, or any agreement on behalf of JMU that involves the payment of money appropriated by the General Assembly, whether or not such agreement is executed in the name of the Commonwealth of Virginia or JMU. "Contract" includes a subcontract only when the contract of which it is a part is with the employee's own governmental agency.

Council

The Virginia Conflict of Interest and Ethics Advisory Council created by the General Assembly to encourage and facilitate compliance with the State and Local Government Conflict of Interests Act.

Employee

Any person employed in any capacity by the university, including part-time and full-time instructional faculty members, administrative & professional faculty members, staff members, students, wage employees, and any other individual receiving remuneration for services performed in an employment relationship with the university.

Immediate Family

A spouse and any other person who resides in the same household as the employee or officer and who is a dependent of the employee.

Personal Interest

Financial benefit or liability accruing to a university employee, or to a member of their immediate family. Such interests shall exist by reason of the following:

- a. Ownership in a business if the ownership interest exceeds three percent of the total equity of the business.
- b. Annual income that exceeds or may reasonably be anticipated to exceed \$5,000 from ownership in real or personal property or a business.
- c. Salary, other compensation, fringe benefits or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually.
- d. Ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits, or benefits from the use of property.
- e. Personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or
- f. An option for ownership of a business or real or personal property if the ownership interest will consist of the above items a. or d.

Personal Interest in a Contract

A personal interest that an employee has in a contract with a governmental agency, whether due to being a party to the contract or due to personal interests in a business that is a party to the contract.

Related by Family or Marriage

Related by family or marriage means a person who is, by blood or marriage, an employee's spouse, parent, child (including step-children), sibling, grandparent, grandchild, aunt, uncle, niece, nephew, or individual whom an employee has been assigned legal responsibility or guardian.

Statement of Economic Interests

The electronic form used by employees in positions designated to disclose their financial interests by providing information pertaining to real estate, business interests, gifts, travel, liabilities, directorships and other matters.

Transaction

Any matter considered by JMU on which official action is taken or contemplated.

4. APPLICABILITY

This policy applies to all university employees.

5. POLICY

5.1 No JMU employee shall have personal interests in a contract with JMU, other than their own contract of employment. In addition, employees in COI designated positions will disclose financial interests by filing a Statement of Economic Interests before or upon beginning employment. Thereafter, they will file annually.

5.2 Prohibited Conduct

No JMU employee shall:

- Solicit or accept money or other thing of value for services performed within the scope of their official duties, except the compensation, expenses or other remuneration paid by the university. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;
- Offer or accept any money or any other thing of value for or in consideration of obtaining, employment, appointment, or promotion of any person with any governmental or advisory agency;
- Offer or accept any money or other thing of value for or in consideration of the use of the employee's public position to obtain a contract for any person or business with any governmental or advisory agency;
- Use for the employee's own economic benefit or that of another party confidential information that the employee acquired by reason of the employee's public position and which is not available to the public;
- Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence the employee in the performance of the employee's official duties;
- Accept any business or professional opportunity when the employee knows that there is a reasonable likelihood that the opportunity is being afforded the employee to influence the employee in the performance of the employee's official duties;
- Accept a gift from a person who has interests that may be substantially affected by the performance of the employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the

employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties;

- Accept gifts from sources on a basis so frequent as to raise an appearance of the use of the employee's public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties; or
- Use the public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of a supervisor to evaluate the performance of an employee, and to take disciplinary action for misconduct or performance issues, in accordance with applicable law,

5.3 No employee shall serve as the immediate supervisor or exercise sole authority to supervise, evaluate or make personnel decisions regarding a person related to them by family or marriage or an individual sharing the same household.

5.4 The university is expressly authorized to govern the conduct of its employees and to take disciplinary action for misconduct or performance issues.

5.5 Before any agreement or contract, other than an employment contract, is contemplated or exists, an advisory opinion from the Attorney General of the Commonwealth of Virginia or the Council may be required by JMU to determine whether the Act will be violated by its formation.

6. PROCEDURES

6.1 Process of Disclosing

The Office of the Assistant Vice President for Human Resources, Training and Performance provides the names of employees in COI designated positions, which have been approved by Vice Presidents, to the Virginia Conflict of Interest and Ethics Advisory Council.

As a condition of accepting employment, employees in COI designated positions must disclose their financial interests by submitting a disclosure statement of their personal interests and other information as is specified on the form set forth in § [2.2-3117](#). Thereafter, they shall file such a statement annually by February 1 for the preceding 12-month period, January 1 through December 31. The Council manages the online Conflict of Interests Disclosure System and provides guidance on who is required to file. See more at the website for [State Officers and Employees](#).

Before or upon beginning employment in a COI designated position and prior to the February 1 filing date, JMU's COI Agency Coordinator and the Council will send email notifications to COI designated employees to access the Conflict of Interests Disclosure System and complete the Statement of Economic Interests. Any questions regarding the online filing process or general questions about the requirements of the form may be directed to Council staff at ethics@dls.virginia.gov. See the Ethics Council's [Staff Contact list](#). Also see [Reference Materials](#) including Sample Forms and Guides.

All forms shall be maintained as public records for five years in the office of the Council.

6.2 Virginia State and Local Conflict of Interests Act Online Course

COI designated employees must complete an online Conflict of Interests course within 60 days of assuming employment in a designated role and once every two years thereafter. Notifications to complete the course are sent by the COI Agency Coordinator. The course is accessed through the [Virginia Conflict of Interest and Ethics Advisory Council](#) website. Select the role of State Officer or Employee. The course takes approximately 60 minutes to complete. The entire module must be viewed for record of attendance to be recorded in the Council's system.

7. RESPONSIBILITY

It is the responsibility of each JMU employee to comply with the Act.

Any employee who believes they may be in violation of the State and Local Government Conflict of Interests Act has the right and obligation to seek a written advisory opinion of the Attorney General of the Commonwealth of Virginia or the Council and thereby avoid prosecution and loss of employment.

If any employee has reason to believe a conflict of interest may exist, it is the employee's duty to report it to JMU Audit and Management Services.

If any JMU employee has reason to believe that personal conflict of interests may exist, it is the employee's responsibility to refrain from all business matters relating to the process of negotiating or administering a contract.

It is the responsibility of JMU vice presidents to review the list of employees in designated positions and to make recommendations for adding or removing employees from the list.

It is the responsibility of employees in COI designated positions to disclose their financial interests by filing statements upon hire and then annually by the February 1 deadline.

It is the employee's responsibility to meet the training requirements in the policy section 6.2.

It is the responsibility of the COI Agency Coordinator to provide names, email addresses, and roles of employees in COI designated positions to the Council prior to the filing deadline and to manage employee access to the Council's system. The COI Agency Coordinator, in collaboration with the Council, notifies such employees to complete the Statement of Economic Interests.

It is also the responsibility of the COI Agency Coordinator to notify employees in COI designated positions of their obligation to complete the online Conflict of Interests course within 60 days of assuming employment and to notify designated employees when training requirements are to be met.

It is the responsibility of JMU Audit and Management Services to investigate any allegations of violation of this policy and to refer possible criminal violations to the JMU Office of Public Safety.

All departments, offices and employees that generate, receive, or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#) – Records Management.

8. SANCTIONS

Any person who knowingly files the Statement of Economic Interests form inaccurately will be charged with a Class 1 Misdemeanor. Any person who knowingly files the form inaccurately may also be dismissed from employment. An employee required to file the disclosure form who fails to file such form within the time period prescribed shall be assessed a civil penalty in an amount equal to \$250.

Agreements and contracts made in violation of the Act may be declared void and may be rescinded by the JMU Board of Visitors within five years of the date of such contract.

Any money or other thing of value derived by an employee from a violation of the Act shall be forfeited. In addition, in the event of a knowing violation, a civil penalty may also be imposed in an amount equal to the amount of money or thing of value forfeited to the Commonwealth.

If the COI Agency Coordinator does not build the list and notify designated filers of the filing requirement until after the filing deadline has passed, the agency head will be fined \$250.

9. EXCLUSIONS

The Act does not apply to the following situations at JMU:

- An employee's personal interests in additional contracts of employment with JMU that accrue to the employee because of a member of the employee's immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of the employee's immediate family and the employee is not in a position to influence those activities (see JMU Policy [1301](#)-Nepotism and Employment of Family Members).
- The personal interests of an employee in additional contracts of employment with JMU that accrue to the employee because of a member of the employee's immediate family, provided:
 - the employee and the immediate family member are engaged in teaching, research or administrative support positions at JMU,
 - the JMU Board of Visitors finds that it is in the best interests of the institution and the commonwealth for such dual employment to exist, and
 - after such finding, the board ensures that the employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other.
- An employee's personal interests in a contract of employment with any other governmental agency of state government.
- Contracts for the sale, by a governmental agency, of services or goods at uniform prices available to the general public.
- An employee's personal interests in a contract between JMU and a publisher or wholesaler of textbooks or other educational materials for students that would accrue to them solely because they authored or otherwise created such textbooks or materials.
- Subject to approval by the JMU Board of Visitors, an employee's personal interests in a contract for research and development or commercialization of intellectual property between JMU and a business in which the employee has personal interests, if:
 - the employee's personal interests have been disclosed to and approved by JMU

- prior to the time at which the contract is entered into;
- the employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before February 1;
- JMU has established a formal policy regarding such contract that has been approved by the State Council of Higher Education; and
- no later than December 31 of each year, JMU will file an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interests, the JMU employee responsible for administering each contract, the details of JMU's commitment or investment of resources or finances for each contract, and any other information requested by the Council.

Also See JMU Policy [2203](#) - Conflict of Interests Disclosure for Sponsored Programs.

10. INTERPRETATION

The authority to interpret this policy rests with the president, and is generally delegated to the director of human resources.

Previous version: January 2020

Approved by the President: January 2002