

**TEXAS A&M COLLEGE OF EDUCATION AND HUMAN DEVELOPMENT
POLICY ON FACULTY CONSULTING, OUTSIDE PROFESSIONAL EMPLOYMENT
AND CONFLICTS OF INTEREST
(MARCH, 1994)**

1.00 PURPOSE AND SCOPE

This procedure serves to provide all individuals with faculty titles in the Texas A&M College of Education and Human Development with guidelines regarding participation in consulting activities. In particular, this procedure provides guidance for consulting and outside professional employment when the professional activity is related to one's field or discipline and a fee-for-service or equivalent relationship with a third party exists.

2.00 GENERAL

The primary mission of the Texas A&M College of Education and Human Development is to serve the needs of the State of Texas through teaching, research and service. The first priority of full-time faculty is the accomplishment of the duties and responsibilities assigned to a position of employment with the College of Education and Human Development. The College has a commitment to allow faculty members to make their expertise and services available to educational institutions, business, industry, government, professional societies, and other appropriate entities to the extent that such outside services of a professional nature generally strengthen the individual employee and contribute to improvement of teaching, research and service programs. The College of Education and Human Development encourages the involvement of its faculty in extramural activities which are consistent with their primary responsibilities.

For a policy statement where outside employment is not directly related to one's field or discipline and for other professional employees, see the applicable TAMU policy or *TAMUS APRM B.4.3., Nonfaculty Outside Employment and Consulting.*

2.01.1 DEFINITIONS

For purposes of this procedure, the term "faculty" or "faculty member" refers to individuals who carry a title of distinguished professor, professor, associate professor, assistant professor, clinical professor, clinical associate professor, clinical assistant professor, distinguished lecturer, senior lecturer, lecturer and assistant lecturer.

"Consulting" and "outside professional employment" are defined as professional activity related to one's field or discipline, where a fee-for-service or equivalent relationship with a third party exists. The governing principle in categorizing such a relationship is that an individual agrees to use his or her professional capabilities to further the interests of a third party in return for compensation. This includes, but is not limited to, situations where the faculty member is on the party's payroll, works as an independent contractor, or serves as a director, manager, or owner of a company engaged in activities related to his or her field or discipline.

Certain activities, such as lecturing and writing text books, reviews, and journal articles, are not normally considered professional outside employment unless they adversely affect the employee's performance of duty.

However, whenever such activity is to involve an honorarium or reimbursement for services (in contradistinction to travel expenses and text book royalties), employees should consult the head of their department, center or other unit as to the applicability of the outside professional employment procedures.

3.00 PREREQUISITES FOR APPROVAL

Consulting and outside professional employment may be authorized only if all of the following conditions exist:

1. there is no limitation on the number of consulting days requested per month by the faculty member as long as the following criteria are met:
 - a. days requested by the faculty member have been authorized by the department head and approved by the Dean;
 - b. consistent with *System Policy 35.01.01*, requests for approval must certify that the requested release time will not interfere with the performance of the faculty member's assigned duties and responsibilities within the System (including teaching, research and service responsibilities of the faculty employee);
2. it avoids unfair competition with private enterprise;
3. it does not bring the faculty member into a conflict of interest situation with the State of Texas;
4. the consulting or outside employment activity is not represented as having the endorsement or sponsorship of Texas A&M University; and
5. it is approved in advance by the department head and dean or by their designee(s).

4.00 USE OF TEXAS A&M UNIVERSITY SYSTEM PROPERTY AND PERSONNEL

The use of facilities, equipment, or personnel of Texas A&M University for consulting or outside employment activities is prohibited. However, to the extent that the Texas A&M resources are available to the general public, they are similarly available to the faculty for activities covered by this policy.

5.00 CONFLICTS OF INTEREST

The best and most accurate method by which to identify conflicts of interest is through the early and meaningful disclosure to the department head and Dean by the affected faculty member of any activities or relationships which could pose such a conflict.

Matters of conflict of interest may arise when a faculty member engages in consulting and employment activities with external entities. This is particularly true of those outside activities, such as direct and active management obligations in outside business entities, which normally conflict with the requirement that the primary loyalty of a full-time faculty member be the College of Education and Human Development. The ownership and operation of other businesses may or may not result in a potential conflict of interest with the employee's job. To

avoid conflict of interest or potential appearance of conflict of interest, faculty should seek guidance in such situations.

Guidelines:

In assessing the potential for a conflict of interest the following list of activities deserves particular attention and is not considered to be all-inclusive:

1. ownership of substantial equity in a commercial enterprise that carries on activities closely related to the employee's area of work;
2. holding of a line management position in a commercial enterprise that carries on activities closely related to the employee's area of work;
3. participation in the day-to-day operations of a commercial enterprise that carries on activities closely related to the employee's area of work;
4. assumption of a key, continuing role in the scientific and technical effort of a commercial enterprise that carries on activities closely related to the employee's area of work;
5. transfer to a commercial enterprise of non-patented technology or information developed in Texas A&M University or one of the College of Education and Human Development's programs and having potential commercial value;
6. buying, selling and/or trading other commodities which are closely related to the employee's area of work;
7. service as an expert witness or consultant involving clientele, a sponsor of research, or other entity having an agreement with a Member of The Texas A&M University System. In these situations, the employee may be granted approval to provide expert witness testimony only in response to a valid and duly-served subpoena or at the request of the court. In accordance with TAMUS policy (*APRM B.12, Expert Witness*) faculty and staff members should seek TAMUS approval prior to giving testimony as official representatives of TAMUS or when using unpublished scientific data belonging to TAMUS; or
8. holding elected or appointed position with more than one entity of the federal, state or local government. In these situations, employees shall seek approval in accordance with TAMUS Policy (*APRM B.2.10, Holding More Than One Office with Entities of Federal, State or Local Governmental Bodies*).

5.00 EQUITY OWNERSHIP AND BUSINESS PARTICIPATION BY FACULTY IN ENTITIES DOING BUSINESS WITH THE TEXAS A&M UNIVERSITY SYSTEM

Statement of Policy:

The mere fact of ownership by a faculty member of an equity interest or participation in a business entity having an agreement with The Texas A&M University System is not per se a violation of law.

Statutory Requirements:

Certain additional requirements exist in state law regarding agreements relating to the research, development, licensing, or exploitation of intellectual property conceived, created, discovered, invented or developed by the faculty member owning an interest in the contracting entity.

1. The faculty member is required by law to report such ownership interests to the Chief Executive Officer or designee on an annual basis. Said report should include the name of the entity and the amount and type of interest owned by the faculty member.
2. Such a faculty member may not serve as a member of the board of directors or other governing board or as an officer or employee of an entity having such an agreement relating to such intellectual property without approval of the Board of Regents of The Texas A&M University System.

Ownership of a Substantial Interest

If a faculty member or a member of his or her immediate family holds a substantial interest in, or participates in the management or the conduct of affairs of a business entity having a contract with a Member of TAMUS or if any work of the College of Education and Human Development and its faculty is being funded by the entity, the potential for a conflict of interest may arise. A faculty member has “substantial interest” in a business entity if any of the following conditions exist:

1. the faculty member or immediate family member has controlling interest in the business entity;
2. the faculty member or immediate family member has any participating interest, either direct or indirect, by shares, stock, or otherwise, whether or not voting rights are included, in the profits, proceeds, or capital gains of the business entity in excess of 10 percent of them;
3. the faculty member or immediate family member holds the position of a member of the board of directors or other governing board of the business entity; or
4. the faculty member or immediate family member serves as an elected officer of the business entity, or is an employee of the business entity.

Disclosure by Faculty Member

It is the responsibility of the faculty member to fully disclose such facts to the head of the department whether or not the substantial interest was owned prior to or acquired after the date on which the contractual relationship between any Member of TAMUS and the business entity commenced. The head of the department shall forward such information through the Dean of the College to the Dean of Faculties who will make a determination as to whether a conflict of interest exists.

Service at Request of Board of Regents

Upon request of the Board of Regents, an employee may legally serve as a member of the board of directors or other governing board of a business entity having an agreement between any Member of TAMUS.

7.00 FINDING OF CONFLICT OF INTEREST

If a finding of conflict of interest is made, TAMUS, TAMU, or the College of Education and Human Development will require that the faculty member take steps to minimize and/or eliminate such conflict. TAMUS, TAMU, and the College of Education and Human Development reserves the right to cancel or require modification of the terms of any agreement whenever, in its opinion, a conflict of interest exists.

8.00 STANDARDS OF CONDUCT

Standards of conduct of state officers and employees as established by law are outlined in the applicable policy of Texas A&M University and in *TAMUS APRM B.4.2, Standards of Conduct of State Officers and Employees*. Any employee who violates such standards through an outside employment or consultation arrangement may be subject to appropriate disciplinary action, regardless of whether an application for the outside employment or consultation has been approved.

9.00 REQUESTING APPROVAL FOR CONSULTING AND OUTSIDE PROFESSIONAL APPOINTMENT

Responsibility of Faculty Members:

It is the obligation of faculty to inform the head of their department and the Dean of the College of Education and Human Development of all outside professional employment activities (including renewals each fiscal year) prior to entering into any agreement, including those which involve arrangements dealing with intellectual property.

Procedure for Approval:

Requests for approval of consulting and outside employment shall be submitted in writing in accordance with the following procedures:

- A. The employee will complete the “Faculty Request for Consulting and Outside Professional Employment” form (see Attachment A).
- B. The employee shall provide a copy of correspondence, if available, in which the consulting offer is made.
- C. The employee will ensure accurate information is provided regarding (if not included in item B):
 - 1. name and address of prospective employer (permission for outside employment or consulting will be granted only when the name and address of the firm, agency, or individual who is to engage the employee’s services is specifically stated on the application);
 - 2. the nature of the proposed work (except for classified consulting);
 - 3. total amount of time involved;
 - 4. when the work is to be performed (permission for consulting and employment on an ongoing basis shall be for no more than one year’s duration, and all authorizations shall terminate on August 31 of each year);

5. travel and leave forms should be executed in accordance with University policy.
- D. The employee will provide a justification of the benefit to the College of Education and Human Development and a statement concerning the potential conflict of interest concerns that can be identified.
- E. If the employee has received or anticipates receiving a grant or contract from the employing firm, agency, or individual, information must be furnished concerning the nature of the grant or contract.
- F. If the employee anticipates entering into a written agreement or contract resulting from the approval of this request, a copy of this agreement must be submitted with the request. If the employee enters into a written agreement subsequent to the approval of this request, then a copy of the agreement must be furnished for the approved outside employment to remain valid.
- G. Requests for approval should be submitted through the department head to the Dean of the College of Education and Human Development. Requests from joint employees must also be approved by the appropriate official of each College where the individual is employed.
- H. The original form will be returned to the applicant upon completion of the approval process. A copy of all applications/authorizations will be kept in the College of Education and Human Development's files, and a copy will be sent to the department to be placed in the employee's personnel file.

Part-Time Employment

Faculty holding less than a 50 percent appointment are not required to submit formal applications as outlined in this policy. However, part-time faculty are expected to comply with this policy and keep the appropriate official informed of the general nature of their other professional activities.

10.00 APPEAL PROCEDURE

A faculty member may appeal a finding of conflict of interest or other administrative decision made in conjunction with this policy through the applicable university appeal/grievance procedure.

See also:

- APRM B.4.2., Standards of Conduct of State Officers and Employees*
- APRM B.4.12., Faculty and Consulting, Outside Professional Employment, and Conflicts of Interest*
- APRM B.4.7., Faculty Academic Workload Rules and Regulations*
- APRM C.20., Use of Private Consultants and Professional Services*
- APRM B.12., Expert Witness*
- APRM C-10.5, Use of System Resources for Outside Professional Activities*

TAMU PPM 2.2.8.5, Outside Employment and Consulting

TAMU PPM 2.2.8.6, Holding More Than One Office or Position With Entities of Federal, State or Local Governmental Bodies

TAMU PPM 2.3.2.6, Faculty Grievance Procedures Not Concerning Questions of Tenure, Dismissal or Constitutional Rights

TAMU PPM 2.3.8, Standards of Conduct of State Officers and Employees

TAMU PPM 8.1.10, Expert Witness