

**REVISION OF *FACULTY HANDBOOK* CONCERNING CONSULTING AND
CONFLICT OF COMMITMENT POLICIES
Commission on Faculty Affairs
CFA Resolution 2011-12 B**

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| Approved, Commission on Faculty Affairs: | April 13, 2012 |
| First reading by University Council: | April 30, 2012 |
| Approved by University Council: | May 7, 2012 |
| Approved by the President: | May 7, 2012 |
| Approved by the Board of Visitors: | September 10, 2012 |
| Effective Date: | Fall 2012 |

WHEREAS, the provost charged a university-wide task force on consulting and conflict of interest with responsibility for reviewing existing policies and practices and making recommendations on needed improvements;

WHEREAS, major revisions to policy 13010 on individual conflicts of interest have been approved by University Council; these revisions clarified and better documented institutional policies and practices and incorporated recent changes in federal regulation concerning conflict of interest in research; and

WHEREAS, related policies on consulting and conflict of commitment contained in the Faculty Handbook also needed updating to address several issues, including federal contract compliance concerns for faculty members funded on sponsored grants and contracts, inconsistencies in oversight and approval processes, and lack of clarity about what constitutes external consulting as opposed to professional service.

NOW, THEREFORE, BE IT RESOLVED that Faculty Handbook sections 2.14.1(Consulting Activities) and 2.15 (Conflict of Commitment) be revised as attached.

2.14 Consulting and Outside Employment

2.14.1 Consulting Activities

The university recognizes that consulting work for external entities enhances the professional development of faculty members and provides channels for communication and outreach not otherwise available. Hence, reasonable participation in consulting is encouraged. Faculty members are often called on to assist outside agencies and individuals about matters within their area of professional competence during periods in which the university employs them.

This policy differentiates between external consulting and professional service activities as follows:

External consulting is professional activity related to an individual's area of expertise, where that individual generally receives compensation from a third party and is not acting as an agent of the university. Consulting may take many forms, but the guiding principle is that, in consulting, a person agrees to use his or her professional capabilities to further the agenda of a third party in return for an immediate or prospective gain. Even in cases without compensation, advance approval is required to document the proposed external activities and to ensure they do not constitute a conflict of commitment, or a conflict of interest where gifts of equipment or donations to the faculty member's laboratory may substitute for direct compensation. Provisions of the consulting policy also apply to external activities where the faculty member has a direct relationship to the external entity, such as personal or family ownership of the company. Consulting does not involve becoming an employee of the external entity. External consulting or business ownership are reported in accordance with policy 13010 and disclosed on related forms.

Professional service includes service on national commissions, on boards of governmental agencies, on granting agency peer review panels, on visiting committees or advisory groups to other universities, on professional associations, and on analogous bodies. Professional service activities may involve a token honorarium and/or expense reimbursement. Typically these activities are considered part of the faculty member's institutional responsibilities for participation in the larger scholarly academic community. Participation in external professional service activities may require supervisor approval depending on departmental practice and expectations of the position. Annual leave is not required. Form 13010 does not need to be completed for participation in professional service activities; however, travel payments or reimbursements may need to be reported by Public Health Service (PHS)-funded researchers in accordance with PHS guidelines and policy 13010.

Consulting arrangements may be entered into by faculty members during periods of university employment, provided that:

- such advice is not part of their normal responsibility to the university and is not normally provided through Virginia Cooperative Extension, outreach programs, or other component of the university;

- the work undertaken contributes to their professional development;
- the work can be accomplished without interference with their assigned duties and does not ordinarily involve more than one day per week and does not exceed five days in any five-week period;
- university resources and facilities are not involved (except as described below in the use of university facilities policy); and
- written approval in advance is obtained from the faculty member's department head or chair, and dean or senior manager.

~~Further conditions may apply for consulting by faculty members whose appointments are funded in whole or in part by sponsored projects may participate in consulting when consistent with their responsibilities and in compliance with federal contract compliance and state regulations. Generally, university time available for consulting is in proportion to base salary funding from non-sponsored sources. With supervisor approval, additional consulting days may be charged to annual leave.~~

~~The university recognizes that consulting work enhances the professional development of faculty members and provides channels for communication and outreach not otherwise available. Hence, reasonable participation in consulting is encouraged.~~ Usually, consulting work should involve advisory services based on a faculty member's store of knowledge and experience in contrast to programs of research, development, or testing, which may interfere with the performance of the faculty member's duties or conflict with university interests.

In any faculty consulting arrangement, it is understood that the name of the university will be not be used neither in connection with any product or service developed as a result of such consulting nor in any connection arising out of the arrangement.

Paid consulting by faculty members is not permitted for work done for a group within the university. ~~except for non-credit instruction in the Division of Continuing and Professional Education.~~ For example, if a faculty member advises or assists the principal investigator on a grant, there shall be no pay for the services. Such consulting is considered part of the normal duties of faculty members. Faculty members may be paid for participation in —non-credit instruction offered through appropriate university units, such as Continuing and Professional Education or University Organizational and Professional Development, in accordance with overload payment policies in section 2.17 of the Faculty Handbook.

When a faculty member testifies as an expert witness, the following conditions apply: aA disclaimer is given in court indicating that the faculty member is speaking as a professional and not as a representative of the university; when a faculty member is under subpoena, the university civil leave policies apply; and a faculty member may not testify in civil suits involving the Commonwealth of Virginia, except under subpoena.

~~Virginia Cooperative Extension employees should also be aware of specific policies covering faculty having federal appointments. (These appear in sections 4.12 and 7.9, "Consulting Activities for Virginia Cooperative Extension Faculty.")~~

~~Faculty members are subject to the Virginia Conflict of Interests Act, which prohibits self-dealing and other forms of conflict of interest. (Further information on this appears in section 2.15.4, "Compliance with the Virginia Conflict of Interests Act.")~~

Faculty members intending to do consulting work should also read the policy on use of university facilities. Except under the provisions specified in that policy, faculty members are not allowed to use university resources in conjunction with consulting or otherwise for private gain. This includes the parallel use of university facilities associated with consulting activities; i.e., when a faculty member is engaged in authorized consulting activities, the consulting employer may not enter into an agreement to use university resources for any purpose related to the consulting activity. Instead, when significant resources of the university are required, the employer may request that an agreement, grant, or contract be drawn with the university that provides the necessary services, including human resources. The faculty members then carry out duties attendant on the agreement as part of their assigned university duties.

Because library facilities are made available to the public, their use in consulting is not regarded as being in contravention of this policy. ~~In any faculty consulting arrangement, it is understood that the name of the university will be used neither in connection with any product or service developed as a result of such consulting nor in any connection arising out of the arrangement.~~

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Because of the university's land-grant mission, it may be in the best interest of the university to impose some additional restrictions on the consulting activity of the faculty of one or more of the colleges. Therefore, an academic dean, after consulting with his or her faculty, may recommend to the provost that the faculty of that college need to satisfy additional requirements for consulting approval. The provost, after consulting with the Commission on Faculty Affairs, and with the approval of the president and the board of visitors, may require that the faculty of the affected college satisfy such additional requirements. Virginia Cooperative Extension employees should also be aware of specific policies covering faculty having federal appointments. (These appear in sections 4.12 and 7.9, "Consulting Activities for Virginia Cooperative Extension Faculty.")

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~~Regulation Oversight~~ of faculty consulting ~~so that a reasonable level is maintained and normal duties are not neglected~~ is a responsibility of the department heads or chairs and other relevant administrative officers of the university so that a reasonable and appropriate level of external activities is maintained and normal duties are not neglected.

~~A To protect the faculty member from possible criticism regarding conflicts of interest, a request for approval of consulting request~~ must be approved by the department head or chair

and dean. Notice of approval is accomplished by returning a copy of the signed approved consulting request form to the faculty member. (See related reporting forms available on the Conflict of Interest provost's website maintained by the Office of the Vice President for Research.) Further information on the conflict of interest policy appears below and on that website.

~~The department head or chair and dean annually review the consulting activity for the prior year as reported on the annual faculty activity reports to ensure compliance with the reporting and approval requirements and reasonableness in relation to the faculty member's assignment. The dean submits an annual summary of faculty consulting to the Office of the Senior Vice President and Provost, which monitors overall activity.~~

Approval of summer arrangements consulting or other external activities -for faculty members holding nine-month appointments is not necessary during the summer unless there is concern about conflict of interest, or the university employs the faculty member during the consulting period. When the university employs the faculty member in the summer months, university and college consulting policies apply.

Setting the consulting fee is the prerogative of the faculty member. Compensation rates, however, should not subject professional people outside the university to unfair competition. The actual or estimated consulting income is reported on the request form to allow reviewers a full assessment of potential financial conflicts of interest. -Income received for consulting work is not considered when faculty members are evaluated for annual merit salary increases.

~~Compensation rates, however, should not subject professional people outside the university to unfair competition.~~

[2.14.2 ~~Skip~~ Technical Assistance section - no change.]

[2.14.3 Outside Employment and External Activities Other Than Consulting - no change]

2.15 ~~Conflicts of Interest and~~ Conflict of Commitment

~~All faculty members of the university must be committed to conducting themselves in accordance with the highest standards of integrity and ethics. This includes identification of the potential for conflicts of interest and commitment, and the assurance that participation by faculty in such activities does not improperly affect the university.~~

~~A conflict of interest occurs when a faculty member is in a position to advance one's own interests or that of one's family or others, to the detriment of the university.~~

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~~A conflict of commitment arises when the external activities of a faculty member are so demanding of time, attention, or focus that they interfere with the individual's responsibilities to the university. The university adopted policy 13010, "Faculty Conflicts of Interest and Commitment," to guide the process of faculty disclosure and approval of involvement with external activities. The Request to Engage in External Activity Form 13010A, the Disclosure of Conflict of Interest/Commitment Form 13010B, and the Memorandum of Understanding allow for disclosure of involvement with external activities and development of an agreement on how potential conflicts will be managed. (The forms are available on the provost's website.) A document providing guidance to faculty members and to administrators responsible for conflict of interest/commitment reporting and review is also available on the provost's website.~~

~~Both state and federal law define conflict of interest and the conditions under which such conflicts may be deemed acceptable.~~

2.15.1 Faculty Commitment to the University

~~Upon accepting an academic appointment,~~ Virginia Tech faculty members owe their primary professional responsibility to the university. Their primary commitment of time and intellectual energies shall be directed toward the learning, discovery, and engagement missions of the university.

A conflict of commitment arises when the external activities of a faculty member are so demanding of time, attention, or focus that they interfere with the individual's responsibilities to the university.

Faculty members have traditionally been allowed wide latitude in defining their professional agendas and their degree of involvement in external activities when those activities advance the mission or prestige of the university. ~~However, excessive participation in activities external to the university can compromise the performance of the primary responsibilities of the faculty member. This policy is intended to guide involvement in external activities.~~

2.15.2 Statement of Principles

The university encourages active participation by faculty members in external activities that are integral to and/or enhance their professional skills and standing or that constitute substantive outreach and public service activities.

Such activities are usually expected of faculty members to promote academic-professional development, and to enrich their contributions to the institution, their profession, the state, and the national and world societies. Additionally, Virginia Tech encourages entrepreneurial activities by faculty, recognizing that such activities are critical to promoting economic development and meeting society's needs, provided that participation in those activities is in compliance with federal and state laws and policies, the Virginia Tech conflict of interest policy, and these guidelines.

Faculty members should make the fulfillment of their responsibilities to the university the focal point of their ~~academic activities~~professional effort. They are expected to arrange their external activities so that they do not impede or compromise their university duties and responsibilities. Responsibility for ensuring commitment to the university and for reporting activities that might be perceived as compromising that commitment rests with each faculty member in consultation with his or her unit administrator (typically the department head or chair, or school or center director) and dean. ~~The primary judgment as to whether a faculty member is meeting his/her professional responsibilities to the unit and the university rests with the faculty member's unit. The counsel of the unit administrator and colleagues, or dean, should provide valuable perspectives on faculty commitment.~~

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2.15.3 Procedures to Monitor and Approve Involvement in External Activities

The university recognizes that the balance of external activities varies among individuals, from discipline to discipline, and from one type of proposed activity to another. That balance is affected by unit goals and changing needs for teaching, research, creative/artistic activities, extension, service, and outreach. Primary duties and responsibilities may vary from year to year for individual faculty members. Undergraduate and graduate enrollment demands, faculty-staffing levels, and changes in the nature and scope of outreach, teaching, and research within the unit may affect the primary duties and responsibilities of individual faculty. The primary judgment as to whether a faculty member is meeting his or her professional responsibilities to the unit rests with the department head and dean (or relevant senior manager). ~~Therefore, the assessment of academic commitment is best performed at the unit level.~~

~~Faculty members have a responsibility to communicate to their unit administrator or dean any activities that might lead to a conflict of interest or conflict of commitment. External activities that have the potential to be conflicts of interest as defined in university policy 13010, "Faculty Conflicts of Interest and Commitment," and also section 2.15.7, "Disclosure of External Activities and Potential Conflict of Interest and/or Commitment," must be reported on the appropriate forms available on the provost's website and approved in advance. This includes consulting requests. The background document at the same Web location gives examples of activities that must be reported in advance. Reporting on external activities that are not inherently a conflict of interest is done in several ways:~~

~~For example, a statement of plans and goals in the faculty activities report (FAR) outline prospective plans for the upcoming academic or calendar year. This serves as an appropriate tool for consultation between faculty members and their unit administrator concerning involvement in external activities and should lead to recommendations regarding continuance or restriction of some external activities. A statement of plans and goals in the FAR should not be viewed as a static document; rather, the statement of plans should be updated throughout the academic year to track both internal and external activities. When unplanned requests for participation in external activities are recognized as impacting on university duties and~~

~~responsibilities, they must be reported by the faculty member to the unit administrator, who assesses the activities in light of the current scope of activities, duties, and responsibilities of the faculty member.~~

~~Faculty members may also write a letter of intent to their unit administrator, complete and submit the Request to Engage in External Activity Form 13010A, or provide other documents or correspondence with regard to participation in external activities.~~

~~It is the responsibility of the unit administrator to review and acknowledge communications regarding external commitments. The unit administrator should signify support for the planned activities, or should work with the faculty member to establish an appropriate level of commitment. At the end of the year, the FAR documents the faculty member's accomplishments related to their primary university duties and responsibilities as well as their participation in or performance of external activities. It provides an opportunity for the unit administrator and dean to assess whether the faculty member's performance of primary duties was compromised by excessive participation in external activities.~~

▲ If a faculty member is committed to engaging in an external activity that compromises his or /her ability to meet university responsibilities, a leave of absence or a reduction in percent employment may be appropriate or necessary. Approval of a leave request or change in appointment depends on the needs of the college and unit and protection of university interests.

~~When-if~~ a unit administrator, or dean, observes that a faculty member appears not to be fulfilling his or /her primary responsibilities to the university, the administrator shall immediately address these concerns with the faculty member ~~is immediately advised~~ to ensure that these responsibilities are adequately met. ~~Conflicts may be referred to the appeal process outlined in university policy 13010, "Faculty Conflicts of Interest and Commitment," including eventual referral to the Committee on Conflicts of Interest and Commitment.~~ Failure to meet primary departmental and university obligations is handled through established university procedures appropriate to the situation (for example, formal reprimand, non-reappointment, post-tenure review, or dismissal for cause). See sections of this handbook for relevant appeal processes for such actions.

Nothing in this policy statement shall be interpreted as interfering with the academic freedom of faculty members, nor with their primary responsibility to direct their own research.

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