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# Compensated Outside Services and Conflict of Interest Policy

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## 8.1.1. Compensated Outside Services

Full-time faculty members appointed to The University of Tennessee agree to devote themselves to UT's mission of teaching, research, and public service. Fulfillment of these responsibilities demands a full-time, 100 percent commitment to normal University duties, including remaining current in the discipline to which the faculty member is appointed. For many faculty members, an important part of keeping up-to-date lies outside the classroom, laboratory, and library: it involves testing one's academic skills and abilities by applying them to real-world problems. The University encourages the faculty to engage in consulting and other related outside services which are associated with an individual faculty member's appointment and which develop his/her professional expertise. By these means, many faculty members improve their disciplinary skills; they serve educational institutions and professional organizations, business, industry, and government; and they bring positive recognition to The University.

The following policy has three governing ideas. One is that the faculty development and University "value" of compensated outside services is partly determined within the culture of the academic discipline; thus, rather than having a centralized and unilateral requirement, this policy largely delegates responsibility to the departmental level. Secondly, the policy calls for regular and open communications as means of promoting accountability. Finally, because other faculty activities (teaching, research, service) often are gauged as a percent-of-effort, this policy does the same for compensated outside service activities.

These policy guidelines primarily concern long-term or continual/recurring short-term arrangements between faculty members and clients. Occasional, short term non-recurring activities (which are typically not compensated except for modest honoraria) such as participation in symposia, accreditation visits, research paper presentations, exhibitions, or recitals are not covered by these guidelines, but faculty members

must notify and secure approval from their department head<sup>1</sup> in advance of such activities.

The provisions of this policy do not apply to income-generating activities covered by a specific Professional Activity Allowance Agreement (e.g., the practice agreements of faculty members in the UT, Memphis College of Medicine).

In the conduct of compensated outside services, faculty may not make any use of the name of The University of Tennessee or of any of its constituent institutions (e.g., campuses or institutes) for any purpose other than professional identification of the faculty member, nor may they claim any University or institutional responsibility for the conduct or outcome of such activities.

Each UT campus/institute shall have procedures to ensure that professional development is encouraged, within the context of each faculty member's meeting his/her regular University responsibilities in a timely and effective manner. By means of its faculty handbook, a campus/institute may adopt compensated outside services guidelines which are more restrictive than these University-wide policies (e.g., requiring the dean's approval instead of/in addition to the department head's for some provisions; restricting compensated outside services to activities, locations, or clientele outside of the faculty member's assigned UT responsibilities).

Campus/institute faculty handbook policies and procedures for resolving disputes ("appeals," "grievances") should be followed in instances where the faculty member and department head or dean are unable to reach the agreements required in the provisions of this policy.

The Office of the Senior Vice President will develop illustrative case studies and a workshop format to ensure that the policy is understood and consistently applied across the University.

This policy shall be in effect starting AY 1994-95, and shall be included in campus/institute faculty handbooks.

### Provisions:

1. As part of the annual goal-setting/performance review process, each faculty member must

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<sup>1</sup>"Department Head" is used herein to refer to the head, chair, director, etc. who serves as the administrative officer of the department or comparable unit in which the faculty member's primary appointment is held.

describe his/her general plans and general percent of effort to be allocated to anticipated compensated outside service activities for the year ahead. Each faculty member and his/her department head must agree on the faculty development benefits will be gained by the planned compensated outside services. During the period prior to the next goal-setting/performance review, significant changes to this agreed-upon plan must be reported to the faculty member's department head, and the head's concurrence should be sought.

2. As part of the annual goal-setting/performance review process, each faculty member must report his/her previous year's actual allocation of effort regarding compensated outside services on an effort certification form (which will be developed/amended for this purpose). This information also should be used as part of subsequent annual goal-setting/performance review process.
3. Nine-month faculty members are expected to perform University-related activities for a nine-month academic year. Thus, nine-month faculty members should limit their total compensated outside services to no more than twenty percent (20 percent) over their total (100 percent) University effort during a given academic year, exclusive of non-academic year course schedules (summer session, mini-term, etc.) but including grants of released time. The department head and dean may restrict compensated outside service effort to less than 20 percent (e.g., if a faculty member's performance of assigned activities is less than satisfactory).
4. Nine-month faculty employed full-time on the University payroll during the summer months (e.g., summer school teaching, work on grants and contracts), must ensure that their annual compensated outside service activity is no more than 20 percent over their total (100 percent) University effort per academic year. For part-time summer employment, the limit of compensated outside services will be established by written agreement between the department head and the faculty member.
5. Twelve-month faculty and staff members<sup>2</sup> are expected to perform University-related activities for a twelve-month year. Thus, faculty members on twelve-month appointment are covered by the same University of Tennessee Personnel Policies and Procedures which apply to administrative or

professional personnel of the University. However, to provide equitable treatment of nine-month and twelve-month faculty, the latter should normally limit their aggregated compensated outside services to no more than an additional twenty percent (20 percent) over their total (100 percent) University effort—including accrued annual leave taken and grants of released-time—during a given calendar year, upon approval of the department head and dean.<sup>3</sup> The department head and dean may restrict a faculty member's compensated outside service effort to less than 20 percent.

6. Faculty and staff on grants/contracts/awards must adhere to requirements concerning percent time service, expressed or implied. Official regulations governing the administration of Federal grants and contracts allow extra services of faculty and other professional employees to be charged to Federal grants and contracts.

Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation. In no event will charges to sponsored agreements, regardless of the basis of computation, exceed the proportionate share of base salary for that period. Since intra-University consulting during the academic year is assumed to be undertaken as a University obligation requiring no compensation in addition to full-time base salary, the principle also applies to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member at the same institution.

In unusual cases, where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his/her regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.

Faculty members must ensure that proposal documents are consistent with campus/institute research policies.

7. During the academic year, activities reimbursed by UT as extra service pay may be counted as compensated outside service effort.

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<sup>2</sup>Including professional research staff.

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<sup>3</sup>"Dean" refers herein to the administrative officer to whom the department head reports.

The total of activities covered both by extra service pay and compensated outside services should not exceed 20 percent more than a faculty member's 100 percent of effort for the academic year. Compensated outside services performed on behalf of the UT Institute for Public Service need not be included in the above 20 percent.

8. Use of University facilities, equipment, personnel, or students may not conflict with regular University operations. With the exception of facilities for the use of which there are established procedures and fee schedules, no unauthorized activity is permitted involving a significant direct expense to UT or significant use of University facilities, equipment, or services. Faculty and staff wishing to use such University resources to conduct compensated outside services must have an official written UT agreement specifying the nature of work to be performed, the kind of equipment, supplies, material or services to be used, the extent of the use, and the amount to be paid to the University. The amount may not be less than the University's cost or a fair market value. A written agreement must be approved in advance by the appropriate department head, dean/director, and chief business officer.
9. Noncompliance with this policy on compensated outside services may be considered a negative factor in promotion and tenure decisions, salary determinations, and requests for released time, and other institutional support (e.g., a faculty member's compensated outside service activities may be limited if his/her performance of assigned activities is less than satisfactory). Serious and/or continuing noncompliance also may result in other sanctions (e.g., reductions in allowable percentage of compensated outside services, salary reduction, restitution for cost of equipment, termination for adequate cause).

All parts of this policy on Compensated Outside Services are intended to be consistent with the University's other policies regarding conflict of interest, ownership of commercial ventures, intellectual property, Faculty Handbook provisions regarding academic freedom, etc.

### **8.2.1. Conflict of Interest Policy**

Objectivity and integrity are essential qualities for employees of any organization and particularly for those who are engaged in the service of a comprehensive public university. If a public university is to carry out its missions in the areas of

instruction, research, and public service with unquestioned credibility, it is imperative its employees maintain the highest levels of integrity and objectivity in the performance of their duties and responsibilities. Therefore, it is the purpose of this policy to ensure objectivity and integrity on the part of faculty and staff of The University of Tennessee in areas relating to conflicts of interest both real and perceived.

### **Applicability**

This policy is applicable to all employees of The University of Tennessee.

### **General Policy**

Faculty and staff of The University of Tennessee are to avoid at all times any actual or apparent conflicts of interest between their duties and responsibilities as employees and their interests outside the scope of their University employment. Generally, a conflict of interest exists whenever:

1. The interests of an employee outside the scope of employment with the University interferes with or compromises the employee's judgment and objectivity with respect to duties and responsibilities to the University, or
2. An employee makes or influences University decisions or uses University resources in a manner that results in:
  - a. Personal financial gain or financial gain for his or her immediate family members (Note: For purposes of this policy, "immediate family members" shall be defined as the UT employee, his or her spouse, and any minor children residing with the employee.), or
  - b. An unfair advantage to a third party outside the University.

### **State Laws and Regulations**

In addition to the general policy above, state laws and regulations specifically prohibit the following conflicts of interest:

1. Acceptance of rebates, gifts, or other things of value. All employees responsible for initiating requisitions are prohibited by Tennessee Code Annotated section 12-3-106 from accepting or receiving, directly or indirectly, any rebate, gift, money, or other thing of value from any person, firm, or corporation to whom a contract for the purchase of materials, supplies, or equipment may be awarded. This statute also prohibits accepting or receiving any promise, obligation, or contract for future rewards or compensation from a contractor.
2. Personal interest in any contract in which the University is or may be interested. All

employees who are in a position to select a contractor, to oversee work under a contract, or in any manner to superintend a contract in which the University is or may be interested are prohibited by Tennessee Code Annotated section 12-4-101 from being directly interested in the contract. An employee is directly interested if the contract is with:

- a. the employee;
- b. a business in which the employee is the sole proprietor;
- c. a business in which the employee is a partner; or
- d. a business in which the employee owns or controls the largest number of outstanding shares owned by any single individual or corporation (a "controlling interest").

Any interest which does not fall within the definition of a direct interest is an indirect interest and is also prohibited unless it is publicly acknowledged at the time of contracting.

If the employee, proprietorship, partnership, or corporation is the sole supplier of required goods or services in the county, the employee's interest will not violate this statute if it is publicly acknowledged at the time of contracting.

Violation of this statute carries a civil penalty requiring forfeiture of all pay and compensation received under the contract, dismissal from the employee's position, and ineligibility for the same or a similar position for ten years.

3. Selling goods to the University or any other state agency. All employees of the University are prohibited by the terms of Tennessee Code Annotated section 12-4-103 from bidding on, selling, or offering to sell any merchandise, equipment, material, or similar commodity to the University or any other state agency.

This prohibition applies to sales by:

- a. the employee;
- b. a business in which the employee is the sole proprietor;
- c. a business in which the employee is a partner; or
- d. a business in which the employee owns or controls the largest number of outstanding shares owned by any single individual or corporation (a "controlling interest").

Sales by a business in which an employee owns less than a controlling interest are also prohibited unless the employee's interest is publicly acknowledged at the time of the sale.

if the employee, proprietorship, partnership, or corporation is the sole supplier of required goods in the county, the sale will not violate this statute if the employee's interest is publicly acknowledged at the time of the sale. The prohibition of Section 12-4-103 continues for a period of six months after employment with the University terminates.

Violation of section 12-4-103 carries both civil and criminal penalties:

- a. *Civil*. The employee must refund to the University or the state all amounts paid for the goods, plus eight percent (8%) interest.
  - b. *Criminal*. Violation of section 12-4-103 is a Class E felony.
4. Providing personal, professional, or consultant services to the University or any other state agency. Tennessee Code Annotated section 12-4-109 requires that all personal, professional, and consultant services to the University and other state agencies be procured in the manner prescribed by regulations of the State Department of Finance and Administration. Under those regulations, all employees are prohibited from contracting with the University or another state agency to provide personal, professional, or consultant services. This prohibition applies to contracts with:
    - a. the employee;
    - b. a business in which the employee is the sole proprietor;
    - c. a business in which the employee is a partner; or
    - d. a business in which the employee owns or controls the largest number of outstanding shares owned by any single individual or corporation (a "controlling interest").

This prohibition continues for a period of six months after employment with the University terminates.

5. Interests of spouse or minor child. For the purpose of applying every statute and regulation described above, the interest of a spouse or a minor child with whom the employee commingles assets is treated as the employee's interest.
6. Nepotism. Tennessee Code Annotated section 8-31-103 prohibits employees who are relatives from working within the same direct line of supervision whereby one relative is responsible for supervising the job performance or work activities of the other. The term "relative" means a parent, foster parent, parent-in-law, child, spouse, brother,

foster brother, sister, foster sister, grandparent, grandchild, son-in-law, brother-in-law, daughter-in-law, sister-in-law, or any other family member who resides in the same household.

## **Reporting Requirements**

### **A. General Requirement**

The overriding intent of this policy is to require each employee to take the initiative in reporting any outside interests in which they are involved where there is an actual, potential, or apparent conflict of interest with his or her duties and responsibilities as an employee of The University of Tennessee. Thus, it shall be the responsibility of each employee to report, in writing, to his or her supervisor(s) all situations in which he or she is involved in an activity or relationship with another employer which poses an actual, potential, or apparent conflict of interest.

### **B. Specific Requirements**

1. It shall be the responsibility of each campus and unit of the University to develop procedures for reviewing the information disclosed by employees to determine if conflicts of interest exist, and for working with employees to eliminate actual or apparent conflicts and prevent potential conflicts from occurring.
2. All new employees, at the time of initial employment, will be given a copy of the University's policy on conflict of interest, and the policy will be discussed with new employees during their employee orientation.
3. All new employees, at the time of initial employment, will be required to complete a reporting/disclosure form.
4. Senior administrative personnel as designated by the President or Executive Vice President will be required within 30 days of the start of each new fiscal year to complete and file with the Office of the General Counsel a new reporting/disclosure form.
5. All employees, other than senior administrative personnel, will be required to complete and submit to their supervisor(s) a new reporting/disclosure form only at such time as there is a need for such disclosure.
6. Once an employee discloses the existence of a potential conflict of interest situation in which he or she is involved, such as employment by or the holding of a financial interest in an outside firm, he or she must file a reporting/disclosure form each year as long as the potential conflict of interest exists.

## **Examples of Prohibited Conflicts of Interest**

1. Soliciting or accepting gifts, gratuities, benefits, or favors of monetary value from a person or an organization (a) in return for influencing an employee in the discharge of his or her University duties, or (2) while being in a position to obtain favored treatment for or provide an unfair advantage to that person or organization.
2. Holding a financial interest (either by the employee or a member of his/her immediate family) in a private venture and procuring or influencing the procurement of goods or services from that venture for the University.
3. Selling anything (excluding copyrighted literary property such as books, stage plays, etc.) to the University while employed by the University or within six months after termination of active employment with the University.
4. Providing contracted personnel services to the University while employed by or within six months after termination of active employment with the University for which payments other than through payroll are made.
5. Using confidential or official University information in any manner that results in personal financial gain or that provides financial gain or an unfair advantage to a third party.
6. Holding an office or a management position in a private venture and (a) the venture is either in competition with the University, or (b) the individual uses his/her University position to obtain favored treatment for or to provide unfair advantage to that venture.
7. Holding a financial interest in excess of five percent (5%) of the total capital of a private venture and (1) the venture is either in competition with the University, or (2) the individual uses his/her University position to obtain favored treatment for or to provide an unfair advantage to that venture.

## **Examples of Outside Interests to be Reported and Approved**

1. Engaging in a dual employee relationship with University superiors or subordinates in a private venture.
2. Engaging in University research sponsored by an outside organization in which the researcher has ownership (excluding publicly traded stocks or bonds of a corporation).