

POLICY CONCEPTS: INSTRUCTIONS AND GUIDELINES

All policy proposals – including new policy concepts, proposed revisions, or suggested repeals – must be submitted via the form on page 2 to the Office of the University Secretary with appropriate supporting information and documents. Completed submissions are forwarded to the University Senate (academic policies) or the President’s Policy Advisory Council (PAC), which ensures proper routing through the policy-making process. (See UO Policy I.03.01 for more information.)

Please keep the following definition of a university policy in mind as you develop your concept:

A University Policy (“Policy”) is a policy that (1) has broad application or impact throughout the University community, (2) must be implemented to ensure compliance with state or federal law, (3) is necessary to enhance the University’s mission, to ensure institutional consistency and operational efficiency, or to mitigate institutional risks; or (4) is otherwise designated by the Board [of Trustees] or the President [of the University] as a University Policy.

A policy establishes rights, requirements or responsibilities. Excluded from this definition are things such as, but not limited to, implementation guides, operating guidelines, internal procedures, and similar management controls and tools.

To help facilitate as smooth a process as possible, please consider the following:

1. Consult as many stakeholders as possible *prior to submitting* your concept. A primary role for the PAC is to ensure that appropriate offices, departments or groups are consulted.
2. Run your concept by the Office of General Counsel (OGC) *prior to submission*. OGC review is a required step in policy-making.
3. Please use the proper template – email uopolicy@uoregon.edu to obtain either (a) the new policy template (new proposals) or (b) the Word version of the existing policy in its proper template (for redlines/revisions).
4. A “redlined” version of your concept in Word is required for proposed revisions. This must be done using the appropriate Word version (see #3, above).
5. Include any appropriate related resources that will be useful to those reviewing the concept. Links are preferred, but supplemental documents are of course acceptable for items not online. Examples of such items include any associated procedures or unit level policies (even if in draft form), or other policies or procedures related to, overridden by, necessary as a result of, or otherwise affiliated with your concept;
6. Please submit all documents as individual files.
7. Someone from the responsible office or proposing unit will need to attend a PAC meeting to explain the concept and answer any questions.

Please email uopolicy@uoregon.edu if you have any questions. Thank you!

POLICY CONCEPT FORM

Name and UO Title/Affiliation:	Emily Tanner-Smith, Associate Professor, Thomson Professor, Associate Vice President for Research
Policy Title & # (if applicable):	Proprietary Research, Policy Number II.06.05
Submitted on Behalf Of:	Office of the Vice President for Research and Innovation
Responsible Executive Officer:	Vice President for Research and Innovation

SELECT ONE: New Policy Revision Repeal

Click the box to select

HAS THE OFFICE OF GENERAL COUNSEL REVIEWED THIS CONCEPT: Yes No

If yes, which attorney(s): Jessica Price

GENERAL SUBJECT MATTER

Include the policy name and number of any existing policies associated with this concept.

This concept proposes to revise the existing policy entitled “Proprietary Research.” There are no other existing policies associated with this concept.

RELATED STATUTES, REGULATIONS, POLICIES, ETC.

List known statutes, regulations, policies (including unit level policies), or similar related to or impacted by the concept. Include hyperlinks where possible, excerpts when practical (e.g. a short statute), or attachments if necessary. Examples: statute that negates the need for or requires updates to an existing policy; unit level policy(ies) proposed for University-wide enactment; or existing policies used in a new, merged and updated policy.

There are no known statutes or regulations related to or impacted by the concept.

Related University policies:

Allegations of Research Misconduct

<https://policies.uoregon.edu/vol-2-academics-instruction-research/ch-6-research-general/allegations-research-misconduct>

Conflict of Interest, Conflict of Commitment, and Outside Activities

<https://policies.uoregon.edu/vol-1-governance/ch-2-legal-affairs/conflict-interest-conflict-commitment-and-outside-activities>

Inventions, License Agreements, Educational & Professional Materials Development, Patents & Copyrights

<https://policies.uoregon.edu/vol-2-academics-instruction-research/ch-7-innovation-tech-transfer-economic-development/inventions>

Research: Classified Research

<https://policies.uoregon.edu/vol-2-academics-instruction-research/ch-6-research-general/research-classified-research>

Research: Financial Conflict of Interest in

<https://policies.uoregon.edu/vol-2-academics-instruction-research/ch-6-research-general/research-financial-conflict-interest>

STATEMENT OF NEED

What does this concept accomplish and why is it necessary?

This concept proposes to revise the University's policy on the conduct of proprietary research. This revision is needed because the current policy has produced unintended consequences that impinge on the academic freedom of faculty and sponsored researchers and their ability to engage in productive research partnerships. For instance, the current policy does not address the natural rights of indigenous cultures to control their natural resources and languages, thus precluding UO researchers from engaging in research partnerships with tribes and other indigenous groups. The current policy does not allow for reasonable timing of publication for research where the UO is participating in multi-institutional work such as national research consortia. The current policy also does not allow for more than a 90-day delay in publication for intellectual property protection. The current policy also fails to recognize the need for providers of standardized tests and examinations (e.g., those used for K-12 or for licensure) to retain confidentiality related to test items. The proposed revision to this policy addresses these unintended consequences by providing potential pathways for UO researchers to seek exemptions under the policy. These exemptions would prevent the aforementioned problems, while ensuring that the appropriate safeguards are in place to ensure research conducted at the University of Oregon primarily serves public rather than private purposes.

AFFECTED PARTIES

Who is impacted by this change, and how?

The following parties will be affected by the new policy: Anyone who conducts or supports research at the University of Oregon. Of note, these parties will not experience any changes associated with the adoption of this policy revision. Rather, the only immediately affected parties will be any principal investigators at the university who would like to submit an exception request under the newly revised policy.

CONSULTED STAKEHOLDERS

Which offices/departments have reviewed your concept and are they confirmed as supportive? (Please do not provide a list of every individual consulted. Remain focused on stakeholders (e.g. ASUO, Office of the Provost, Registrar, Title IX Coordinator, etc.).)

Review was conducted in several parts. First, during the months of January – March 2021, input was sought from the Senate Executive Committee, Innovation Partnership Services, and Office of General Counsel for initial outreach. An initial discussion draft of the policy was created in response to that outreach.

Next, a joint administration-senate ad hoc committee was formed in April 2021 to further consider and revise the draft. The committee met in April, May, and June 2021 to further revise the policy draft. The committee was comprised of the following representatives:

Chair:

Emily Tanner-Smith, Associate Professor, Counseling Psychology and Human Services

Members:

Nick Allen, Professor, Psychology

Gina Biancarosa, Professor, Special Education and Clinical Sciences (Senator)

Nico Larco, Professor, Architecture (Senator)

Staff:

Brittney de Alicante, Executive Assistant, OVPRI

Orca Merwin, Associate Director of IPS, OVPRI

Jessica Price, Associate General Counsel, OGC

Chuck Williams, Associate Vice President for Innovation, OVPRI

Third and finally, the revised policy, approved unanimously by the committee, was submitted to Senate President Berkman in June 2021 and presented to the Senate Executive Committee on November 10th, 2021.

Name	Office	Date
Elliot Berkman	UO Senate	Multiple reviews during February 2021 – June 2021
Senate Executive Committee	UO Senate	March 3, 2021
Senate Membership	UO Senate	January 13, 2021
Ad hoc Policy Committee	UO Senate	Multiple reviews during April – June & September – October 2021
Jessica Price	Office of General Counsel	Multiple reviews during January-September 2021
Bob Guldberg	Knight Campus	June 22, 2021
Sponsored Research Council	Office of the Provost	June 24, 2021
Research and Outreach Council	College of Education	July 8, 2021
Financial Conflict of Interest in Research Committee	Research Compliance Services	July 8, 2021
Research Compliance Leadership Team	Research Compliance Services	July 8, 2021
OVPRI Center & Institute Directors	Office of the Vice President for Research and Innovation	July 8, 2021
Divisional Dean and Department Heads, Natural Science	College of Arts and Sciences	July 8, 2021
Divisional Dean and Department Heads, Social Science	College of Arts and Sciences	July 8, 2021
Divisional Dean and Department Heads, Humanities	College of Arts and Sciences	July 8, 2021
Division of Graduate Studies	Office of the Provost	September 13, 2021
Research Advisory Board	Office of the Vice President for Research and Innovation	September 17, 2021

Proprietary Research

Policy Number:

II.06.05

Reason for Policy:

To record the faculty's commitment to freedom to publish research results.

Entities Affected by this Policy:

Anyone who conducts or supports research at the University of Oregon

Responsible Office:

For questions about this policy, please contact the Office of the Vice President for Research and Innovation at (541) 346-2090, vpri@uoregon.edu

Website Address for this Policy:

<https://policies.uoregon.edu/vol-2-academics-instruction-research/ch-6-research-general/proprietary-research>

Enactment & Revision History:

12 October 2016 - Policy number changed from 09.00.07 to II.06.05

14 June 2012 - Reviewed and approved the interim university president

Policy:

Preamble:

To fulfill its mission and meet requirements arising from the University of Oregon's status as a tax-exempt, public educational and research institution, research conducted at the University of Oregon must primarily serve public rather than private purposes. University researchers must have autonomous freedom to conduct research and to publish and disseminate that research, limited only by the standards and methods of accountability established by their profession, their individual disciplines, and the principles of research integrity. Therefore, it is expected that research results will be published or otherwise disseminated on a nondiscriminatory basis and within a reasonable period of time.

Policy Statement:

Except as expressly provided below, University researchers may not conduct proprietary research where the freedom to publish the results of that research is limited, and the University of Oregon shall not accept any limitation on the freedom to publish research results from any research sponsor, including, but not limited to, restrictions that convey veto or censorship authority. Publication delays not exceeding sixty (60) days are acceptable so that a research sponsor may review publications and (1) offer comments or suggestions and (2) determine that its proprietary data are not disclosed. Delays not exceeding ninety (90) days also are permitted so that the University and the research sponsor may screen proposed publications for intellectual property protection. If both sixty- and ninety-day delays are applicable, the total period of delay should not exceed ninety (90) days.

Sponsored research projects allowing access to or use of the sponsor's proprietary data or materials will be accepted only if regulations regarding access, use, and protection of such data or materials do not restrict the full dissemination (excluding the proprietary data or materials) of scholarly findings made under the research agreement. Proprietary data or materials must

be labeled as such by the research sponsor before release to University researchers. Research sponsor requirements shall not proscribe citation of the sponsor name in publications.

Only under the following scenarios may exceptions be granted regarding additional publication delays or for other publication restrictions.

Exceptions for Publication Delays

Reasonable publication delays exceeding ninety (90) days are only permitted when all of the following requirements are satisfied: (1) the University principal investigator agrees; (2) the time is necessary for filing or registering for intellectual property protection; (3) the VPRI signatory approves; and (4) the agreement to delay is not reasonably likely to result in the delay of the graduation of any students participating in research.

Exceptions for Any Other Publication Restrictions

Requests for any other reasonable publication restrictions are only permitted as follows:

- A. Pre-approved classes of exceptions: University researchers may submit a written request to the OVPRI for an exception under one or more of the following pre-approved classes of exceptions. The OVPRI shall use a streamlined process to review these types of requests and ensure, prior to approval, that all proposed and future UO participants will agree in writing to comply with the proposed publication limitation. The following classes of exceptions will be eligible for this streamlined application and review process:
 - i. Publication restrictions on cultural resources or cultural property, defined as any property of great importance to the cultural heritage of a people. For instance, tribal cultural resources may include land, tribal names, symbols, stories, medicines, and language.
 - ii. Publication control in a project managed by an academic, government, or non-profit organization with a clear mission to publish data and works authored by contributors to the project.
 - iii. Participation in bona fide standards bodies, defined as non-discriminatory, non-industry-controlled consortia or organizations focused on creating and disseminating standards. Standards are defined here as published documents that establish specifications and procedures to maximize the reliability of materials, products, methods, and/or services used by the public.
 - iv. Publication restrictions to protect human subjects, endangered species, or other personally identifiable information.
 - v. Publication restrictions for contributions to standardized tests or standardized assessments.
- B. Other exception requests: For any other sponsor limitations on publication that do not fall within the pre-approved class of exceptions described in section A above, university researchers may submit a written request to the OVPRI for an other exception request.

University researchers submitting other exception requests will be required to provide a summary of the proposed research, the academic value of the research, the research's potential benefit to the public despite publication restrictions, and assurances that the publication restrictions are not reasonably likely to result in the delay of the graduation of any students participating in research. These requests will be reviewed by the OVPRI to assess whether there are any regulatory concerns.

If the OVPRI review described above finds no concerns, a committee convened by the OVPRI that predominantly includes faculty representation shall review the exception request. The committee will review these requests to assess whether the proposed sponsor limitations on publication could compromise the University's pursuit of its mission to serve public rather than private purposes. The committee makes a recommendation to the VPRI whether to grant the exception, grant the exception with conditions, or deny the exception. The VPRI or their designee makes the final decision to grant, grant with conditions, or deny the exception request.

The following guiding principles may be used by the Committee when reviewing these other exception requests:

- The proposed research, even considering the proposed publication restrictions, must have substantial benefit to the public.
- The proposed publication restrictions should not be expected to adversely affect the graduation ability of any involved University student researchers.
- The proposed publication restrictions should not effectively restrict a substantial area of intellectual inquiry for any other University researchers.
- If there are costs associated with complying with the proposed publication restrictions, the grant management unit must provide evidence of accepting responsibility for those additional costs and those costs must be congruent with allowable expenses and in compliance with terms and conditions of the award. The grant management unit must also provide evidence that they have the physical and technological facilities/capacities needed to ensure compliance.

Chapter/Volume:

- Volume II: Academics, Instruction and Research
- Chapter 6: Research, general

Original Source:

UO Policy Statement

Proprietary Research

Policy Number:

II.06.05

Reason for Policy:

To record the faculty's commitment to freedom to publish research results.

Entities Affected by this Policy:

Anyone who conducts or supports research at the University of Oregon

Responsible Office:

For questions about this policy, please contact the Office of the Vice President for Research and Innovation at (541) 346-2090, vpri@uoregon.edu

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Policy:

Preamble:

To fulfill its mission and meet requirements arising from the University of Oregon's status as a tax-exempt, public educational and research institution, research conducted at the University of Oregon must primarily serve public rather than private purposes. University researchers must have autonomous freedom to conduct research and to publish and disseminate that research, limited only by the standards and methods of accountability established by their profession and their individual disciplines. Therefore, it is expected that research results will be published or otherwise be disseminated on a nondiscriminatory basis and within a reasonable period of time.

Policy Statement:

Except as expressly provided below, University researchers may not conduct proprietary research where the freedom to publish the results of that research is limited, is limited inherently and fundamentally, even if such limitation is intended only to permit University project personnel access to proprietary information, and ~~the University of Oregon shall not accept any fundamental and inherent limitation on the freedom to publish research results from any research sponsor, including, but not limited to, and therefore, shall not accept publication~~ restrictions that convey veto or censorship authority ~~to extramural sponsors of University research projects.~~ Publication delays not exceeding sixty (60) days are acceptable so that a research sponsor may review publications and (1) offer comments or suggestions and (2) determine that its proprietary data are not disclosed. Delays not exceeding ninety (90) days also are permitted so that the University and the research sponsor may screen proposed publications for intellectual property protection. If both sixty- and ninety-day delays are applicable, the total period of delay should not exceed ninety (90) days.

Sponsored research projects allowing access to or use of the sponsor's proprietary data or

materials will be accepted only if regulations regarding access, use, and protection of such data or materials do not restrict the full dissemination (~~excluding the proprietary data or materials~~), of scholarly findings made under the research agreement. Proprietary data or materials must be labeled as such by the research sponsor before release to University researchers, ~~except that proprietary data or materials disclosed orally must be identified, within 30 days of such disclosure, in writing by the sponsor as proprietary, or as otherwise agreed to in writing by University's authorized representative.~~ Research sponsor requirements shall not proscribe citation of the sponsor name in publications.

Exceptions for Publication Delays

Reasonable publication delays exceeding ninety (90) days are only permitted when all of the following requirements are satisfied: (1) the principal investigator agrees; (2) the time is necessary for filing or registering for intellectual property protection; (3) the VPRI signatory approves; and (4) the agreement to delay is not reasonably likely to result in the delay of the graduation of any students participating in research.

Exceptions for Any Other Publication Restrictions

The University of Oregon's OVPRI shall review requests from University researchers for other exceptions to the Proprietary Research Policy as follows:

- A. Pre-approved classes of exceptions: University researchers may submit a written request to the OVPRI for an exception under one or more of the following pre-approved classes of exceptions. The OVPRI shall use a streamlined process to review these types of requests and ensure, prior to approval, that all proposed and future UO participants will agree in writing to comply with the proposed publication limitation. The following classes of exceptions will be eligible for this streamlined application and review process:
- i. Publication restrictions on cultural resources or cultural property, defined as any property of great importance to the cultural heritage of a people. For instance, tribal cultural resources may include land, tribal names, symbols, stories, medicines, and language.
 - ii. Publication control in a project managed by an academic, government, or non-profit organization with a clear mission to publish data and works authored by contributors to the project.
 - iii. Participation in bona fide standards bodies (non-discriminatory), defined as non-industry controlled consortia or organizations focused on creating and disseminating standards. Standards are defined here as published documents that establish specifications and procedures to maximize the reliability of materials, products, methods, and/or services used by the public.
 - iv. Publication restrictions to protect human subjects, endangered species, or other personally identifiable information.
 - v. Publication restrictions for contributions to standardized tests or standardized assessments.

B. Non-standard exception requests: For any other sponsor limitations on publication that do not fall within the pre-approved class of exceptions described in section A above, university researchers may submit a written request to the OVPRI for a non-standard exception request.

University researchers submitting non-standard exception requests will be required to provide a summary of the proposed research, the academic value of the research, the research's potential benefit to the public despite publication restrictions, and assurances that the publication restrictions are not reasonably likely to result in the delay of the graduation of any students participating in research. These requests will be reviewed by the OVPRI to assess whether there are any compliance concerns.

If the OVPRI review described above finds no compliance concerns, a committee convened by the OVPRI that predominantly includes faculty representation shall review all non-standard exception requests. The committee will review these requests to assess whether the proposed sponsor limitations on publication could compromise the University's pursuit of its mission to serve public rather than private purposes. The committee makes a recommendation to the VPRI whether to grant the exception, grant the exception with conditions, or deny the exception. The VPRI or their designee makes the final decision to grant, grant with conditions, or deny the exception request.

The following guiding principles may be used by the Committee when reviewing any non-standard exception request:

- The proposed research, even considering the proposed publication restrictions, must have substantial benefit to the public.
- The proposed publication restrictions should not be expected to adversely affect the promotion-ability of any involved University researchers.
- The proposed publication restrictions should not effectively restrict a substantial area of intellectual inquiry for any other University researchers.
- If there are costs associated with complying with the proposed publication restrictions, the grant management unit must provide evidence of accepting responsibility for those additional costs. The grant management unit must also provide evidence that they have the physical and technological facilities/capacities needed to ensure compliance.

Chapter/Volume:

- Volume II: Academics, Instruction and Research
- Chapter 6: Research, general

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UO Policy Statement