

BOARD OF REGENTS  
BRIEFING PAPER

**Agenda Item Title: Handbook Revision: Compensated Outside Services**

**BACKGROUND & POLICY CONTEXT OF ISSUE:**

Recent media requests to UNLV for access to the forms filed by faculty in conformance with Board policy regarding compensated outside services and conflicts of interest were turned down due to the opinion of legal counsel that this information is considered to be confidential since they are personnel documents. Board policy does not specifically address the public or confidential nature of these requests, nor does it address how this information should be reported at each institution. At the August meeting of the Research and Economic Development Council, regents requested that staff prepare a policy proposal to address these issues.

Staff surveyed a number of state systems and institutions and found a mixture of institutions that publicly disclose compensated outside services and institutions that consider this information to be a personnel document and therefore confidential. A limited number of institutions employ a partial disclosure policy where conflict of interest information is kept confidential and compensated outside activities are reported. According to the staff survey, institutions that consider conflict of interest and compensated outside services to be public records typically reference a state sunshine law requiring the public disclosure of this information.

It is true in all cases that intellectual property or proprietary information is kept confidential.

The proposed policy is a hybrid of what was found in the survey of national and regional best practices, making faculty disclosures of outside compensated services and conflicts of interest confidential employee personnel documents and providing for public reporting of this information in aggregated form.

**SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

Board action is requested to revise Board policy (*Handbook, Title 4, Chapter 3, Section 8, and Title 4, Chapter 11, Section 12*) to include faculty compensated outside services and conflict of interest information as part of an employee's confidential personnel documents and to require that institutions report this information in aggregated form to the Board on an annual basis. In addition, the proposal eliminates the requirement that DRI faculty provide monthly reports on consulting time consistent with other NSHE institutions.

**IMPETUS (WHY NOW?):**

Regents requested that this information and policy proposal be brought forward for the Board's consideration at this time.

**BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- It is common practice for institutions within states that do not have specific sunshine law provisions to require that this information be made public to keep this information confidential.
- Complete disclosure by faculty of possible conflicts of interest and outside compensated services will provide for better oversight and increased awareness by the administration of faculty activities and minimize faculty participation in activities that pose an unacceptable conflict of interest.
- Public disclosure of outside compensated activities and possible conflicts of interest would create a disincentive for faculty disclosure.
- Outside compensated services are often integrated into confidential intellectual property development.
- The public needs to be reassured that NSHE institutions have oversight mechanisms in place to be sure that faculty are not engaged in activities that could pose a conflict of interest or interfere with their performance as a NSHE faculty member. The annual report provides that reassurance.

**POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

- The public has a right to know if faculty are engaging in activities that present a conflict of interest to the mission of the institution.
- Increased public disclosure of compensated outside services and conflict of interest disclosures will increase public trust in the workings of the institutions and faculty.

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

- Formulate a proposed policy that makes the disclosure of compensated outside services and/or conflicts of interest public documents.

**COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title # \_\_\_\_\_ Chapter # \_\_\_\_\_ Section # \_\_\_\_\_
- Amends Current Board Policy: Title 4, Chapter 3, Section 8 and Title 4, Chapter 11, Section 12
- Amends Current Procedures & Guidelines Manual: Chapter # \_\_\_\_\_ Section # \_\_\_\_\_
- Other: \_\_\_\_\_
- Fiscal Impact: Yes \_\_\_\_\_ No \_\_\_\_\_  
Explain: \_\_\_\_\_

**POLICY PROPOSAL**  
**TITLE 4, CHAPTER 3, SECTION 8**  
Compensated Outside Professional Services

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

Section 8. Compensated Outside Professional Services

(For DRI Faculty Members, See ~~Also~~ 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. Such service shall occupy no more than one day's equivalent time per work week (20%). Faculty members on 12-month contracts must take annual leave if providing outside professional or scholarly service during the standard work week.
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 281.481-281.581), 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 396.255, NRS 281.221(3), NRS 281.230(3), NRS 281.505(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. Faculty members engaged in providing compensated outside professional or scholarly service shall provide advance notification 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.*

7. When a supervisor believes that a 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.
8. 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.
9. In negotiating for a contract for outside compensated professional or scholarly services, faculty members shall not use institutional stationery or forms in any manner.
10. Faculty members may make a general announcement of their availability as consultants but may not solicit consulting assignments.
11. Faculty members working independently on their own time may obtain patents or copyrights on the results of their work.
12. 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.
13. ***It is the responsibility of each faculty member to timely report outside compensated services and to certify the accuracy of the disclosures. Failure to accurately and timely disclose outside compensated services constitutes a basis for disciplinary action under Title 2, Chapter 6.*** 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. (B/R 8/04)
14. ***Each NSHE institution shall publish an annual report regarding compensated outside professional or scholarly service completed by its 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**  
**Compensated Outside Professional Services**

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

Section 12. Compensated Outside Professional Service

(For NSHE General Policy, See 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.
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) 281.481-281.581), 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 396.255, NRS 281.221(3), NRS 281.230(3), NRS 281.505(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. A faculty member engaged in providing compensated outside professional service shall provide advance notification in writing to his or her supervisor (*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.***
7. When a supervisor believes that a 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 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. (B/R 6/05)

8. Any faculty member performing outside professional service shall inform those who engage him or her that they are 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.
9. 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.
10. 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 faculty member to timely report outside compensated services and to certify the accuracy of the disclosures. Failure to accurately and timely disclose outside compensated services constitutes a basis for disciplinary action under Title 2, Chapter 6.*** Records are to be kept annually by each supervisor of all approved consulting activities. ~~Monthly reports of consulting time will be submitted by the faculty member.~~ (B/R 8/04)
14. ***The Desert Research Institute shall publish an annual report regarding compensated outside professional or scholarly service completed by its 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.***