

January 10, 2009

From: John E. Bonine

To: Ad Hoc University Senate Committee Reviewing Administration's Draft Conflicts Proposal

Re: Preliminary Criticisms of Proposal (page 1 only)

As suggested by the Chair of our Ad Hoc University Senate Committee that is reviewing the administration's draft conflicts proposal,<sup>1</sup> I am working to provide detailed comments.

These initial comments apply only to the first page of the 18-page document. They consist of three pages of comments. The first page uses "track changes" and marginal balloon "comments" to show needed modifications of part 1.0. The second does the same for part 2.0. The third page removes the balloon comments, accepts the tracked changes, and thereby produces a new, clean version of parts 1.0 and 2.0.

This is a preliminary effort, which I might be inclined to modify somewhat later.

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<sup>1</sup> The formal name is University of Oregon Policy – [Insert Policy Number]: Disclosure & Management of Individual Conflicts of Interest and Commitment (Draft Document – Work in Progress as of November 2008).

# UNIVERSITY OF OREGON POLICY – [INSERT POLICY NUMBER]: DISCLOSURE & MANAGEMENT OF INDIVIDUAL CONFLICTS OF INTEREST AND COMMITMENT<sup>1</sup>

## 1.0 OVERVIEW

Every day, the University of Oregon touches the lives of citizens in our community, our state, our nation, and our world. Oregon’s external engagement arises not *adventitiously*, but rather through active outreach as members of the University community strive to connect their scholarship *and teaching* to the questions and issues that confront modern society. Outreach manifests itself in a myriad of activities, including research, *consulting, publishing, small businesses*, education, technology transfer, and community service.

Thoughtful, responsible management of *conflicts of interest* promotes public trust in the objectivity of University research and education.

## 2.0 OBJECTIVE

The University of Oregon, its faculty and other employees are committed to the principle of free, open, and objective inquiry in the conduct of its teaching, research, service and administrative activities. For the purpose of protecting both the integrity and objectivity of its faculty and other employees in the performance of their University activities, it is the policy of the University that conflicts of interest and commitments should be avoided where possible, disclosed annually (or more frequently as needed), and that actual conflicts are managed appropriately.

University faculty and other employees owe their primary professional allegiance to the University, and their primary commitment of time and intellectual energies should be to the education, research, administrative, and service programs of the institution. The specific responsibilities and professional activities that constitute an appropriate and primary commitment will differ across Colleges, Schools, Departments, Centers and Institutes, but should be based on a general understanding between the faculty member or other UO employee and his or her Supervisor, Department Chair, Dean, Vice

<sup>1</sup> Portions of this policy have been adapted from and are used with the permission of Stanford University.

1/10/09 6:34  
**Comment:** The word “serendipity” is does not make sense here. Better would be “accidentally” or perhaps “adventitiously.”

1/9/09 16:17  
**Deleted:** out of - serendipity

1/9/09 16:06  
**Deleted:** The University’s o

1/10/09 6:34  
**Comment:** Considering that outside consulting, publishing, and small enterprises are some of the main outside activities of professors, they should be included here, lest they inadvertently be seen as disfavored..

1/10/09 6:34  
**Comment:** Deleting this first sentence would promote clarity. As for its substance, disclosure and management are *not* natural outgrowths or necessary corollaries of external engagement.

1/9/09 16:25  
**Deleted:** The disclosure of extra-University relationships, and the subsequent management of -

1/9/09 16:26  
**Deleted:** COI-C

1/10/09 6:34  
**Comment:** Promoting “public trust” in “objectivity” relates *only* to management of conflicts of *interest*. Conflicts of *commitment* do not involve impairment of “objectivity.” Such other “conflicts” simply involve a faculty member’s giving of less than full loyalty to the University of Oregon. This is an example of how merging the two types of conflicts policies can muddle issues.

1/10/09 6:34  
**Comment:** The term “open disclosure” never appears again in this draft policy. It should be deleted, for its use can only result in “policy creep.” It suggests *public* disclosure (as does the goal of “promoting public trust”)—yet *OUS Internal Management Directive 4.015* actually *prohib*{ ... [1]

1/10/09 6:34  
**Comment:** No laws, regulations, or guidelines require “open disclosure.” Laws that do involve confidential disclosure and management appl{ ... [2]

1/9/09 16:26  
**Deleted:** In addition, open disclosure and diligent management of COI-C are crucially

1/9/09 16:26  
**Deleted:** important for compliance with the complex body of state and federal laws, regulations,

1/9/09 16:26  
**Deleted:** and guidelines that relate to University activities.

1/10/09 6:34  
**Comment:** COMMENTS on the bottom half of this page are found on the second iteration of this page.

Bonine edits and comments to part 1.0 (1-10-09)

DRAFT DOCUMENT – WORK IN PROGRESS AS OF NOVEMBER 2008

Definitions for words in red are located in section 5.0 of this policy.

## UNIVERSITY OF OREGON POLICY – [INSERT POLICY NUMBER]: DISCLOSURE & MANAGEMENT OF INDIVIDUAL CONFLICTS OF INTEREST AND COMMITMENT<sup>1</sup>

### 1.0 OVERVIEW

Every day, the University of Oregon touches the lives of citizens in our community, our state, our nation, and our world. Oregon’s external engagement arises not out of serendipity, but rather through active outreach as members of the University community strive to connect their scholarship to the questions and issues that confront modern society. The University’s outreach manifests itself in a myriad of activities, including research, education, technology transfer, and community service.

The disclosure of extra-University relationships, and the subsequent management of conflicts of interest (COI) and conflicts of commitment (COC) (COI-C), is a natural outgrowth and necessary corollary of external engagement. Thoughtful, responsible management of COI-C promotes public trust in the objectivity of University research and education. In addition, open disclosure and diligent management of COI-C are crucially important for compliance with the complex body of state and federal laws, regulations, and guidelines that relate to University activities.

### 2.0 OBJECTIVE

For the purpose of protecting both integrity of its faculty and other employees in the performance of their University activities, it is the policy of the University that conflicts of interest should be avoided where possible, disclosed, and managed appropriately.

Although University faculty and other employees are encouraged to engage in outside activities, full-time employees owe their primary professional allegiance to the University, and their primary commitment of time and intellectual energies should be to the education, research, and administrative responsibilities of the University, as well as community service. The specific responsibilities and professional activities that constitute an appropriate and primary commitment will differ across Colleges, Schools, Departments, Centers and Institutes. Issues of commitment are handled in a separate policy.

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- 1/10/09 6:34  
**Comment:** COMMENTS on part 1.0 are found on the previous iteration of this page.
- 1/10/09 6:34  
**Comment:** Putting generalizations about what the University and faculty are “committed to” in a policy document makes them enforceable, which ca[... [3]
- 1/10/09 6:34  
**Comment:** “Objectivity” is not a universal [... [4]
- 1/9/09 17:24  
**Deleted:** The University of Oregon, its fa[... [5]
- 1/9/09 17:25  
**Deleted:** the
- 1/9/09 17:25  
**Deleted:** and objectivity
- 1/10/09 6:34  
**Comment:** . Avoidance of conflicts of [... [6]
- 1/10/09 6:34  
**Comment:** Conflicts of interest are inevit[... [7]
- 1/9/09 17:26  
**Deleted:** and commitments
- 1/10/09 6:34  
**Comment:** The frequency of disclosure is r[... [8]
- 1/9/09 18:25  
**Deleted:** annually (or more frequently as [... [9]
- 1/10/09 6:34  
**Comment:** Requiring that all conflicts be [... [10]
- 1/9/09 17:27  
**Deleted:** that actual
- 1/9/09 17:27  
**Deleted:** conflicts are
- 1/10/09 6:34  
**Comment:** The mention of primary allegi[... [11]
- 1/10/09 6:34  
**Comment:** Primary allegiance cannot be r[... [12]
- 1/9/09 16:44  
**Deleted:** and
- 1/10/09 6:34  
**Comment:** The sentence needs to include [... [13]
- 1/9/09 16:34  
**Deleted:** programs of the institution
- 1/10/09 6:34  
**Comment:** Which “responsibilities and [... [14]
- 1/10/09 6:34  
**Comment:** The “professional activities” th[... [15]
- 1/9/09 17:03  
**Deleted:** , but should be based on a ge[... [16]
- 1/9/09 17:03  
**Deleted:** between the faculty member [... [17]
- 1/10/09 6:34  
**Comment:** Conflicts of commitment raise[... [18]

## **UNIVERSITY OF OREGON POLICY – [INSERT POLICY NUMBER]: DISCLOSURE & MANAGEMENT OF INDIVIDUAL CONFLICTS OF INTEREST AND COMMITMENT<sup>1</sup>**

### **1.0 OVERVIEW**

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Thoughtful, responsible management of conflicts of interest promotes public trust in the objectivity of University research and education.

### **2.0 OBJECTIVE**

For the purpose of protecting both integrity of its faculty and other employees in the performance of their University activities, it is the policy of the University that conflicts of interest should be avoided where possible, disclosed, and managed appropriately.

Although University faculty and other employees are encouraged to engage in outside activities, full-time employees owe their primary professional allegiance to the University, and their primary commitment of time and intellectual energies should be to the education, research, and administrative responsibilities of the University, as well as community service. The specific responsibilities and professional activities that constitute an appropriate and primary commitment will differ across Colleges, Schools, Departments, Centers and Institutes. Issues of commitment are handled in a separate policy.

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The term “open disclosure” never appears again in this draft policy. It should be deleted, for its use can only result in “policy creep.” It suggests *public* disclosure (as does the goal of “promoting public trust”)—yet *OUS Internal Management Directive 4.015* actually ***prohibits, rather than necessitates, “open disclosure.”***

*OUS Internal Management Directive [IMD] 4.015, paragraph 7*, provides that conflicts disclosures involving conflicts “shall be made a part of a faculty member's *confidential* personnel record [emphasis added].” This record cannot be kept anywhere except in a department because *Oregon Administrative Rule (OAR) 580-022-0085* states that official faculty personal records “shall be kept in locations central to the institution, school, division, or department by which they are maintained.” Records about conflicts must be “maintained” in a school or department because *OUS IMD 4.015, paragraph 3*, restricts the duty of disclosure to providing information to a “designated supervisor”—presumably a Dean or perhaps department chair. This prohibit having conflicts files from going to a separate research office, such as envisioned in this draft policy.

No laws, regulations, or guidelines require “open disclosure.” Laws that do involve confidential disclosure and management apply only to certain matters, not to everything proposed in the draft policy. Furthermore, state and federal *laws* have nothing to do with conflict of *commitment*.

Putting generalizations about what the University and faculty are “committed to” in a policy document makes them enforceable, which can threaten academic freedom. It can provide a basis for critics of individual professors to put pressure on them or the University. Anyway, platitudes do not belong in an “objectives” section. The sentence should be deleted.

“Objectivity” is not a universal value for all activities. Inclusion as an “objective” invites monitoring of a professor’s passionate advocacy in the classroom. Delete.

The University of Oregon, its faculty and other employees are committed to the principle

of free, open, and objective inquiry in the conduct of its teaching, research, service and

administrative activities.

. Avoidance of conflicts of *commitment* is not needed to protect either integrity or objectivity. The term should be deleted here.

|  |                     |
|--|---------------------|
| <b>Page 3: [7] Comment</b>   | <b>1/10/09 6:34</b> |
| Conflicts of interest are inevitable, of course. Conflicts of commitment are in the eye of the beholder. Not all need be avoided; neither require “management” under the supervision of an office outside the department; and many do not need “management” by anyone at all other than the professor himself or herself.  |                     |
| <b>Page 3: [8] Comment</b>   | <b>1/10/09 6:34</b> |
| The frequency of disclosure is not an “objective” but a detail. It can be deleted here. In addition, annual disclosure may not be necessary. This will be discussed later.   |                     |
| <b>Page 3: [9] Deleted</b>   | <b>1/9/09 18:25</b> |
| annually (or more frequently as needed)  |                     |
| <b>Page 3: [10] Comment</b>  | <b>1/10/09 6:34</b> |
| Requiring that all conflicts be managed under the direction of a supervisor, rather than by the faculty member herself or himself, would be a substantial change in university culture. The long traditions of trusting professors to use their own judgment on what is best for their varied educational roles would be replaced by a top-down, management-by-supervisors approach. It has not been shown that this is necessary or desirable and its harms could be enormous. The use of passive voice in this sentence disguises the reality of what the draft policy would substitute for current practices. |                     |
| <b>Page 3: [11] Comment</b>  | <b>1/10/09 6:34</b> |
| The mention of primary allegiance needs to be balanced with a reference to the affirmative encouragement of outside activities that is represented in the one-day-per-week policy.   |                     |
| <b>Page 3: [12] Comment</b>  | <b>1/10/09 6:34</b> |
| Primary allegiance cannot be required for part-time employees (e.g., adjuncts).  |                     |
| <b>Page 3: [13] Comment</b>  | <b>1/10/09 6:34</b> |
| The sentence needs to include community service, not just service programs “of the institution.”   |                     |
| <b>Page 3: [14] Comment</b>  | <b>1/10/09 6:34</b> |
| Which “responsibilities and professional activities” are “appropriate” as part of one’s “commitment” is <i>not</i> a matter for “understanding” between a faculty member and Dean or department head. Making these decisions is a fundamental aspect of an individual professor’s academic freedom. The files of the American Association of University Professors are replete with examples of all levels of administrative authorities seeking to suppress the academic freedoms of individual faculty members, often because of perceived threats from outside.   |                     |
| <b>Page 3: [15] Comment</b>  | <b>1/10/09 6:34</b> |

The “professional activities” that a professor chooses to pursue—whether during the work week or in personal time—need *not* be based on an “understanding” (general or otherwise) with his or her department head or Dean. It is the essence of academic freedom that the faculty member has the discretion to make such decisions.

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**Page 3: [16] Deleted**

**1/9/09 17:03**

, but should be based on a general understanding

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**Page 3: [17] Deleted**

**1/9/09 17:03**

between the faculty member or other UO employee and his or her Supervisor, Dean, Vice

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**Page 3: [18] Comment**

**1/10/09 6:34**

Conflicts of commitment raised different issues than do conflicts of interest and should be handled differently. Putting them together produces great confusion in drafting, so I am deleting them from this policy document.