

BOARD OF REGENTS
BRIEFING PAPER
Handbook Revision, Compensated Outside Services

BACKGROUND & POLICY CONTEXT OF ISSUE:

Current Board policy provides that 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. The policy further provides that an annual report regarding compensated outside professional or scholarly service shall be reported in aggregate form to the Board of Regents for review. The report is intended also to verify that all potential conflicts of interest have been reviewed and approve in accordance with the Board's policy. As currently written, the applicability of the policy to full-time faculty only is unclear. Staff recommends clarifying the policy to provide that it is applicable to full-time faculty only. In addition, this proposal clarifies that 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, and if the amount of compensation, above expenses, is less than the monetary value of taking a half-day leave. This revision also excludes weekend work from the definition of the work week for full-time faculty.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Amend Title 4, Chapter 3, Section 8 and Title 4, Chapter 11, Section 12 to provide that the general provision concerning compensated outside professional services and those provisions specific to DRI are applicable to full-time faculty only and that 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.. (See attached Policy Proposal.)

IMPETUS (WHY NOW?):

A recent review of the policy resulted in this recommendation to clarify the applicability of the policy to full-time faculty members.

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

The original policy adopted by the Board of Regents concerning the reporting of aggregate data regarding compensated outside professional or scholarly service was intend to apply to full-time faculty. The proposed policy revision will clarify that intent.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

None have been brought forward.

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

Leave the policy as currently written not clarifying its applicability to full-time faculty members.

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_X_____

Explain:_____

POLICY PROPOSAL

TITLE 4, CHAPTER 3, SECTION 8
Compensated Outside Profession Services - General

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

Section 8. Compensated Outside Professional Services

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 396.255, 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, halfsibling, or step-relative; or

- (c) The faculty member's in-laws, aunt, uncle, niece, nephew, grandparent, grandchild, or first cousin.
7. [Faculty] **Full-time 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.
 8. 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.
 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. [Faculty] **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 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.
 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
Compensated Outside Profession Services - DRI

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

Section 12. Compensated Outside Professional Service

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.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 396.255, 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, halfsibling, or step-relative; or

(c) The faculty member's in-laws, aunt, uncle, niece, nephew, grandparent, grandchild, or first cousin.

7. A **full-time** 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.
8. 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.
9. 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.
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 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.
14. The Desert Research Institute 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.