

BOARD OF REGENTS
BRIEFING PAPER
***Handbook* Revision, Approval Process for Compensated Outside Professional or
Scholarly Activities**

BACKGROUND & POLICY CONTEXT OF ISSUE:

Under current Board policy outside professional or scholarly service by faculty members, including DRI faculty, is recognized as a legitimate activity unless specifically prohibited by the employee's contract with the institution (*Title 4, Chapter 3, Section 9* and *Title 4, Chapter 11, Section 12* of the *Handbook*). This policy requires that faculty members engaged in providing compensated outside professional or scholarly service provide advance notification and request approval in writing to their immediate supervisor about the nature of the work to be performed, the company/organization for which the work will be performed, and the estimated time involved. In accordance with the policy, a report is published annually concerning the number of faculty and professional staff who request to perform scholarly or professional outside compensated services and the number of reported conflicts of interest.

Faculty frequently engage in routine outside professional or scholarly services, such as serving on national panels, speaking engagements, and reviewing manuscripts. While institutions have an obligation to ensure that such activities are legitimate and do not pose a conflict with the faculty member's employment, faculty participation in these activities benefits and is important not only the faculty member but also the institution as a whole through the promotion and recognition of the expertise of its faculty. As such activities are recognized as routine, an expedited pre-approval process will allow the institutions to become more efficient in approving standard requests for outside services. The current policy does not provide for an expedited pre-approval process.

Staff and the Academic Affairs Council recommend revising the current policy to provide that professional or scholarly activities that are standard and routine may approved by the institution through a written expedited approval process. Specifically, under the proposed policy revision institutions, including DRI, may establish an expedited pre-approval process for notification of certain compensated outside professional or scholarly activities that are for a short-period, determined to be routine or standard, and compensated at \$3,000 or less per activity. Such services must be identified within the written pre-approval process established by the institution and may include activities such as service on a national panel, speaking engagements as allowed by the institution, and reviewing manuscripts.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Amend *Title 4, Chapter 3, Section 9* and *Title 4, Chapter 11, Section 12* of the *Handbook* to authorize the universities and DRI to establish an expedited pre-approval process for notification of certain compensated outside professional or scholarly activities that are for a short-period, determined to be routine or standard, and compensated at \$3,000 or less per activity. Such services must be identified within the written pre-approval process established by the institution. (See attached policy proposal.)

IMPETUS (WHY NOW?):

This proposed policy is brought forward at the request of the universities and with the support of DRI and the Academic Affairs Council.

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Streamlining institutional approval procedures facilitates faculty participation in appropriate outside professional or scholarly services benefits the both the faculty and the institution.
- Ensuring that faculty are supported in such appropriate outside compensated professional or scholarly activities by the institutions promotes a better work environment for existing faculty and enhances the institutions' ability to attract new faculty.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

None have been presented.

ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

Retain the existing policy and approval process.

COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #_____ Chapter #_____ Section #_____
- Amends Current Board Policy: *Title 4, Chapter 3, Section 9 and Title 4, Chapter 11, Section 12*
- Amends Current Procedures & Guidelines Manual: Chapter #_____ Section #_____
- Other: _____
- Fiscal Impact: Yes _____ No _____
Explain: _____

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POLICY PROPOSAL
TITLE 4, CHAPTER 3, SECTION 9
Compensated Outside Professional Services – Pre-Approval Process

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 9. Compensated Outside Professional Services

(For DRI Faculty Members, See Title 4, Chapter 11, Sec. 12)

1. Outside professional or scholarly service by faculty members within their subject matter field and for compensation is recognized as a legitimate activity unless specifically prohibited by the employee's contract with the institution.
2. Outside professional or scholarly service as contemplated by this section shall not interfere with the performance of the duties of any faculty member. If taken during the faculty member's standard workweek, such service shall occupy no more than one day's equivalent time per work week (20%) for full-time faculty members. Faculty members on 12-month contracts must take annual leave if providing outside professional or scholarly service during the standard work week. For the purposes of this paragraph, annual leave is not required to be taken if the activity is scholarly in nature and advances the reputation of the institution, such as serving on a national review board, and the amount of compensation, above expenses, is less than the monetary value of taking a half-day leave.
3. No faculty member may undertake outside professional or scholarly service that would result in a conflict of interest with his or her assigned duties. Conflict of interest means any outside activity or interest that may adversely affect, compromise, or be incompatible with the obligations of an employee to the institution.
4. Faculty members performing compensated outside professional or scholarly service are subject to the code of ethical standards of the State of Nevada (NRS 281A.400-281A.660), which governs the conduct of public officers and employees.
5. A faculty member may not perform an official act on behalf of the institution that directly benefits a business or other undertaking in which he or she either has a substantial financial interest or is engaged as counsel, consultant, representative, agent, director, or officer. This prohibition is not intended to limit a faculty member's ability to enter into a contract between a governmental entity, the institution, and a private entity to the extent authorized by and in conformity with NRS 281.221(3), NRS 281.230(3), NRS 281A.430(3), the Board of Regents Intellectual Property Policy (Title 4, Chapter 12, Sections 1-8), and the Board of Regents Conflict of Interest Policy (Title 4, Chapter 10, Section 1.7).
6. For the purpose of this section, potential conflicts of interest include a faculty member's involvement in transactions or decisions on behalf of an institution, in which the faculty member knows that benefits accrue to individuals in the faculty member's household, persons to whom the faculty member is related by blood, adoption or marriage within the third degree of consanguinity, or persons with whom the faculty member has substantial and continuing outside business relationships.

Relationships within the third degree of consanguinity or affinity are defined as:

- (a) The faculty member's spouse, child, parent, sibling, half-sibling, or step-relatives in the same relationship;
- (b) The spouse of the faculty member's child, parent, sibling, half-sibling, or step-relative; or
- (c) The faculty member's in-laws, aunt, uncle, niece, nephew, grandparent, grandchild, or first cousin.

7. ***Except as otherwise provided in this section, full-time*** ~~[Full-time]~~ faculty members engaged in providing compensated outside professional or scholarly service shall provide advance notification ***and request approval*** in writing to their immediate supervisor about the nature of the work to be performed, the company/organization for which the work will be performed, and the estimated time involved. The request must be approved in advance by the supervisor within 10 working days. Individual requests to perform outside professional or scholarly service shall be considered confidential personnel documents pursuant to Title 2, Chapter 5, Section 5.6.2. of the Code.

Institutions may establish an expedited pre-approval process for notification of certain compensated outside professional or scholarly activities that are for a short-period, determined to be routine or standard, and compensated at \$3,000 or less per activity. Such services must be identified within the written pre-approval process established by the institution and may include activities such as service on a national panel, speaking engagements as allowed by the institution, and reviewing manuscripts.

8. When a supervisor believes that a ***faculty member's consulting activities conflict with the faculty member's obligations to the institution or other obligations of the institution*** ~~[conflict exists with obligations currently incurred or assumed by the institution regarding a faculty member's consulting activities]~~, the supervisor shall inform the faculty member of these concerns and negotiate a mutually acceptable course of action. If a mutually acceptable course of action cannot be negotiated, the appropriate vice president or vice chancellor, as the case may be, will hear and evaluate the evidence and render a decision, or appoint a review committee if necessary. The vice president or vice chancellor may require the faculty member to cease performance of existing obligations while the faculty member remains a NSHE employee.
9. Faculty members performing compensated outside professional or scholarly service shall inform those who engage them that they are not acting in the name of the institution and that the institution is not a party to the contract nor liable for any actions of such faculty member.
10. In negotiating for a contract for outside compensated professional or scholarly services, faculty members shall not use institutional stationery or forms in any manner.
11. Full-time faculty members may make a general announcement of their availability as consultants but may not solicit consulting assignments.
12. Faculty members working independently on their own time may obtain patents or copyrights on the results of their work.
13. Faculty members performing compensated outside professional or scholarly service are subject to the Board policy on personal use of System property or resources (Title 4, Chapter 1, Section 25). A faculty member working independently on an outside-compensated contract shall not use NSHE facilities, equipment or personnel unless such use is authorized in advance by the supervisor. Reimbursement of any costs to the institution shall be in accordance with Title 4, Chapter 1, Section 25.
14. It is the responsibility of each full-time faculty member to ~~[timely]~~ report outside compensated services ***in a timely manner*** and to certify the accuracy of the disclosures. Failure to ~~[accurately and timely]~~ disclose outside compensated services ***in a timely and accurate manner*** constitutes a basis for disciplinary action under Title 2, Chapter 6 of the Code. Records are to be kept annually by the dean or appropriate vice president, or vice chancellor as the case may be, of all approved consulting activities in each department or division.
15. Each NSHE institution shall publish an annual report regarding compensated outside professional or scholarly service completed by its full-time faculty (aggregate data) and approved by the institution in accordance with the provisions of this section. This report will verify that all potential conflicts of interest have been reviewed and approved in accordance with the provisions of this section. A summary of these reports will be sent to the Board of Regents annually.

POLICY PROPOSAL

TITLE 4, CHAPTER 11, SECTION 12

DRI - Compensated Outside Professional Services – Pre-Approval Process

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 12. Compensated Outside Professional Service

(For NSHE General Policy, See Title 4, Chapter 3, Sec. 8)

1. Under conditions set forth below, limited professional services rendered by a Desert Research Institute (DRI) faculty member to organizations or individuals outside of DRI for compensation is recognized as a legitimate, and often desirable, activity for a faculty member.
2. Outside professional or scholarly service as contemplated by this section shall not adversely affect the performance of the faculty member in regard to his or her obligation and duties to DRI. A faculty member is to perform compensated outside professional activities on his or her own time. For the purposes of this section, compensated outside professional or scholarly service does not include work conducted as part of the regular duties of, or the professional responsibilities of, the faculty member, such as serving on a national review board.
3. No faculty member may undertake outside professional or scholarly service that would result in a conflict of interest with his or her assigned duties. Conflict of interest means any outside activity or interest that may adversely affect, compromise, or be incompatible with the obligations of an employee to the institution.
4. DRI faculty members performing compensated outside professional or scholarly service are subject to the code of Ethical Standards of the State of Nevada (*Nevada Revised Statutes* (NRS) 281A.400-281A.480 and 281A.500-281A.660), which governs the conduct of public officers and employees.
5. A faculty member may not perform an official act on behalf of the institution that directly benefits a business or other undertaking in which he or she either has a substantial financial interest or is engaged as counsel, consultant, representative, agent, director, or officer. This prohibition is not intended to limit a faculty member's ability to enter into a contract between a governmental entity, the institution, and a private entity to the extent authorized by, and in conformity with, NRS 281.221(3), NRS 281.230(3), NRS 281A.430(3), the Board of Regents Intellectual Property Policy (Title 4, Chapter 12, Sections 1-8), and the Board of Regents Conflict of Interest Policy (Title 4, Chapter 10, Section 1.7).
6. For the purpose of this section, potential conflicts of interest include a faculty member's involvement in transactions or decisions on behalf of an institution, in which the faculty member knows that benefits accrue to individuals in the faculty member's household, persons to whom the faculty member is related by blood, adoption or marriage within the third degree of consanguinity, or persons with whom the faculty member has substantial and continuing outside business relationships.

Relationships within the third degree of consanguinity or affinity are defined as:

- (a) The faculty member's spouse, child, parent, sibling, half-sibling, or step-relatives in the same relationship;
- (b) The spouse of the faculty member's child, parent, sibling, half-sibling, or step-relative; or
- (c) The faculty member's in-laws, aunt, uncle, niece, nephew, grandparent, grandchild, or first cousin.

7. ***Except as otherwise provided in this section, a [A] full-time faculty member engaged in providing compensated outside professional service shall provide advance notification and request approval*** in writing to his or her supervisor, i.e., the Executive Director of the Division or the appropriate Vice President if not in a division, of the nature of the work to be performed, the company/organization for which the work will be performed, and the amount of his or her time likely to be involved. The request must be approved in advance by the supervisor within 10 working days and shall indicate that the intended compensated outside professional service is not in conflict with any obligations currently incurred or assumed by the Institute. Activity in new areas not presently a regular part of the DRI efforts will not be considered to be in conflict even if DRI subsequently moves into such work. Individual requests to perform outside professional or scholarly service shall be considered confidential personnel documents pursuant to Title 2, Chapter 5, Section 5.6.2 *of the Code*.

DRI may establish an expedited pre-approval process for notification of certain compensated outside professional or scholarly activities that are for a short-period, determined to be routine or standard, and compensated at \$3,000 or less per activity. Such services must be identified within the written pre-approval process established by DRI and may include activities such as service on a national panel, speaking engagements as allowed by the institution, and reviewing manuscripts.

8. When a supervisor believes that a ***faculty member's consulting activities conflict with the faculty member's obligations to the institution or other obligations of the institution***, [~~conflict exists with obligations currently incurred or assumed by the Institute regarding a faculty member's consulting activities~~], the supervisor shall inform the faculty member of these concerns and negotiate a mutually acceptable course of action. If a mutually acceptable course of action cannot be negotiated, the faculty member or the supervisor may request the DRI Senate to appoint a panel of three DRI professional members to hear and evaluate the evidence and make a recommendation to the President. The President will review the recommendation and render a final decision. The President may require the faculty member to cease performance of existing obligations while the faculty member remains a DRI employee.
9. Any faculty member performing outside professional service shall inform those who engage him or her that the faculty member is not acting in the name of the DRI and that the DRI is neither a party to the contract nor liable for any actions of such faculty member.
10. In negotiating for a contract or any contract activities for outside compensated professional service, a faculty member shall not use DRI stationery or forms in any manner.
11. Faculty members performing compensated outside professional or scholarly service are subject to the Board policy on personal use of System property or resources (Title 4, Chapter 1, Section 25). A faculty member working independently on an outside compensated contract shall not use DRI facilities, equipment or personnel not available to members of the general public unless such use is authorized in advance by the supervisor. Reimbursement of any added direct costs to DRI shall be in accordance with Title 4, Chapter 1, Section 25.
12. A faculty member working independently on his or her own time may obtain patents or copyrights on the results of his or her work, providing DRI resources were not used in the preparation of the inventions or copyrighted work.
13. It is the responsibility of each full-time faculty member to [~~timely~~] report outside compensated services ***in a timely manner*** and to certify the accuracy of the disclosures. Failure to [~~accurately and timely~~] disclose outside compensated services ***in a timely and accurate manner*** constitutes a basis for disciplinary action under Title 2, Chapter 6 of the Code. Records are to be kept annually by each supervisor of all approved consulting activities.
14. The Desert Research Institute shall publish an annual report regarding compensated outside professional or scholarly service completed by its full-time faculty, as aggregate data, and approved by the institution in accordance with the provisions of this section. This report will verify that all potential conflicts of interest have been reviewed and approved in accordance with the provisions of this section. A summary of these reports will be sent to the Board of Regents annually.