

## **II.E.10. Conflict of Interest Policy for Faculty Members**

*(Source: 1979 Handbook for Faculty and Administration; revised, Office of the Provost, Almanac, March 8, 1983; revised 1991)*

*(See also: Human Resources Policy Manual, Policy No. 003 on Use of University Property.)*

### **I. Introduction**

This policy applies in full to all Standing Faculty, Standing Faculty-Clinician-Educators, and all full-time members of both the Associated Faculty and Academic Support Staff, hereinafter simply designated as “faculty members.” Parts of it also apply to those with part-time faculty appointments; these cases are noted in the appropriate sections. The details of this policy derive from the following general obligations:

- All employees are required to conform to the mores and ethical standards of the University and the rules promulgated to enforce them.
- Employment as a faculty member presumes a primary commitment of time and intellectual resources to the academic mission of the University and its functioning as a community.

The following sections cite specific types of activity that have commonly been found to conflict with these obligations, and the procedures and regulations that have been devised to identify and resolve such conflicts. They are intended to serve as examples and not as a comprehensive compilation. Situations not covered by them will be judged in the light of the above general obligations.

Examples of actions that run counter to the first general obligation include nepotism, discrimination on the basis of irrelevant characteristics, inappropriate use of the University’s name, and exploitation of any aspect of association with the University for unacceptable purposes or private gain. They are proscribed at all times for all faculty members, extending to those in part-time employment as noted in the relevant sections of this document. Excessive commitment of time or mental effort to extramural engagements or other non-University activities during the academic year constitutes a violation of the second general obligation. As used in this policy, the academic year is defined for each faculty member as that portion of the year during which he or she receives a salary from the University for services.

## **II. Conflict of Interest in the Allocation of Time and Effort to Extramural Activities**

The University recognizes that its faculty members are not employees in the usual sense, and that a precise allocation of academic time and effort is inappropriate. Their pursuit of knowledge in their areas of competence is presumed to be a lifelong commitment. A limited association of faculty members with government, professional agencies, and public or private organizations is appropriate, especially when it may enhance their competence as scholars.

**Policy on Extent of Extramural Activities.** Forms of extramural activity include part-time engagement for a fee as a technical or professional consultant or practitioner and formation or association with business enterprises or non-profit organizations.\* In principle, both such associations are approved under the following conditions:

1. Faculty members should not engage in such extramural associations to an extent that detracts significantly from their availability for normal academic duties. These commitments in aggregate should not exceed one day per seven-day week during the academic year. Exceptions to this shall be permitted only in unusual circumstances and require the specific approval of the President or Provost, the academic dean and the department chair.
2. Faculty members shall make known to their department chairs and academic deans the prospect of each continuing engagement, including, at least, all engagements expected to extend for a substantial portion of an academic term. Faculty members should decide to enter a relationship only if, after discussion with their department chairs and academic deans, there is concurrence that the proposed engagement will not conflict with the faculty members' professional obligations to the University, or with the University's outstanding or prospective commitments for teaching and research.
3. In addition to the prospective disclosure cited above, all faculty members must report on the extent of their extramural activities of all types as detailed below.

\*Including part-time employment by another academic institution. Such employment may be inappropriate for a faculty member whose primary commitment of time and intellectual resources is to the academic mission of the University of Pennsylvania and its functioning as a community. A full-time faculty member who considers employment for research or teaching at another academic institution during the period of his or her employment by the University should treat this prospective employment as a continuing engagement and follow the procedures below.

### **III. Conflict of Financial Interest between the University and Extramural Organizations**

Members of the faculty or of their immediate families (including parents, children, siblings, spouse) may have significant investments or interests or hold official positions in extramural business organizations, whether or not they have undertaken to perform continuing work or services for them. Such economic or official relationships are of concern if:

1. The organizations are engaged in activities that parallel activities in which the University is currently or prospectively engaged, and in which faculty members play (or might appropriately play) a role in their academic capacity; or
2. The organizations have a present or prospective relationship with the University, e.g., as suppliers of goods or services or as parties to research contracts, and the conduct of those relationships may involve faculty members in their academic capacities; or

3. The engagements undertaken by faculty members under the aegis of extramural business organizations might be suitable and appropriate activities for execution within the University.

**A. Policy on Disclosure of Relationships with Organizations that are Suppliers or Potential Competitors of the University.** In any of the situations outlined above, faculty members shall be required to report the facts and circumstances of the potential conflict to their department chairs and academic deans so that appropriate steps may be taken to avoid conflicts of interest, especially ones in which faculty members may benefit from a knowledge of confidential information.

It is generally assumed that those with part-time faculty appointments shall not normally participate in University decisions that could engender conflicts of interest for them. Where part-time faculty might encounter a conflict, the policy stated above extends to them. Furthermore, in any circumstances in which part-time faculty members are engaged in externally sponsored research projects contracted with the University, or where they stand to benefit from knowledge of confidential information, full disclosure of their relationships with relevant extramural organizations and of the facts pertaining to any potential conflict is required.

**B. Policy on Acceptance of Engagements through Extramural Organizations.** Faculty members with positions or connections in extramural organizations who wish to undertake engagements through those organizations rather than through the University are obliged to offer first to the University each such engagement (grant, contract, client, etc.) in which they would assume one or both of the following relationships to the engagement:

1. Owner, executive or other principal decision-making position responsible for the conduct of that business enterprise; and/or
2. Principal investigator or other substantial responsibilities for the satisfaction of the engagement.

By requiring that each engagement be offered to the University, the following ends are served:

1. The disclosure of the type, scope and extent of extramural activities is achieved, in accordance with University policy;
2. The decision as to whether an engagement is appropriately undertaken as a University or extramural activity is shared with the University administration, thereby avoiding possible conflicts of interest, and the appearance of such conflicts.

Faculty members intending to conduct engagements in business enterprises with which they are associated shall disclose in writing to their department chairs and deans:

1. The nature and terms of the proposed enterprise, and

2. The reasons why it should be conducted as an extramural activity.

If the chairs and deans agree that the engagements are not appropriate as a University activity, and if they conclude that the other conditions of the extramural consulting policies of the University will be met, then they will advise the faculty members to proceed. Otherwise, they may require that the engagements be conducted within the University.

#### **IV. Disclosure of University Affiliation in Publications of Extramural Organizations**

Faculty members who form or associate with extramural business enterprises or nonprofit organizations should exercise particular care that their University affiliation is appropriately cited in publications of such organizations. Problems that can arise from failure to observe this injunction include:

1. Such an organization, by reason of the participation of faculty members, might be considered to have some formal or informal relationship to the University.
2. Faculty members by reason of their positions in such organizations might be expected to discharge duties and responsibilities for those organizations that would be inconsistent with their primary duty to the University.

**A. Disclaiming University Relationships.** A business enterprise or non-profit organization with which a faculty member has a connection may release to the public from time to time publications concerning itself and its activities. In all such publications it may be desirable and, in many cases, required by law that a faculty member's affiliation with the University be disclosed.

The impact of such disclosure will depend on the circumstances. At one extreme a faculty member might serve as a member of the board of directors of an established business or non-profit organization, where there is not even a remote implication that such organization is in any way connected with the University of Pennsylvania. At the other extreme, all or a large number of the principals of an organization (officers, directors, promoters and substantial shareholders) may be faculty members. In such cases, there is a strong implication that the organization may be connected with the University of Pennsylvania, even that the University bears some responsibility for its activities and success. In these cases, an express statement of the form,

The \_\_\_\_\_ has no connection, directly or indirectly, with the University of Pennsylvania.

in prominent type, should be included in all publications released by such organization. The Provost shall have the power to require that such a statement be included in all organizational publications that refer to faculty members, when it is in his or her judgment necessary.

The foregoing rules extend to part-time faculty members, when their association with the University is mentioned in an organizational publication.

**B. Affirmation of Obligations to the University.** A faculty member may have a position of responsibility (continuing or temporary) with an extramural business organization. In such cases it should be made clear in any publications of the organization that the obligations, in terms of both time and responsibility, of the faculty member to the extramural organization are limited by and subject to the policy of the University of Pennsylvania. This alerts both the public and the faculty member's business associates that duties to the extramural organization are thus limited. This is especially necessary in the case of corporate officers who are normally regarded as owing a comprehensive fiduciary duty to the corporation and its shareholders. The suggested format for such a disclosure is:

J. Smith, a Vice President of this corporation, is a member of the faculty of the University of Pennsylvania and as such is subject to limitations by the University on the time that may be devoted to the affairs of this corporation. In any instance where the interest of this corporation may conflict with the interest of the University of Pennsylvania, J. Smith will resolve such conflict in favor of the University of Pennsylvania.

The Provost shall have the power to require such a disclosure in any instance where he or she adjudges it necessary.

**V. Conflict of Interest in Externally Sponsored Research**

Regulations concerning sponsored research may be found in the *Sponsored Projects Handbook*. (See <http://www.upenn.edu/researchservices/>, available from the Office of Research Services, and Guidelines for Extramural Activities of Faculty of the University of Pennsylvania Medical Center and Health System. The Office of Research Services can be reached at 3451 Walnut Street, Room P-221, Philadelphia PA 19104-6205, tel: 215-898-7293.)

The University encourages its faculty members, including those in part-time employment, to participate in externally sponsored research projects, whether supported by government agencies, foundations, associations, or other non-profit organizations; or by corporations, partnerships or other for-profit entities. In any sponsored project, faculty members are expected to avoid use of the project for their private financial gain other than in the form of salary support or of royalties resulting from commercialization of intellectual property rights in accordance with University policies. However, there may be unusual circumstances under which the interests of the University would be served if a faculty participant in a sponsored project were to assume an entrepreneurial role; for example, if a faculty member participates directly in a private enterprise providing funds to Penn in support of the project. Assumption of such a role would not be a violation of these guidelines if approved in advance and reviewed periodically by the relevant dean and the Vice Provost for Research. Examples of situations from which conflicts of Interest may arise include, but are not limited to, the following:

1. Undertaking or orientation of sponsored research to serve the needs of a private agency or enterprise in which a responsible staff member has an interest.
2. Purchase of major equipment, instruments, materials or other items for externally sponsored research from any agency or enterprise in which a responsible staff member has an interest.
3. Acceptance of any limitations on the free publication of and access to the results of any sponsored research. Exceptions may be granted by the Provost for privileged information, but only in the form of a delay in the release of such information. The delay shall only on rare occasions exceed three months. Those wishing to engage in research of a kind whose results cannot be so disseminated may only do so as an extramural consulting activity under the conditions previously described.
4. Transmission to any private agency or enterprise, use for personal gain, or other unauthorized use of the work product, results, materials, records, or information gathered from sponsored research that is not made generally available through publication or other free access.
5. Acceptance of gratuities or special favors from a private agency or enterprise with which the University conducts business in connection with a sponsored research project.

**A. Disclosure to Responsible University Officials.** Before participating in any sponsored research project, all faculty members must give written notice of their extramural consulting relationships or other sponsored research projects that may relate in any way to the project to the appropriate department chairs and through them to the deans and Vice Provost for Research. Any significant financial or managerial interests that may relate in any way to the project must be disclosed in writing to the Vice Provost.

Any faculty members engaged in sponsored research projects must disclose in the same manner any change in their outside activities or interests. In the light of such disclosures, the University shall take appropriate steps to neutralize or eliminate potential conflicts of interest.

**B. Distribution of Effort.** The sponsoring agency supporting research must not be misled as to the amount of intellectual effort that faculty members are actually devoting to these research projects. A system of precise time accounting is incompatible with the inherent character of the work of faculty members, because the various functions that they perform are closely interrelated and do not conform to any meaningful division of a standard work week. However, if externally sponsored research agreements provide that faculty members shall devote a definite fraction of effort to the projects, or if it is agreed that they shall assume specified responsibilities in relation to such research, demonstrable relationships between the stated efforts or responsibilities and the actual extent of their involvement are to be expected. Each faculty member, in such circumstances, shall confirm the fraction of effort devoted to the projects in the effort reports required of all faculty members who are so engaged.

**C. Advice and Guidance.** Any questions concerning potential conflicts of interest, appropriate distribution of effort, or other problems associated with externally sponsored research, should be addressed to the office of the Vice Provost for Research.

## **VI. Requirements for Reporting Extramural Activities and Obligations**

At the end of each academic year, each faculty member shall submit to his or her department chair and dean a report of his or her extramural activities during that year, containing the following information:

1. Number of days (or hours, if preferred) of extramural activities for fee (include consulting, professional practice, and outside teaching commitments).
2. Names of organizations (government agencies, private firms, partnerships) for which the extramural activities conducted represented a continuing engagement.
3. Number of days (or hours, if preferred) of extramural activities on behalf of business enterprises in which the faculty member has a financial interest or official position.
4. Names of business organizations in which the faculty member is a significant owner, partner, officer, director, or staff member.

The last item shall also be reported by all part-time faculty members for whom any of the following conditions obtain:

1. The organization is a supplier of the University and the part-time faculty member participates in the decision to engage its services.
2. The organization supplies goods or services to the University to be used in the performance of externally sponsored research projects in which the part-time faculty member participates.
3. The part-time faculty member is privy to confidential University information that could be used to the business advantage of the organization.
4. The affiliation of the part-time faculty member with the University may be mentioned in any publication of the organization.

Forms for the reporting of extramural activity are available from the Office of the Provost.

All faculty members must also report on a continuing and timely basis to the appropriate administrators the relevant circumstances, as noted in the sections cited, whenever any of the following conditions are met:

1. They have or wish to initiate a relationship with an extramural business organization that is or may become a supplier or competitor of the University (*see* section II.E.10.A. on Policy on Disclosure of Relationships with Organizations that are Suppliers or Potential Competitors of the University).
2. They wish to undertake an engagement (grant, contract, client, etc.) through an extramural organization (*see* section II.E.10.B. on Policy on Acceptance of Engagements through Extramural Organizations).
3. They intend to participate in a sponsored research project that may be related to their other sponsored research projects, to any of their extramural consulting relationships, or to any organization in which they have significant managerial or financial interests (see section II.E.10 on Policy on Acceptance of Engagements through Extramural Organizations).