



# University of Colorado

Boulder | Colorado Springs | Denver | Anschutz Medical Campus

## BOARD OF REGENTS

### 13. BUSINESS AND FINANCE

#### Policy 13.A: University Investments

##### 13.A.1 Purpose

Under this policy, the Board of Regents authorizes the Treasurer of the University to manage and invest the financial assets within the described limits.

##### 13.A.2 Policy

The Treasurer of the University shall invest the university's financial assets primarily in cash equivalents, debt instruments, equities, and alternative strategies, using external managers and commingled and mutual funds, including the University of Colorado Foundation's Long Term Investment Pool, where appropriate, with advice from the University Investment Advisory Committee, according to the following:

- (A) The Prudent Investor Rule within the Colorado Uniform Prudent Investor Act;
- (B) The Uniform Prudent Management of Institutional Funds Act;
- (C) Applicable federal and state laws and regulations; and
- (D) Regent laws, policies, and resolutions. Examples of these resolutions are:
  - (1) institutional neutrality (South African and other investments), and
  - (2) Sudan divestment.

For each operating and non-operating fund for which discretion over investments lies with the university, the Treasurer of the University shall develop written guidelines which:

- (A) Document the purpose of the portfolio and the use of earnings thereon;
- (B) Specify the appropriate time horizon and risk profile;
- (C) Establish diversification limits by asset class, sector, industry, and issuer;
- (D) Communicate other restrictions and limits;
- (E) Inform the reader of the desired balance between safety, liquidity, and yield;
- (F) Select performance benchmarks and explain their use in the review processes;
- (G) If employed, document securities lending limits and goals;
- (H) For the operating funds known as the University Treasury Pool, establish adequate earnings distribution and stabilization reserves; and
- (I) Set in writing the process used to periodically review the investment strategy and the guidelines.

Members of the university's Investment Advisory Committee shall be chosen by the Treasurer of the University in consultation with the vice president for budget and finance. There shall be at least five members of this committee as required by C.R.S. § 23-20-117.5 (4). No member of this committee may be in the business of selling investment services or advice, brokering investments, or have a potential conflict of

interest. This committee shall provide advice to the treasurer on investment strategies and goals.

The Treasurer of the University is authorized to designate qualified employees of the treasurer's office who can buy, sell, and transfer certificates of stock, bonds, and approved funds, and/or other similar financial instruments held in the name of the Regents of the University of Colorado, the University of Colorado, or any of the divisions thereof in order to efficiently manage and invest the university's financial assets.

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**History:**

- Adopted: January 14, 2009.
- Revised: June 13, 2019.
- Last Reviewed: June 13, 2019.



# University of Colorado

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### 13. BUSINESS AND FINANCE

#### **Policy 13.B: Intercollegiate Athletics Policy**

Each campus may support intercollegiate athletic teams at appropriate levels of competition and as approved by the Board of Regents. The campus chancellors are responsible for the oversight and management of their respective athletic programs and related representational events. The chancellors will provide opportunities for the president and Board of Regents to attend and participate in athletic and related representational events that can enhance the image and outreach of the university.

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#### **History:**

- Adopted: June 27, 1996.
- Revised: November 29, 2007, January 14, 2009, April 6, 2017.
- Last Reviewed: April 6, 2017.



# University of Colorado

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## BOARD OF REGENTS

### 13. BUSINESS AND FINANCE

#### **Policy 13.C: Approval of the University Risk and Insurance Management Program**

The University of Colorado shall implement and support a risk management strategy.

The strategy shall place the highest priority on preventing and actively managing the risks and associated costs which detract from the pursuit and realization of institutional objectives.

The strategy shall encourage each member of the university community to take individual responsibility for the creation of an environment that protects and enhances the reputation and assets of the university in a responsible and cost-effective manner.

The results of this comprehensive effort will help assure that the University of Colorado is a safe place to teach, learn, and work.

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#### **History:**

- Adopted: January 18, 1996.
- Revised: June 27, 1996, January 14, 2009.
- Last Reviewed: September 7, 2017.



# University of Colorado

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## BOARD OF REGENTS

### 13. BUSINESS AND FINANCE

#### Policy 13.D: Defense and Indemnification of University of Colorado Employees

The Board of Regents acknowledges the University of Colorado's obligation to defend and indemnify public employees of the University of Colorado, including officers, employees, servants, and authorized volunteers, in accordance with the terms of the Colorado Governmental Immunity Act. It is the policy of the University of Colorado to defend and indemnify public employees against claims that arise in the course and scope of public employment, unless the actions of the public employee are determined to have been the result of willful and wanton conduct.

In all claims made against public employees, other than members of the Board of Regents in their personal capacities and officers of the university, the Board of Regents authorizes the president of the university or the president's designee to make determinations related to defense and indemnification under the Colorado Governmental Immunity Act, including, but not limited to: (1) whether the university will provide for the defense of the employee; (2) whether to retain or assign counsel to the public employee; (3) whether to reimburse the public employee for the reasonable costs of legal representation; (4) whether to condition the defense and indemnification of the public employee in any manner; (5) whether to seek reimbursement of defense costs from a public employee when the university is legally permitted to do so; and (6) whether to settle or otherwise resolve a claim against a public employee.

In all claims made against the officers of the university, the chair of the Board of Regents is authorized to make decisions related to defense and indemnification after consultation with the full Board of Regents in executive session.

In all claims against members of the Board of Regents in their personal capacities, decisions related to defense and indemnification shall be made by an affirmative vote of the remaining members of the Board of Regents, provided that a quorum of the board may be achieved by the members who are not named as defendants in the action. In the event that such a quorum is not possible, the decision shall be made by independent counsel designated by an affirmative vote of the full Board of Regents.

In the event an award of punitive damages is made against a public employee, the university shall not indemnify the public employee for any such damages unless the Board of Regents determines by resolution at a public meeting that it is in the public interest for the university to pay such an award.

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#### History:

- Adopted: February 20, 1997.
- Revised: January 14, 2009; February 13, 2020.
- Last Reviewed: February 13, 2020.



# University of Colorado

Boulder | Colorado Springs | Denver | Anschutz Medical Campus

## BOARD OF REGENTS

### 13. BUSINESS AND FINANCE

#### Policy 13.E: Fiscal Misconduct

##### 13.E.1 Statement of Information

The purpose of this policy is to maintain the public trust in and to preserve and to protect the assets and financial interests of the university by:

- (A) Promoting adherence to federal and state law, administrative rules, and university policies;
- (B) Promoting increased awareness of all employees of the possibility that various forms of fiscal misconduct may occur; and
- (C) Establishing responsibility for the prevention, detection, investigation, and resolution of fiscal misconduct.

##### 13.E.2 Terms

In the context of this policy, fiscal misconduct means a deliberate act or failure to act in the course of university employment regarding fiscal matters, contrary to established law, rule, or policy, with the intent to obtain an unauthorized benefit, which results in loss or other damage to the university or university faculty, staff, student or university affiliated entity. Fiscal misconduct includes, but is not limited to:

- (A) Embezzlement or misappropriation of university funds, goods, property, services, or other resources;
- (B) Improper handling or reporting of financial transactions;
- (C) Authorizing or receiving compensation for goods not received or services not performed;
- (D) Authorizing or receiving compensation for hours not worked;
- (E) Forgery or unauthorized alteration of financial documents or records;
- (F) Diverting funds to an unrelated private enterprise that otherwise could be available to the university;
- (G) Suspected fiscal misconduct is a reasonable belief or actual knowledge that fiscal misconduct has occurred or is occurring.

Fiscal misconduct also includes attempted fiscal misconduct. Attempted fiscal misconduct exists when an employee, with the intent to obtain a financial gain, engages in deliberate act or failure to act that constitutes a substantial step towards committing fiscal misconduct, even though that act or failure to act did not result in loss or other damage to the university or university faculty, staff, student or university affiliated entity.

### 13.E.3 Policy

#### (A) General

Prevention. The university will maintain an internal control environment to protect the university from loss or other damage resulting from fiscal misconduct.

Obligation to Report. All instances of suspected fiscal misconduct involving the university must be promptly reported in accordance with established university procedures.

Investigation. The university will establish and maintain procedures for investigating reports of known or suspected fiscal misconduct.

Remedies. Appropriate and timely actions will be taken to remedy fiscal misconduct. Such remedial actions may include, but are not limited to: (1) taking disciplinary action (up to and including termination of employment) against university officers and employees who engage in fiscal misconduct or fail to report suspected fiscal misconduct, (2) seeking restitution for all losses, including investigative and legal expenses, (3) forwarding information to the appropriate authorities for criminal prosecution of persons who engage in fiscal misconduct, and (4) instituting civil action to recover losses. Administrative actions will be taken as needed to mitigate the risk of future fiscal misconduct.

False Allegations. Employees who make false allegations of suspected fiscal misconduct with the intent to disrupt the university's business or to cause harm to another will be subject to disciplinary action.

#### (B) Responsibilities

Officers and Employees. All officers and employees are responsible for preserving the university resources entrusted to them and for using those resources in a prudent manner and for their designated purposes, as prescribed by law, regulation, or policy. Officers and employees are also responsible for promptly reporting incidents of suspected fiscal misconduct, whether by members of the university community or by outside parties. Individuals who are not responsible for investigating reports of fiscal misconduct shall not attempt to conduct investigations. Officers and employees are expected to cooperate fully with those authorized to conduct the investigation.

Managers and Supervisors. Employees with managerial or supervisory duties are responsible for creating an environment that contributes to the deterrence of fiscal misconduct and for maintaining a system of internal controls that assists in the prevention and detection of incidents of misconduct. Managers and supervisors should be familiar with the types of fiscal misconduct that might occur within their area of responsibility and be alert for indications of their occurrence. Appointing or supervisory authorities, as appropriate, are responsible for taking remedial action with respect to those involved in fiscal misconduct. Managers also are responsible for implementing cost-effective

changes in policy and procedures that are designed to reduce the likelihood of recurrence.

Campus and System. Each campus has responsibility for maintaining an internal control environment and system of controls for the campus that reasonably deter, detect, investigate, and remedy fiscal misconduct. System administration has such responsibility for system activities and further has overall responsibility for maintaining an internal control environment and system of controls universitywide.

Department of Internal Audit. The Department of Internal Audit has the primary responsibility for coordinating the initial assessment, investigation, and internal reporting of known or suspected fiscal misconduct. The campus police departments, the Office of University Counsel, and other offices will be involved in these activities in a manner consistent with their responsibilities and authority and appropriate for the circumstances. All examinations, documentation, and reports concerning the investigation shall be considered confidential to the extent permitted by law.

Campus Police Departments. The campus police departments are responsible for criminal investigations and for coordinating the reporting of criminal actions with the Office of University Counsel to the district attorney and external law enforcement agencies in the jurisdiction.

Office of University Counsel. The Office of University Counsel is responsible for providing guidance to university departments and officials regarding investigative and remedial actions. The Office of University Counsel will serve as the liaison with external legal entities and, along with the campus police departments, will coordinate the reporting of criminal actions to the district attorney and law enforcement agencies in the jurisdiction.

Other. Certain activities that require investigation may not clearly constitute "fiscal misconduct" as defined in this policy. If other university policies or procedures do not exist, university management may follow the framework established here to ensure adequate coordination of such investigations.

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### **History:**

- Adopted: December 7, 2000.
- Revised: January 14, 2009, November 6, 2015.
- Last Reviewed: April 6, 2017.





# University of Colorado

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## BOARD OF REGENTS

### 13. BUSINESS AND FINANCE

#### **Policy 13.F: Gifts Benefiting the University of Colorado**

The University of Colorado Foundation (CUF) is designated as the primary recipient of all gifts given for the benefit of the university. Accordingly, it shall be presumed that any charitable contribution directed to the university or any of its organizational units was intended to be directed to and managed by the CUF, except where clear evidence of donor intent to the contrary exists and subject to any exceptions established by the president. The president is authorized to transfer to the CUF monies and title to any asset derived from a charitable contribution directed to the university whenever, in the sole discretion of the president, the good of the university so requires.

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#### **History:**

- Adopted: June 23, 2015.
- Revised: n/a.
- Last Reviewed: April 6, 2017.



# University of Colorado

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## BOARD OF REGENTS

### 13. BUSINESS AND FINANCE

#### Policy 13.G: Contractual Indemnification of Contractors

##### 13.G.1 Definitions

For purposes of this policy:

- (A) an “indemnification obligation” is any contractual obligation pursuant to which the university agrees to assume the liabilities of any third party (person or entity) or to defend or hold such third party harmless for claims, settlements, judgments or similar liabilities; and
- (B) a “contractor” is any person or entity with whom the university has a written contractual relationship.

##### 13.G.2 Policy

The president and chancellors are authorized to agree to an indemnification obligation only under the following circumstances:

- (A) The contract containing the indemnification obligation is for the university’s acquisition of essential goods or services and, in the opinion of the Office of University Counsel:
  - (1) the terms of the contract are non-negotiable for consumers (such contracts are sometimes referred to as contracts of adhesion and ordinarily include “clickwrap” software license agreements); or
  - (2) the indemnification obligation is a contingent liability that is incidental to the contract and is so remote or unlikely that it could not reasonably be reduced to a sum certain.
- (B) The contract containing the indemnification obligation is for the university’s acquisition of essential goods or services or is a revenue contract and, upon review of a risk analysis and recommendation provided by the Office of University Counsel, the president or chancellor concludes that the risk to the university that may arise from entering into the contract are sufficiently limited and outweighed by the benefits of the contract.

The risk analysis and recommendation provided by the Office of University Counsel should, at a minimum, consider the following factors:

- (1) The importance of the contract to the achievement of system or campus goals or objectives and the impact on the system or campus if the contract is not executed.
- (2) The net value of the contract to the system or campus. For example, a materials transfer agreement which provides essential research materials without charge may be more beneficial than a revenue contract where revenues only slightly exceed costs.
- (3) The availability of other contractors who can provide the same goods or services at similar cost without requiring an indemnification obligation.
- (4) The likelihood that further efforts to negotiate an approach to contractual allocation risk that does not require the university to indemnify the contractor will be successful, and the likelihood that the university intends to engage in future transactions with such contractor.
- (5) Whether the indemnification obligation is required by state or federal law as a condition of a contract with, or grant to or from, a governmental entity, and whether such governmental entity enjoys immunity from claims or liabilities related to the subject matter of the contract or grant.
- (6) The extent to which the university is able to mitigate the risk posed by the indemnity obligation or to limit any liability arising from the indemnity obligation. For example:
  - (a) An indemnification obligation that requires the university to hold a contractor harmless for claims or liabilities arising from the acts or omissions of university employees is more likely to be acceptable than an indemnification obligation that requires the university to hold a contractor harmless for the acts or omissions of non-university personnel. An indemnification obligation that requires the university to hold a contractor harmless for claims or liabilities arising from the gross negligence or willful or wanton acts of the directors, officers, employees, agents or contractors of such contractor is generally unacceptable.
  - (b) An indemnification obligation accompanied by a contractual provision that caps the university's potential liability is more likely to be acceptable than an indemnification obligation where the university's potential liability is unlimited.
  - (c) An indemnification obligation accompanied by a contractual provision that requires the indemnified contractor to carry insurance and includes a waiver of insurer subrogation rights is more likely to be acceptable than an indemnification obligation that is not accompanied by such a provision.

- (d) An indemnification obligation that requires the university to hold a contractor harmless for claims or liabilities for violation of intellectual property rights arising from the university's use of contractor intellectual property is more likely to be acceptable than an indemnity obligation that is not limited as to subject matter.
- (e) An indemnification obligation is more likely to be acceptable if the university encumbers funds to pay for any potential liability or if such liability is reasonably likely to be covered by insurance, bonds, surety instruments, loss reserves, a risk management fund, or other source of funds than an indemnification obligation with respect to which there is no identified source of funds to pay for any potential liability.

### 13.G.3 Further Delegation, Record Keeping and Training

The authority delegated to the president and chancellors pursuant to section (A) of paragraph 13.G.2, herein, may be further delegated expressly in writing, provided that all such written delegations shall be maintained by the Secretary of the Board of Regents and reported annually to the Board of Regents.

The authority delegated to the president and chancellors pursuant to section (B) of paragraph 13.G.2, herein, may not be further delegated. A complete copy of any agreement entered into by the president or the chancellors pursuant to section 13.G.2(B) shall be forwarded to the Secretary of the Board of Regents and reported annually to the Board of Regents. Information reported to the Board of Regents related to section 13.G.2(B) shall include, to the extent possible, an estimate of the amount of the total potential liability imposed by any agreement entered into by the president or chancellor.

The Office of University Counsel shall develop guidance and training for any individual exercising this authority.

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#### **History:**

- Adopted: January 8, 2016.
- Revised: N/A.
- Last Reviewed: June 18, 2020.



# University of Colorado

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## BOARD OF REGENTS

### 13. BUSINESS AND FINANCE

#### **Policy 13.H: Limited Authority to Transfer Certain University Funds to Certain University Auxiliary Funds to Certain University Affiliated Entities**

##### **13.H.1 Definitions**

For purposes of this policy, and only for the purposes of this policy and any policies of the university administration adopted to implement this policy, the following definitions shall be applicable:

- (A) "Auxiliary Funds" shall mean any monies derived from royalty revenues attributable to any university-owned or university-controlled technologies, unrestricted funds anticipated to enhance or further university research or other benefit anticipated to directly promote the university's academic or research missions, or any monies derived from revenue contracts that are directly related to a university research enterprise. Auxiliary Funds shall not include any monies derived from state or federal grants or appropriations, tuition or fees, or any other source subject to any restriction not consistent with this policy.
- (B) "University Affiliate" means any entity supervised or controlled in connection with the university, and that exists or is organized for the benefit of the university.

##### **13.H.2 Policy**

The president is authorized to transfer Auxiliary Funds to a University Affiliate whenever, at the sole discretion of the president, the good of the university so requires and the president has determined that the use of such Auxiliary Funds by such University Affiliate will directly benefit the university.

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##### **History:**

- Adopted: February 13, 2019.
- Revised: N/A.
- Last Reviewed: February 13, 2019.



# University of Colorado

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## BOARD OF REGENTS

### 13. BUSINESS AND FINANCE

#### Policy 13.I: Contracting Authority and Regent Notification

##### 13.I.1 Background

Per regent policy 3.A.1(H), the president is authorized to make and execute contracts on behalf of the university without the prior approval of the Board of Regents, except as may be limited by law, or when the Board of Regents has expressly provided otherwise for a specific contract or category of contracts.

##### 13.I.2 Board of Regent Notification

For any contracts involving non-real property contemplated to exceed \$10,000,000, the Board of Regents (Board) shall be informed, except as noted below, prior to finalizing a solicitation:

- (A) The board previously approved a contract for the provision of a given service or product and the contract is simply up for renewal. The president shall brief the board on any such renewal at the next board meeting.
- (B) The contract is funded exclusively through research or clinical sources when those clinical sources are funding clinical-related activities, or otherwise noted in regent laws and policies.
- (C) Universitywide price agreements required for the day-to-day operation of the university.

Informing the board provides an opportunity to receive board feedback prior to spending commitments being made.

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#### History:

- Adopted: September 10, 2020.
- Revised: N/A.
- Last Reviewed: September 10, 2020.