

CONFLICT OF INTEREST AND CONFLICT OF TIME COMMITMENT POLICY

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This policy is influenced by certain assumptions about its scope and purpose. It assumes that University personnel, faculty, administrative, and staff, are men and women of high personal standards. Thus, this policy is not designed to intrude into the personal affairs of personnel; rather, it is intended to promote open disclosure and appropriate management of potential conflicts of interest and conflicts of time commitment.

PURPOSES OF A CONFLICT OF INTEREST AND CONFLICT OF TIME COMMITMENT POLICY

Conflicts of interest and conflicts of time commitment present an administrative challenge in the decentralized and complex environment of a university. Many of the conflicts encountered arise from natural overlaps between legitimate domains of personal and professional activities, which usually can be reconciled only on a case-by-case basis. Further, conflicts of interest often arise innocently during the normal course of employment rather than by deliberate choice. Therefore, in dealing with conflicts of interest, the underlying philosophy of this policy involves their disclosure and management; however, total elimination of the conflicts may not be possible. Moreover, the traditions and assumptions of professional practices may vary widely among various academic disciplines and other employment fields. This policy recognizes, for example, that faculty personnel will as a general rule enjoy greater flexibility and freedom in the manner in which they carry out their responsibilities than do administrative and staff personnel. With such limitations in mind, the purpose for having a conflict of interest and conflict of time commitment policy is to accomplish the following:

- Establish university employment as the primary work commitment of University personnel;
- Promote the achievement of primary or core activities of University employment;
- Assist personnel to maximize their unique contributions to the University;
- Promote self-disclosure and openness between personnel and line management concerning support and supplemental activities that might give rise to conflicts;
- Enhance professional attitude and increase the efficiency and productivity of personnel; and
- Manage to the extent possible both the fact and the appearance of conflicts among personnel.

It is believed that the accomplishment of these purposes will result primarily from relating economic incentives to actual productivity; from raising awareness of individual responsibility among personnel of their obligation not to become involved in support or supplemental activities which detract from their primary employment commitment to their University employment; and from implementing standardized disclosure and conflict management mechanisms for promoting individual accountability.

CONFLICT OF INTEREST

A conflict of interest situation may exist when personnel are in a position to influence the direction or decision of the University or one of its programs, or to inappropriately use University resources, in such a way that may lead to the personal financial gain of the individual or of his or her immediate family or other designee.

APPLICATION

This policy is applicable to all full-time personnel. However, if special circumstances warrant, line management may need to apply some portion of this policy to part-time personnel on an individual basis.

LINE MANAGEMENT RESPONSIBILITY

Although rigid distinctions cannot be drawn among personnel levels, the more comprehensive a responsibility personnel are assigned in the University's administration structure, the more likely such personnel may encounter potential conflicts of interest. Such conflicts may arise from subjective aspects of administrative decisions, from increased visibility, from increased exposure of expanded decisional impact, and from risk that the acts of such administrators may be deemed official acts of the University. The existing organization provides line management for all personnel, and such line management should include a concern for conflicts of interest at any level of responsibility.

IMPLEMENTATION

Line management shall obtain on an annual basis a Faculty Conflict of Interest and Conflict of Time Commitment Disclosure Statement signed by each full-time faculty member, and an Administrative/Staff Conflict of Interest and Conflict of Time Commitment Disclosure Statement signed by each full-time employee. These documents are designed to reflect the nuances in application of this policy to the varying employment conditions of both faculty and of administrative/staff personnel. The disclosure statement is available in the office of the Associate Academic Vice President-Faculty for faculty and in the office of the Assistant Administrative Vice President-Human Resource Services for administrative and staff employees. Line management shall maintain a copy of the current disclosure statement.

The individual and line management should meet annually to discuss and evaluate the potential of any activity or involvement for creating a conflict of interest. This can occur in conjunction with a discussion regarding each individual's assignments, projects, and productivity. (See Joint Planning Process/Annual Performance Plan Policy and Faculty Rank and Status Professorial and Professional Policies.) If no conflict is noted, the disclosure is kept on file by line management. If a potential conflict of interest is identified, the individual and line management should collaborate to develop a written plan describing the manner in which the potential conflict will be reduced, eliminated or appropriately managed. The individual and line management must sign the plan, and a copy of the plan must be sent to the applicable dean or director and to the Associate Academic Vice President-Faculty or the Assistant Administrative Vice President-Human Resource Services, as the case may be, for approval. If any deficiencies in the plan are

noted, line management may be directed to negotiate a revised plan with the individual.

If the individual and line management are unable to agree on a plan to resolve or manage a potential conflict of interest, the matter will be referred to the next level of line management for resolution. Deans and directors should confer with the Associate Academic Vice President-Faculty or the Assistant Administrative Vice President-Human Resource Services whenever the scope or sensitivity of particular activities or interests so dictate. No plan may be implemented without the approval of the Associate Academic Vice President-Faculty or the Assistant Administrative Vice President-Human Resource Services. An individual dissatisfied with the ultimate plan adopted may grieve the decision according to the applicable University grievance procedures. An individual who fails to disclose potential conflicts of interest or who fails to observe the adopted plan may be disciplined as would be the case for any other employment misconduct.

This policy should be administered at the lowest possible level and in the context of the overall employment relationship of the individual under the direction of his or her immediate line management.

Conflicts of interest represent one area in the total sphere of the individual's working relationship with the University. Line management should assume the affirmative responsibility of understanding the complete context of the individual's work assignment as well as a thorough ongoing awareness of all relevant factors that bear on any potential conflict of interest. As line management and the individual engage in the continuous process of sharing information, the employment responsibility with the University will be defined or redefined as required by the circumstances. The general questions of the propriety and judgment in the selection of outside activities and interests are the questions raised by most conflicts of interest. Line management should help answer those questions.

Within the framework of the employment responsibility, the following general guidelines are given:

- Primary responsibility for compliance with the objectives of the policy rests with the individual, who should take the initiative in disclosing all potentially conflicting activities and interests to line management.
- Line management should confer with applicable deans and directors on a regular basis and as dictated by the implications of personnel activities and interests.
- When other University personnel become aware of apparent conflicts of interest involving those who do not report directly to them, the matter should be communicated to the individual's immediate line management, rather than to others. This will assist in resolving questions at the lowest possible level and with due regard for the uniqueness of each college or administrative area.
- It is of critical importance that this entire process be conducted with a view toward helping, rather than merely policing, to support the individual in building a professional career in ways consistent with employment expectations.

GENERAL CONFLICT OF INTEREST STANDARDS

The basic philosophy of this policy is that full disclosure is the most productive means of dealing with potential conflicts of interest. With respect to faculty, this policy is designed to complement and be in harmony with the “Expectations of a Faculty Appointment” document. The principles outlined in this section are intended to provide flexibility. They are intended to suggest situations in which there are likely to be conflicts of interest, in the absence of special circumstances. If such circumstances exist, line management has the authority to approve a management plan following the conflicts management plan process described in the policy.

Personal Monetary Benefit. Whenever an individual's University position or activities give an opportunity for significant personal or family monetary benefit beyond the compensation paid by the University, the circumstances of such potential benefit must be disclosed to the appropriate line management and an appropriate plan adopted. (See Employee-Vendor Policy.)

Nominal Use of University Property. Nominal personal use of University property is generally not considered inappropriate. “Nominal” refers both to amount of use and to the nature of the equipment or facilities used. The use is to be on BYU's premises and of non-expendable items only. However, because of the expense involved, any personal use of a University vehicle or other major capital equipment is not considered nominal. No further definition of the term is supplied because it is believed that line management should be consulted in cases in which there may be doubt about the nature and extent of proposed use. When proposed personal use might reasonably be considered more than nominal, permission should be obtained from line management. It is not intended to encourage personal use of University property, but rather to bring what use is made into the open.

Extensive Substantial Use. Compensation to the University is appropriate when personal use is extensive substantial or when expendable supplies (including use of copy machines and postage) are consumed. Where extensive substantial use of University equipment is involved, arrangements should be made with line management for proper supervision of the use of the equipment. Such use of equipment and facilities should be covered by a reimbursement arrangement approved by the line management responsible for the equipment and by the dean or director of the individual's college or department. This arrangement should be in writing for the protection of all involved parties.

Use for Benefit of Private Organizations. Use for the benefit of a commercial or other private organization is inappropriate without approval from and compensation arrangements made with line management and the applicable dean or director.

Inappropriate Uses. Some proposed personal uses may be so extensive substantial that neither permission nor compensation can make such use appropriate.

Other circumstances, which often give rise to conflicts of interest that should be the subject of disclosure to line management include, but are not limited to, the following:

- **Influencing University Negotiations.** Except with express authorization to do so, negotiating, influencing or attempting to influence the negotiations of contracts or

agreements between the University and a private or governmental organization. (See Employee-Vendor Policy.)

- **Inside Information.** Use for personal gain or other unauthorized purpose of privileged information acquired in connection with University business, i.e., confidential personal records, knowledge of forthcoming programs, site selections, or the selection of contractors, etc., before public announcements.
- **Commercial Use of 'Know-How.'** Making beneficial commercial use of unpatentable or non-copyrightable information or other know-how or trade secrets developed on University time. (See Consulting or Moonlighting section of this policy.)
- **Personal Privileges.** Using a University position to obtain personal privileges or gain (except privileges available to all personnel) from persons or firms outside the University, or, without authorization, from the University itself. (See Gifts From Vendors or Other Outside Sources Policy.)
- **University Affiliation and Private Projects.** Permitting the inappropriate use of an individual's affiliation with the University to give credibility or other material support to a private undertaking. (See Advertising/Selling/Soliciting Policy--Use of University Name section)
- **Disclosure of Opportunities.** For the purpose of personal gain, failing to disclose to the University information acquired in connection with employment by the University regarding financial, scientific, research, or other opportunities in which the University might reasonably be expected to have an interest.
- **Sponsored Research.** Individuals involved with externally sponsored research must avoid or disclose any possible conflicts between interests of the sponsor and the university. In particular, any personal income outside the authorized salary payments must be disclosed and meet federal guidelines. (See Research Institutes with University Personnel Policy, Sponsored Research Activity Conflict of Interest Policy, and Research Projects for Church-Related Agencies/Services to Church Departments/Agencies Policy.)

CONFLICT OF TIME COMMITMENT

A potential conflict of time commitment exists when activities external to the University exceed reasonable time limits or when primary professional responsibility is not to the University.

PRIMARY EMPLOYMENT COMMITMENT

Personnel are expected to understand the terms of their employment and give full measure of time, talent, and loyalty to the University. Any activity or work pattern that lowers productivity is in conflict with basic obligations; thus, any significant reduction in productivity attributable to other activities may itself suggest a conflict of time commitment. Except with written permission from line management, no individual should engage in the following activities:

- Serve as a line officer (in title or in fact) in a private business;
- Maintain a business or professional telephone listing;
- Maintain an off-campus office (other than in an individual's home);
- Be employed to teach or provide instructional or administrative services for other academic or non-academic institutions. For acceptable non-employment consulting

arrangements, see the "Expectations of a Faculty Appointment" Policy Statement;

- Be involved in significant government service other than jury duty, state legislature, or weekend national guard or reserve; or
- Be employed in selling products or services not produced by the University.

TIME COMMITMENT

Time is only one factor to be considered in evaluating productivity. However, a minimum time commitment is a basic element in any individual's obligation to the University. In most cases, that minimum will be approximately 40 hours per week.

PRODUCTIVITY FACTORS

Factors to be considered in evaluating productivity should include, in addition to time, the quality of work and the extent to which the terms of the employment agreement have been fulfilled. For faculty, the annual stewardship interview with the department chair should include a discussion and understanding of the assignments for teaching, counseling of students, administrative duties, creative activity, permissible outside activity, and such other projects or activities as may be agreed upon. The annual performance review of administrative/staff employees should include a similar discussion of primary responsibilities, professional development activities, committee involvement, etc.

DISCLOSURE OF POTENTIAL CONFLICTS OF TIME COMMITMENT

All full-time personnel are responsible to inform line management of any outside professional or other activities that may constitute a conflict of time commitment on the Faculty Conflict of Interest and Conflict of Time Commitment Disclosure Statement for faculty and the Administrative/Staff Conflict of Interest and Conflict of Time Commitment Disclosure Statement for employees. When conflicts occur, the individual and line management will develop a plan to reduce, eliminate, or manage such conflicts (see Implementation Section of this policy. Also see Faculty--Professional Activities in Addition to Regular Assignment Policy.)

EVALUATION OF OUTSIDE ACTIVITY

Factors to be considered by the individual and line management together in evaluating the desirability and managing the risks of involvement in outside interests include the following:

- The degree to which an outside interest (including professional, business, church, and community service) materially and adversely affects an individual's performance at the University. Such adverse effects could include reduced productivity, divided loyalties, distraction of interest, or inappropriate appearances.
- Whether the activity is consistent with the goals of the University.
- Whether the nature of the activity is in competition with the activities of the University.
- Whether the activity enhances the individual's professional competence in a way that benefits the University.

ACCOMMODATION FOR ACTIVITIES OR INTERESTS

When line management concludes that a certain activity is inappropriate because it reduces an individual's productivity below the level of expected job performance, but the individual

nevertheless wishes to continue the activity, salary reduction and/or conversion from full-time to part-time status (if approved by the Associate Academic Vice President-Faculty or Assistant Administrative Vice President-Human Resource Services) may represent an appropriate temporary solution.

OTHER UNIVERSITY EMPLOYMENT

No individual should be paid twice for performing the same service. Therefore, additional employment by an organizational unit of the University or the Church, other than the unit in which a person is regularly employed, should take place only with the consent of line management of the unit in which he or she is regularly employed. It also requires the approval of the Associate Academic Vice President-Faculty or the Assistant Administrative Vice President-Human Resource Services if the result would be more than full-time employment. The Fair Labor Standards Act and the restriction to 40 hours per week should be reviewed for non-exempt employees. Participation in BYU or Church Educational System Continuing Education programs will not be regarded as a conflict of time commitment, assuming compliance with existing policies governing participation by University personnel in such programs. (See BYU Personnel Volunteer Policy, Supplemental Research Compensation for Externally Sponsored Work Policy, Supplemental Compensation for Administrative Employees Policy, and Faculty--Compensation Over 100% of Salary Policy.)

CONSULTING RESTRICTIONS

Consulting should be distinguished both from moonlighting and from acting as a principal. Consulting is defined to include only that outside activity that brings professional enrichment and benefit (financial or otherwise) both to the consultant and to the University, whereas moonlighting ordinarily benefits only the individual. (See Independent Contractors/Consultants/Attorneys Policy.) Thus, while moonlighting is not prohibited, it is not encouraged, particularly in the case of faculty members. Examples of moonlighting include after-hours employment by other firms, farming, the operation of a part-time business, etc., under circumstances in which such additional income-producing activities are unrelated to or interfere with the University assignment.

A consultant often advises other professionals who may be trained in the same field as the consultant. The other professionals are usually principals who are responsible to third parties for the performance of a complete project. Frequently, a principal's commitment is so open-ended and so large that the principal cannot control the exact nature or extent of involvement in completing the project. Retention of control over one's involvement is not only possible but essential for a consultant whose principal open-ended professional commitment is to the University. An individual should avoid becoming more a principal than a consultant. Even then, consulting must not materially and adversely affect the consultant's primary or core obligations to the University.

No personnel may voluntarily testify as an expert witness adverse to the University, its affiliated sponsor, The Church of Jesus Christ of Latter-day Saints, or other institutions within the Church Education System or entities which are affiliated with, owned or controlled by the Church. University personnel are not precluded in any way from testifying as lay witnesses. For purposes of this policy, an expert witness is a witness testifying in an

adversarial or administrative proceeding, whether retained for compensation or acting as a volunteer, and qualified by knowledge, skill, experience, training, or education to provide a scientific, technical, or other specialized opinion that will assist the finder of fact. A lay witness is a witness testifying in an adversarial or administrative proceeding who is not retained for compensation by a party, who is not testifying as an expert witness and who therefore only provides testimony concerning the facts of the case based upon firsthand knowledge.

Faculty members should carefully review the Expectations of a Faculty Appointment Policy Statement which outlines the primary/core activities of faculty employment, i.e., teaching, publishing, maintaining a presence on campus, accessibility to students and continual improvement and discussions of the manner in which consulting, as well as participation in other support and supplemental activities, may give rise to an impermissible conflict.

EXTENT OF PERMISSIBLE ACTIVITY

Whenever a faculty member spends more than the four days per month in outside activities from which personal compensation is received, a presumption arises that further outside activity would be excessive. The four days per month limitation on such outside activity is the provision made in Expectations of a Faculty Appointment Policy Statement.

CHURCH SERVICE CONFLICTS

In general, the Church sponsorship of the University does not justify any different attitudes about the use of University time or University property for Church service. At the same time, the University is sympathetic to the need for flexibility on this subject. The kinds of activities that would not ordinarily raise conflicts of interest or conflict of time commitment questions include use of an office during off-duty hours, working on Church assignments on a rare "emergency" basis during regular hours, or the compensated use of University property such as copying machines. Special circumstances should be discussed with line management when particular needs arise. (See Church Duties and University Obligations Policy.)