

RECOMMENDATION TO THE BOARD OF TRUSTEES
CONCERNING THE ADOPTION OF A NEW REGULATION
REGARDING PROCUREMENT

Board of Trustees – January 21, 2021

RECOMMENDATION:

The President recommends that the Board of Trustees approve a new procurement regulation, as attached.

BOARD ACTION:

Passed X

Did Not Pass

Other

Signature on File

Assistant Secretary

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KRS 164.821(7) and the University of Louisville Interpretation

Unless specifically approved by the board of trustees under the provisions of KRS 164.367, no member of the teaching or administrative staff of the university shall be directly or indirectly interested in any contract with the university for the sale of property, materials, supplies, equipment, or services, with the exception of compensation to the faculty, staff, and student members.

Prior to March 2019, University of Louisville Research Foundation (ULRF) and the University of Louisville Athletic Association (ULAA) were not considered included in the above statute's interpretation – only the University of Louisville. A Covered Person with an interest in a contract with ULRF or ULAA would do so under an approved Management Plan. In March 2019, based on a new interpretation by the Chief Compliance Officer, ULRF and ULAA were considered covered by the above statute. With that interpretation, a company in which a Covered Person holds an interest can donate goods or services to UofL, ULRF or ULAA. Alternatively, the Covered Person can divest themselves from the company seeking a contract with UofL, ULRF or ULAA.

This proposed Administrative Regulation and associated Procedure provides the University with the opportunity to engage in a contract with a Covered Person, beyond compensation, if it is determined to be in the best interest of the university.

Proposed: University of Louisville Administrative Regulation: Interest in Contracts

Section 1. The Board of Trustees of the University of Louisville exercises its authority to perform the functions set forth in KRS 164.367 (2) establishing the conditions and procedures by which a Covered Person, who may be directly or indirectly interested in a contract, may contract with the University for the sale of property, materials, supplies, equipment or services to the University.

Section 2. A Covered Person, must act with the utmost integrity, responsibility, and honesty. A Covered Person cannot use his/her position for financial gain or other benefits for oneself, business associates, Relatives, or other persons with which a Covered Person has a close personal relationship. Actions that create an appearance of impropriety are to be avoided.

Section 3. If there is a proposed contract in which a Covered Person has an interest, whether direct or indirect, for the sale, or purchase of property, materials, supplies, equipment, or services with the University, the contracting entity shall submit a request for review of that desired contract. An indirect interest can be found when a real or perceived use of a University position could lead to financial or other benefits to the Covered Person or a Relative of the Covered Person. An indirect interest includes situations where a business owned or controlled by a Relative of the Covered Person would be doing business with the University.

Section 4. The Board of Trustees of the University of Louisville has determined the University may enter into a contract in which a Covered Person has an interest only if the proposed contract is approved pursuant to the processes for review and approval and said contract meets specified criteria. Requests for review are submitted to the University's Conflict Review Board for its review and recommendation. The Conflict Review Board (1) may recommend approval of the request through the University of Louisville's Vice President for Risk, Audit and Compliance (who serves as the Conflict of Interest and Commitment (COIC) Officer), (2) recommend approval of the request with modification, or (3) recommend denial of the request because of failure to appropriately mitigate identified COICs. If the COIC Officer agrees with the CRB's recommendation of approval, with or without modifications, the COIC Officer then submits the recommendation to the President of the University. If the President agrees with the recommendation, the President submits the recommendation to the Board of Trustees for final approval.

In such review process, each of the following criteria must be met:

- a) the Covered Person does not perform simultaneous work as both Covered Person and contractor and the Covered Person's interest in the contract does not present a conflict with Covered Person fulfilling his/her University Responsibilities;
- b) the Covered Person does not have any institutional decision-making power over the contract or the proceeds resulting from the contract;
- c) the Covered Person is not a Relative, as defined by KRS 164.001(20) to a contract negotiator or decider;
- d) the Covered Person either has taken, or agrees to take, whatever actions the Conflict Review Board, the Covered Person's designated Appropriate Authority (as designated in the Management Plan), COIC Officer, President or the Board of Trustees requires to manage or avoid any conflict of interest or appearance of a conflict of interest;
- e) if the contract is subject to the provisions of KRS Chapter 45A, the Covered Person's contract shall be the lowest price bid or otherwise provide the best value to the University;
- f) the contract scope does not include human subjects research;
- g) the contractual relationship is determined to be in the best interest of the University; and
- h) the nature of the contract and the nature of the Covered Person's interest in the contract is fully disclosed to the University community in as broad of communications as appropriate for the nature of the contract and the Covered Person's interest.

Section 5. Upon recommendation of the University of Louisville's Conflict Review Board, the University of Louisville's COIC Officer, and the University of Louisville President, the Board of Trustees of the University of Louisville will have final authority to approve or disapprove all contracts in accordance with Sections 2, 3 and 4 of this regulation.

Section 6. Board of Trustees Members and University Officers will remain prohibited to contract with the University of Louisville except as set forth in KRS 164.0053 and KRS 164.390, respectively.

Section 7: For purposes of the applicability of this regulation, University includes the University of Louisville, the University of Louisville Research Foundation, Inc., and the University of Louisville Athletic Association, Inc. and their successors as well as any other future affiliated corporation of the University of Louisville meeting the criteria specified by KRS 164A.610. In addition, this regulation applies when the funding is held by University of Louisville Foundation, if those funds are held for the benefit of the University of Louisville, the University of Louisville Research Foundation, Inc., or the University of Louisville Athletic Association, Inc., or any other future affiliated corporation of the University of Louisville meeting the criteria specified by KRS 164A.610.

Proposed: University of Louisville Administrative Procedure: Interest in Contracts

KRS 164.821(7) and University of Louisville (University) policy prohibits University Covered Persons from having an interest in a contract with the University unless specifically approved by the Board of Trustees (Trustees). In order for such a contract to be considered eligible for approval by the Trustees, the Covered Person shall have the right to request a review of the statutory prohibition. The Reconsideration Request must be submitted in writing. Reviews of the Reconsideration Request are submitted to the Conflict Review Board (CRB), who makes a recommendation to the Conflict of Interest and Commitment (COIC) Officer (Vice President for Risk, Audit and Compliance). If the recommendation is for approval, with or without modification, and the COIC Officer agrees with the recommendation, the COIC Officer shall then submit the recommendation to the University President. If the President agrees with the recommendation for approval, then the President shall submit the recommendation to the Trustees for final approval.

The Reconsideration Request must be submitted through the disclosure system and provide the following detail:

- ❖ Detailed description of the specific project for which the request is being made. This detail should include a description of the role of the Covered Person in the project, any relevant proposal/award numbers, any relevant compliance numbers (Institutional Review Board, Institutional Animal Care and Use Committee, Institutional

Biosafety Committee), complete copies of associated sponsored programs proposals (including portions submitted by the external entity as the prime awardee);

- ❖ Justification as to why the contractual relationship is in the best interest of the University;
- ❖ Documentation of actions the Covered Person has taken or will take to avoid any conflict of interest or any appearance of a conflict of interest;
- ❖ Documentation, in accordance with KRS Chapter 45A, that the Covered Person's proposed contract shall be the lowest price bid or otherwise provides the best value to the University, sole source justification is not sufficient for this requirement;
- ❖ Justification that the Covered Person's interest in the contract does not present a conflict with the university job performance; and,
- ❖ Description of how the nature of the contract and the nature of the Covered Person's interest in the contract or business shall be fully disclosed to the University community by as broad communications as feasibly possible.

The COIC Director, who serves as the CRB Chair, will present the Reconsideration Request at the next convened meeting of the CRB. The COIC Officer will in attendance at any CRB meeting in which a Reconsideration Request is presented. When a Reconsideration Request is time sensitive, the CRB Chair reserves the right to convene an ad hoc meeting of the CRB in order to review the request. The convened CRB will review the Reconsideration Request and determine whether it has sufficient information within the request to make a decision. Reconsideration Requests submitted that impact the design, proposing, conduct, performance or analysis of research may require a hold (including expenditures) to be placed upon the specific project in question until the management issue is resolved. If adequate detail is not provided, the Reconsideration Request will be returned to the Covered Person. If adequate detail is provided, the CRB will make one of the following recommendations to the COIC Officer:

- ❖ Recommend to approve the contractual relationship, as described and submitted by the Covered Person
- ❖ Recommend to approve the contractual relationship, with modification(s)
- ❖ Recommend to not proceed with a recommendation to the Trustees and thus prohibit the contractual relationship

All recommendations made by the CRB will be forwarded to the COIC Officer. The COIC Officer will review the submission and supporting documentation from the CRB and issue one of the following recommendations to the President for approval and transmittal to the Trustees:

- ❖ Accept the CRB Recommendation as submitted
- ❖ Accept the CRB Recommendation, with modification(s)
- ❖ Overrule the CRB Recommendation

The decision to overrule the CRB recommendation requires review and consideration by the overrule panel. The panel consists of the COIC Officer in conjunction with the Provost and either the Executive Vice President for Research and Innovation (in research matters) or the Chief Financial Officer (for business matters).

When the CRB and COIC Officer jointly or the COIC Officer recommends prohibition of the contractual relationship, the request will be shared with the President, but will not be presented to the Trustees for review and approval. In these instances, the decision of the COIC Officer will be final. Upon Trustee request, any such denials will be provided on a quarterly basis in summary fashion.

At the next convened Trustees meeting, the Trustees will review the recommendation for approval from the President and supporting documentation and vote to either approve or reject the recommendation. The decision of the Trustees shall be final.

Definitions:

Appropriate Authority. The Covered Person's direct supervisor. The Board of Trustees serves as Appropriate Authority for the President.

Attestation and Disclosure Form (ADF). A Covered Person's annual attestation to the Standards of Conduct and disclosure of external activities and interests to the University.

Conflict of Interest or Commitment (COIC). An external relationship or interest that influences Covered Person's professional judgment in University teaching, Research, outreach, or public service. The term also includes situation in which Covered Person engages in a Non-University Commitment that may interfere with fulfillment of obligations to University. Examples may include outside employment, pro bono or volunteer work, and government service in public interest.

Conflict of Interest and Commitment Office (COIC Office). The office responsible for collecting and reviewing submitted ADFs. COIC Office fulfills the following duties:

- preserve files on all ADFs at University;
- keep databases for tracking disclosures and disclosure dates;
- keep administrative files for CRB;
- screen disclosures for completeness before starting review;
- act as a resource for Covered Persons on general regulatory information, guidance with forms, and aid in preparing ADF;
- provide reports certifications, and assurances for federal, state, departmental-, and unit-wide surveying of disclosure compliance;
- provide sanctioned reports or certifications for external sponsors or agencies, when necessary;
- preserve information on federal regulations about conflicts of interest in research;
- provide education about the COIC process and regulations to the University community;
- provide education opportunities to CRB members; and
- conduct quality assurance and quality improvement for the CRB.

Conflict of Interest and Commitment Officer (COIC Officer). The Vice President for Risk, Audit and Compliance, who is responsible for implementation and enforcement of COIC policy, serves as the COIC Officer and reports directly to President. COIC Officer is responsible for developing and issuing this policy. COIC Officer is responsible for ensuring compliance with all federal, state and local requirements about conflicts of interest. COIC Officer shall report yearly to President and Board of Trustees under this policy. COIC Officer may delegate responsibilities under this policy to COIC Office.

Conflict Review Board (CRB). Board named by COIC Officer to evaluate potential COIC, review reconsideration requests, and review information about noncompliance. Members include both faculty and administrative staff. The CRB is chaired by the COIC Director (who only votes to break a tie vote).

Covered Person. All University faculty, administrators, staff, and any other individuals (full or part-time, paid or unpaid) participating in academic, business, clinical, and Research or scholarly activities for University.

Institutional Animal Care and Use Committee (IACUC). The committee responsible for the review and approval of teaching and research conducted under the auspices of the University involving animals.

Institutional Biosafety Committee (IBC). The committee responsible for the review and approval of research conducted under the auspices of the University involving biological materials.

Institutional Review Board (IRB). The board responsible for the review and approval of human subject research conducted under the auspices of the University.

Management Plan. A written plan for management, reduction, or elimination of identified conflicts of interest and commitment.

Overrule Panel. The decision to overrule the CRB recommendation requires review and consideration by the overrule panel. The panel consists of the COIC Officer in conjunction with the Provost and either the Executive Vice President for Research and Innovation (in research matters) or the Chief Financial Officer (for business matters).

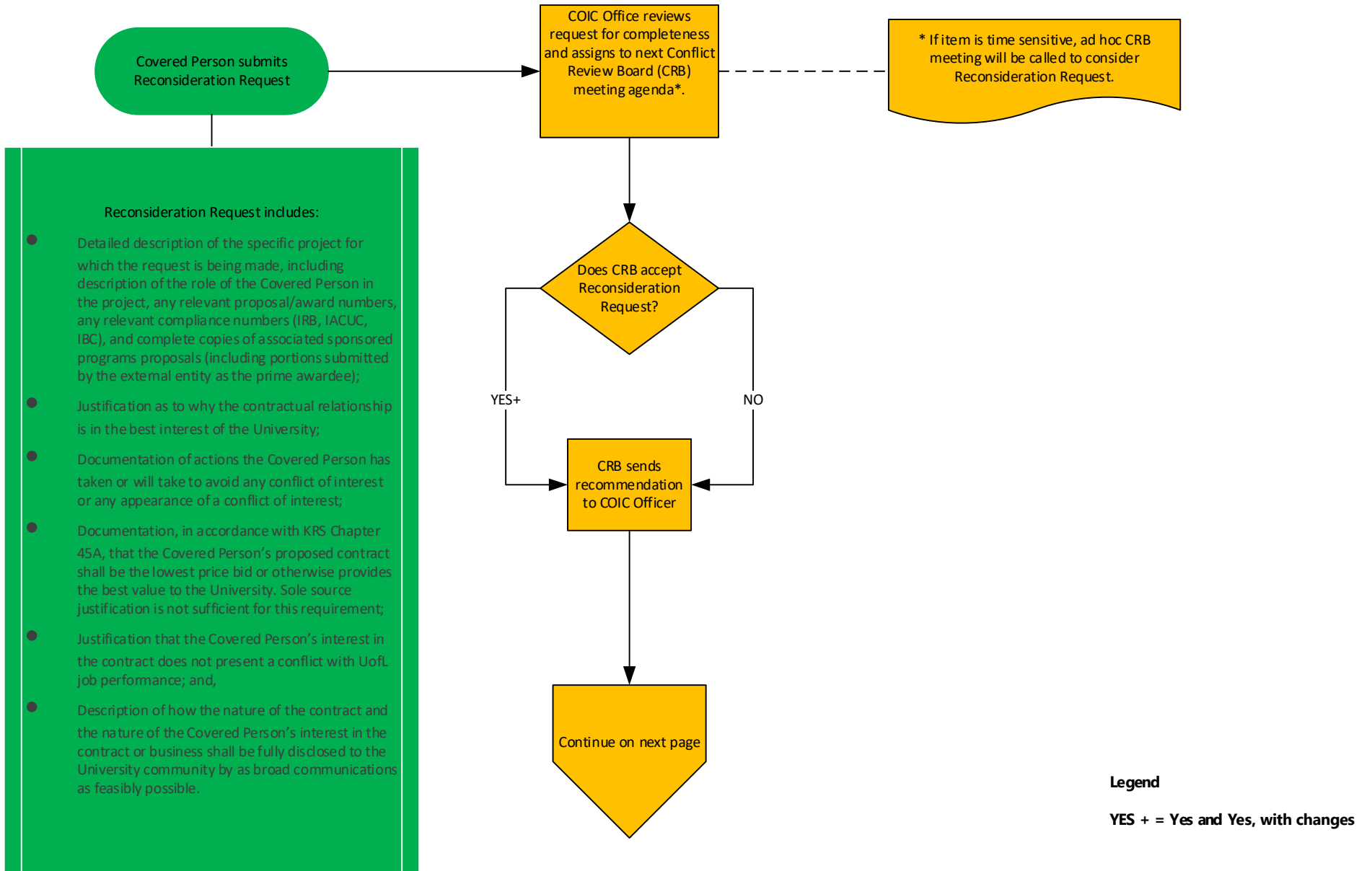
Reconsideration Request. A submission in writing by the Covered Person requesting the CRB to reconsider one or more clauses in the approved management plan. The request should include, at a minimum, the clause (s) needing change, a reason of why the approved Management Plan will not work, and a proposed revision to the approved management clause (s).

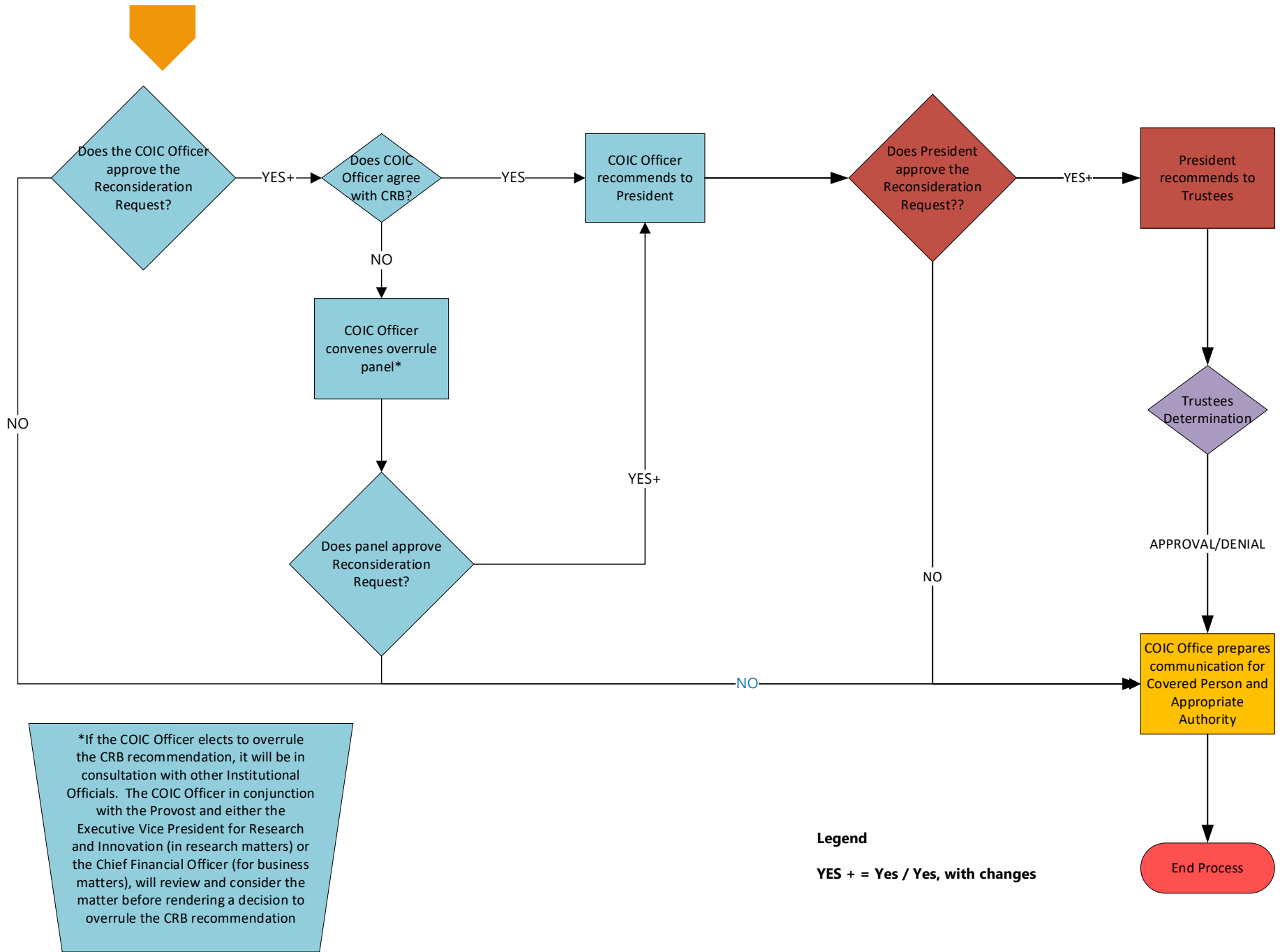
Relative. Anyone related to a Covered Person in the following ways, and includes those within these categories who are referred to as adopted, step-, foster, grand-, half-, in-law, spouse of, or great-: parent, child or ward, sibling, uncle or aunt, first cousin, nephew or niece, spouse, domestic partner, or significant other.

Research. A systematic investigation designed to develop or contribute to generalizable knowledge. The term encompasses basic and applied research, service and testing, and product development that may or may not be published in an article, book or book chapter and product development (e.g., a diagnostic test or drug). The term includes any such activity for which research funding is available through a grant, cooperative agreement, or contract, such as a research grant, career development award, center grant, individual fellowship award, infrastructure award, institutional training grant, program project, or Research resources award or gift. Research also includes research activities that are not funded or sponsored.

University Responsibilities. A Covered Person's duties and responsibilities on behalf of the University. The activities outlined in an Covered Person's annual assignment or position description may include administration, teaching, Research (regardless of whether or not it is funded), Research consultation, and creative activities, course preparation, curriculum development, lectures, evaluation of student efforts, academic advising, committee meetings and memberships, service on panels such as University review boards or data and safety monitoring boards, public service to include service on advisory committee's or review panels, and any other activity assigned by the Covered Person's Appropriate Authority in accordance with University policies.

Appendix A: Flowchart of Proposed University of Louisville Administrative Procedure: Interest in Contracts





Appendix B: Scenario – Illustrating a Reconsideration Process Requiring Trustees Approval/Denial

