6.3 CONFLICT DISCLOSURE

6.3.1. General Policy Statement

As public employees, Mines faculty and staff members have a fiduciary obligation and statutory duty to the people of the State of Colorado to adhere to ethical principles of conduct (C.R.S. §§24-18-103, 104). Specifically, the holding of employment at a state university such as Mines is a public trust and any effort to realize personal gain through official conduct, other than as compensation set through established processes, or by inappropriate disclosure of confidential information is a violation of that public trust. Accordingly, the employee’s external obligations, financial interests and activities must be conducted in a manner that does not create an actual conflict of interest, result in the appearance of impropriety, or interfere with the employee’s primary obligation and commitment to Mines.

Conflicts of interest arise from time to time and are not necessarily unethical or illegal, as long as they are appropriately disclosed and managed. However, failure to be transparent and fully disclose conflicts or potential conflicts of interest is unethical and may be illegal in certain circumstances.

The Mines Conflict of Interest Policy, accessible at the online Policy Library, purpose of this policy is to provide a means for disclosing actual and potential conflicts so that these may be managed, reduced, or eliminated, to the extent possible, without detriment to the reputation, integrity, or position of Mines and the employee, and to avoid, whenever possible, compromising the employee’s appropriate scholarly and professional pursuits.

6.3.2. Definitions

A. Conflict of Interest

A “conflict of interest” arises when an employee has or represents interests that compete with or are adverse to those of Mines. Such conflicts often result from situations in which financial or other personal considerations may adversely affect, or have the appearance of adversely affecting the employee’s judgment while exercising his or her Mines duties or responsibilities. Where a personal bias or consideration does or has the potential to cloud the employee’s professional judgment, the conflict of
interest that arises may adversely impact the institution’s research, instructional, or administrative programs or operations. The education of our students, conduct of research and scholarship, and performance of administrative tasks must be free of the undue influence of outside interests.

The mere appearance of a conflict of interest situation may be just as serious and damaging as the existence of an actual conflict. Reports of conflicts based on appearances can undermine the public trust in Mines and its commitment to its mission. Accordingly, apparent or potential conflicts of interest should be disclosed and evaluated with the same vigor as actual conflicts.

All employees have an ongoing obligation to report actual, apparent, and potential conflicts throughout the term of their employment with Mines. A conflict of interest may arise at any time during the employee’s appointment at Mines, including periods when the employee is not on campus and not performing his or her primary duties for the institution. Such conflicts may arise and should be reported during summer and semester breaks, or sabbatical leaves, as well as during the academic semesters for which the faculty member has a teaching or other assignment at Mines.

B. Conflict of Commitment

A “conflict of commitment” arises when an employee assumes external commitments or activities (such as professional consulting, other business interests, or personal pursuits) that substantially interfere with, or impede, the employee’s ability to satisfy his or her primary institutional obligations and commitments to Mines. A full-time Mines appointment implies an obligation to satisfy Mines professional responsibilities in a timely manner and maintain a meaningful presence on campus to ensure accessibility to students, staff members and colleagues during the employee’s appointment period. Generally, a conflict of commitment is only likely to arise during periods when the employee is performing his or her assigned duties for the institution. By definition, such conflicts are not likely to occur when the employee is on leave or does not have an active assignment with the institution, during semester breaks, summers, and sabbatical or other leaves for faculty on nine-month contracts, for example.

6.3.3 General Guidelines

A. Actual Conflicts of Interest

Following are examples of activities that create actual conflicts of interest and must be disclosed and reviewed prior to being undertaken. Mines will not approve the proposed activity if a conflict of interest exists that cannot be effectively managed.
1. Financial gain to the employee that results from involvement in institutional decisions. Public employees may be subject to criminal penalties if they do not disclose a conflict of interest in situations where they exercise “substantial discretionary function” in connection with a government contract, purchase, payment, or other pecuniary transactions without appropriate, advance notice to the Secretary of State and Mines’ governing board. (C.R.S §18-8-308.) Such conflicts may arise when the employee or a member of his or her immediate family serves as an officer, director, trustee, partner, agent or employee of an external, non-governmental entity participating in a transaction with Mines, or the employee or a member of his or her family has other direct or indirect dealings with the non-governmental entity through which the employee or his or her immediate family member knowingly materially benefit by receiving directly or indirectly cash or other property as the result of the transaction. Such conflicts may be avoided or managed effectively if properly disclosed, allowing the institution to remove the employee from the Mines decision-making process that triggers the conflict.

2. Financial interests in companies and other kinds of organizations doing business with the institution. (Such conflicts are often manageable by the institution if reasonable notice of the potential or actual conflict is provided to the employee’s supervisor.)

3. Performance of work for personal gain above and beyond the employee’s usual Mines compensation when the work in question falls within the regular assignment of the employee.

4. Any outside activities that conflict with the employee’s institutional teaching, research, service, or other responsibilities.

5. Unauthorized disclosure of unpublished, privileged, or confidential information from a colleague or other Mines source for personal gain.

6. Directly or indirectly selling, renting, trading, or leasing personal property to Mines without full disclosure of the employee’s interests.

7. Assignment of students or other supervisees to research or other activities from which only the employee intends to realize personal financial gain, or where the employee is in a position to
evaluate the student’s academic performance or serve as the student’s academic advisor.

8. Use of Mines facilities for private consulting or research arrangements that may involve personal gain without appropriate disclosure and reimbursement to Mines for use of such facilities.

9. Consultations that impose obligations that conflict with Mines’ obligations to research sponsors.

B. Apparent or Potential Conflicts

The following activities are examples of apparent or potential conflict of interest situations. In many cases, these conflicts can be resolved or effectively managed upon prior disclosure.

1. Certain types of outside employment involving assignments that have the potential to compromise the institutional position of the employee.

2. Consulting relationships involving activities with the potential to compromise the institutional position of the employee.

3. Relationships that might enable employees to influence Mines’ interactions with companies or other entities doing business with the institution for the purpose of personal gain.

C. Activities Generally Not Deemed Conflicts

The following activities are examples of permissible activities that would not be deemed an actual or apparent conflict of interest:

1. Acceptance of royalties pursuant to Mines’ Intellectual Property Policy (Section 10.1), publication royalties, or honoraria for commissioned publications and lectures, providing acceptance of such payments do not violate state law, including but not limited to Article XXIX of the Colorado Constitution.

2. Services to professional, scientific, educational, artistic, cultural, civic, business, or other organizations that enhance the value of the employee to Mines and do not adversely affect the employee’s primary commitment to Mines.

D. Special Considerations in the Context of Licensing and Equity Ownership

When outside companies license Mines inventions or other intellectual
Typically, this happens when employees make decisions while fulfilling their Mines responsibilities that might materially affect their personal wealth or that of their immediate family members. Sometimes such conflicts can be managed; sometimes they must be avoided. The following are intended as some general guidelines, but are not necessarily rules to cover all possible situations. The underlying principle, however, for all situations is to make prior full disclosure of the possible conflict situation to the employee’s department head or immediate supervisor.

1. Individuals in managerial or supervisory positions should be especially aware of potential personal legal and tax implications resulting from investing in companies that are based on Mines technology and are founded by faculty, staff, or students under their supervision. (See §4958 of the Internal Revenue Code, Excess Benefit Transactions.)

2. Conflicts can arise in connection with performing outside professional activities related to licensing and intellectual property. Faculty should adhere to the reporting and approval requirements outlined in Section 6.4.3 below.

3. While a company is still privately held, managers and supervisors, including student advisors and supervisors, should not invest personally or own stock in business ventures of their subordinates or students, since there is a conflict of interest between the manager’s supervision of the student or subordinate (e.g., assigning grades, approving promotions, determining salary levels, allocating office and research space, etc.) and the manager’s business partnership with the student or subordinate.

4. Faculty, particularly department heads and laboratory and research center directors, have a special responsibility with respect to determining ownership of intellectual property developed from research by investigators they supervise. All faculty and staff should weigh carefully their and the inventor’s obligations to Mines in deciding whether the invention falls under Mines ownership. It is a direct conflict if an employee, department head or laboratory/center director responsible for determining ownership of the intellectual property intends to invest in or be a co-founder of a company with the inventor.

5. It is a conflict for an investigator/inventor to negotiate with MINES regarding the terms of a license before the matter of ownership has been definitely resolved. Faculty and staff who are founding companies should not personally negotiate the licensing terms.
6. Faculty and staff who own equity in a company should not attempt to influence the licensing terms that Mines offers to the company.

7. Faculty and staff who hold board positions with companies should recuse themselves on issues involving licensing terms with Mines.

8. Faculty and staff should remember that their primary employer is Mines and that they have a heightened responsibility to their primary employer when deciding whether to assign their inventions to Mines or to a company for whom they consult. If an employee has questions about intellectual property ownership and the applicability of the Mines Intellectual Property Policy (Section 10.1), he or she should consult with the Vice President for Research and Technology Transfer or the Director of the Office of Technology Transfer.

9. It is a conflict for a faculty member to accept research sponsorship from a company in which he or she has a significant financial interest. This conflict arises because the outcome of the research could materially affect the personal wealth of the researcher or an immediate family member. However, a faculty member is not precluded from receiving research support from a large, publicly held company just because the employee or his or her family member owns shares of stock in the company. Financial interests should be disclosed pursuant to the Conflict of Interest Policy to determine whether an actual conflict exists.

6.3.4 Conflicts of Interest and Commitment Disclosure Requirements and Procedure

A. Disclosure Requirement and Timing

The employee has the responsibility for disclosing to their Department Head or Supervisor any actual, apparent, or potential conflicts of interest and commitment through the process outlined below, and consistent with the Mines Conflict of Interest Policy. Disclosures are required as follows:

1. prior to the start of Mines employment for every new employee;

2. at least 30 days in advance of the undertaking of all new external commitments, including professional consulting and non-
remunerative activities, or acquiring new significant financial interests; and

3. in conjunction with the annual faculty evaluation process.

B. Role of Department Head or Supervisor

Supervisors are responsible for reviewing all conflict of interest and conflict of commitment disclosures made by employees they supervise, and keeping the information on the disclosure confidential, except for purposes of conferring with the appropriate Vice President or their designee, or the Conflict of Interest Committee as necessary and appropriate. Upon receipt of an employee’s disclosure, the supervisor will take the following steps:

1. Within 14 calendar days following receipt of the employee’s disclosure form, the supervisor will determine whether:

   a. the reported activity is permissible because it falls within the scope of professional and appropriate conduct, and has been properly disclosed;

   b. a conflict exists that should be addressed by developing and implementing a conflict of interest management plan that, among other things, may transfer certain decision-making responsibilities to other employees or require other actions necessary to address actual, apparent, or potential conflicts of interest; or

   c. the conflict cannot be effectively resolved or managed by the institution and the proposed activity must therefore be terminated.

2. If the supervisor finds the activity to be permissible, the supervisor shall approve the disclosure and forward it to the appropriate Vice President. If, however, the supervisor identifies a conflict of interest, the supervisor shall confer with the appropriate Vice President or their designee for purposes of developing a conflict of interest management plan. In the case of academic faculty disclosures, the supervisor may also consult with the appropriate Dean prior to resolving or managing any actual, apparent, or potential conflicts of interest or commitment. The supervisor will inform the employee in writing of the outcome of the conflict review and provide a management plan where appropriate.

3. When a conflict of interest management plan has been implemented for a particular employee, the supervisor is responsible for monitoring the employee’s compliance with the requirements of the management plan.
C. Role of COI Committee

The Conflict of Interest Committee ("COI Committee") helps facilitate the implementation of the university's conflict of interest policies, clarifies faculty obligations in this area, provides guidance with respect to enforcement of university policy and the development of conflict of interest management plans, and addresses disputes arising from conflict management plan development and implementation. Employees who disagree with the decision of the supervisor regarding the resolution of a conflict of interest or a proposed conflict management plan may appeal the decision by requesting that the COI Committee review the case and make a written recommendation to the appropriate Vice President, who will then issue a final decision in the matter. An employee’s failure to comply with the Vice President’s final decision may result in disciplinary action.

6.3.5 Safeguards and Sanctions

A Mines employee who has fully and timely disclosed actual, apparent, or potential conflicts of interest will have an affirmative defense to any civil or criminal action that might result from a breach of his or her fiduciary duty (C.R.S. §24-18-110). Failure to fully disclose actual, apparent, or potential conflicts as prescribed by university policy may be grounds for disciplinary action and sanctions. Additionally, federal awarding agencies may require reporting of policy violations.