

FEEDBACK FROM COI-C WEB SITE as of 1-8-09

Comments

Thank you for policy review

I would like to express my thanks to Dr. Linton, Dr. Tomlin, and Dr. van Donkelaar for setting in motion a new process for reconsideration and faculty governance regarding these policies.

I will do my utmost to assist in the evaluation of appropriate and effective policies so that the interests of both the public and the faculty are well-served.

John E. Bonine
Professor of Law
Dean's Distinguished Faculty Fellow

• By John E. Bonine (not verified) at 12/16/2008 - 17:44

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Frohnmayr conflict of interest reporting

Text of an email to UO Counsel Melinda Grier, author of the COI-C policy;

Dear Ms Grier:

In order to give the faculty an idea of what the Oregon Government Ethics Board requires senior state officials to report, I've posted a copy of President Frohnmayr's 2008 "verified statement of economic interest" at

<http://harbaugh.uoregon.edu/uomatters/>

I want to be clear that I have posted this on an official UO server. I connected to it using a computer bought with money from UO. I used software that I bought using my UO ASA money. I got this information from the Oregon GEC and posted this during my official paid time as a UO faculty member, using VPN software provided to me as a UO faculty member.

If you have any problems with this, deal with it.

Bill Harbaugh, Professor of Economics.

• By Bill Harbaugh (not verified) at 12/11/2008 - 17:18

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Yuck

Today for the first time I actually downloaded the 14 page PDF form that we are now supposed to fill out.

Not sure if all readers of this forum have done that yet, but its pretty heinous form that also calls for disclosure of members of your immediate family ...

• By Bothun (not verified) at 12/10/2008 - 23:42

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Memorandum - II. Personal Time and Freedom

II. Personal Time and Freedom

A. Disappearance of “personal time” exemption

Under current policy, which is consistent with statewide requirements (set out below), personal outside activities are exempt from reporting, disclosure, or approval. The draft policy would significantly alter existing policy as follows:

“Nearly all outside activities require the approval of one’s Supervisor, Department Chair, Director, and/or Dean prior to initiating the activity.” *Draft Policy*, § 4.4, p. 5.

The Frequently Asked Questions web page of the ORCR is explicit about its intentions:

“19. How do I know what financial interests to disclose?

“If you or a member of your immediate family is engaged in activities *related to the area of expertise* for which the University hired you, these must be disclosed. Even if your outside activities *are not related to your area of expertise, you should disclose them.*”[<http://orcr.uoregon.edu/node/11>]

This is a dramatic change from current University policy, State Board of Higher Education directives, applicable Oregon Administrative Rules, and state statutes.

The existing policy, UO Policy Statement 3.095, does *not* require such approval:

“Outside activities unrelated to university responsibilities and undertaken by faculty on personal time, regardless of whether compensated, *are not subject* to these Board of Higher Education and institution policies.” [<http://policies.uoregon.edu/ch3g1.html> (emphasis added).]

The language of Policy Statement 3.095 is taken directly from the statewide Internal Management Directive 4.015 of the Oregon University System, which states:

“Outside activities unrelated to institutional responsibilities and undertaken by faculty on personal time, regardless of whether compensated, *are not subject to these Board of Higher Education and institution policies.*” [<http://www.ous.edu/about/polipro/files/IMD%2012-04.pdf> (emphasis added)]

The draft policy’s assertion that “nearly all” outside activities must be approved by a Department Chair, Director, or Dean clearly means what the FAQ says it means: that faculty members “should” disclose activities even beyond what they “must” disclose; and that anything “related to the area of expertise for which the University hired you” “must” be disclosed. This breathtaking sweep of mandated or encouraged disclosure simply ignores the actual scope of both the State Board’s IMD 4.015 and the University’s existing Policy Statement 3.095.

Neither of those governing documents uses the term “area of expertise.” Rather, activities undertaken during “personal time” are only reportable if related to “institutional responsibilities.” This is discussed in more detail in the next section of this Memorandum.

The draft policy flatly ignores the fact that certain outside activities are “not subject to . . . institution policies” (mandatory or voluntary), instead making them subject to such policies.

B. New, expansive definition of “outside activities”

The draft policy shifts an enormous amount of control and discretion over a professor’s life—away from individual scholars and instead into the hands of various administrators, both within one’s department or school and in the Office for Responsible Conduct of Research. It accomplishes this by including everything possible within a professor’s new obligations of reporting, certification, and approval, using a wide variety of loose and varying terms. The potentials for abuse of the resultant approval process—for example, by an administrator who seeks to retaliate against or restrict a controversial professor—are virtually unlimited. The loose language coupled with the hard machinery of compliance poses a distinct threat to academic freedom.

Under existing policy and the state Internal Management Directive, two categories of “outside activities” exist—those not related to university “responsibilities” and those that are related to such “responsibilities.” There is a good reason for this distinction. A university’s concern is not with everything a faculty member does in his or her life, but with those outside activities that might interfere with, or alter, the “institutional responsibilities” of a professor or the integrity of the work she is doing at the university. The draft policy eliminates this important distinction. By not including this distinction relating to “responsibilities” in the definition of outside activities, all of a professor’s non-University activities would require approval of a Dean “prior to initiating the activity.”

The proposal sweepingly states, for purposes of reporting, that

“Outside Activities – are those activities engaged in by UO faculty and other UO employees, whether or not compensated, that are not specifically a part of their University activities.” *Draft Policy*, § 5.0, p. 10.

By treating all outside activities the same (and as a consequence requiring reporting for "nearly all") the proposal eliminates entirely the existing concept of exempt "personal time." This violates IMD 4.015, which specifically instructs university administrators that personal time is "not subject" to "institution policies" except under narrow circumstances involving faculty work that is related to institutional "responsibilities." [http://www.ous.edu/about/polipro/files/IMD%2012-04.pdf]

The new definition turns existing policy on its head. Outside activities *not* related to university responsibilities are clearly *exempt* from disclosure or approval under Policy Statement 3.095. In contrast, the draft policy quoted previously, in combination with this definition, requires *approval* even for outside activities that are *not* part of university activities.

The varying terms used in the draft policy mask the full extent of its deviation from state policies and results in massive overreaching. They also leave faculty members with a document incapable of clear interpretation. For example, the draft policy uses the term "University responsibilities" in various places. In fact, it even highlights the phrase in red. The draft policy says, "Definitions for words in red are located in section 5.0 of this policy." However, no definition of that red-highlighted phrase appears in section 5.0. [See Draft Policy, § 5.0.]

Instead, the draft policy introduces a variety of non-specific, overlapping, and contradictory new terminologies, namely "extra-University relationships"; [Draft Policy, § 1.0, p. 1.] "University activities"; [Draft Policy, § 2.0, p. 1; Draft Policy, § 4.2, p. 4] "all University research and scholarly activities"; [Draft Policy, § 4.0, p. 2 (emphasis in original).] "UO obligations"; [Draft Policy, § 4.1, p. 3.] and "area of expertise for which the individual was hired." [Draft Policy, § 5.0, p. 10] It refers to "outside activities" as possibly being "related to his or her University responsibilities" on one page, *Draft Policy*, § 4.1, p. 3, but refers to them as among "non-University purpose[s]" on another, *Draft Policy*, § 4.6, p. 6.

The most serious policy shift is the introduction of the term "area of expertise," a term found nowhere in state laws, regulations, or policies. The staff members who drafted these policies may want to require disclosure relating to a faculty members' "area of expertise," but they lack the legal authority to do so, and certainly should not do so without thorough campus discussion. Some other universities use an "area of expertise" approach, but the State Board has not used such language. Different formulations mean different things, and the University of Oregon lacks the legal authority to substitute words not in the governing regulations and IMDs for words the staff may prefer. To do so without thorough discussion among faculty members on the campus is unacceptable.

Even if the staff were to believe that the language used in the draft policy (and the massively enhanced scope of disclosure that results) *should* be adopted, the fact is that it *has not* been properly adopted. Administrative proponents of the conflict of interest proposal should engage in a campus-wide conversation before proposing such a radical shift. Faculty governing bodies should themselves lead the discussions and ultimately make a decision in the best interest of the institution and individual faculty members. Faculty governing bodies would then be free to recommend to the State Board of Higher Education that it modify its IMDs and OARs, and individual professors who disagreed would be free to oppose such a modification. In lieu of these required procedural steps, staff has simply drafted language it prefers and asks high officials in the University to impose the new policy on faculty members who have no inkling about how this change is being engineered. Faculty member are face with disclosure requirements and processes that is in many instances impenetrable, opaque, and contradictory.

C. Limit on outside activities to one-day-per-week

As actually written in state policy, a one-day-per-week allowance for consulting work performed "on company time," so to speak, is eminently sensible. The normal expectation is that a faculty member is working a regular work week, Mondays through Fridays (even though many work far more than that). IMD 4.015 allows one of those days to be devoted to outside work, even for profit, as long as it is "related to institutional responsibilities." The reasons for encouraging this involvement in society, business, government, and the like during the work week have been well canvassed and need not be repeated here. However, it is important to observe that the one-day-per-week limit on such activities refers *only* to activities "related to institutional responsibilities" that would normally be undertaken during the normal work week. (The University of Oregon has adopted the term "one day in seven," but IMD 4.015 uses the clearer formulation, "one day per week." [http://www.ous.edu/about/polipro/files/IMD%2012-04.pdf])

The sensible one-day-per-week policy comes to mean something entirely different if it is applied to all "outside activities" of any kind, or even all those relating to a professor's area of expertise. Such a reformulation threatens to block professors from using their evenings and weekends as they fit. Having swept all outside activities into a new disclosure-and-approval regime, the draft policy prohibits faculty from engaging in such activities beyond one day out of seven even if in their "off time." To make its purpose clear, the draft policy explicitly states that work on "Saturday and Sunday" falls within this restriction.

Because IMD 4.015 prohibits institutions from requiring approval for most outside activities, however, such activities not related to institutional "responsibilities" simply cannot be made subject to a one day per week regime.

• By John E. Bonine, Professor of Law (not verified) at 12/10/2008 - 00:59

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Memorandum - III. Categorically Exempt Activities

III. Categorically Exempt Activities

Despite the draft policy's attempt to sweep widely, current university policies and state law categorically exempt some activities from the one-day-per-week (or one-day-in-seven) rule. I offer just two examples here, to illustrate that further care must be taken

in drafting any policy, and that faculty participation will help get any new policy right.

A. Travel, lectures, scholarly, philanthropic activity

Under the draft policy the one-day-in-seven rule would sweep in (because it supposedly "permits," but only within limits) scholarly or philanthropic activity done without pay, even if performed on one's own time outside UO. It seeks to cover even "travel to other institutions or conferences for the purpose of presenting lectures, leading seminars or workshops or visiting the laboratories of colleagues." As a result, all such activities would be limited to the allowable time periods in that policy. *Draft Policy*, § 4.1, p. 3.

Under current Policy Statement 3.095, however, such activity outside the University "if uncompensated except for expenses and nominal honoraria, [is] *not* subject to the "one day in seven" time limitation that is applicable to faculty members." [Policy Statement 3.095, Part III-A, <http://policies.uoregon.edu/ch3g1.html>]

This change is a major one, which requires substantial faculty discussion before the faculty decides whether to endorse such a change. Such discussions, and accompanying faculty governance steps, have not taken place.

B. "Pro bono" activities and work for nonprofits

Among the outside activities that the draft policy would restrict to one day in seven are "outside activities such as consulting, public service or pro bono work." *Draft Policy*, § 4.0, p. 2. While work with "professional organizations" (improperly defined as a subset of "academic institutions," *Draft Policy*, § 4.4, p. 5) does not normally require approval, service in a key role in any "private . . . entity" does. *Draft Policy*, § 4.4(c), p. 6.

At a minimum, this policy ignores Oregon law if the consulting, public service, or pro bono work is for a *nonprofit* organization. Under Oregon State Law [<http://www.leg.state.or.us/ors/244.html>.] (which applies to all state employees as "public officials"; ORS 244.020(13)), most of the work that an employee might do for a nonprofit organization is excluded from conflict-of-interest coverage—even if a person makes money at it. That is, if "pecuniary benefit or detriment arises out of . . . [m]embership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code," it is specifically *excluded* from being considered a "potential conflict of interest" by ORS 244.020(11). *Ipsa facto* if no pecuniary benefit arises, it is excluded. Such benefit is also *excluded* from being considered an "actual conflict of interest." ORS 244.020(1). In turn, ORS 244.120 regulates the activities of "public officials" (including state employees) only when they involve actual or potential conflicts of interest.

Since *pro bono* activities and work for nonprofits *cannot* be considered actual or potential conflicts of interest, it is improper at a minimum for the draft policy to treat membership or board membership in a nonprofit organization as a disclosable activity requiring approval. Moreover, subjecting such activities and work to the one day per week restriction is similarly improper. Of course, the way that the draft policy seeks to avoid the limitations of state law is by creating a new category that it calls a "conflict of commitment," the regulation of which it presumably considers not to be governed by state law.

Even as a matter of simple policy choice, however, the inclusion of *pro bono* work in the draft policy is undesirable. The University of Oregon should (and currently does) encourage donation of faculty members' time to the good of the public (work that is "*pro bono publica*"). As a competing example, Stanford University explicitly excludes *pro bono* work from such restrictions. <http://rph.stanford.edu/4-3.html>. At a bare minimum, this kind of policy change should be thoroughly discussed in faculty governance processes and with widespread, advance faculty consultation.

• By John E. Bonine, Professor of Law (not verified) at 12/10/2008 - 00:49

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Memorandum - IV. External Entities and University Resources

I do not purport to have examined every aspect of the draft policy. That is not my job. It is the job, rather, of a wide variety of faculty members who can critique various aspects of the draft policy as they may impact individual faculty members. Such critique would be better done not "under the fire" of a self-created January deadline, but through normal processes where faculty deliberation can work its way through various issues.

In that light, I concede that the following section of my memorandum is woefully incomplete.

IV. Regulatory Provisions

A. Definition of "external entity" to include oneself

The draft policy's definition of an "external activity" to include oneself is both labored and fraught with unknown consequences. (I have not yet spent the time to analyze this in detail, but this needs doing.)

B. Use of university resources

The new draft policy prohibits the "[u]se of an individual's UO office, computers, internet access, copy machines, facilities, laboratories, students or staff when authoring textbooks, textbook materials, or other publications *when those publications are not specifically required* by the individual's University employment." *Draft Policy*, § 4.6(c), p. 6.

Several faculty members have protested this draft policy. Professor of Geography Alec Murphy says in response that it is a

"fundamental violation of what a university is about to have a policy that makes writing for other scholars—but not writing for students—within the scope of one's duties."

Orlando John and Marian H. Hollis Professor of Law Susan Gary comments,

"The intent may be to prevent the use of students in outside business activities, unrelated to the University's mission, but that's not what 4.6(a) says."

James and Ilene Hershner Professor of Law Steve Bender comments,

"I am left wondering whether scholarly works I prepare for a general audience are required by my employment. If not, I supposedly am unable to use University resources to complete them. What about textbooks? Treatises for legal practitioners? Op-eds? I shared the details of the proposal with faculty members at other competing institutions, and they were aghast. One former member of the UO law faculty characterized the proposal as the last straw in what he saw as the anti-intellectualism campaign at the UO. I find it hard to disagree when any proposal forces me to question the legitimacy of the methods by which I convey my findings toward legal, societal, and political reform."

Ian F. McNeely, Associate Professor of History, similarly comments;

"[F]ar from merely subjecting the production of such books to bureaucratic oversight and formal disclosure (which itself would be objectionable), section 4.6(c) effectively bans faculty members from producing them altogether, unless they are able to do so at home, one day a week, on computers they themselves own. This policy is patently ludicrous -- it would literally outlaw some scholars' research programs -- and it is frankly impossible to enforce. As to the signal it sends, I can't think of a better way to drive talent out of the university."

Enough questions have been raised by important scholars that these issues should be examined in the faculty governance process. Furthermore, this and other areas may be ones where "one size fits all" – that is, a uniform rule across the University – is simply not the best way to proceed. It is perhaps remarkable that those developing the textbook rule did not consult widely enough to understand what role textbook-authoring actually plays in various departments of the University.

● By John E. Bonine, Professor of Law (not verified) at 12/10/2008 - 00:43

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Memorandum - V. Privacy, Governance, and Claimed Necessity

V. Other State Law Issues – Information Privacy, Governance, and Necessity

The draft policy implicates several state law issues involving procedures for adopting new information collection rules in universities (the procedures are being violated), information privacy (along with confidentiality and security; all of which are imperiled), and whether the draft policy is required by applicable laws (it is not).

A. Violation of governance rules on information collection

The process for development of the draft policy violates an explicit state regulation, OAR 580-022-0060 (Institutional Rules) that applies to the collection of information from faculty. *The regulation requires faculty involvement in developing any institutional rules on the "nature of the information to be collected" by the institution:*

"(1) The Board delegates to the president responsibility for developing institutional rules governing the form and variety of faculty records to be maintained in the institution, the nature of the information to be collected, the way in which such faculty information is to be recorded, maintained, used and eventually disposed. Such institutional rules shall be consistent with Oregon Laws and the Board's Administrative Rules. . . .

"(2) The Board *expects that the presidents will give faculty an important voice in developing these rules, consistent with the nature of the academic community.*" [http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_022.html]

What could be clearer? The faculty at an institutional body has *not* been given a voice in developing the COI-C rules, which clearly involve "information to be collected."

B. Violation of state privacy restrictions

The draft policy requires the reporting form to be sent to three employees in the Office for Responsible Conduct of Research, in the Riverfront Research Park. This probably will violate state privacy requirements. The State Board of Higher Education's Internal Management Directive, IMD 4.015(7), requires that information reported on outside activities be held *only* in "a faculty member's confidential personnel record." [<http://www.ous.edu/about/polipro/files/IMD%2012-04.pdf>] That record has *not*, prior to now, been kept in a research office in Riverfront Research Park.

Rather, it is expected by OAR 166-475-0095(2) (Academic and Unclassified Employees Personnel Records (Supervisor's Copy) that such records will be "maintained in the office of the dean, director, department head, or vice provost." [http://arcweb.sos.state.or.us/rules/OARS_100/OAR_166/166_475.html].

Personal records obviously include the kinds of data that the draft policy plans to collect, because such records are defined by OAR 580-022-0065 as including information on "professional activities external to the institution." [http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_022.html]

A faculty member's "confidential personnel record" must be safeguarded carefully. Oregon Administrative Rule (OAR) 580-022-0085 states as follows:

"Official faculty personal records shall be kept in locations central to the institution, school, division, or department by which they are maintained. *Custody shall be assigned to designated personnel* specifically charged with maintaining the *confidentiality and security* of the records in accordance with institutional rules. No institution shall maintain more than three files relating to the evaluation of a faculty member. . . ." (Emphasis added.)

It is not clear how many records are kept now, so I cannot evaluate whether there is "room" for another such file to be kept by the Office for Responsible Conduct of Research." The lack of faculty involvement in the drafting of this policy has prevented such questions being raised.

In addition, OAR 580-022-0125 provides: "(3) Duplication of faculty records shall be minimized." This may also be violated by the procedures under the draft policy.

Submission of information through e-mail in electronic form, which is encouraged by the ORCR, probably does not comply with that provision or with the "security" requirements of OAR 580-022-0085. The requirement to submit conflict of interest disclosure documents and certifications appears to be insecure.

Furthermore, the fact that the draft policy calls for staff to consider requiring a faculty member to submit a "management plan" may raise questions under OAR 580-21-0385, which provides this restriction:

"No notation shall be made in the personnel record of an academic staff member of any investigation that has not resulted in formal charges being brought against the academic staff member under OAR 580-021-0320 through 580-021-0375 or that has not resulted in the imposition or a sanction of oral or written warning or reprimand in accordance with institutional procedures, as provided in OAR 580-021-0320." [http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html]

C. Policy legally required?

The Dec. 1 e-mail to the faculty from the Provosts and Vice President asserts that the draft policy is legally required:

"The requirements 'arise out of state law and State Board of Higher Education Internal Management Directives (IMDs) designed to implement that law.'"

According, to the Minutes of the Nov. 12, 2008, meeting of the University Senate, Vice President for Research Rich Linton sounded a similar theme:

"The vice president went on to explain . . . that such policies are a fundamental legal requirement. There is a mix of Internal Management Directives from OUS, Oregon statutes, and a wide range of federal agency policies to which the UO must adhere. In other words, not having such policies is not an option."

The policy *currently* in effect arises out of state law and IMDs. Nothing has changed in those legal authorities that requires a change in UO policy. On the contrary, the draft policy contains several conflicts with, or violations of, state law and IMDs. These are detailed elsewhere in this memorandum. A few general comments may be useful, however.

In fact, the policy itself contradicts the Vice President's statement. It provides:

"Federal regulations require that, when federal agencies fund University research or other sponsored activities *through a grant or contract*, the University must examine conflicts and, where appropriate, report them to the federal agency involved." (My emphasis.)

This statement does not apply to all, or even most, faculty members at this University. Furthermore, the draft policy goes on to say explicitly:

"The University extends this policy to all University research and scholarly activities regardless of the source of funding." Draft Policy, § 1, p. 1 (word "all" emphasized in original; other emphases mine).

The extension to "all" faculty members is a policy choice, not a legal requirement. Furthermore, the particular information being requested is not a legal requirement, but a policy choice. These are, of course, policy choices in which the faculty itself should be involved in making, as part of its responsibilities for faculty governance.

• By John E. Bonine, Professor of Law (not verified) at 12/10/2008 - 00:35

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Deiberation

Colleagues,

The FAC is not a public, deliberative body, that formally accepts or rejects motions presented by any of its members. Therefore, while it can offer advice and creative thinking on matters of importance, it is not a substitute for public deliberation. This is both my stance to you and our upper administration.

Second, my understanding is that the administration did suggest introducing this issue to the Senate last year, but the offer was not taken up. So, I think it is a mistake to accuse the administration of simply trying to ram this down our throats.

I also ask my colleagues to avoid overly inflammatory rhetoric on this and other matters, and I say this as one who has failed to heed the wisdom of this counsel. We **need** to have a clear policy on this matter and we should act in ways that will help us realize that goal.

Finally, I believe we should postpone implementing the policy until a degree of mutual-understanding and collective buy-in can be achieved. If that is possible, I ask that we not turn the moment into a symbolic fight over faculty governance. Let's save that for our non-symbolic discussions about whether we should restructure the Senate.

John Lysaker
Professor and Head
Department of Philosophy
Chair, Faculty Advisory Committee

• By John Lysaker (not verified) at 12/09/2008 - 23:40

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we do need a COI-C policy now

Hi John

I do not think that we should postpone implementing a COI-C policy.

The money Pres Frohnmayer receives from Knight and Kilkenny create obvious conflict of interest issues with very large consequences for UO - the arena, for example. Wether you think that project is good or bad, it clearly needs some sunlight.

Similarly with OIED VP Martinez - the time he spends at his second job at OSLC has reduced his effectiveness as UO diversity leader to window-dressing.

I also think this is an clear and very consequential example of the consequences of Frohnmayer's efforts to destroy faculty governance, and therefore an excellent place to begin the debate on restoring some balance.

Bill Harbaugh, Economics

• By Bill Harbaugh (not verified) at 12/10/2008 - 10:27

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Merely "symbolic" fight over governance"

Dear John Lysaker,

I appreciate your public endorsement of postponement of implementation of the draft policy.

However, to term the good-faith discussions of faculty governance as merely engaging in a "symbolic" fight diminishes the importance of governance on this particular issue.

Restructuring the Senate will itself be merely symbolic, if the Senate does not engage itself on the fundamental issues of academic freedom and culture that are presented here.

Finally, could you please elaborate on this statement?

*"We *need* to have a clear policy on this matter"*

I consider the current policy rather clear. It would certainly help me understand better what you hope to achieve through this new policy if you would be explicit on it.

Thanks, John

• By John E. Bonine, Professor of Law (not verified) at 12/10/2008 - 00:57

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Memorandum - VI. Procedural Matters

VI. Procedural Matters

A. Response to state audit

During the Nov. 12 meeting of the University Senate, several assertions were made that the policy changes were required by a state "internal audit." Indeed, review of that document ("University of Oregon - Technology Transfer - Audit Report," March 2006) indicates that the audit report language can be seen as mandatory.

However, when I telephoned the Internal Audit Division of the Oregon University System, I learned (1) that the Division does not have the authority to command a university to implement its recommendations, and (2) the Division is *not* commanding UO to do so. The personnel there are flexible in working toward reasonable solutions to problems they identify. They indicated that specifically with regard to the requirement that all faculty members annually file disclosure forms, if the University finds the policy intrusive (or contrary to state regulations), *the idea could be dropped*.

Unfortunately, in the case of the UO's draft policy, I learned from the Internal Audit Division personnel that no one at UO has interacted with the Division on a continuing basis after receipt of the Audit Report three years ago.

The Internal Audit Division also understands the benefits of having policies that garner wide faculty acceptance, because otherwise compliance will be dismal.

B. January deadline

Apparently statements have been made to the effect that the University must complete adoption and implementation of this new policy by January.

However, the state's Internal Audit Division indicated to me that the Division has not imposed any deadline; thus if a deadline exists it is a self-imposed deadline chosen by the University.

Moreover, when an Audit Division recommendation is not implemented or otherwise resolved, it is documented in a summary report to the Board of Higher Education as an "open" matter. It appears that the January deadline is simply the result of a University preference to get the matter closed at that time.

C. Disciplinary sanctions and procedures

Under the new draft policy, failure to file annual reports, or filing incomplete or misleading annual reports, or failure to follow a "management plan" imposed on a professor, will be "adjudicated in accordance with applicable disciplinary policies and procedures

of the University in the Faculty Handbook." Such cases can result in penalties ranging from a warning letter or reprimand up to "dismissal from employment." *But the Faculty Handbook is not the source of disciplinary policies and procedures of the University.*

The policy currently in place provides that any penalty greater than warning or reprimand may be imposed only "in accordance with the procedure in OAR 580-21-325 through 580-21-385." These are Oregon Administrative Rules, adopted under the Oregon Administrative Procedure Act (Oregon APA) after notice-and-comment rulemaking. They have the force and effect of law.

The proposed new procedures would apparently be whatever happens to be written in the "Faculty Handbook," a document not adopted through proper procedures under the Oregon APA. The Oregon APA seeks to allow all stakeholders to participate in policy-making, in order to give them an opportunity to point out flaws in policy proposals or argue against certain policy choices.

If this is merely an oversight in wording, then at a minimum the presence of this (and numerous other) oversights, mistakes, or outright conflicts with applicable norms suggest that the draft policy was drafted without the degree of care and attention that is required for a policy affecting hundreds of faculty members who are devoting their professional lives and careers to this institution.

• By John E. Bonine, Professor of Law (not verified) at 12/09/2008 - 23:12

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Memorandum - VII. Faculty Governance

VII. Faculty Governance

At the Nov. 12 meeting of the University Senate, Vice President Linton "said that the new policies have been pilot tested over the past few months with the College of Education, so there has been considerable faculty engagement in the process. . . ." In a similar manner, Senior Vice Provost Russ Tomlin "noted that the Faculty Advisory Council also has reviewed the policy. . . ."

Pilot-testing a reporting form in the College of Education does not constitute sufficient "faculty engagement in the process," nor is it a substitute for actual faculty governance. The faculty response to the public announcement of the policy is evidence of the lack of faculty engagement in the process. Furthermore, it must be noted that the Faculty Advisory Council engages in *confidential* discussions with the University Administration and its members will not reveal to other faculty members the substance of their discussions. Such discussions do not constitute faculty consultation under faculty governance policies. Rather, the confidential nature of such discussions ensures that they are part of the University Administration's own processes, not the faculty's governance processes.

Professor of Biology Nathan Tublitz has put the matter succinctly:

"The DoJ ruling [of November 2008] confirmed the basic governance structure of the University as stated in the original 1876 University Charter (Section 14): "The President and professors constitute the faculty of the University, and, as such, shall have the immediate government and discipline of it and the students therein." Any alteration in policy affecting faculty must come to and be approved by the University Senate, the primary governance body on this campus. [Concerns about the proposed COI/C policy, <http://orcr.uoregon.edu/node/20#comment-534>]

John Marshall First Amendment Professor of Journalism Kyu Ho Youm has emphasized, "In other universities, such as Stanford University, conflict of interest policies are adopted only by Senate action." [feedback on Eugene Weekly story, <http://orcr.uoregon.edu/node/20#comment-739>] Surely the University of Oregon can and should do no less.

• By John E. Bonine, Professor of Law (not verified) at 12/09/2008 - 23:04

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This kind of seems key

The below is excerpted from Prof. Bonine's post. To me, it seems critical to resolve this before one even has any further discussion:

" The draft policy itself asserts that it is required for "compliance with the complex body of state and federal laws, regulations, and guidelines." However, state law, IMDs, and federal laws and regulations do not require this policy. "

So if state and federal law doesn't require this policy, Why Does the Law at the UO require it?

Can someone please answer this coherently?

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- reply

Memorandum: I. Overall Issues with Annual Certification

I. Overall Issues with Annual Certification

The draft policy states:

"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." *Draft Policy*, § 1, p. 1 (emphasis added).

However, it is not obvious that mandatory certification of compliance by every member of the University faculty every year is would significantly promote public trust or ensure "compliance" with laws. On the other hand, the draft policy is already eroding trust and morale on the campus among those charged with educating a new generation of citizens and leaders and producing new knowledge for the benefit of society.

The draft proposal would require that, for the first time in the 132-year history of the University of Oregon, all professors annually file forms with a centralized office, "*certifying that they are following the University's policies* related to conflict of interest and commitment." *Draft Policy*, § 6.0, Roles and Responsibilities, page 11 (emphasis added).

According to the Minutes of the Nov. 12, 2008, meeting of the University Senate, "Once the disclosures are submitted, the Office for Responsible Conduct of Research will review and screen all of the disclosures, and depending on the complexity of issues raised, there will be different levels of institutional review and oversight." This means that disclosures of possible conflicts of interest and commitment will no longer be reviewed only by the Deans or others involved in the academic enterprise, as has been the case in the past. It also means, because of the massive increase in reportable activities, that the opportunities for *disapproval* by administrators have increased by an order of magnitude. This is a disturbing threat not only to the culture of academia but to academic freedom.

Problems with the proposed "certify, report and monitor" approach fall into both legal and policy areas. I will mention some of each.

A. Legal issues with blanket certification approach

Oregon Revised Statutes (ORS) 351.067(4) provides:

"The [State Board of Higher Education] shall adopt by rule standards governing employee outside employment and activities, including potential conflict of interest, as defined by state board rule and consistent with ORS 244.020, and the public disclosure thereof, and procedures for reporting and hearing potential or actual conflict of interest complaints." [<http://landru.leg.state.or.us/ors/351.html>]. A matrix list of these and other regulatory provisions, including hyperlinks to web locations for the documents, can be found at http://orcr.oregon.edu/files/coic/uploads/final_final.pdf.]

The State Board has done so, in Oregon Administrative Rule (OAR) 580-021-0025, regarding "outside employment and activities" and "conflict of interest," adopted in 1978 and updated in 1991, 1993, and 1996. [http://www.sos.state.or.us/archives/rules/OARS_500/OAR_580/580_021.html.]

The regulation states:

"(1) No full-time employee of the Department or of any of the institutions or divisions shall engage in any outside employment that *substantially interferes with duties*. See also IMD 4.005 and 4.010, Board and Institution Policy on Outside Activities and Related Compensation. (Emphasis added.)[IMD numbers later changed.]

"(2) Institution employees shall provide written reports to their president *regarding potential conflicts of interest* as defined under ORS 244.020(8). Other Department employees shall provide the same reports to the Chancellor. Complaints by any person regarding potential conflicts of interest may be referred for investigation to the president, Chancellor or Director of Internal Audit who shall investigate the complaint."

The first subsection states the applicable standard concerning outside employment: *substantial* interference with duties. The second specifies the procedure: written reports to the university president *when conflicts may exist*. Presumably the legal counsel for the University Administration has taken the position that the phrase "written reports to their president regarding potential conflicts of interest" can be expanded to require annual written reports covering all of a professor's outside activities, whether or not there is a potential conflict of interest. However, that is quite an adventurous interpretation of the regulation. OAR 580-021-0025 requires only reports regarding "potential conflicts," not certification regarding the *lack* of such conflicts.

Furthermore, the limited scope of the provision for "written reports" is clarified in the State Board of Higher Education's Internal Management Directives, which are directly referenced in OAR 580-021-0025. Several aspects of the IMDs will be discussed later in this memorandum.

B. Policy issues with blanket certification approach

The existing policy regarding conflicts of interest does not involve such a "certify, report and monitor" approach. Instead, University of Oregon Policy Statement 3.095[University of Oregon Policy Statement 3.095, available at <http://policies.uoregon.edu/ch3g1.html>.] "recognizes that personal responsibility, integrity, and *high ethical standards are the principal deterrents of conflicts of interest.*" The Policy Statement furthermore states, "The safeguards against abuse are the standards required by professional colleagues and the *rigorous process by which the University evaluates and selects individuals for appointment and promotion.*" (Emphases added.) Placing such trust in faculty members to ensure that potential conflicts are reported and avoided is attractive to high-quality faculty, while monitoring faculty as high-school hallways are monitored can have the opposite effect.

There are many University policies—such as submitting only valid reimbursement requests for faculty travel, meeting classes on a scheduled basis, and not sexually harassing students. Conceivably the university could attempt to improve compliance with each of these other policies by requiring annual certification by each faculty member that he or she is "following the University's policies" in these matters. It has not done so, however. Michael Raymer, Knight Prof. of Liberal Arts and Science, has put the matter this way:

"To many faculty, the proposed implementation of the new policy might feel like it would if the Eugene Police required us all to certify once a year we had not broken any of the laws of the City." [Comment previously posted here.]

The e-mail sent on Dec. 1, 2008, from the Provosts and Vice President to all faculty members on the "HR" list advises the University of Oregon's faculty members that complying with new requirements of the new draft policy will "help *protect yourself from issues*, including ethical concerns, which could result from external consulting, business associations, or other external professional relationships." The e-mail also states that the new draft policy "will *facilitate outside relationships* now and in the future and can *protect you* from the possible penalties that can be imposed on you by Oregon state laws." The e-mail states that the policy's "goal is to *support the relationships* and outside activities that have allowed University of Oregon faculty to be at the *forefront of academic fields* and to *collaborate with colleagues* around the world."

A policy actually intended to protect faculty members, for their own good, however, could be implemented on a voluntary basis, rather than a mandatory basis.[However, even calling for voluntary implementation should be thoroughly weighted against possible violations of state privacy laws, overly restrictive provisions, and the hydraulic pressure that it might create on individual faculty members to "go along."] Protecting individual faculty members from their own flawed compliance with conflict of interest policies is hardly a reason for a massive shift in university practices. In the same manner, a policy intended to "support" the activities that have allowed UO faculty to be academic leaders and worldwide collaborators would presumably be adopted through a process of faculty governance, but no such governance process has been followed or proposed until now.

It is not clear that a single, uniform approach is appropriate for the widely diverse schools and disciplines found throughout the University. Reporting on work that relates to one's responsibilities in a laboratory heavily funded by federal grants might justify measures that are completely unnecessary for a law faculty or department of music or romance languages. The annual disclosure and approval burden of blanket certification for scientists may also be unjustifiable, however. One of the most senior professors in Oregon's Physics Department, Davison Soper, has written that "the definition of external entity is so broad that all of my research collaborations with physicists from outside the UO are included." He has written further:

"I am a member of a physics research group named CTEQ. For instance, we organize a ten day summer school for physicists every year. That participation in creating and disseminating knowledge in science is now to be reported and subject to scrutiny from the new Assistant Vice President for Responsible Conduct of Research.

"The situation is worse for my colleagues in experimental research in particle physics, who work (with students and postdocs) in very large research collaborations. Their disclosure forms will surely be onerous.

"My net assessment is that this proposal for conflict of interest reporting is bad for the university and will have a chilling effect on any faculty activity related to scientific research." [Comment previously posted here.]

Allowing each unit of the university to continue to take responsibility for its own faculty members would allow appropriate distinctions to be made. Relying on "personal responsibility, integrity, and high ethical standards," as does the existing policy, enhances trust in individual faculty members. In the long run, such reliance is a sounder basis for public trust than a system that treats faculty members as potential scofflaws.

• By John E. Bonine, Professor of Law (not verified) at 12/09/2008 - 10:18

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Memorandum of Law and Policy - Introduction

I have prepared a legal and policy analysis of the draft policy. From my contacts and conversations on campus, it is apparent that some who have endorsed the policy have not actually read all the details. I hope that my analysis may prompt them to dig deeper,

just as the faculty should do so, and should vote for full faculty review--not merely some kind of enhanced "consultation" outside of official faculty governance.

The University Administration may well not agree with some points of my analysis. But so far nobody from the Administration and nobody among those involved in drafting these policies have answered *any* of the questions raised in the comments previously posted here by anyone. Does that tell us anything about the process of faculty participation--much less the process of faculty governance?

Memorandum of Law and Policy

John E. Bonine, Professor of Law and Dean's Distinguished Faculty Fellow
December 8, 2008 (draft 1.1)

Executive Summary

The University of Oregon's *Draft Conflict of Interest and Commitment Policy* [*1*] has been roundly condemned by a number of senior scholars as "both anti-intellectual and counter-productive," [*2*] taking the University "in the direction of academic systems where innovation and creativity have arguably been seriously compromised by invasive bureaucratization (e.g., Japan)," [*3*] and "patently ludicrous—it would literally outlaw some scholars' research programs." [*4*] One scholar in the arts has stated that "the proposed 'upgrade' could stifle much of our professional productivity." [*5*]

This memorandum, written as part of my "university responsibilities" but at nights and on Saturday and Sunday, exposes some of the legal flaws in the draft policy, including conflicts with state law and regulatory directives. I also touch on issues of administrative discretion and academic freedom. Whether or not university officials agree with me, discussion of these and other issues should take place during faculty consultation and governance processes.

An e-mail was sent on Dec. 1, 2008, by the Provosts and Vice President to all faculty members on the "HR" list. It asserts that the new requirements "arise out of state law and State Board of Higher Education Internal Management Directives (IMDs) designed to implement that law." [*6*] The draft policy itself asserts that it is required for "compliance with the complex body of state and federal laws, regulations, and guidelines." However, state law, IMDs, and federal laws and regulations do not require this policy. Furthermore, its provisions contradict state law and IMDs. As one example, universities in Oregon are only allowed to require reporting on activities related to "institutional responsibilities," but the draft policy regulates one's "area of expertise."

The annual certification procedure is said to be required by an internal audit. But the internal audit did not require the massive program that has been designed, including a change in the scope of what should be reported. Furthermore, I talked with the Executive Director of the Internal Audit Division. She told me that if the audit's suggestion causes any problems, it can be changed, but that university staff has not been in discussions about its new policy with her.

The University Administration's draft policy has many substantive and procedural flaws. The best interests of the University would be served by pulling it back from implementation for six months or more to allow proper faculty review and consultations to take place. The University Senate would then ultimately adopt a final policy in the current or an amended form.

ENDNOTES

[*1*] "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)," available at http://orcr.uoregon.edu/files/coic/uploads/UO_COI-C_Policy_11-5-08_LS-_C... (hereinafter, *Draft Conflict of Interest and Commitment Policy*, or *Draft Policy*).

[*2*] Comment of Mary Jaeger, Professor of Classics, at <http://orcr.uoregon.edu/node/20>.

[*3*] Comment of Alec Murphy, Professor of Geography, *ibid*.

[*4*] Comment of Ian F. McNeely, Associate Professor of History, *ibid*.

[*5*] Comment of John Schmor, Associate Professor of Theater Arts, *ibid*.

[*6*] E-mail of Dec. 1, 2008, reprinted in Appendix C (emphases added).

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Sections of memorandum to be posted seriatim.

• By John E. Bonine (not verified) at 12/09/2008 - 10:00

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Time sinks

When I read the memo on the new policy and went to the "Conflict of Interest and Commitment" home page, I burst out laughing. A colleague who must remain anonymous had suggested that disclosure was likely to take 2 minutes a year, but the home page itself contained 15 substantial readings, each one murkier than the last. Just reading the new policy and all its backstory, in other words, was another time sink -- in dead week and exam week, for implementation in January.

Having a great regard for the collective wisdom of my colleagues, I also read their posted comments on the proposed policy. That was an hour well spent: the combination of different areas of expertise and different disciplinary points of view clarified a great deal.

For myself I can only repeat what I've been saying for several years: that announcing to the FAC--a closed and confidential body-- what is about to be handed down, is not consulting with the faculty. It is not shared governance. And it is not conducive to a productive working environment or collaboration between the faculty and administration on our campus.

I agree that this policy needs to be rolled back to the beginning and worked through the UO Senate. Any egregious cases of conflict of interest or conflict of commitment that currently exist can be investigated and addressed without recourse to a top-down, invasive, and clearly *highly* problematic new policy.

Gina Psaki, Romance Languages

• By Gina Psaki (not verified) at 12/08/2008 - 22:32

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open later to Pres Frohnmayer:

Dear President Frohnmayer:

UO has just announced that it will have graduation a week *before* students take their finals, to accommodate a NCAA track meet. See <http://www.margaretsoltan.com/>. Nike is the likely sponsor of this meet, and Phil Knight and Pat Kilkenney have apparently given hundreds of thousands to supplement your pay, and millions more to your Fanconi Anemia Association. The exact amounts, and the timing of these gifts, have never been released.

I think this helps demonstrate that we need some sort of COI policy. However the policy your administration has proposed would require, say, a music professor to report that they'd earned \$100 from a private lesson, while letting yourself, Mr. Kilkenney, and Mr. Knight to continue to engage in far more consequential conflicts of interest with impunity and no public reporting.

As a gesture of good faith then, I suggest that you release the schedule of gifts that you and your related foundations have received from UO donors, boosters, employees, and people doing business with UO, *before* you implement a policy that requires the same of the faculty.

Bill Harbaugh
Economics, University of Oregon
<http://harbaugh.uoregon.edu>

• By Bill Harbaugh (not verified) at 12/08/2008 - 07:02

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A Modest Proposal

From what I can understand, it seems that the proposed policy and its enforcement need to be rethought from the ground up, not simply tweaked a little. I make a few specific points and offer a proposal for how to move forward.

* There should be no distinction made between faculty's scholarly books (written for a scholarly audience) and textbooks (written by faculty at great sacrifice, not great profit). There is no sensible way to separate these in most cases, nor any constructive reason to, as pointed out in earlier comments.

* There should be no distinction made between faculty who receive federal funds and those who do not (an idea that might spring to mind while reading some earlier comments). One policy should be acceptable to all.

* To many faculty, the proposed implementation of the new policy might feel like it would if the Eugene Police required us all to certify once a year we had not broken any of the laws of the City. Better methods are needed.

A Modest Proposal:

Require only that faculty sign a form once every five years saying that they have read the current COI/COC policy, period - no certification of any type: not that they understand it, or agree with it, or have not violated it.

This educational exercise would go a long way toward raising issues. In the long run, it could lead to a reasoned, fair policy that all can live with. It would still likely lead to howls (still seeming intrusive to some) and insistence on clarification or changes, but there would not be the level of panic that we are seeing now.

• By Michael Raymer, Knight Prof. of Liberal Arts and Science (not verified) at 12/08/2008 - 01:22

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Not good for the arts

Having read the draft document and compared to current policy, having read and re-read the comments here, from experts wiser about the details than I can be, I have to add that for faculty in the several arts, the proposed "upgrade" could stifle much of our professional productivity towards tenure and promotion. A painter, a cellist, an actor, may no longer feel encouraged to pursue national or international work - as the gallery, the recital hall, and the theatre pay (very little, but they pay) - and their schedules are not interested in our academic calendar. If disclosures can include weekend, evening, and even vacation time - never mind the usual need for off-campus showings during the regular school periods - this is likely no small amount of paperwork for department heads, as it is not very easy in the "non-profit" world to simply define how an artwork (still worse, a performance) is valued, or how the artist (outside of union rules) should be remunerated. Foggier still will be deciding if the artist spent any time with campus equipment or in studios or practice rooms for the sake of a showing not related to university production or teaching. Rehearsal is similar to the drafting and re-drafting of an article - but unless surveillance cameras are on their way, I'm not sure how administrators will be able to monitor, with or without disclosure, when or how the actor learned his lines.

I worry that the omnipresent threat of audit has justified similar policy closures without regard for the arts on campus - we apparently no longer may minimally compensate our peers from other departments (from either stateside or foundation accounts), who come into our classrooms and productions to enhance and complicate our students' experience of arts production, faculty and staff whose expertise in any other market would be compensated. I can guess there are arguments of "conflict of interest" here, but I wonder if the proposed policy considered how this might compromise the notable emphasis on interdisciplinarity in the Academic Plan, particularly for faculty in the arts, many of whom receive (even after tenure and promotion) among the lowest salaries on this campus? (Are some faculty in the arts motivated to produce/teach/design elsewhere for extra pay as much as for furthering research that can enhance their teaching or their department's profile here? You bet.)

I realize the new COI/COC policy has a larger mission, involving legal incentives that likely don't have much relevance to a showing, a concert, or a play. If I have hope about this policy, it is that I have misread it. I can't disrespect the intentions, merely question the ramifications. If I have not misread the policy and the commentary I am adding to, then my last hope is that the proposed policy has such scope as to render what we do in the arts, more importantly how we do it, practically irrelevant - and we will be able to find ways to thrive in its shadow.

• By John Schmor (not verified) at 12/07/2008 - 21:13

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feedback on Eugene Weekly story

Feedback on the Eugene Weekly story

The Eugene Weekly published an article, "UO Squelches Faculty?" relating to the COI-C on Dec. 4. I was interviewed for the story of 424 words with a picture of myself from the School of Journalism and Communication faculty website (see "UO Squelches Faculty?" (<http://www.eugeneweekly.com/2008/12/04/news.html#1>)).

After reading the EW story, several UO faculty members, including my SOJC colleagues, and one distinguished communication scholar at Seoul National University in South Korea who has visited at UO, wrote to me. Some of them are more circumspect and some expansive than others. For example (with good reason, their names withheld and primly edited):

"Our adjuncts are really going to suffer under this policy -- particularly the ones who are partners at law firms. They should be kept up to date on what is going on. I personally appreciate what you are doing as well, because if this policy goes into effect, it will be pretty disastrous for me."

"Excellent! Thank you for speaking out."

"Nice quote for the article. Thanks for being willing to stick your neck out on this."

"I read the Eugene Weekly article with much interest and was pleased to see your thoughtful comments (and that cute photo too!)"

"I consider your public intervention to be an important component of highlighting this, and leading to this elevating of the issue and getting the FAC's attention."

"I agree that the UO's new policy has gone too far."

Probably the most substantive and relevant feedback I received on the EW story was this: "Before you agreed to be interviewed for the Weekly, did you consider talking to any of the people involved in drafting and promulgating the policy or doing your own research to determine: (1) the intent of the policy; (2) the degree to which it constitutes a change from existing policy; (3) the consultation with relevant faculty groups such as the Faculty Advisory Council and the Senate Executive Committee that did or did not take place prior to the announcing of the draft policy; (4) the extent to which the proposed policy is or is not consistent with practice at most if not all of our peer major research universities; and (5) the existence or lack of federal and or state mandates requiring such a policy?"

No doubt this thoughtful comment from a highly regarded UO administrator, for whom I have the highest admiration and respect and trust as a colleague and as a scholar-teacher, deserves more than a dismissive riposte: "Are you asking seriously?" Simply because it raises a number of significant questions not only about myself as a scholar-teacher of 23 years, but it also centers on the proposed COI-C policy. [BTW: I have my own revelatory first-hand experience with the UO conflict of interest case relating to IPRI and Prof. Jean Stockard in 2005-07, when I got fortuitously(?) involved in 2005-2007, when three Korean government officials visiting at UO on April 17, 2005, urgently asked for my immediate help as the only Korean-American faculty member when they were threatened to shut up or leave UO when they suspected a possible fraud by some UO faculty members and/or administrators; any relationship to the COI-C policy at issue here? That's a question I'll not address here simply because it may distract from my sharply focused agenda.]

Before you agreed to be interviewed for the Weekly, did you consider talking to any of the people involved in drafting and promulgating the policy or doing your own research?

I did my own research and relied on research done by others, including respected UO colleagues whose credentials are unimpeachable.

I began by carefully reading the e-mail that was sent out on Dec. 1 on the Human Resources list from the Provost, the Senior Vice Provost, and the Vice President for Research. The last sentence of that e-mail told me where "questions or concerns" should be directed:

Should you have any questions or concerns, please contact the ORCR?

The e-mail did not say how to contact the Office of Responsible Conduct of Research (ORCR), so I went to its website to learn more. The entire policy is set out there.

[Did you] determine: (1) the intent of the policy?

Regarding the intent of the policy, it is clearly stated both in the e-mail and in the policy itself. The e-mail says that its intent is to protect faculty members "from issues, including ethical concerns, which could result from external consulting, business associations, or other external professional relationships." It also says that the requirements "arise out of state law and State Board of Higher Education Internal Management Directives (IMDs) designed to implement that law." Therefore, my first assumption was that the policy was carrying out state law, but further research indicated that is not the case.

I also looked, as the e-mail suggested, at the policy document itself, which is on the website. The policy document gives this rationale in its second paragraph:

"The disclosure of extra-University relationships . . . 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."

So in answer to the "intent" question, yes, I understood the intent of the policy. It says that the way to gain public trust in our objectivity is for everyone in the university faculty to disclose every relationship that he or she has outside the University. And the e-mail says that this kind of disclosure of everything will protect faculty members from "issues, including ethical concerns."

I don't agree with that point of view, but I did determine the intent of the policy.

[Did you research] (2) *the degree to which it constitutes a change from existing policy[?]*;

Yes, of course. The existing policy, Policy Statement 3.095, is quoted in the e-mail and is on the ORCR website as well. The new policy is a change from existing policy, which does not require disclosure of all relationships outside the university and approval for them. It only requires disclosure and approval in certain categories of faculty activities. For example, it says:

"Outside activities unrelated to university responsibilities and undertaken by faculty on personal time, regardless of whether compensated, are not subject to these Board of Higher Education and institution policies." <http://policies.uoregon.edu/ch3g1.html>

On the other hand, the new policy says in section 4.4, on page :

"Nearly all outside activities require the approval of one's Supervisor, Department Chair, Director, and/or Dean prior to initiating the activity."

I would say that is a massive change. The new policy does not include the exemption for "personal time" and outside activities that are "unrelated to university responsibilities." Instead, the new policy says in section 5.0, on page 5, that "nearly all" outside activities are now covered:

"Outside Activities - are those activities engaged in by UO faculty and other UO employees, whether or not compensated, that are NOT specifically a part of their University activities."

This definition omits the need to determine whether the activities are "personal" or "unrelated to university responsibilities" and just includes all outside activities.

The new policy gives various examples, including "limited consulting," without limiting those examples to consulting or other activities only when they are related to "university responsibilities." It is obvious to me that "university responsibilities" is a different term than, for example, "university area of expertise." The existing policy only imposes restrictions and disclosure regarding outside activities involving our "responsibilities." The new policy does not mention that in its definition of "outside activities" or its statement that "nearly all outside activities" require approval.

The only place where a limitation to university responsibilities is even mentioned in the new policy is a phrase buried in the middle of a paragraph about one-day-in-seven time, on page 3. However, that one phrase is not enough to make an exemption for a faculty member's personal time, because the definition itself on page 10 in section 5.0 says the opposite. It says clearly that outside activities include everything that is NOT "specifically a part of . . . University

activities." And section 4.4 on page 5 requires "approval" for outside activities.

[Did you research] (3) *the consultation with relevant faculty groups such as the Faculty Advisory Council and the Senate Executive Committee that did or did not take place prior to the announcing of the draft policy[?];*

Yes, of course. However, I learned that the Faculty Advisory Council is a confidential group and that none of its members will disclose any conversations held with the Administration.

The policy was also reported to the University Senate on Nov. 12. I have reviewed the extensive Minutes of that presentation.

Of course, reporting and consultation are not the same as faculty governance, which would require Senate action.

[Did you research] (4) *the extent to which the proposed policy is or is not consistent with practice at most if not all of our peer major research universities[?];*

Yes, of course. In other universities, such as Stanford University, conflict of interest policies are adopted only by Senate action.

Furthermore, the policies themselves are certainly different from the UO policy. For example, at <http://rph.stanford.edu/4-1.html>, disclosure and approval is only required for activities exceeding \$10,000 annually, or for certain categories of consulting. Also, pro bono work is explicitly excluded from the 1-day-in-7 policy. For example, see at <http://rph.stanford.edu/4-3.html>. In contrast, the UO policy explicitly include in the 1-day-in-7 policy "outside activities such as consulting, public service or pro bono work." (Section 4.0, page 2)

[Did you research] (5) *the existence or lack of federal and or state mandates requiring such a policy?*

The policy cites federal regulations, but then says that they do not apply to most faculty. However it says that the university "extends this policy to all University research and scholarly activities regardless of the source of funding." (Section 4.0 - Policy)

In other words, the policy itself states that it is not required for all professors, but the university extends it to all.

• By Kyu Ho Youm (not verified) at 12/06/2008 - 14:42

- delete
- edit
- reply

1- in-7 Practically speaking

In the distant past, when I was doing frequent consulting, the basic 1 in 7 accounting that was done was on a monthly basis. This was a common sense approach.

Essentially on average there are 180 working hours per month so one was permitted 14.2% or about 25 "consulting" hours per month, however they were accrued.

And it occurs to me that I have one another example. I once was a Phi Beta Kappa visiting scholar (meaning 2 day trips to a particular campus to give several talks or essentially 3 days gone from campus including travel) which I guess now would be a COI/COC/COWhatever.

• By Bothun (not verified) at 12/05/2008 - 20:49

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- reply

audit report

I've sent the email below to Grier's office, asking for copies of the audit reports Rich Linton mentioned to the Senate. I think they will help clear up the real motivation for this crazy policy.

I'll post the link to the reports when I get them. Melinda's usual practice is to drag these requests out for a month, until you petition the AG, and then charge for the documents, so it will take awhile.

Unless Rich Linton will just post them himself!

Dear Mr. Park:

In a recent UO Senate discussion, VP Rich Linton mentioned an audit report on COI and or COC. This a public records request for copies of any such audits since Jan 1 2006.

I ask for a fee waiver, on the grounds of general public interest, as evidenced by the discussion at <http://orcr.uoregon.edu/node/20> and the many recent national press stories on COI scandals.

Sincerely,

Bill Harbaugh
Economics, University of Oregon
<http://harbaugh.uoregon.edu>

• By Bill Harbaugh (not verified) at 12/05/2008 - 18:09

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• reply

COI -C process

I agree with the thoughtful criticism posted by my colleagues. The language introducing the proposed process of COI-C disclosure and that of the forms itself is vague; the burden it imposes on the faculty is unnecessarily onerous. Moreover, its development has circumvented the normal processes of faculty governance.

As conceived and written this is both anti-intellectual and counter-productive. We the faculty are employees of the University and thus the state of Oregon; but we are, first and foremost, servants of our disciplines, and we serve the state and University best when we best serve our disciplines. This includes activity that could, maybe (boy it's hard to tell!), be construed by this document and these forms as embodying a conflict of interest. A humanities scholar receives small amounts of money or payment in books for reading manuscripts for university presses, very occasionally for reviewing tenure cases, for contributing chapters to books for general and scholarly audiences, and even, sometimes, as royalties, for scholarly books. Someone might make significant money from a textbook, but otherwise, the money for none of these activities really repays the time invested. We do these things because they are research, they are service to the profession, or they enhance our pedagogy. They did seem to be required by our job descriptions. But now they appear to be suspect, and we must list as an "external entity" every press, including university presses, with which we have published in a given year, for which we have an ongoing contract, or for which we have read a manuscript. And the time we work for those "external entities" seems to fall under the one-in-seven rule; but it is not clear.

These rules for disclosure need to be crystal clear, because the boundaries between the various parts of our jobs, and between our lives and our jobs, are not. A university that wants to foster the creativity and productivity of its faculty will state clearly what is required by law and impose the minimum level of oversight required by law. To do otherwise is to intrude unnecessarily into the working—and private—lives of the teaching and research faculty, who are the core of the university.

I ask that we reconsider this process, and with the involvement of the governing body of the university, which is the faculty.

Mary Jaeger, Professor, Classics

• By Mary Jaeger (VERIFIED!!!) (not verified) at 12/05/2008 - 17:17

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This policy was cooked up by

This policy was cooked up by UO Counsel Melinda Grier - purportedly a specialist in labor law - after I told her that since they weren't doing anything about OIED VP Charles Martinez's double dipping I was reporting it to the NIH.

Rather than just deal with Martinez's documented abuses (3/4 time at UO, 3/4 time at OSLC) they are stalling for time by claiming they are implementing this new policy, which is so clearly a non-starter that they can drag it out for another year or so, and keep him on the dole meantime.

What a giant waste of everyone's time. Why don't Tomlin, Dyke, and Grier just deal with the obvious cases of abuse that they know about, then send out a memo explaining what's allowed and what's not and what will happen if you break the rules?

Oh, I know, it's because then they would actually have to do their jobs. This 14 page form is much easier - for them.

Bill Harbaugh, Economics

• By Bill Harbaugh, Economics (not verified) at 12/05/2008 - 09:48

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- reply

Issue is not 1-in-7; the issue is personal time and relatedness

It is crucially important that people understand that their focus on "one-day-in-seven," caused by sloppy drafting by the UO, has the potential to confuse things still more. The 1-in-7 language in the proposed UO policy is a mess, but it is also legally wrong. The drafters of the UO policy simply had a huge misunderstanding when they drafted it. The state policies on the matter are actually quite good. The problem is that UO doesn't understand them and is making a mish-mash of them.

At the state level, under Internal Management Directive 4.015, found at <http://www.ous.edu/about/polipro/files/IMD%2012-04.pdf>, any outside work that is *not* related to a faculty member's institutional "responsibilities" (presumably meeting classes, serving on committees, meeting with students) is completely exempt from ALL reporting, disclosure, etc, as long as it is done on one's "personal time," which I interpret to mean at a minimum nights and weekends, but probably other times during the week and during the day, if I chose to do some of my institutional work on weekends or in evenings.

If you don't believe this, just read IMD 4.015 for yourself. focus on this: "**Outside activities unrelated to institutional responsibilities and undertaken by faculty on personal time, regardless of whether compensated, are not subject to these Board of Higher Education and institution policies.**" Note that such time is not subject to "institution policies." That means the UO proposed policy as well. Now one important thing that you have to do is to decide which of your outside activities are "unrelated" to "institutional" "responsibilities" and refuse to report them.

If one did not understand universities, one might assume that a faculty member should not perform "outside work" at all, and certainly not during work days. But the state's rules allow us to do such outside work in two circumstances: (1) First, if we do it on "personal time", and (2) second, if we do it even during working days, Monday-Friday, as long as it does not exceed one day per week on average. The policy is sufficiently liberal that, pushed to the limit, we could draw our full salaries but only work 4 days per week on university tasks, and then also supplement that salary by working one day per week on paid consulting -- even if that consulting were in some way "related" to university "responsibilities." That's not such a bad deal.

The problem comes from the new, proposed UO policy suggesting that it controls our evenings and weekend days. That is just flat wrong. Under state rules, we can work evenings and weekends entirely for our own profit, and not even disclose that to anyone -- as long as it is not "related" to institutional "responsibilities." I have a hard time of thinking of any outside, profit-making work that I might do that would be in some way related to my institutional responsibilities, so that seems like a large area of complete freedom.

Note that institutional "responsibilities" cannot mean the same thing as a person's area of expertise. A person's expertise is not his or her responsibilities.

Another way to understand the matrix in the state rules (which the UO policy does not understand), is first to divide outside work into two categories: "related" to one's university "responsibilities," and NOT related to them. Outside work in the second category (not related) can be done to one's heart's content, in whatever one defines as his or her "personal time." Outside work in the first category (related to responsibilities) is limited to one day per week, whenever that day may be taken.

In short, the issue is not 1-in-7. The state's IMD does not even use that term. It talks of one day per week. And keep in mind, this is in addition to the non-related outside work that one can do (which is most of such work).

The proposed UO policy is based on both a complete distortion of the one-day-per-week-if-related-to-responsibilities principle, and also the ignoring of the equally crucial principle: that most of our potential outside work has nothing to do with our institutional responsibilities -- is not "related" to them. When outside work is not so related, our time is our own, even if we choose to make money during it. And under IMD 4.015 we have absolutely no obligation to report on it.

By seeking to require us to report on, and disclose, outside work that it exempt under IMD 4.015, the proposed UO policy simply violates state rules. And as a consequence, the proposed UO policy can be ignored and the requested forms not be filed.

• By John E. Bonine, Professor of Law (not verified) at 12/05/2008 - 07:13

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- reply

Message from the Senate President

Hi All:

My understanding is that the new COI/COC policy is a slightly revised version of the current policy that has been in place for some years. The big difference of course is the mandatory requirement to complete the forms associated with the revised policy.

Having looked at the forms and listened to several explanations from Rich Linton and Russ Tomlin, it seems to me that for the large majority of us, this will be a 5-10 minute process. For those of us with significant outside activity, the forms will take longer to fill out. However, I assume that these same folks are already the ones who have to deal with the current policy and its less formalized procedures. If not, then that's a flaw in the current system that the updated procedure is designed to rectify.

So here is what I would like to see: comments from faculty who have had to jump through the COI/COC hoops already in place. Let the rest of us know how burdensome this process is currently. If we can get a sense of the amount of work/invasiveness that is involved, then maybe it will help to inform our understanding of the new procedure.

By the way, as the Senate President I would love to hear directly from colleagues about the policy, but especially those with positive or neutral comments. I can be reached by phone at 346-2687 or by email at paulvd@uoregon.edu. If I hear few of the latter such comments, then I'll assume that most feel like those who have posted to this website.

Thank you and enjoy the end of the term.

Yours sincerely,

Paul van Donkelaar
University Senate President

• By Paul van Donkelaar (not verified) at 12/05/2008 - 05:57

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Section 4.6(c) / royalties / assigning own book

Three comments:

(I.) I would like to echo Alec Murphy's and others' concerns about section 4.6(c), which I find fundamentally misconceived. First, as he notes, there is no meaningful, rigorous way to distinguish textbooks from scholarly books (or general interest books) in many disciplines. Second, far from merely subjecting the production of such books to bureaucratic oversight and formal disclosure (which itself would be objectionable), section 4.6(c) effectively bans faculty members from producing them altogether, unless they are able to do so at home, one day a week, on computers they themselves own. This policy is patently ludicrous -- it would literally outlaw some scholars' research programs -- and it is frankly impossible to enforce. As to the signal it sends, I can't think of a better way to drive talent out of the university.

(II.) I would like the document to clarify the oversight procedures regarding book royalties, which to my mind do not involve the same potential conflicts of interest as, say, consulting fees, licensing fees, ownership stakes in start-ups, etc. and perhaps therefore ought not to be lumped together (as, e.g. in sections 4.7(a)-(c)). I would like to know in what specific instances a faculty member would be prevented from earning such royalties.

(III.) Finally, the document should clarify under what circumstances professors may assign their own books in a course. Pedagogically I feel it is critical that we have that right, but perhaps we should be required to surrender whatever royalties are thereby generated back to the students or to the university.

• By Ian F. McNeely (not verified) at 12/05/2008 - 05:12

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- reply

What's a Contract?

In that handy One-Day-In-Seven link there is the following exact wording

- Activities unrelated to UO responsibilities must be engaged in during times the faculty member is not under contract to UO.

Personally, I have no idea when and when I am not under contract. If I am observing at Pine Mountain (or anywhere else) at 3 am, am I under contract or not.

Its 5 pm right now, so as I write this I am under contract so when it posts I am not? Does that mean I can go drinking after 5?

Seriously, what does any of this contractual language actually mean?

- By Bothun (not verified) at 12/05/2008 - 01:01
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- reply

Coi-C

Throughout campus there seems to be a continuous river of hostile actions taken against employees that are in the lower level administration, faculty, classified staff and anyone working for the university that is anywhere "below" the Johnson Hall administrators. What is up with that? The JH and corner office people on this campus seem to think its ok to treat people like lower class employees. Is this their job? Is this what they are instructed to do? Are the actions they take against us legal? Who is in charge here? Who is the person we need to involve to stop the administrations hostile actions toward the people that work here. Do they lay awake at night thinking of what they can do next? Why do they think they are so darn important? If it were not for the faculty, students, instructors, and classified staff these blow hard self indulged people wouldn't have a job. Who made them god! Why can't they work to make the University a better place for EVERYONE instead of harassing the people that work here? We are all here for the students....we are not here to further the administrations careers, portfolios or make their pockets fuller, or even to make them look oh so important with all their new titles and salaries. Were not here to make them rich and treat us like dirt. We are treated on the same level as we have been treated the last 8 years under a U.S. president that wanted to only further HIS cause and to hell with the people. Our administration seems to be from the same mold. I call for a change. Our administration is nothing more than a bully boss, using intimation and harassment that creates a hostile environment of mistrust and anger only to further their cause. We should throw them all out and start over. Shame on them.

- By Anonymous (not verified) at 12/05/2008 - 00:56
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- reply

New policy violates privacy, security, duplication regulations

The reporting form is designated to be sent to three rather low-level employees in the Office of Responsible Conduct of Research.

However, the State Board of Higher Education's Internal Management Directive, IMD 4.015(7), requires that information reported on outside activities be held only in "a faculty member's confidential personnel record."

Oregon Administrative Rule (OAR) 580-022-0085 states as follows:

"Official faculty personal records shall be kept in locations central to the institution, school, division, or department by which they are maintained. Custody shall be assigned to designated personnel specifically charged with maintaining the confidentiality and security of the records in accordance with institutional rules. . . ."

In what way does the reporting form and the processes associated with it comply with OAR 580-022-0085?

In addition, OAR 580-022-0125 provides: "(3) Duplication of faculty records shall be minimized."

In what way does submission of information on the web in electronic form comply with that provision?

In fact, does not the provision for e-mail submission of reporting forms violate both the confidentiality and security requirments and the duplication prohibitions of these two OARs?

- By John E. Bonine, Professor of Law (not verified) at 12/05/2008 - 00:36
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- reply

Less interpretation, More Examples

I am clearly not as smart as the rest of the posters and am unlikely to use grammatically correct sentence structure - but how the hell is a simple(minded) faculty member like me suppose to

decipher all of these multiple interpretations of what the policy says and doesn't say. Its a little bit like trying to sort out the financial crises - everyone is an expert on its cause.

Please provide actual examples of what is and what isn't a COI as it relates to the 1 in 7 rule

For instance

- a) if I go teach a week at Stanford and someone at the UO covers my classes is that a COI? have I used up 5 days in the 1 in 7 rule?
- b) if I go to DC and testify to Congress that our current energy policy sucks, how many days against the 1 in 7 rule does that count?
- c) if I invite Senator Tublitz for beers on Saturday night, is that now a federal crime (well yes I know it should be)

Just give us some common sense examples of what potentially does violate the rewarded COI policy. Is that too much to ask for?

● By Bothun (not verified) at 12/05/2008 - 00:29

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- reply

Please clarify what 1-in-7 means

I've not seen a definition of 1-in-7 and I find it not at all clear as I think about the outside work I do.

If I work 10 minutes on an outside consulting project one day, does that mean I can't work again on outside work until the next week? Does 1 really mean 8 hours? 24 hours? Please provide a definition and maybe some examples.

-Dale Smith

● By Dale Smith (not verified) at 12/05/2008 - 00:22

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Concerns about the proposed COI/C policy

I write to add my voice to those expressing strong reservations about the University's proposed conflict of interest/commitment (COI/C) policy. There have been many thoughtful and cogent comments post by my university colleagues at the University of Oregon's Conflict of Interest and Commitment website (<http://ocr.uoregon.edu/node/20>). I raise here a few specific points not previously stated:

1. FACULTY CONTRACT. The employment contract signed by faculty upon appointment is entirely qualitative in nature. The contract makes no mention of a quantitative time commitment (e.g. minimum time requirement); we are assessed solely on qualitative performance criteria. Requesting quantitative time commitment information from faculty whose official contract has no such quantitative stipulation is inappropriate and may not be legal, unless the specific activity requires approval.
2. OUTSIDE ACTIVITIES. The new language being added misinterprets the State of Oregon's one day per week rule (IMD 4.015). This occurs by adding the reference to Saturday and Sunday which ignores the fact that outside activity is entirely exempt from the one day per week rule if it is not related to University "responsibilities" and if done during "personal time" (which includes at a minimum Saturday, Sunday and evenings). I have no qualms with disclosing my activities during standard work week hours even though we have no standard work hours. It is another thing altogether to ask about my outside activities that I engage in at nights and weekends. The University has no legal right asking me to disclose my private, non-university activities.
3. POLICY VS POLICING. I suspect few faculty are against a reasonable conflict of interest policy. We have had a functional policy in place at the University for years. It is the policing of this policy and the reporting requirement by all faculty that are the problematic issues. We have many current policies, such as rules on spending University funds and fraternization with students and staff. We do not, however, sign an oath or submit paperwork affirmatively certifying we are not in violation of these policies. There is no justification for active policing of the COI/C policy because there is no reason to assume the faculty is violating this policy in greater numbers than for any other university policy.
4. FACULTY GOVERNANCE. That the administration refuses to bring this policy to the University Senate for ratification is contrary to the recent 2008 ruling by the Oregon Department of Justice. The DoJ ruling confirmed the basic governance structure of the University as stated in the original 1876 University Charter (Section 14): "The President and professors constitute the faculty of

the University, and, as such, shall have the immediate government and discipline of it and the students therein." Any alteration in policy affecting faculty must come to and be approved by the University Senate, the primary governance body on this campus.

5. PRECISELY WHO IS REQUIRING THIS POLICY AND ITS ENFORCEMENT? The administration claims there are state and federal rules requiring the implementation and the faculty reporting element of this policy. Yet the administration has not provided specific details about what entities are requiring this policy despite repeated requests. The administration also claims that many other universities are already requiring faculty reporting such as proposed in this policy. The University Senate and the faculty as a whole should require the University Administration to issue a written justification for the implementation and policing aspects of this proposed policy and provide a list of other research universities that have already implemented a similar reporting procedure.

6. CONFLICT OF INTERESTS BY ADMINISTRATORS. There have been many decisions made by the University of Oregon administration that raise questions about conflicts of interests and/or conflict of commitment. These include:

A. University President and Professor Frohnmayer is the recipient of a Knight Professorship from the largest University donor. At least the source of these funds is known. Professor Frohnmayer has also been given annual deferred compensation of \$50,000 by the UO Foundation, raised to \$150,000 this year. The Foundation keeps donations and expenditures secret, so it is impossible to tell if these payments are given by a specific donor and earmarked for Professor Frohnmayer, or if they come from funds given for general support of the University. Either possibility is troubling from a conflict of interest point of view. As a faculty member, shouldn't Professor Frohnmayer be held to the same conflict of interest standards as the rest of the faculty? And shouldn't the University community know the origin of the \$150,000 deferred compensation?

B. The outstanding Fanconi Anemia Foundation, started and headed by Professor Frohnmayer in part to find a cure for the fatal disease afflicting his family, receives a large fraction of its funding from University donor Phil Knight. Pat Kilkenny made a \$240,000 donation to the foundation the year before Professor Frohnmayer appointed him AD. Would the policy cover these potential conflicts of interest?

C. The approval by Professor Frohnmayer of the hiring of the current athletic director Pat Kilkenny, after Kilkenny donated much if not all of the \$1.8 million to buy out the contract of his predecessor Bill Moos. Will the new COI/C policy prevent blatant conflicts such as this from occurring in the future?

D. The 0.75 FTE appointment by Professor Frohnmayer of Charles Martinez to the position of Vice President for Institutional Equity and Diversity while simultaneously working at an additional 0.75 FTE at the Oregon Social Learning Center (OSLC) in Eugene. Martinez earns \$141,222 from UO (\$119,064 as salary & \$22,158 as a "stipend") and at last reporting also received \$84,335 from OSLC. UO Counsel Melinda Grier and VP for Finance Francis Dyke have known of this blatant conflict of commitment for at least 18 months, and have done nothing to stop it. Is this not a serious conflict of commitment?

In short, I wonder why this sudden emphasis on conflicts of interest and time commitment, and this set of extraordinarily intrusive questions, given the administration's long and continuing tolerance of well documented abuses within its own ranks?

Given the serious problems with the proposed COI/C policy raised here and elsewhere, the University faculty should give serious consideration to not complying with the administration's request to fill out the COI/C forms until:

- 1) The administration explains in writing the justification for requesting from faculty quantitative and private time expenditure information when our contracts do not have any quantitative time requirement;
- 2) The administration redrafts the policy so that it does not violate the State's 1 day in 7 policies;
- 3) The administration states in writing the specific federal, state and OUS statutes, rules and regulations that mandate the proposed policy and monitoring;
- 4) The administration explains in writing why the situations in 6A-D are not conflicts of interest or conflicts of commitment; and,
- 5) The University Senate formally approves the COI/C policy and the policing requirements.

● By Nathan Tublitz (not verified) at 12/04/2008 - 23:41

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Personal time, "company time," and one-day-in-seven

The Oregon University System (OUS) has this clear policy in an "Internal Management Directive" -- found at <http://www.ous.edu/about/polipro/files/IMD%2012-04.pdf>:

4.015 Institution Policy on Outside Activities and Related Compensation

"Each institution shall adopt policies and procedures to implement IMD 4.011 to 4.015. Such policies and procedures shall:

"(1) Include appropriate measures, such as one day per week, which define faculty time available for outside activities related to the faculty member's institutional responsibilities. **Outside activities unrelated to institutional responsibilities and undertaken by faculty on personal time, regardless of whether compensated, are not subject to these Board of Higher Education and institution policies.** However, if the faculty member, while on personal time, engages in outside activities that create a potential conflict of interest, the faculty member must provide written disclosure thereof"

This is consistent with what Senior Vice Provost Tomlin told the University Senate on Nov. 12. *However, the new, proposed policy appears to adopt a radically different position.*

During the Nov. 12 presentation, the Minutes report the following exchange took place:

<<Mr. Tublitz continued with another question regarding the "1 in 7" rule. He opined that since faculty sign a contract to perform certain duties that did not have any specific hours of work involved and this policy would seem to require faculty to quantify the number of hours worked, and secondly, why does the university need to know what faculty are doing in their time off from the institution, such as on the weekends. **He stated that is a fundamental right for faculty to be able to do what they want to during off hours without disclosing what it is;** there is a difference between 1 in 5 and 1 in 7. **Mr. Tomlin replied that 1 in 7 does not mean that one of the weekend days was "owned by the company store."** **The things that one chooses to do privately do not need to be disclosed.** >>

Vice Provost Tomlin's reply is obviously consistent with the OUS's IMD 4.015. Unfortunately, the current wording of the proposed new UO policy is not. While this may simply be a matter of sloppy drafting, it certainly creates confusion and demands that better wording be devised.

A key question is how the dividing line is drawn between (1) "the things that one chooses to do privately" (Tomlin)(or, as the OUS IMD puts it, "Outside activities unrelated to institutional responsibilities and undertaken by faculty on personal time") and (2) "outside activities related to the faculty member's institutional responsibilities" (IMD). The key apparently lies in the term "institutional responsibilities." This term is much narrower than, for example, one's field of expertise. My institutional responsibilities include a certain amount of teaching, a certain amount of scholarship, and a certain amount of university service. They do *not* include anything and everything that I might do in my profession.

The dividing line in the IMD between "(1)" and "(2)" above in the IMD means that a faculty member is free to engage in some outside activities without regulation, but must limit some other outside activities so as to stay within the one-day-in-seven policy. However, even for the latter (those lie within one's "institutional responsibilities"), not all such activities must be disclosed, nor need prior approval be sought for all of them. In fact, the University of Oregon is *obligated* to recognize classes of activities that, while falling within a faculty member's institutional responsibilities, are normally exempt from approval or even disclosure.

The OUS IMD 4.015 states, "Each institution *shall* adopt policies and procedures" that "*shall*: . . . (3) *Identify and describe* types of outside faculty activity related to faculty institutional responsibilities and associated funding sources which the institution approves as a class(es) and *which will not require review and prior approval*"

Furthermore, paragraph 4 of IMD 4.015 clearly mandates "disclosure" **only** when "approval" is required, which involves either specifically listed activities in paragraph 4 or personal activities that "create a potential conflict of interest." **There is no requirement of disclosure for "conflicts of commitment" or for personal activities that don't pose a potential conflict of interest. There is no Orwellian mandate that everything must be disclosed in order to determine *whether* there might be a potential conflict of interest.**

Reading the OUS's IMD makes it clear that the proposed new policy overreaches when it says the following:

"Nearly all outside activities require the approval of one's Supervisor, Department Chair, Director, and/or Dean prior to initiating the activity." Paragraph 4.4, page 5, http://orcr.uoregon.edu/files/coic/uploads/UO_COI-C_Policy_11-5-08_LS-C...

This provision becomes untethered from proper OUS system-wide policies when it furthermore defines "outside activities" in paragraph 5 as "activities engaged in by UO faculty and other UO employees, whether or not compensated, that are not specifically a part of their University activities."

If understood as it is written, this provision of the proposed new policy contradicts IMD 4.015's requirement that activities taken during personal time may well be exempt from disclosure or approval (if not related to institutional responsibilities), and its requirement that each institution "shall" identify classes of activity related to one's institutional responsibilities that do *not* require approval and disclosure.

What is missing in this definition is that it should be limited to "activities related to university responsibilities" (and that, in turn, should be explicitly limited in scope).

University or Oregon faculty policies should not be written in such a way that only a lawyer can interpret them, or that only a lawyer can reconcile them with existing and binding OUS policies.

The University obviously lacks the authority to impose requirements that are prohibited by the OUS's Internal Management Directive. Fortunately, Vice Provost Tomlin's oral remarks at the Nov. 12 University Senate meeting appear to be consistent with the IMD. The problem is that the written, proposed new policy is not -- or at least is not obviously consistent with the IMD.

Adherence to the normal faculty governance model would have likely revealed these mistakes (or inartfulness in drafting) in the proposed new policy before it became a prospective command to individual faculty members.

Caveat: It is possible that I have misunderstood some aspects of the proposed new policies. I welcome clarification.

• By John E. Bonine, Professor of Law (not verified) at 12/04/2008 - 16:02

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- reply

Comment on disclosure policy

I would like to add my voice to the colleagues who have raised objections to the implementation of the conflict of interest and commitment disclosure policy.

I understand and concur with the general policy of university administration that unclassified staff will not engage in activities that conflict with their duties as employees of the university. But the implementation of this policy, as it is currently constructed, does not appear to be conducive to fostering and enhancing a world-class faculty. Faculty must feel free (no - should be encouraged) to engage in appropriate external activities related to their academic interests without being questioned about each interaction in such a police-force approach, as announced here. I think monitoring is best handled in each case at the local level, by department management, where there is a good understanding of each situation. Our faculty is diverse in its activities; local monitoring seems to me to be a much better approach than a one size fits all, invasive disclosure process, which has been called for.

I am writing this message from the DESY laboratory in Hamburg, Germany, where I serve on the International Advisory Board for the Terascale Helmholtz Alliance. It took two days of travel (overnight) to get here, and will take another day to return. The travel alone therefore uses up 3 of my weeks of 1 day in 7. Is this what the university wants to restrict? I certainly hope not. However, the way I read the announcement, I find a heavy weight pressing down on my un-paid, research motivated, international collaboration, which provides the university with very good visibility, by the way.

I urge the administration to reconsider the format of this implementation, to move first to clarify the classes of activities that are of concern, to restrict disclosure to such activities, to re-assess what format for disclosure is necessary, and, if a disclosure process is deemed necessary, to work with department level management in implementing a monitoring approach that creates a willingness to participate, and an encouragement for valuable external activities.

Sincerely,
James Brau
Knight Professor of Natural Science

• By James Brau (not verified) at 12/04/2008 - 15:47

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Misconceptions about the proposed policy

The process for disclosure of this new policy is revealed in the minutes of the November 12, 2008, meeting of the UO Faculty Senate (<http://www.uoregon.edu/~uosenate/dirsen089/12Nov08Minutes.html>). However, several statements made during that meeting appear to be contradicted by the policy itself or by other materials. On this basis alone, the University Senate must exercise its rights to require another engagement session to clarify and answer questions raised by the presentations at the Nov. 12 meeting.

(In addition, the University Senate must insist that only the Senate can adopt new policies of this sort, and should appoint a faculty committee and adopt means to stimulate wide campus discussion and advice. Only at the end of such a process, which logically should proceed over several months, should the Senate decide whether the proposed policy or another version is appropriate for the University of Oregon.)

The following excerpts are taken from the Minutes of the Nov. 12 University Senate meeting, which can be found in full at <http://www.uoregon.edu/~uosenate/dirsen089/12Nov08Minutes.html>. Some parts of the Minutes are highlighted in bold in this comment posting. Reactions to those parts are inserted by this author in italics.

Conflict of Interest and Conflict of Commitment policies update. Vice President for Research and Dean of the Graduate School **Rich Linton** began his remarks by thanking Lynnette Schenkel and Meg Rowles, both in the Office for Responsible Conduct of Research, for their work and efforts on these issues. . . .

The vice president went on to explain . . . that such policies are a **fundamental legal requirement**. There is a mix of Internal Management Directives from OUS, Oregon statutes, and a wide range of federal agency policies to which the UO must adhere. In other words, not having such policies is not an option.

[NOTE: It is not correct that the specific policies are a "fundamental legal requirement" for all faculty members, which is how the policy has been designed. In fact, the policy itself contradicts this statement. It states: "Federal regulations require that, when federal agencies fund University research or other sponsored activities **through a grant or contract**, the University must examine conflicts and, where appropriate, report them to the federal agency involved." (My emphasis.) This statement does not apply to all, or even most, faculty members at this University. Furthermore, the policy goes on to say explicitly: "**The University extends this policy to all University research and scholarly activities regardless of the source of funding.**" University of Oregon Policy, Disclosure & Management of Individual Conflicts of Interest and Commitment," paragraph 1, page 1, http://ocr.uoregon.edu/files/coic/uploads/UO_COI-C_Policy_11-5-08_LS-Comments_Deleted.pdf (word "all" emphasized in original; other emphases mine). The extension to "all" faculty members is a policy choice, not a legal requirement. Furthermore, the particular information being requested is not a legal requirement, but a policy choice.]

Vice President Linton continued that for the **past several years** the research offices as well as the deans and academic affairs have been working to update and revise the conflict of interest/commitment guidelines and policies, and they are **now ready to roll out the newly revised policies**. The vice president noted that when the university underwent an internal audit recently, a **uniform requirement** came out of the review saying that **institutions have to have a mandatory disclosure process on an annual basis**.

[NOTE: Without access to this "internal audit," it is not possible to analyze just what it said as a "requirement" that all OUS institutions have to have a "mandatory disclosure process on an annual basis." Even if such annual disclosure is required for some faculty members, one must ask whether the internal audit "required" it for all, and whether the specific, detailed elements on the disclosure form were "required" by such an audit document.]

Previous policy said that when a faculty member had something to disclose, there was an expectation from the university that the faculty member would disclose it. **Starting in calendar year 2009, there will be a mandatory disclosure from every faculty member** and relevant staff to make an annual disclosure. He explained that there would be disclosure forms. . . capturing the necessary information to meet **regulatory requirements**.

[NOTE: As noted above, it does not appear that any "regulatory requirements" from outside the University require all faculty members to do disclosure reporting on an annual basis.]

Once the disclosures are submitted, the Office of Responsible Conduct of Research will review and screen all of the disclosures, and depending on the complexity of issues raised, there will be different levels of institutional review and oversight.

[NOTE: This means that disclosures of possible conflicts of interest and commitment will no longer be reviewed by the Deans or others involved in the academic enterprise, but by mostly low-level employees in the three-person office over in the Riverfront Research Park.]

In more complicated cases, a committee will be formed to provide recommendations back to the Offices of Research and of Academic Affairs to help with the management plan for the conflict. Vice President Linton said that the new policies have been **pilot tested over the past few months with the College of Education, so there has been considerable faculty engagement in the process**. . . .

[NOTE: Pilot-testing a reporting form in the College of Education does not constitute "faculty engagement in the process," nor is it a substitute for actual **faculty governance**.]

Vice Provost Tomlin pointed out that neither of the policies is aimed at curtailing faculty activities, or at hyper analyzing faculty routines. . . . The primary purpose of disclosing conflict of commitment is to have a means to manage disclosed conflicts and protect ourselves. He noted that the **Faculty Advisory Council also has reviewed the policy**. . . .

[NOTE: The Faculty Advisory Council engages in confidential discussions with the University Administration. Such discussions do not constitute faculty consultation under faculty governance policies.]

During a discussion period, **Mr. Gordon Sayre, English**, asked [some questions about the review committee.] . . . **Mr. John Chalmers, business**, asked if the disclosure would be part of the **annual faculty report** or part of other general reports.

[NOTE: The answer is "No." A completely new, 14-page form is required.]

Vice Provost Tomlin replied that there is large variability around how different colleges and schools gather year end information from faculty members. . . . Vice President Linton added that. . . [m]andatory disclosure is mainstream; most institutions have such requirements across the country, and the **UO policy is very much the same policy as is found in similar institutions**.

[NOTE: I have not yet found any institutions with policies and disclosure forms as onerous as the proposed policy for the University of Oregon. On the other hand, a presentation for the National Association of College and University Attorneys (NACUA) in June 2008 by two expert attorneys at the leading Washington, D.C., law firm Arent Fox LLP cited three universities for having "Model Policies" – Stanford, the University of Pennsylvania, and Catholic University of America. A couple of these policies can be found at <http://rph.stanford.edu/4-1.html>, <http://policies.cua.edu/faculty/handbook%2011/conflict-of-interest/disclosure%20form.doc>. None of the three policies even comes close to the complexity and intrusiveness of the proposed UO policy.]

. . . Vice President Linton added that conflicts of interest and conflict of commitment are often entangled by their very nature. Part of the revised policy approach at the UO is to couple these issues together in one disclosure form that addresses both areas. **Mr. Chris Jones, AAA**, commented that the policy seems to have ambiguity when it comes to mentioning faculty and other UO employees. He asked that it be made clearer whether teaching faculty or other employees are being addressed. Vice provost Tomlin asked Mr. Jones to send him an email on the question with more specific information so that it could be answered directly.

Senator Nathan Tublitz, biology, asked about the rationale for policing the policy, **wondering if there have been many serious incidents** requiring more attention to these issues. Mr. Tomlin replied that the impetus is coming from external sources in part as a result of the audit; **it is not a matter of how many or few incidents there are.**

[NOTE: As indicated above, extension of a detailed, 14-page, annual disclosure requirement to "all" faculty members does not come from any federal or state regulations, and the policy itself states that it is the University that has decided to extend these requirements to "all" faculty members. As for the internal audit, my requests for a copy of it have thus far gone unanswered.]

Also, with the UO's research external funding crossing the \$100 million mark, it **opens new levels of federal scrutiny**. Mr. Linton noted that the **major institutional concern is about chronic underreporting**, "not knowing what you don't know". The website shows what the various regulations are, and the complexity of the regulatory environment.

[NOTE: As indicated above, there are no "new levels of federal scrutiny" that would require a detailed, 14-page, annual disclosure requirement for all faculty members, including professors who are not operating under federal research grants. Presumably a "major institutional concern" should be attracting and retaining high-quality faculty members, trusting them to report when necessary, and minimizing the burden on others. The is taking a back seat, however, to a desire for more reporting, which is being imposed wholesale on the entire professoriate.]

● By Prof. John E. Bonine (not verified) at 12/03/2008 - 23:01

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Reporting and science

I offer some comments on the proposed reporting requirements for conflicts of interest and commitment.

It seems that any activity related to an external entity is suspect. There is a stringent limit (one day in seven) on activities with an external entity. The administration may ask for anything written that outlines my relationship with the external entity. The plan seems especially interested in anything that I may have done with an external entity that involves students or employees (for instance, postdoctoral research associates). Also apparently suspect and needing to be reported is research funded by outside agencies like the U.S. Department of Energy, which funds my physics research.

I point out that the definition of external entity is so broad that all of my research collaborations with physicists from outside the UO are included. I am currently writing a paper with a collaborator in Germany and my Ph.D. student. That activity is now suspect. A few years ago, I was a Divisional Associate Editor for the journal Physical Review Letters. Normally, a university would be proud to have a faculty member listed on the masthead of that prestigious journal, but now it appears to be suspect. I am a member of a physics research group named CTEQ. For instance, we organize a ten day summer school for physicists every year. That participation in creating and disseminating knowledge in science is now to be reported and subject to scrutiny from the new Assistant Vice President for Responsible Conduct of Research.

The situation is worse for my colleagues in experimental research in particle physics, who work (with students and postdocs) in very large research collaborations. Their disclosure forms will surely be onerous.

My net assessment is that this proposal for conflict of interest reporting is bad for the university and will have a chilling effect on any faculty activity related to scientific research.

● By Dave Soper (not verified) at 12/03/2008 - 19:23

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Conflict of Interest Policy

The rationale for these changes is not fully explained in the letter from Bean, Linton and Tomlin. Let me quote:

"It is common for faculty to cultivate professional relationships that extend beyond the boundaries of their conventional UO appointments. Most such relationships are entirely appropriate, though in some cases they may reflect a perception of or actual Conflict of Interest or Commitment (COI-C). Generally, faculty disclosures under COI-C reflect cutting edge scholarship and research that has application to address societal needs and/or professional activities that reflect a broader engagement with the community which the University fully supports in principle. Disclosure and successfully managing potential COI-C is the mechanism that will facilitate outside relationships now and in the future and can protect you from the possible penalties that can be imposed on you by Oregon state laws."

Phrases like "in some cases" and "possible penalties that can be imposed on you" give no sense of a current policy in crisis. The faculty should ask Bean, Linton and Tomlin to justify the immense amount of energy going into this project with a clear statement of how big the problem is that is being addressed. If the University has been backed into a corner by a handful of difficult legal cases, or is responding to a request from the state's attorney general, that is one thing. But if they are laboring under the sense (too common among administrators) that the faculty should be under more control and oversight, that is another.

The obvious place for this discussion is the University Senate.

Jim Earl

• By Jim Earl (not verified) at 12/03/2008 - 15:12

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Disappointed and Confused

I am writing to express my disappointment that the process of faculty governance has been circumvented. The UO faculty should have the opportunity for an in-depth assessment of the justification for the proposed policy as well as its provisions. As I understand it, the state and federal "mandates" do not require this policy at all. In addition, this policy is shortsighted in so many ways. For example, according to the policy, it is inappropriate to use University resources, including our UO office, computer, internet access, etc. "when authoring...textbooks... or other publications when those publications are not specifically required by the individual's University employment." I interpret this policy to cover ANY scholarly writing that would be disseminated through a third party. Not only are journal articles not "required" by University employment, but I was explicitly told by the Administration that writing an article for a scholarly journal is not part of my University employment. Several years ago, the University refused to represent me when I was threatened with a meritless defamation suit for a scholarly article. David Frohnmayer said in an email, "[W]hen faculty publish their scholarship in scholarly publications, etc., they enter into personal arrangements to do so. As a result, when matters arise out of that publication, the University cannot take responsibility for the publication. That is different from other scholarly work, such as a scholarly presentation, posting on a website, or other activities in which the faculty member does not disseminate the results of her research through a third party." When I couple the President's message with the new conflict of interest policy, the meaning is clear: Don't write any more articles for publication, at least not in your UO office, on your UO computer, etc.! It is a personal activity for which use of University resources is inappropriate!

• By Merle H. Weiner (not verified) at 12/03/2008 - 07:46

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Faculty Governance - Guaranteed by the UO Charter

Dear colleagues,

The process used for the development, announcement, and adoption of the new university policy, "Disclosure & Management of Individual Conflicts of Interest and Commitment," violates the legal principle of faculty governance on which the University of Oregon is founded.

The new policy, with its onerous reporting and certification requirements, was not developed by a committee of the University Senate nor adopted by the Senate. It was only shown to the 21 members of the University Senate present at a meeting less than three weeks ago. Unknown drafters in the administration have been working on this for a much longer time. Yet it is dropped on the faculty while exams are being prepared and will be "rolled out" as adopted policy next month.

It appears, from minutes of the Nov. 12 University Senate meeting, that much of the work on this onerous new policy was done by two employees in the "Office of Responsible Conduct of Research" who are not members of this faculty and do not possess the advanced degrees and understanding of the special culture and features of an academy that membership in this university faculty entails.

Faculty governance is at the heart of the academy, is a key protector of academic freedom, and has for 132 years been the rock upon which the University of Oregon faculty does its important work. 132 years ago, the establishment of the University of Oregon was based on the principle of faculty governance, as stated in the University Charter. The University Charter continues today as a matter of state legislation:

" I. Charter

(May only be altered by State legislative action)

"The President and professors constitute the faculty of the University, and, as such, shall have the immediate government and discipline of it and the students therein. The faculty shall also have power, subject to the supervision of the board of regents, to prescribe the course of study to be pursued in the University, and the text books to be used. University of Oregon Charter, Section 14, 1876 (ORS 352.010, 352.004, 352.006)"

President Frohnmayer has noted as recently as last Spring that faculty governance has been **"fundamental to this university since its charter and founding."** However, unlike other major universities, whose policies on conflicts of interest and commitment are adopted by their university senates, the administration of this university has chosen simply to inform our faculty and then move ahead unilaterally, without faculty study, participation in drafting, or even vote.

The new UO policy purports to be adapted in part from Stanford University. But Stanford University's policy for teaching faculty was adopted by the "Senate of the Academic Council" of Stanford, not merely issued by its Administration. <http://rph.stanford.edu/4-1.html> A report of the debate, discussion, committee consideration, revision, and adoption of the policy at Stanford can be found at <http://news-service.stanford.edu/pr/94/940419Arc4320.html>.

In a similar fashion, conflict of interest policies were adopted not by Administrations but by faculty senates at Washington University in St. Louis (<http://www.wustl.edu/policies/conflict.html>), University of Colorado (<https://www.cu.edu/sg/messages/6189.html>), Georgetown University (<http://facultysenate.georgetown.edu/Archives/coi/coi-detailmemo-may12.pdf>), among many other universities. At Oregon State University, a committee with at least 7 faculty members worked on its policy (<http://oregonstate.edu/senate/agen/reports/2005/05c.pdf>).

• By John E. Bonine, Professor of Law - VERIFIED (not verified) at 12/03/2008 - 06:27

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This policy substantially revises faculty employment obligations

1.

The proposed new policy and reporting requirements, which have seemingly dropped from the sky (in a message to all university faculty and others yesterday) is a substantial revision in the employment obligations of faculty members at the University of Oregon. It contains draconian changes that will make it difficult to hire and retain faculty members of high quality.

The proposed new "DISCLOSURE & MANAGEMENT OF INDIVIDUAL CONFLICTS OF INTEREST AND COMMITMENT" is not something that the University faculty has devised in its role as self-governing members of this University. Rather, it claims to be copied from a policy at Stanford University (although Stanford has a much more liberal and trusting policy). It will apparently replace policies under which University of Oregon faculty members have worked for decades.

2.

The proposed new policy imposes reporting requirements never before seen at the University of Oregon. These requirements are breathtaking in their scope and detail. The new policy states, for example:

"4.4 Activities Requiring Prior Approval: Nearly **all outside activities** require the approval of one's Supervisor, Department Chair, Director, and/or Dean *prior to initiating the activity.*" (second emphasis in original.) "

3.

The pre-existing University of Oregon "Policy Statement, 3.095 Personnel Practices, Title: Potential Conflicts of Interest" provides "general guidance" between outside activities in which faculty members can engage freely, on the one hand, and others that "require consideration of possible incompatibility with University obligations." The current, pre-existing policy "recognizes that personal responsibility, integrity, and **high ethical standards are the principal deterrents of conflicts of interest.** The safeguards against abuse are the standards required by professional colleagues and the rigorous process by which the University evaluates and selects individuals for appointment and promotion." It reposes trust in faculty members to ensure that these policies are adhered to, and allows each academic unit to decide what kinds of reporting requirements or procedures are appropriate.

4.

The proposed new policy, in contrast, dispenses with our professional standards and our appointment and promotion process as the primary basis for ensuring ethical behavior by university professors. Instead, it adopts a *presumption* of inappropriate behavior by university faculty members.

It does this by requiring, for the first time in the history of this University, an annual process of formal, centralized disclosure filings for all professors, **"certifying that they are following the University's policies related to conflict of interest and commitment."** Part 6.0, Roles and Responsibilities, page 11. "Faculty and other UO employees supply this information for review by the University." Under current policy, this has been left to the judgment of individual units in the university.

5.

A new bureaucracy, the Orwellian-titled "Office for Responsible Conduct of Research" (*which appears to be staffed by persons without advanced academic degrees*), "serves as the primary reviewer of annual and periodic disclosures . . ." Id., page 12. If certain thresholds are exceeded in the report submitted by a faculty member, this Office sends matters to a professor's "supervisor" for the purpose of "mitigation" through development of a "management plan." Id., pages 12 and 14. It appears that if

a faculty member does not like what his or her "supervisor" is ordering, he or she can appeal any "enforcement sanctions" imposed on the professor to another body, the Conflict of Interest and Commitment Committee." Id. at 11.

6.

The Office of General Counsel will serve with the Office for Responsible Conduct of Research as the cops-on-the-beat for scofflaws. That is, they are responsible for overseeing "enforcement of this policy." Id., page 15. Failure to file annual reports, or filing incomplete or misleading annual reports, or failure to follow a "management plan" imposed on a professor, will be "adjudicated in accordance with applicable disciplinary policies and procedures of the University in the Faculty Handbook." Such cases can result in penalties ranging from a warning letter or reprimand up to "dismissal from employment."

7.

The policy that is currently in place provides that any penalty greater than warning or reprimand may be imposed only "in accordance with the procedure in OAR 580-21-325 through 580-21-385." These are Oregon Administrative Rules, adopted under the Oregon Administrative Procedure Act after notice-and-comment rulemaking. **The proposed new procedures would apparently be whatever happens to be written in the "Faculty Handbook," a document not adopted through proper procedures under the Oregon APA.**

8.

A substantial revision is proposed in how much scholarly, professional, and philanthropic activity outside the University a professor can undertake. Under the *current policy*, such activity outside the University "if uncompensated except for expenses and nominal honoraria, [is] not subject to the "one day in seven" time limitation that is applicable to faculty members." Part III-A of UO "Policy Statement, 3.095 Personnel Practices." However, under the *proposed new policy* the one-day-in-seven rule sweeps in ("permits") all such activities, **even scholarly or philanthropic activity done without pay, if performed outside UO and even "travel to other institutions or conferences for the purpose of presenting lectures, leading seminars or workshops or visiting the laboratories of colleagues" -- meaning that they are now limited to the limited allowable time periods in that policy.** Paragraph 4.1, page 3.

9.

A massive shift in the relationship between professors and their university (keeping in mind that the University of Oregon charter, a state statute, provides that professors have the governance of this University) should not be imposed by fiat without thorough vetting and discussion among the faculty of this institution. Since no such discussion has occurred, this whole enterprise needs to be slowed down and proper governance by the university's faculty must take the place of this administratively imposed policy.

• By John E. Bonine, Professor of Law - VERIFIED (not verified) at 12/03/2008 - 06:03

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objection to new policy

I believe this policy is ill-crafted and will drive away faculty members at a time when we need retention the most. It does not appear to have been passed according to faculty governance procedures. It is ambiguous, vague, and undercuts scholarship. It appears to be a significant departure from the existing policy.

In particular, the following section is problematic: " Use of an individual's UO office, computers, internet access, copy machines, facilities, laboratories, students or staff when authoring textbooks, textbook materials, or other publications when those publications are not specifically required by the individual's University employment." It is understood that publications are an important part of our scholarly commitment, yet no publication, in particular, is "specifically required." This provision makes no sense in light of the scholarly expectations of the university. The contradiction between this policy section and the faculty expectations reflects the lack of faculty involvement in the policy as a whole.

I urge the administration to begin the process of faculty involvement and start anew in the discussions of conflict procedures.

• By Mary Christina Wood (not verified) at 12/03/2008 - 05:44

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This policy fits a pattern

This policy fits a pattern that I believe undermines academic excellence at the University of Oregon.

I have noted memos in my inbox arriving regularly about new rules regarding travel reporting, the use of academic support accounts, political activities and so on that seem adopt a default assumption that faculty are irresponsible and not to be trusted.

The tone is too often one of a parent to a badly behaved child. We are not children, and the vast majority of us are responsible, informed, and deeply committed to scholarship and teaching.

The apparent focus on the few 'bad apples' is a narrow vision of efficiency that trades small gains in accountability for a major erosion of good will between faculty and administration, resulting in potentially far greater losses to this institution in the long run.

• By Peter Walker (not verified) at 12/03/2008 - 03:18

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Comment on Draft Conflict of Interest and Commitment Policy

I urge the University to spend more time thinking about an appropriate conflict-reporting policy. The goals – avoiding impermissible conflicts of interest – are admirable, but requiring faculty, OAs and others to submit a 14-page form each year, detailing professional activity and tracking days away on professional work (including weekend days), is not the right way to reach the goals. I would think the University would want to encourage productive faculty to be more productive. The administrative burden of the new reporting requirement falls on the faculty and takes more time away from our work carrying out the University's mission. More importantly, the policy may discourage or prevent faculty from undertaking projects that benefit the University, our students, the academy more broadly, and our own faculty. Faculty may be left with two choices – stop doing so much professional work and spend more time with family and friends (time away from University duties that is not tracked) or leave the UO and join a University that facilitates professional work by its faculty.

I will make just a few particular points and leave other problems for others to address. My first two points address Section 4.6(a), (c) of the draft policy, page 6, and I quote those subsections here:

Inappropriate use of University resources includes but is not limited to:

(a) Assigning the individual's students, staff or postdoctoral scholars University tasks for purposes of potential or real financial gain of the individual rather than the advancement of the scholarly field or the students' educational needs.

(c) Use of an individual's UO office, computers, internet access, copy machines, facilities, laboratories, students or staff when authoring textbooks, textbook materials, or other publications when those publications are not specifically required by the individual's University employment.

Section 4.6(a) is unclear as written. When I use research assistants, I always try to develop projects that will further the student's education, and I always work on a project that will advance my scholarly field. At the same time, there is the potential that I will gain financially from the scholarly work I do because our raises are usually based, in part, on merit. If I write more articles, I may benefit through a larger raise. Further, my colleagues who write textbooks presumably get paid when the textbook is sold. Research assistants often help develop material for textbooks, and in doing so the faculty member helps the students expand their own knowledge of the field. The intent may be to prevent the use of students in outside business activities, unrelated to the University's mission, but that's not what 4.6(a) says.

Section 4.6(b) suggests that writing a textbook is not beneficial to the University's mission or to its students unless the "publications are "specifically required by the individual's University employment." At the law school, I have not yet authored a textbook, but I have thought of doing so because I am dissatisfied with the tools I currently use for teaching. When I think of the leading legal scholars in my fields – trusts and estates and nonprofit law – many of them are textbook authors. My own former dean at the UO Law School, Laird Kirkpatrick, was a leading evidence scholar and was known in part for the terrific textbook he authored. His current institution, the George Washington Law School, clearly values the contributions he has made. Here is the first paragraph from Prof. Kirkpatrick's biography, posted on the George Washington Law School's website:

A former trial lawyer and federal prosecutor, Professor Kirkpatrick has taught evidence and evidence related courses for more than 25 years. He is the coauthor of Evidence Under the Rules (6th ed. Aspen 2008), a coursebook in use at more than 100 law schools, Federal Evidence (3d ed. Thomson/West 2007), a six-volume treatise on the Federal Rules of Evidence, and Evidence (3d ed. Aspen 2003), a one volume hornbook for students and lawyers.

I cannot understand why work on textbooks is outside the scope of our work for the University.

The one-in-seven rule appears in the draft policy as if it is mandated by the state or federal government. It is not, at least in any statute or administrative rule I have found. ORS 351.067 is cited in the new policy:

One-Day-in-Seven time is a privilege granted through ORS 351.067 permitting individuals holding an unclassified appointment to engage in overload and/or outside activities one day in each seven day week that are related to the area of expertise for which the individual was hired.

I've looked at that section of the ORS and the section merely gives the State Board of Higher Education the authority to make rules. Here's the OAR cited at the end of the draft policy:

OAR 580-021-0025

Outside Employment and Activities; Conflict of Interest

(1) No full-time employee of the Department or of any of the institutions or divisions shall engage in any outside employment that substantially interferes with duties. See also IMD 4.005 and 4.010, Board and Institution Policy on Outside Activities and Related Compensation.

(2) Institution employees shall provide written reports to their president regarding potential conflicts of interest as defined under ORS 244.020(8). Other Department employees shall provide the same reports to the Chancellor. Complaints by any person regarding potential conflicts of interest may be referred for investigation to the president, Chancellor or Director of Internal Audit who shall investigate the complaint.

Stat. Auth.: ORS 351.070□Stats. Implemented: ORS 351.070□Hist.: HEB 3-1978, f. & cert. ef. 6-5-78; HEB 6-1991, f. & cert. ef. 10-9-91; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

The one-in-seven rule is a University policy, promulgated by the UO some years ago. I have not found the requirement in any state or federal law. My guess is that it was not intended to prevent faculty from participating in professional meetings or from giving talks at other institutions. The rule was a guideline, intended to help administrators with concerns about faculty spending too much time on non-University-related business activities. A faculty member who meets her obligations to classes, students, committee work, and scholarly production should not be penalized because she is sought after for talks at other Universities or for other types of unpaid professional work.

I have addressed three particular provisions not because these are the only problematic provisions or because these are even the most important, but just as a way to get some comments started and to encourage other faculty to think about how this will affect all of us and the institution. I urge the University to delay the adoption of the policy until a lot more thought has been brought to bear on it.

I want to add a plea for Officers of Administration. People serving the University as OAs will not likely post comments because they do not have tenure. They are supervised in their departments, colleges or schools, and if an OA spends more time than he should away from the University, the supervisor will be able to address the problem. The OAs at the law school are an exceptional group. They work extremely hard, and I would hate to lose any of them.

Susan Gary

Orlando John and Marian H. Hollis Professor of Law

● By Susan Gary (not verified) at 12/03/2008 - 02:36

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I am commenting on the

I am commenting on the proposed Conflict of Interest and Commitment Policy, and the accompanying disclosure form. In the preceding twelve months, I have taught a full-time course-load, participated extensively in local, national, and international academic organizations, and published two articles and four books, one of them a co-written book for which I was the lead author, and another of them a co-written textbook for which I was also the lead author. The other two were solo-authored books, one of which garnered the Oregon Book Award for general nonfiction. In addition another article I wrote was accepted for publication in spring 2009 and I have almost completed a book manuscript under contract with NYU Press.

I am commenting then, as a reasonably productive faculty member and as a legal scholar with over 20 years experience reading and interpreting legal documents. With that background, I submit that the draft policy and disclosure form are riddled with inconsistencies, unclear language, and plain awful logic. For example, I am left wondering whether scholarly works I prepare for a general audience are required by my employment. If not, I supposedly am unable to use University resources to complete them. What about textbooks? Treatises for legal practitioners? Op-eds?

I shared the details of the proposal with faculty members at other competing institutions, and they were aghast. One former member of the UO law faculty characterized the proposal as the last straw in what he saw as the anti-intellectualism campaign at the UO. I find it hard to disagree when any proposal forces me to question the legitimacy of the methods by which I convey my findings toward legal, societal, and political reform.

These changes come at an unfortunate time when the University ought to be positioning itself to retain rather than further burden, annoy, discourage, and even chase away productive faculty members. Please start from scratch and engage the faculty and be transparent in the process. Many of us have options elsewhere but stay for the love of a school whose academic reputation increasingly is tarnished. This proposal points the way to further mediocrity, rather than to greatness.

● By Steven Bender (not verified) at 12/02/2008 - 23:39

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right to comment

I want to know whether I can comment if I do not provide my e-mail address.

I also want to know what it means, that an e-mail address "will not be shown publicly."

Do University administrators have access?

Can un-tenured professors post safely with such restrictions?

• By Anonymous (not verified) at 12/03/2008 - 00:39

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Comment on Draft Conflict of Interest and Commitment Policy

I have significant concerns about a number of specific aspects of this policy, but they are dwarfed by a more general concern with what this policy represents. There are clearly legitimate reasons for the university to be concerned about conflicts of interest and inattention to duties, and there are certainly instances in which individuals have taken on work that erodes their ability to do their jobs at the U of O or failed to make themselves available to students and colleagues on a regular basis. In an effort to address these real problems, this policy takes us down the path of trying to regulate/control time and activities in ways that are time consuming, invasive, and punitive for the vast majority of faculty who do not violate their commitments to the university. They take us in the direction of academic systems where innovation and creativity have arguably been seriously compromised by invasive bureaucratization (e.g., Japan). They seek to legislate time commitments in ways that can easily penalize out-of-town scholarly commitments over in-town non-scholarly commitments; they seek to specify what constitutes the work of faculty in ways that, for example, treat writings aimed at students as beyond the scope of our duties as professors. And they require regular "training sessions" for all faculty (since all faculty are engaged in outside activities as defined in the policy) – overseen by an Orwellian sounding "Vice President for the Responsible Conduct of Research."

My strong recommendation, then, is for the institution to take a very different policy approach from the one set forth in this document. I recommend that we specify a set of engagements/activities that represent clear conflicts of interest with university duties. These would include, for example, teaching for pay at another institution while being employed at the U of O and favoring external entities in an attempt to unduly influence them in their dealings with the University. I would then specify general expectations for the conduct of faculty members, including regular, timely interactions with students and colleagues and continuous research and service throughout one's career in keeping with departmental tenure and promotion guidelines. Then I would indicate that under circumstances in which the proper performance of an individual's duties is called into question, the appropriate administrative authorities have the right to look into time away from campus and other external activities. This puts some burden on administrators, but it takes it away from most faculty who do not abuse the system and it asks administrators to engage in normal oversight activities rather than to function in loco parentis, as the proposed policy with its disclosure statements and training sessions encourages.

My suggested policy approach has several advantages over the current approach. It states a real need up front, but does not start from the presumption that faculty members are likely to misbehave and need to be shown how to conduct themselves. It does not require reporting and oversight of the efforts of committed faculty members. And it focuses attention on the problem cases rather than dragging everyone into a bureaucratic morass. Beyond these general matters, it avoids a number of specific problems with the current policy proposal. I will highlight a couple of my biggest concerns below, but I would argue that these cannot be dealt with by wordsmithing within the current framework. Rather, they call for a fundamentally different approach.

1. Enforcement of the one-day-in-seven rule (noted in the draft policy statement as coming from an Oregon statute, but in fact a policy adopted by the U of O. The cited statute simply calls on the state board to adopt appropriate policies). As a general guideline, this rule makes some sense, but the effort to specify how, exactly, it will work raises form over substance and potentially penalizes those with high-profile careers that take them off campus with some regularity. To sketch a somewhat extreme case to make the point, imagine the following scenario. Faculty member A is relatively unproductive on the research front, meets his classes but is around for a short time each day, saying he does most of his research and writing at home. He responds slowly, if at all, to email messages, and is unreliable when assigned an administrative task. Faculty member B has a very high-profile, productive research career and is on the road quite a bit—giving talks at universities and public fora, serving on committees, lecturing abroad, etc. She misses a number of regular work days, but is often in on weekends and often works late into the evening. Moreover, she goes to great pains to make sure her students know when she is on the road, she responds quickly to email, and she can always be counted on to fulfill any administrative task given to her. Under the current policy, faculty member B is the one who would have to go through the disclosure hoops (a 14-page pdf form!) and could well run afoul of the rules even without missing many classes (if, for example, she taught on a MW schedule, missed one week for a conference and had several late-in-the-week speaking invitations and board meetings that did not require missing class). Do we really want to make the U of O a place that is inhospitable to a public intellectual like a Paul Krugman or a Jeffrey Sachs while letting low performers like faculty member A off the hook? (And imagine the reaction of a Krugman or Sachs if they were confronted with the rules and reporting requirements set forth in the proposed draft at their own institutions!)

Beyond these matters, it is clearly inappropriate to include weekends in any oversight of faculty activities. To hit only the most obvious point, faculty are not compensated to work on weekends (even though most of us do), but if weekends really are included in the calculation of our work, then the rules literally require us to report on any weekend activity, since "outside activity" is defined as "those activities engaged in by UO faculty and other UO employees, whether or not compensated, that are not specifically a part of their University activities." The privacy violations of this rule speak for themselves.

2. The idea that it is inappropriate to use university resources to produce textbook materials (section 4.6) perpetuates an outmoded dividing line between writings for other scholars and writings for students. In law and other disciplines, textbooks are one important way of shaping the trajectory of a field. Do we want to get into the business of policing a dividing line that doesn't exist? More fundamentally, it is arguably a fundamental violation of what a university is about to have a policy that makes writing for other scholars—but not writing for students—within the scope of one's duties. Shall we also preclude writing for a public audience? Where would Jonathan Spence's classic tome, *The Search for Modern China* fit? He wrote it for use by the general public, classes, and other scholars—very likely in that order. The policy as stated suggests that we would not be interested in having a Spence on our faculty.

I could go on, but I think the point is clear. If we start policing faculty activities as set forth in the draft policy statement, we are headed down a very slippery slope—one that could easily undermine some of the things that have made our university what it is. The typical response to the sorts of concerns I have raised is that such policies are needed to respond to state and federal

mandates. But it is not at all clear that there is anything coming from the state or federal government requiring this level of invasiveness or that my alternative policy approach (outlined above) would not meet any such "mandates." Indeed, a strong argument could be made that the university should be doing its best to stand up to attempts at over-regulation. I still hope, perhaps in vain, that American universities can hang onto the openness and flexibility that made them educational leaders in the twentieth century. Alas, this policy takes us in the opposite direction. I strenuously urge that it be rethought.

• By Alec Murphy, Professor of Geography (not verified) at 12/02/2008 - 22:41

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