

DRAFT REPORT OF THE JOINT ACADEMIC AFFAIRS/SENATE CONFLICT OF COMMITMENT WORKING GROUP

November 30, 2009

NOTE: This draft is circulated for comment by the University of Oregon community.

I. Introduction

In April, 2009, following a campus-wide conversation on issues surrounding conflict of interest and conflict of commitment, the Senior Vice Provost for Academic Affairs and the President of the UO Senate appointed the Joint Academic Affairs/UO Senate Conflict of Commitment Working Group. The members of the working group are listed at the end of this report.

The working group was charged with undertaking “a deliberate, philosophical and thorough discussion of [the] issues” in order to “bring clarity and professionalism to our consideration of conflict of commitment and how we will address it at the UO.”

To address this charge, the working group met a number of times in spring and fall terms 2009, examined existing policies relevant to the issue (UO Policy Statement 3.095 and OUS Internal Management Directive [IMD] 4.015), consulted with the General Counsel, and reviewed examples of conflict of commitment (COC) policies from other academic institutions across the country.

As defined in UO Policy Statement 3.095, we reiterate the principle that teaching and research are the primary functions of the University. These functions are enhanced by efficient and imaginative governance, in which the faculty plays a significant role. Likewise, service to the University, community and nation is also an inherent obligation of University faculty. These four functions—teaching, research, governance, and service—are essential features of academic life for faculty members at the UO. The expectation for each member of the institution is that he or she will fully and completely meet his or her responsibilities in these essential university duties.

The contributions of University employees, however—and faculty members in particular—are not solely measured by activities directly related to University programs. The objectives of the University are served and its programs enriched by the active participation of its faculty in outside activities that contribute to the advancement of the individual’s profession and the well-being of our communities, or provide an opportunity for professional growth through interaction with industry, business, government, non-profit organizations and other institutions of our society.

The University recognizes the contributions and achievements of its faculty by appropriate promotion and salary advancement and permits them substantial freedom in arranging their academic lives. This freedom is, however, subject to the principle that the

primary professional affiliation of a full-time member of the faculty is to the University of Oregon. Orderly procedures must be followed to ensure that such activities do not conflict with the proper discharge of University responsibilities.

This report affirms, yet seeks to clarify, UO Policy Statement 3.095, which provides general guidance regarding time available for outside professional activities and the distinction between those activities that can be engaged in freely and those that require consideration of possible incompatibility with University obligations. Outside activities that are subject to special consideration include many that are strongly encouraged by the University. Implicit and explicit approval of such activities is an official acknowledgment that they enhance the quality and prestige of the University.

In particular, this report proposes an ethical framework and a set of principles within which interaction between University employees and the outside community can flourish. Limiting such creative interaction is by no means the intent of this report. Rather, it presumes that the primary means of identifying and addressing potential conflicts of commitment will be rooted in personal responsibility, integrity, and high ethical standards of the University faculty. The safeguards against abuse are the standards required by professional colleagues and the rigorous process by which the University evaluates and selects individuals for appointment and promotion.

II. Background and Issues

In 1965, the Association of American University Professors (AAUP) concluded that “a system of precise time accounting is incompatible with the inherent character of the work of a faculty member since the various functions [the faculty member] performs are closely interrelated and do not conform to any meaningful division of a standard workweek.”

However, when faculty, in the course of their professional or community non-University activities, enter into commitments which do, or may, negatively impact the fulfillment of their UO responsibilities a conflict of commitment potentially exists. These activities may include efforts that advance professional careers and improve our communities (such as consulting, start-up businesses, or participation in volunteer or non-profit organizations), whether or not financial remuneration is involved. The working group does not believe conflicts of commitment are a common or widespread occurrence; nonetheless, they need to be addressed appropriately to protect both the faculty members and the institution.

The term “conflict of commitment” relates to an individual University employee’s distribution of effort between obligations to the University and outside professional activities, many of which are generally encouraged because they promote the professional development of faculty members and enrich their contributions to the institution, their profession, and the community. The nature of external activities varies greatly among the schools and colleges, and even among departments within those units. In some fields, it is rare to engage in these activities, whereas in others they are essential to personal

advancement.

The University allows full-time faculty to be employed in remunerative consultative activities or research capacities when such activities do not involve excessive university time and energy. In addition, activities performed on personal time are exempt from regulation unless they pose potential conflicts of interest or conflict with the proper discharge of University responsibilities. (See: UO PP 3.095 and IMD 4.015)

III. Principles

The working group advises the University Senate and the Senior Vice Provost that any revision of conflict of commitment policy be based upon sound principles that are understood and accepted across campus and that carry out State Board of Higher Education Internal Management Directive 4.015. These principles should direct decision-making regarding current issues and provide guidance for potential future concerns as yet unidentified.

We propose that the following principles guide further discussion as well as the implementation of conflict of commitment policies and procedures at the University of Oregon.

1. Conflict of commitment is a conflict between internal and external activities. It does not involve internal vs. internal activities, which need to be managed through other mechanisms.
2. Conflict of commitment issues can occur for tenure-related faculty or career non-tenure track faculty (NTTF), as well as for officers of administration.
3. Faculty expectations, and potential conflicts of commitment, vary considerably among the schools and colleges and should be addressed at the most local level possible. A UO conflict of commitment policy should provide general principles and guidance but direct that the development of implementation and oversight mechanisms, as needed, is the responsibility of the schools, colleges and departments, with agreement from Academic Affairs. This principle is analogous to UO tenure and promotion policies and procedures. Some local units may need to establish clear expectations of faculty obligations, so that potential conflicts can be more easily defined and resolved.
4. Conflict of commitment is not necessarily linked to financial remuneration.
- 5 A UO conflict of commitment policy should not be driven by a focus on exceptional cases, but rather on routine circumstances and occurrences. As noted in the first page of this document, there may, in fact, be relatively few instances that qualify as actual conflicts of commitment. Thus required reporting from all faculty members is neither appropriate nor necessary.

IV. Recommendations

The recommendations fall into seven areas.

1. Specifying activities that do and do not require outside approval in the context of the time commitment rule laid out in 3.095;
2. Defining the nature of allowable activities
3. Amending and clarifying the time commitment rule for outside activities that applies to all units and that clearly indicates when unit heads need to be informed of outside activities;
4. Requiring that each unit develop a set of criteria for implementation of this policy;
5. Specifying persons covered by this policy;
6. Developing an appropriate policy for persons not covered by this policy;
7. Providing for campus review of these recommendations every five years.

We recommend retaining the categories currently employed in 3.095: (1) Definition of Activities Requiring Approval; (2) Procedure for Approval; (3) Requirements for Written Disclosure and Request for Approval; (4) Criteria for Reviewing Requests for Approval; (5) Appeal by University Employee; (6) Confidentiality. Executing these recommendations will require that the UO Policy 3.095 be rewritten to accommodate these changes, which we describe in greater detail below.

1. Disentanglement of Conflict of Interest and Conflict of Commitment in 3.095: On the whole, we believe that UO Policy 3.095 adequately defines conflict of commitment and those activities that do and do not constitute a problem; thus it requires minimal modification. As currently formulated, however, the policy intermingles conflict of commitment issues with those pertaining to conflict of interest and creates unnecessary confusion. We strongly recommend that another committee be constituted in the near future to work with legal counsel to formulate two distinct policies, one for conflict of commitment and one for conflict of interest, since that responsibility lies outside the charge to this committee. The portions of 3.095 that appear to pertain specifically to Conflict of Commitment are contained in an Appendix. Properly constituted, we believe 3.095 would be an effective vehicle for conveying university-wide expectations regarding conflict of Commitment.

2. Nature of Allowable Activities: There are many inconsistencies in the way that IMD 4.015 and UO Policy 3.095 describe allowable activities. IMD 4.095 merely refers to activities “related to the faculty member’s institutional responsibilities” and asks for “prospective non-financial benefits to the faculty member and the institution” in written

disclosure requirements. UO Policy 3.095 refers to activities that:

- are “appropriate to the mission of the University: that is, must promise significant contributions to scholarship and knowledge and, when possible, provide appropriate opportunities for students”
- “lead to the advancement of knowledge and is not of a routine nature or solely benefit the sponsor”
- “contribute to the University’s mission of teaching, research and public service”

We recommend changing language in 3.095 so that it is consistent throughout the document, does not unnecessarily restrict local units from defining policies that make sense to them and is aligned with IMD 4.095. We recommend describing allowable activities as those that “contribute to the University’s mission of teaching, research and public service.” This is specific enough to provide guidance but not so specific as to unnecessarily restrict local policies.

3. Clarification of the One-in-Seven and Personal Time Rule: It is clear to us that the “one-in-seven rule” in Part II of 3.095 and other places,¹ is poorly defined, is inconsistently understood, is usually stated without mention of the personal time rule in Part II-C of 3.095, and is the source of considerable misgiving among some faculty. We therefore recommend that UO Policy 3.095 be *amended*, replacing the phrase “one day in each seven-day week” or “one-day-in-seven” wherever it appears with the phrase “one day per week apart from personal time,” which captures more clearly both components of IMD 4.015 and the full scope of UO Policy 3.095. We realize that this replaces a relatively precise accounting of time with a vaguer one, but believe that such flexibility is essential to building consensus across the University community. It should be left to individual units to define “one day per week apart from personal time” more specifically, as necessary or appropriate, within the accepted norms of the various fields and disciplines. This recommendation is consistent with our interpretation of the rule after consultation with General Counsel.

4. Locally Specified Policies and Procedures: We believe that conflicts of commitment are best resolved at the most local level and encourage individual units to develop a process and interpretations to implement this policy. Such local process and interpretations, which would subsequently be agreed upon by Academic Affairs, should include, at a minimum: (a) any understandings of the appropriate amount of professional time that might be devoted to outside work, (b) activities that the unit’s faculty consider not normally to require approval, (c) activities for which the unit’s faculty consider prior approval to be needed (beyond those specified in IMD 4.015 and UO Policy 3.095), (d) indicators suggesting that a conflict of commitment might exist, and (e) an implementation process to remedy such conflicts of commitment as they arise.

[Please refer to the Appendix: Sections III and IV-A of UO Policy 3.095 describes activities that require or do not require prior approval. Pursuant to IMD 4.015, this list must include items (1), (2) and (3) so these need to be retained. Item (4) is not part of

¹ Parts III-A, III-B-(2), IV-C-(4), and IV-D-(6).

conflict of commitment and should be deleted from a conflict of commitment policy. Items (1), (2) and (3) are the minimums required for IMD 4.015 but do not completely account for the heterogeneity across units and their respective functions. Any implementation process must include, pursuant to IMD 4.015, items (1), (2), (4), (5), (6) and (7) from 3.095, Section IV-C.]

5. Persons Covered: UO Policy 3.095 refers throughout to “faculty” or “employees.” We recommend that this be clarified in two ways.

*First, given that current accepted definitions of “faculty” include tenured, tenure-track and career NTTF, and that career NTTF can, and do, engage in outside activities that present potential conflicts of commitment, the policy should be clear that it applies to tenured, tenure-track and career NTTF. Locally created policies and procedures can then describe more specifically how the policies are applied to these faculty groups. Some units may wish to apply this policy to other non-tenure related faculty (such as full-time visiting professors).

•Second, Officers of Administration can potentially engage in activities that present conflicts of commitments but they are not governed under the faculty governance structure and therefore need a separate policy. References in 3.095 to “employees” needs to be changed so that it is clear this policy only applies to faculty, as defined above.

6. COC Policies for Other UO Employees: The scope of the discussions of the working group did not extend to other UO employee classifications such as Officers of Administration or classified employees. The working group recommends that the Working Group on OA Personnel Policies convened by the Provost and the Vice President for Administration undertake a similar review of the existing policies and make recommendations for clarifications or changes as relevant to the Officers of Administration. It is our assumption that those who fall under the collective bargaining agreement have their roles and responsibilities clearly defined as it relates to their professional affiliation with the university.

7. Review of this policy: On a regular basis, preferably every five years, this policy should be reviewed and updated, as necessary, to conform to University and unit standards and best practices.

Conflict of Commitment Working Group

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Appendix A – Excerpts from IMD 4.015 dealing with conflict of commitment.

4.015 Institution Policy on Outside Activities and Related Compensation

Each institution shall adopt policies and procedures to implement IMD 4.011 to 4.015. Such policies and procedures shall:

- (1) Include appropriate measures, such as one day per week, which define faculty time available for outside activities related to the faculty member's institutional responsibilities. Outside activities unrelated to institutional responsibilities and undertaken by faculty on personal time, regardless of whether compensated, are not subject to these Board of Higher Education and institution policies. However, if the faculty member, while on personal time, engages in outside activities that create a potential conflict of interest, the faculty member must provide written disclosure thereof in accordance with (4) and (5) below.
- (2) Identify the name(s) or title(s) of institutional administrator(s) assigned responsibility for reviewing and acting on requests to engage in outside activities related to the faculty member's institutional responsibilities as referenced in (1) above.
- (3) Identify and describe types of outside faculty activity related to faculty institutional responsibilities and associated funding sources which the institution approves as a class(es) and which will not require review and prior approval, such as health care faculty clinical activities, services as an expert witness, and services other than those identified in IMD 4.010(4) and (6) below. If, however, the particular activity under the class creates a potential conflict of interest, the faculty member shall provide a written disclosure thereof to a designated supervisor in accordance with (4) and (5) herein.
- (4) Require faculty to disclose to the named institutional administrator(s) in writing, and to receive prior approval on a case- by-case basis, to engage in outside activities involving any or all of the following:
 - (a) Acceptance of compensation, or ownership of equity in the case of a private entity.
 - (b) Service in a line management position or participation in day-to-day operations of a private or public entity.
 - (c) Service in a key, continuing role in the scientific and technical activity of a private or public entity. Institutional case-by-case approval will not be required if the activity is included within the scope of an institution-defined class as established under (3) above.
- (5) Require that the faculty member's written disclosure, as referenced in (4) above, fully

describe the:

- (a) Type of work or consulting to be provided to the named entity;
- (b) Nature of the relationship (e.g., employer/employee, entity/contractor, or consultant);
- (c) Anticipated time commitment;
- (d) Expected benefits to the entity, faculty member, and institution;
- (e) Use of institutional facilities and support personnel, if any, and method of reimbursing institution for both direct and indirect costs, if institution approves such use; and
- (f) Financial arrangements pertaining to funding sources of compensation, including equity ownership and other forms of economic value provided the faculty member or any immediate member of the faculty member's family.

(6) Require the institutional administrator(s) to consider the following when reviewing written requests to engage in outside activities:

- (a) Written disclosures identified in (5) above.
- (b) Contributions of the relationship to the faculty member's primary obligation to the institution and its support of the academic integrity of the institution as well as the faculty member's interdepartmental relationships.
- (c) Prospective non-financial benefits to the faculty member and institution.
- (d) Average time commitment over an academic term, such commitment not to exceed the limits established by the institution unless the institutional administrator(s) determines that the activity provides extraordinary benefit to both the institution and the participant as a faculty member. In cases where the time limits are to be exceeded, the faculty member shall disclose the amount of time in excess of the limits, and the institutional administrator(s) shall document in writing the rationale for approving the request to exceed the limits.
- (e) Assurances that the outside activity does not substantially interfere with the faculty member's instructional, research, and other related institutional responsibilities, including those to students. Special attention must be given to the intellectual property interests of students who may create and claim ownership to such property developed in the process of completing their academic programs.
- (f) Appropriateness of the use of institutional facilities and support personnel, if

approved, including written documentation that the full cost thereof will be reimbursed to the institution.

(7) Establish the type, nature, and extent of the information required to be reported under (2) through (6) above, which shall be made a part of a faculty member's confidential personnel record.

(8) Provide a process whereby a faculty member dissatisfied with a decision of an authorized administrator may appeal that administrator's decision to another institutional authority. That authority shall be vested with power to make a final determination relative to authorization to engage in the outside activity.

(9) Provide for the institutional president to report to the Chancellor's Office by August 31 of each year any change in institutional policy on outside activities and evidence of procedures followed in monitoring faculty and family acceptance of compensation and equity for outside activities of the faculty member.

(10) Specify appropriate sanctions against faculty who fail to comply with Board and institutional policies and procedures concerning outside activities and acceptance of related compensation and equity.

(11) Be submitted to the Chancellor's Office for review and approval prior to adoption.

Appendix B – Excerpts from UO Policy Statement 3.095 dealing with conflict of commitment.

II. TIME COMMITMENT TO OUTSIDE ACTIVITIES

In general, a full-time faculty member may engage in outside activities related to his or her University responsibilities one day in each seven-day week during periods of full-time employment. A part-time faculty member is allowed to devote to such outside activities a proportionate amount of the faculty member's FTE. A reasonable amount of averaging the time allowance over the quarters or semesters of an academic year is permissible, provided that it does not unduly interfere with the faculty member's primary responsibilities to the University. If outside activities are covered by the exemptions in Section III below, no prior review or approval is required. Prior approval is required for any outside activities that exceed this standard of time.

For other University employees, any outside activities requiring time away from work may be undertaken only with the permission of the employee's immediate supervisor.

III. ACTIVITIES NOT REQUIRING PRIOR APPROVAL

The following describe types of outside activities in which University employees may engage without prior review and approval by the University.

A. Professional Affiliations

Consistent with meeting obligations to the University, University employees are encouraged to participate in scholarly, professional, and philanthropic activities outside the University. It is thus appropriate for University employees to accept invitations to serve on advisory bodies or public commissions related to their academic or professional work, as well as to travel to other institutions or conferences for the purpose of presenting lectures, leading seminars or workshops, or visiting the laboratories of colleagues.

Such affiliations, if uncompensated except for expenses and nominal honoraria, are not subject to the "one day in seven" time limitation that is applicable to faculty members.

B. Limited Consulting

University employees are allowed to engage in limited outside consulting work without prior approval. To assure the University that the ability of the individual to discharge in full his or her obligations to the University is

not impaired when undertaking outside consulting activities, however, the following principles shall apply:

- (1) University employees shall not engage in outside consulting work to the detriment of their University obligations.
- (2) The time devoted to consulting work shall not exceed the one-day-in-seven standard as defined in Part II, above.
- (3) To aid the state in the development of its resources, industries and quality of life, the University's employees, as part of their official duties, may consult and cooperate with public officials on matters of mutual interest or of public benefit, especially on problems that require the research facilities of the University.
- (4) Official University stationery shall not be used in private outside work. A University employee may, however, use personal stationery or other letterheads carrying his or her University title and may sign reports and letters pertaining to outside work over an official title, so long as it is clear that the University title is used for identification only.

C. Outside Activities

Outside activities unrelated to university responsibilities and undertaken by faculty on personal time, regardless of whether compensated, are not subject to . . . Board of Higher Education and institution policies.

IV. ACTIVITIES REQUIRING PRIOR APPROVAL

A. Definition of Activities Requiring Approval

Activities requiring approval do not include those described in Section III, above. The following describe types of outside activities in which University employees may engage if the University has granted approval.

- (1) Acceptance of compensation from, or ownership of substantial equity in, an enterprise that carries on activities closely related to the University employee's area of work;
- (2) Service in a line management position in such a commercial enterprise or participation in the day-to-day operations of such a commercial enterprise;

- (3) Service in a key, continuing role in a private or outside public entity.
- (4) Principal investigators and other key personnel (those directly involved in the conduct and reporting of results) must declare the following in proposals submitted on behalf of the University of Oregon:

- (a) Any 'significant financial interest' — — anything of monetary value including but not limited to salaries, payments (e.g. consulting fees or honoraria), equity (e.g. shares of ownership) or intellectual property rights (e.g. receipt of royalties from patents and licenses) exceeding \$10,000 a year in income or, represent more than a 5% stake — from or in an enterprise where that interest may compromise, or have the appearance of compromising, an investigators' professional judgment in conducting or reporting research. Included are the financial interests of researchers' spouses and dependent children.

- (b) Any 'significant personal interest' — anything of monetary value including but not limited to gifts, favors, consulting relationships or other personal considerations exceeding \$10,000 a year where that interest may compromise, or have the appearance of compromising, an investigators' professional judgment in conducting or reporting research. Also included are personal interests of researchers' spouses and dependent children.

C. Requirements for Written Disclosure and Request for Approval

The University employee's written disclosure and request for approval of an activity requiring approval shall fully describe the:

- (1) Type of work or consulting to be provided;
- (2) Nature of the relationship;
- (3) Potential conflicts of interest;
- (4) Short- or long-term commitment of time and effort including the amount of time, if any, in excess of the one-day-in-seven standard as defined in Part II, above.
- (5) Expected benefits to the outside entity, University employee, and University;

(6) Use of University facilities and support personnel, if any, and the method of reimbursing the University for both direct and indirect costs, if the University approves such use; and

(7) Nature of any financial arrangements pertaining to compensation, including equity ownership and other forms of economic value provided to the University employee or any immediate member of the University employee's family.

(8) Measures proposed to manage potential conflicts and reduce their risk to the research, sponsor and University.

D. Criteria for Reviewing Requests for Approval

The outside activity must be appropriate to the mission of the University; that is, it must promise significant contributions to scholarship and knowledge and, when possible, provide appropriate opportunities for students. In judging the appropriateness of a contemplated outside activity, the supervisor should be satisfied that the activity meets the specific criteria listed below. The written disclosure provided under Section C, above, shall be the basis of this determination.

(1) The facts and circumstances indicate that the University employee's financial involvement with the sponsoring organization will not affect the conduct of research in accordance with University policies and the highest professional standards.

(2) The University's interests will be maintained despite any interest of the University employee in the sponsor.

(3) The outside activity will lead to the advancement of knowledge and is not of a routine nature or solely of benefit to the sponsor.

(4) The outside activity will contribute to the University's mission of teaching, research, and public service.

(5) If commercial privileges are to be granted to a particular sponsor, it is clear that the best interests of the University and the public will in fact be served by this arrangement.

(6) A faculty member's total average time commitment to outside activities should not exceed the limit of one day per seven-day week, unless the supervisor determines that the activity will provide extraordinary benefit to both the University and the University employee. The supervisor shall document in writing the rationale for approving any request to exceed the one-day-in-seven standard.

(7) There must be no anticipated distortion of academic programs. Involvement with external enterprises must in no way undermine the morale or academic integrity of the University.

(8) Care must be taken to insure the intellectual freedom and intellectual property rights of any member of the University community. To this end, consistent with prudent and diligent steps to protect intellectual property through the patent or copyright process, there must be free access to the results of all research conducted at the University. Moreover, the intellectual property of students must be protected.

(9) There must be no excessive or inappropriate use of University facilities or support personnel, and the University employee must provide written assurance that the full cost of any approved use of such facilities or personnel will be reimbursed to the University.

(10) Except under extraordinary circumstances, holding of a line management position or participation in day-to-day operations within an external enterprise should not be approved for full-time employees. Usually, the only condition under which the employee might remain at the University while carrying out such activities is if his or her appointment is reduced by a fraction consistent with the level of activities. However, this restriction should not discourage the early, exploratory phases of entrepreneurial activity. For instance, management of a fledgling commercial enterprise might be judged consistent with full-time University employment.

