

### **Conflicts of Interest and Commitment Affecting Faculty and Non-Faculty EPA Employees**

*The Code of the University of North Carolina* affirms that the basic mission of the faculty is "the transmission and advancement of knowledge and understanding." Faculty employment entails the three responsibilities of teaching, scholarly research and publication, and other professional service to the institution and to society. Realization of those objectives is facilitated and encouraged by certain distinctive characteristics of employment within an academic community, which differs markedly from the conventional work-day and work-week employment models in most business and industrial settings.

Within the academy, time-specific assignments, such as classroom contact hours, constitute only a limited part of the workload. Typically, actual teaching hours account for no more than one quarter of a professor's time. However, activity directly affecting the education of students also includes class preparation and student evaluation, scheduled and unscheduled office hours for individual student counseling, and meetings of committees within departments, divisions and schools of the institution which are responsible for curriculum development, syllabus preparation, and program evaluation. In addition, the collective faculty has extensive authority and responsibility for the governance of the institution. Such work usually is accomplished through membership on various committees, at the department, division, school and institutional levels, which address personnel, financial and other administrative issues. Finally, every member of the faculty is expected to pursue research or creative activity in his or her area of specialization. Such scholarly activity may be specifically relevant to instruction, it may add generally to the body of information and understanding in a particular field, or it may have direct practical applications, as in business, industry, government, primary and secondary education, public health, national defense, and the arts.

Faculty members and EPA non-faculty employees (those UNC employees who are not subject to the State Personnel Act, herein after referred to as 'EPA employees'), also pursue their specialized professional interests in other contexts, collateral to their immediate University employment. They hold memberships in and attend meetings of professional associations and learned societies; they serve on review or advisory panels; they present lectures, papers, concerts and exhibits; they participate in seminars and conferences; they review and edit scholarly publications; and they participate in accreditation reviews. EPA employees also have opportunities to use their specialized competencies in secondary professional employment, as paid consultants to public and private agencies, and thereby contribute to the transfer and application of knowledge.

As relationships between University employees and private industry, federal and state governments, and nonprofit agencies have grown in number and scope, there has been a corresponding increase in concern about conflicts of commitment and interest. While EPA employees are encouraged to engage in appropriate relationships with public and private agencies outside of the University, there is a need for commonly understood principles and corresponding procedures that will identify and address conflicts that would detract from or interfere with an employee's dedication of primary professional loyalty, time, and energy to University teaching, research, and service.

#### **I. Definitions**

- A. *Conflict of commitment* relates to an individual's distribution of effort between obligations to one's University employment and one's participation in other activities outside of University employment. The latter may include such generally encouraged

extensions of professional expertise as professional consulting. Such activities promote professional development and enrich the individual's contributions to the institution, to the profession, and to society. However, a conflict of commitment occurs when the pursuit of such outside activities involves an inordinate investment of time that interferes with the employee's obligations to students, to colleagues, and to the missions of the University.

B. *Conflict of interest* relates to situations in which financial or other personal considerations may compromise, may involve the potential for compromising, or may have the appearance of compromising an employee's objectivity in meeting University duties or responsibilities, including research activities. The bias that such conflicts may impart can affect many University duties, including decisions about personnel, the purchase of equipment and other supplies, the collection, analysis and interpretation of data, the sharing of research results, the choice of research protocols, the use of statistical methods, and the mentoring and judgment of student work. An EPA employee may have a conflict of interest when he or she, or any member of that person's immediate family, has a personal interest in an activity that may affect decision making with respect to University teaching, research, or administration.

C. *External professional activities for pay* means any activity that 1) is not included within one's University employment responsibilities; 2) is performed for any entity, public or private, other than the University employer; 3) is undertaken for compensation; and 4) is based upon the professional knowledge, experience and abilities of the EPA employee. Activities for pay not involving such professional knowledge, experience and abilities are not subject to the advance disclosure and approval requirements of Section III of this policy, although they are subject to the basic requirement that outside activities of any type not result in neglect of primary University duties, conflicts of interest, inappropriate uses of the University name or resources, or claims of University responsibility for the activity.

D. *University employment responsibilities* include both "primary duties" and "secondary duties." Primary duties consist of assigned teaching, scholarship, research, institutional service requirements, and other assigned EPA employment duties. Secondary duties consist of professional affiliations and activities traditionally undertaken by EPA employees outside of the immediate University employment context that redound to the benefit of the profession and to higher education in general. Such endeavors, which may or may not entail the receipt of honoraria (see additional regulations, *UNC Policy Manual*, 300.2.2.2 [R]) or the reimbursement of expenses, include membership in and service to professional associations and learned societies; membership on professional review or advisory panels; presentation of lectures, papers, concerts or exhibits; participation in seminars and conferences; reviewing or editing scholarly publications and books; and service to accreditation bodies. Such integral manifestations of one's membership in a profession are encouraged, as extensions of University employment, so long as they do not conflict or interfere with the timely and effective performance of the individual's primary University duties.

E. *EPA employees* refers to any person – faculty or non-faculty – who is employed by the University of North Carolina or a constituent institution or other agency or unit of the University of North Carolina and who is not subject to the State Personnel Act (see *UNC Policy Manual*, 300.2.2.1[R], Section I, Item B for exceptions that may apply to academic year appointments).

F. *Department* means an academic department, a professional school without formally established departments, or any other administrative unit designated by the chancellor of an institution or by the Office of the President, for the purposes of implementing this policy. "Department Head" refers to the person with supervisory responsibility for the employee, whether in an academic or non-academic department.

G. *Inappropriate use or exploitation of University resources* means using any services, facilities, equipment, supplies or personnel which members of the general public may not freely use. A person engaged in external professional activities for pay may use, in that connection, his or her office and publicly accessible facilities such as University libraries; however, an office shall not be used as the site for compensated appointments with clients, e.g., for counseling or instruction. Under no circumstances may a supervisory employee use the services of a supervised employee during University employment time to advance the supervisor's external professional activities for pay.

## II. Conflicts of Commitment

Questions about conflict of commitment are more easily resolved than questions about conflicting interests. Although full-time faculty and other EPA employment is not amenable to precise, time-clock analysis and monitoring, administrators at the department and school levels are able to and regularly do evaluate the work of employees within their jurisdiction. The formal occasions for determining whether an individual is devoting sufficient time and energy to University employment include regular reviews of performance in connection with annual salary decisions and scheduled reviews incident to promotion, reappointment or tenure decisions. In addition, complaints from students, colleagues, or administrators about possible failures to meet assigned responsibilities may arise and require investigation. The issue, in each case, is whether the employee is meeting the requirements of the job. If presented with evidence that he or she is not meeting full-time responsibilities to the University, *The Code* prescribes that "neglect of duty" is a ground for disciplinary action, including the possibility of discharge. The following describe instances of activities that require specific monitoring to demonstrate the absence of conflict.

### A. External Professional Activities for Pay

The University of North Carolina and its constituent institutions seek to appoint and to retain, as faculty and non-faculty EPA employees, individuals of exceptional competence in their respective fields of professional endeavor. Because of their specialized knowledge and experience, such persons have opportunities to apply their professional expertise to activities outside of their University employment, including secondary employment consisting of paid consultation with or other service to various public and private entities. Through such practical, compensated applications of their professional qualifications, University employees enhance their own capabilities in teaching, research, and administration. Thus, participation of EPA employees in external professional activities for pay, typically in the form of consulting, is an important characteristic of academic employment that often leads to significant societal benefits, including economic development through technology transfer. However, such external professional activities for pay are to be undertaken only if they do not:

1. Create a conflict of commitment by interfering with the obligation of the individual to carry out all primary University duties in a timely and effective manner; or

2. Create a conflict of interest vis-a-vis the individual's status as an employee of the University; or
3. Involve any inappropriate use or exploitation of University resources; or
4. Make any use of the name of the University of North Carolina or any of its constituent institutions for any purpose other than professional identification; or
5. Claim, explicitly or implicitly, any University or institutional responsibility for the conduct or outcome of such activities.

The *UNC Policy Manual*, 300.2.2.1 [R], contains regulations and procedures established to monitor possible conflicts of commitment. An EPA employee who wishes to engage in external professional activity for pay must adhere to these regulations to provide satisfactory assurances that such activity will not interfere with University employment obligations. These regulations may not apply to EPA employees serving on academic year (9-month) contracts, if the external professional activity for pay is wholly performed and completed outside of the academic year and the activity does not conflict with the policy statements of the institution or Board of Governors and is not conducted concurrently with a contract service period for teaching, research, or other services to the institution during a summer session.

In those instances when State-reimbursed travel, work time, or resources are used or when the activity can be construed as related to the employee's State position or official duties on behalf of the State, the employee shall not receive an honorarium. In these instances the employee may request that the honorarium be paid to the University. The honorarium may be retained by the employee only for activities performed during non-working hours or while the employee is on annual leave, if all expenses are the responsibility of the employee or a third party that is not a State entity and the activity has no relation to the employee's State duties. In addition, senior academic and administrative officers may also be subject to special regulations regarding honoraria which require leave to be taken when external activities for pay will take place during the regular work week. Please refer to the *UNC Policy Manual*, 300.2.2.2 [R].

Instead of using annual leave as set out above, pursuant to principles of public accountability, employees who are exempt from the Fair Labor Standards Act and who are out of work due to an external professional activity for pay, or who wish to retain an honorarium, may choose to use periodic uncompensated leave rather than annual leave. The periodic uncompensated leave may be taken in full days and partial days.

External professional activities for pay performed for another institution or agency of the State of North Carolina also must comply with State policies governing dual employment and compensation, unless an exception to those State policies is expressly authorized by the chancellor or the President.

The Board has also established rules for monitoring and regulating the involvement of University employees in political candidacy and office-holding that could interfere with full-time commitment to University duties. Please refer to *UNC Policy Manual*, 300.5.1 et seq. for specific policy details.

### III. Conflicts of Interest

Conflicts of interest are more difficult to define, detect, and resolve than conflicts of commitment. The challenge is to establish some basic parameters of general applicability

throughout the University of North Carolina that will permit institutions and their employees to recognize more readily and clearly those situations that are improper or that may be questionable, and to institute basic procedures for avoiding or rectifying any problems. Thereafter, the constituent institutions, through collaborative faculty and administrative efforts, should develop more detailed policies and procedures that will accommodate any special conditions and needs of a particular campus or particular EPA employee.

An EPA employee's professional activities and financial interests must be arranged to avoid circumstances that do or may prevent or limit objectivity in the performance of University responsibilities or that otherwise do or may affect adversely any University interests.

A. Categories of potential conflicts of interest

Activities that may involve conflicts of interest can be categorized under three general headings: first, those that are allowable and do not need to be reported because, although they appear to involve such a conflict, they in fact do not; second, those that are questionable and must be reported, but that may be allowable with administrative approval; and third, those that generally are not allowable. The following examples are merely illustrative and do not purport to include all possible situations within the three categories:

1. Activities allowable, with no reporting required

The examples cited below involve activities external to University employment, and thus may present the appearance of a technical conflict, but they in fact do not have the potential for affecting the objectivity of the EPA employee's performance of University responsibilities; at most, some such situations could prompt questions about conflicts of commitment.

- An EPA employee receiving royalties from the publication of books or for the licensure of patented inventions subject to the UNC Patent and Copyright Policies.
- An EPA employee having an equity interest in a corporation, the exclusive function of which is to accommodate the employee's external consulting activities.
- An EPA employee receiving nominal compensation, in the form of honoraria or expense reimbursement, in connection with service to professional associations, service on review panels, presentation of scholarly works, and participation in accreditation reviews.

2. Activities requiring disclosure for administrative review

The examples cited below suggest a possibility of conflicting loyalties that can impair objectivity, but disclosure and resulting analysis of relationships may render the activity permissible, perhaps with certain types of limitation or monitoring.

- An EPA employee requiring students to purchase the textbook or related instructional materials of the employee or members of his or her immediate family, which produces compensation for the employee or family member.
- An EPA employee receiving compensation or gratuities (other than occasional meals, gifts of desk copies of textbooks, and the like)

from any individual or entity doing business with the University. Note that no university employee may seek or receive any gift, reward, or promise of reward for recommending, influencing, or attempting to influence the award of a contract by his or her employer (See G.S. 14-234).

- An EPA employee serving on the board of directors or scientific advisory board of an enterprise that provides financial support for University research, and the employee or a member of his or her immediate family may receive such financial support.
- An EPA employee serving in an executive position in a for-profit or not-for-profit business which conducts research or other activities in an area related to the University duties of the employee.
- An EPA employee having significant equity in a for-profit business which conducts research or other activities in an area related to the employee's University duties.
- An EPA employee having a financial interest in a business that competes with services provided by the University.
- An EPA employee accepting support for University research under conditions that require research results to be held confidential, unpublished, or inordinately delayed in publication. Research conducted by faculty or students under any form of sponsorship must maintain the University's open teaching and research philosophy and must adhere to a policy that prohibits secrecy in research. Such conditions on publication must be in compliance with *UNC Policy Manual*, 500.1 and 500.2, and with campus Intellectual Property policies.

### 3. Activities or relationships that are generally not allowable

The examples cited below involve situations that are not generally permissible, because they involve potential conflicts of interest or they present obvious opportunities or inducements to favor personal interests over institutional interests. Before proceeding with such an endeavor, the EPA employee would have to demonstrate that in fact his or her objectivity would not be affected and University interests otherwise would not be damaged.

- An EPA employee participating in University research involving a technology owned by or contractually obligated to (by license or exercise of an option to license, or otherwise) a business in which the individual or a member of his or her immediate family has a consulting relationship, has an ownership interest, or holds an executive position.
- An EPA employee participating in University research which is funded by a grant or contract from a business in which the individual or a member of his or her immediate family has an ownership interest.
- An EPA employee assigning students, post-doctoral fellows or other trainees to University research projects sponsored by a business in which the individual or a member of his or her immediate family has an ownership interest.

- An EPA employee making referrals of University business to an external enterprise in which the individual or a member of his or her immediate family has a financial interest.
- An EPA employee associating his or her own name with the University in such a way as to profit financially by trading on the reputation or goodwill of the University.
- An EPA employee making unauthorized use of privileged information acquired in connection with one's University responsibilities.

B. Avoiding conflicts of interest

Each constituent institution must adopt procedures (a) that effectively impart a clear understanding of impermissible or questionable conduct and (b) that provide for advance disclosure and periodic audits designed to permit analysis and avoidance of potential problems.

Critical to the success of any program established to address conflicts of interest is employee understanding of the problem, so that individuals are equipped to avoid such conflicts on their own initiative. While in many situations the conflict of interest would be obvious to all, in other situations the potential difficulty would not be so apparent. Since concern about conflicts of interest appropriately embraces situations in which there is a potential for or appearance of conflict, as well as actual conflict, there may be differing views about what is or is not a problematic activity or affiliation. Thus, the faculty and administration of each constituent institution first must reach agreement on and promulgate basic definitions, of the type suggested herein, and then must insure that all affected employees are fully informed, on a regular and continuing basis.

Obviously it is preferable to anticipate and avoid conflicts of interest rather than belatedly discover an existing conflict that requires remedial action, involving the possibility of charges of misconduct, the severance of institutional affiliations or the discontinuation of external activities, or other disruptions of professional or financial arrangements. Thus, an effective method of evaluating possible conflicts of interest, in advance, is indispensable. Each campus must establish procedures that elicit information in a timely manner about potential conflicts of interest related to the EPA employee's University responsibilities. Designated administrative and faculty officers and committees then would be equipped to analyze with the employee any apparent problem and decide whether the activity or affiliation in question actually presents a conflict of interest and, if so, what safeguards or remedial actions should be taken. Employees further would be required to supplement the information elicited by the questionnaire at any time during the academic year when a contemplated new venture might entail conflicts of interest. In each case a designated administrative officer would provide a final ruling, subject to prescribed rights of appeal.

In combination, the required advance definition and publicity and advance screening should help all EPA employees avoid any difficulties in the area of conflicts of interest.

Each constituent institution may adopt additional related internal policies, procedures, and guidelines consistent with this Policy. Each chancellor shall submit to the President, for review, a copy of proposed institutional policies and procedures,

including definitions of conflicts of interest, methods for publicizing institutional definitions and requirements, and procedures and forms for disclosing relationships and circumstances that may raise questions about conflicts of interest. Such proposals shall be submitted and, subject to Presidential approval, shall be implemented on a schedule to be established by the President.