Policy Q&A

HOP 1.33: Conflict of Interest, Conflict of Commitment, and Outside Activities

Below you will find some questions and answers that may help expand your understanding of UTSA’s HOP 1.33 and how it applies to you. These are general questions and scenarios. If you have any questions about your specific situation, you should first discuss with your supervisor. You may also the Office of Institutional Compliance & Risk Services at 458-5537 or via email: compliance@utsa.edu.

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Where is the policy located?
HOP 1.33 is located here: http://www.utsa.edu/hop/chapter1/1-33.html

To whom does the policy apply?
- The policy prohibiting conflicts of interest and conflicts of commitment applies to all employees.
- The approval and disclosure requirements apply in some way to all UTSA faculty and UTSA Covered Staff.
  - Covered Staff: Those UTSA employees who have been determined to be exempt from the Fair Labor Standards Act and are, therefore not entitled to overtime pay. Also includes employees designated by their Vice President as having authority to exercise discretion with regard to the award of contracts or other financial transactions.

Am I allowed to have outside employment?
The policy does not prohibit outside employment. However, you must request prior approval in most cases. It is up to the institution to determine whether or not such employment – when considered in combination with your job duties and any other outside activities – represents a potential conflict of interest or conflict of commitment.

When do I need to get prior approval for an outside activity?
- All full-time members of the faculty and all full-time Covered Staff members are required to get prior approval before engaging in the following:
  - Any outside employment or other compensated activity
  - Service on outside boards, regardless of compensation, unless it is for a local religious congregation and/or is primarily personal in nature (visit the policy for examples of these exceptions)
  - Any other activity, regardless of compensation, that may create or could appear to a reasonable person to create a conflict of interest or conflict of commitment
- Part-time faculty and part-time Covered Staff need only request prior approval if the activity may create or could appear to a reasonable person to create a conflict of interest.
- Non-Covered staff are not required to request prior approval, but they are still prohibited from having conflicts of interest or conflicts of commitment.
- Annual review and re-approval is required for ongoing activities.
- For more information, see the training materials available here: http://www.utsa.edu/compliance/COI.html
Do I always need prior approval for outside employment?

- In most cases, yes, BUT...
- There are a few exceptions:
  - Non-Covered staff are not required to request prior approval, but they are still prohibited from having conflicts of interest or conflicts of commitment.
  - Part-time faculty and Covered Staff are not required to request prior approval unless the activity could appear to a reasonable person to create a conflict of interest.
  - Outside employment during those months in which a member of the faculty, who is appointed on a 9-month basis (or anything less than 12 months), is not appointed can be considered pre-approved. It requires no further approval, unless the outside employment could appear to a reasonable person to create a conflict of interest, in which case prior approval is required. (Note: Such activity may require disclosure.)
  - There are categories of activities that are considered pre-approved. The activity must clearly contribute to the mission of UTSA and/or provide important elements of development related to your UTSA responsibilities. Examples of pre-approved activities can be found in the policy [http://www.utsa.edu/hop/chapter1/1-33.html, section IX, B. 2. c]. Note: Such activity may still require disclosure.
    - If you have questions about an outside activity you think may be considered pre-approved, contact the Office of Institutional Compliance & Risk Services at ext. 5537, or via email: compliance@utsa.edu.
  - There may be activities that by their nature cannot be specifically approved before the work must begin, such as consulting on an emergency or other urgent need. You can request approval promptly retrospectively, by selecting that option in the online request form at: http://outsideactivity.utsystem.edu.

How do I get prior approval?

- You must request prior approval by completing the request form available in the Outside Activity Online Portal at: http://outsideactivity.utsystem.edu.
- There are tool tips as well as detailed instruction videos available to guide you through the process.

My request to take on outside employment was rejected. Do I have any options?

- You can appeal the decision. HOP 1.33 has a process, outlined in section IX. D., for you to appeal any decisions.

Who needs to make disclosures?

- All full-time members of the faculty and all full-time Covered staff are required to make disclosures. These full-time employees must also disclose for members of their immediate
family if the activity could appear to a reasonable person to be a conflict of interest (Example 3, below).

- Part-time members of the faculty and part-time Covered staff are required to make disclosures only if the activity could appear to a reasonable person to be a conflict of interest. The policy does cover conflict of commitment for part-time employees. Part-time employees do not have to report for members of their immediate family.
- Non-Covered staff are not required to make disclosures, but they are still prohibited from having conflicts of interest or conflicts of commitment.

**What is a conflict of commitment?**

A state in which the time or effort that a UTSA employee devotes to an outside activity directly or significantly interferes with the employee’s fulfillment of his/her institutional responsibilities or when the employee uses State property without authority in connection with the employee’s outside employment, board service, or other activity (See Sec. 8, RR 30104). Exceeding the amount of total time permitted by UT System or institution policy for outside activities creates the appearance of a conflict of commitment.

Conflict of commitment is generally an issue of time.

Only an UTSA employee – not a member of the employee’s immediate family – can have a conflict of commitment. Part-time employees generally do not have conflicts of commitment.

**Examples of Conflict of Commitment:**

1. *This is the most obvious and easily recognizable example of conflict of commitment.* A full-time UTSA employee has a second job in the evenings. The employee is often late to the office, frequently lethargic and unproductive, and sometimes leaves early to get to his other job. The quality of his work and his dependability have declined. This employee has a conflict of commitment. His outside employment is interfering with his ability to fulfill his responsibilities to UTSA.

2. *It is not always one single activity but the sum total of a variety of activities that may result in a conflict of commitment.* For instance, in addition to her teaching and research duties, a UTSA faculty member served as a reviewer for two journals, gave the keynote address at four conferences, and also gave lectures at three medical campuses. There is value in these outside activities, and UTSA encourages faculty to engage in them. However, in this instance, the chair of the department is concerned that the combination of all of these activities for one faculty member may be creating a conflict of commitment. They have put a conflict management plan in place to provide checkpoints to ensure that her teaching and research responsibilities are being met.
What is a conflict of interest?
A significant outside interest of a UTSA employee or one of the employee’s immediate family members that could or could appear to a reasonable person to directly or significantly affect the employee’s performance of the employee’s institutional responsibilities. The proper discharge of an employee’s institutional responsibilities could be directly or significantly affected if the employment, service, activity, or interest: (1) might tend to influence the way the employee performs his/her institutional responsibilities, or the employee knows or should know the interest is or has been offered with the intent to influence the employee’s conduct or decisions; (2) could reasonably be expected to impair the employee’s judgment in performing his or her institutional responsibilities; or (3) might require or induce the employee to disclose confidential or proprietary information acquired through the performance of institutional responsibilities. Employees should use their judgment in determining what activities could appear to a reasonable person to affect or to interfere with their professional obligations to UTSA and should consider how reasonable individuals (including their supervisor and the general public) will view their outside interests.

Conflict of interest can arise because of the employee’s own activities or financial interests or those of the employee’s immediate family members.

Conflict of interest is usually an issue of financial or other personal gain. In most cases, the activity or interest must be related to your UTSA responsibilities in order to create a conflict of interest.

Examples of Conflict of Interest:
1. As part of her responsibilities, a UTSA employee has some influence in awarding the contract for facilities maintenance. Her son owns and operates a company that performs this type of service and has submitted a bid. This is a potential conflict of interest arising from her son’s substantial interest in a business entity that is related to her job responsibilities.

   If her son were an employee of the company instead of owner, this could still be a potential or perceived conflict of interest. She should discuss with her supervisor and/or the UTSA Compliance Officer whether or not she should disclose this under UTSA HOP 1.33. If her son’s company was not submitting a bid for this contract, this would not be a conflict of interest and would not need to be disclosed.

There are many examples of potential conflict of interest for those who are engaged in research. However, those activities and those conflicts are covered by a separate policy UTSA HOP 10.04 – Conflicts of Interest in Research & Intellectual Property.

If I am required to make disclosures, what activities do I need to disclose?
UTSA HOP 1.33, section IX. B. 3 – Information Required to Be Disclosed by Faculty and Covered Staff to UTSA covers the disclosure requirements. In summary:

- All outside employment or other compensated activity.
Report outside employment or other compensated activities for immediate family members **only** if it may appear to a reasonable person to create a conflict of interest or conflict of commitment. Part-time covered employees **only** report these activities if it may appear to a reasonable person to create a conflict of interest. Part-time covered employees **do not** report for immediate family members.

- **Outside board service.**
  - Exceptions exist for service to a local religious congregation or to a board for which the service is primarily personal rather than professional in nature. See UTSA HOP 1.33, Section VII - **Outside Board Service** – Exclusion for Personal Activities for more details.
  - Report service on boards for immediate family members **only** if it may appear to a reasonable person to create a conflict of interest.
  - Part-time covered employees **only** report if it may appear to a reasonable person to create a conflict of interest or conflict of commitment. Part-time covered employees **do not** report for immediate family members.

- **Uncompensated activity** is required to be reported **only** if it may appear to a reasonable person to create a conflict of interest or conflict of commitment.

- **Substantial interest in a business entity.**
  - For all: Reportable **only** if the interest may appear to a reasonable person to create a conflict of interest or conflict of commitment.
  - Part-time covered employees **do not** report for immediate family members.

- **Gifts of more than $250 given to you or your immediate family members.**
  - For all: Reportable **only** if it may appear to a reasonable person to create a conflict of interest or conflict of commitment.

**What kind of information do I need to tell about the activity or interest?**

Nature and extent includes a description of the organization, description of major duties to be performed, the anticipated time commitment, and the anticipated length of time the commitment is expected to continue. An employee must also disclose the range of total annual compensation received for an activity – or from a single entity for multiple activities – **if** it is greater than $5,000 AND there is a conflict of interest or conflict of commitment.

Note: Compensation is any form of benefit including but not limited to salary; retainer; honoraria, sponsored travel or reimbursement, intellectual property rights or royalties, or promised, deferred, or contingent interest. Compensation may be in kind. Compensation does not include income from seminars, lectures, teaching engagements or service on an advisory or review panel. Also excluded is travel that is reimbursed or sponsored by a U.S. federal, state, or local government agency, a U.S. institution of higher education, an academic teaching hospital, a medical center, or a research institute that is affiliated with a U.S. institution of higher education.

A noted exception relates to compensation provided to UTSA that is designated for one or more UTSA employees and will be disclosed as compensation. When UTSA accepts a gift, grant, donation, or other
compensation from a person that the person designates to be used as a salary supplement for a UTSA employee, the receiving entity shall analyze the gift, grant or donation for potential conflicts of interest. If a conflict of interest exists, UTSA will use its current processes and procedures to eliminate or manage the conflict.

What does “immediate family” mean?
Immediate family members include:
- a spouse;
- a dependent child or stepchild or other dependent, for purposes of determining federal income tax liability during the period covered by the disclosure statement; and/or
- a related or non-related, unmarried adult who resides in the same household as the employee and with whom the employee is financially interdependent as evidenced, for example, by the maintenance of a joint bank account, mortgage, or investments.

The policy says this data will be publicly available online. Is that true?
Yes, in some instances. There will be an online database by individual with the nature and extent of the activity, and the range of compensation if more than $5,000, for all managed conflicts of interest or conflicts of commitment, unless deemed confidential by the institution.

No information will be available online for members of an employee’s immediate family.

Do faculty with nine-month appointments have to disclose outside employment?
Yes. This is considered a full-time appointment and a continuing position. Any outside employment – even if performed over the summer break – must be disclosed. However, if it occurs during the time when an employee is not appointed, it does not require prior approval except (a) if the activity could be perceived by a reasonable person to be a conflict of interest or (b) as required by HOP 10.15 – Management, Use and Commercialization of UTSA Intellectual Property.

Does “substantial interest” include mutual funds?
No. Income from investment vehicles, such as mutual funds or retirement accounts, is not a substantial interest as long as the individual does not directly control the investment decisions made in those vehicles.

Can travel or conference registration fees be considered a gift?
Yes. If the reimbursed travel or registration fees – or travel or fees that are directly paid by a third party (not you and not UTSA) – are not for services rendered (for example, if you attend but do not work or present at a conference), then they would be considered gifts. Gifts must be disclosed if they may reasonably appear to create a conflict of interest. If the travel is in return for services (say presenting or speaking), then it is considered compensation and may need to be reported as outside employment.
Please note: There could be issues in accepting such a gift over and above this policy. Please consult with the UTSA Ethics Officer (Chief Legal Officer).

**What does “primarily personal” mean in regard to Service on Outside Boards?**
This refers to service that is unrelated to your position at UTSA or your UTSA responsibilities. Examples include boards of the following nature – a municipality; local religious congregation; neighborhood association; public, private or parochial school; political organization; social advocacy organization; youth sports or recreation league; affinity group such as the local orchid society or model train collectors club; and other similar outside boards.

**I was told I need a conflict management plan. What is that? Is it something bad in my personnel record?**
- Whenever you are engaged in an outside activity or have an outside interest that may appear to create a conflict, you must have a management plan in place.
- Your management plans will be developed by you in conjunction with your Approval Authority, and it will be approved by the Approval Authority’s supervisor.
- Conflict management plans are put in place to provide checkpoints to ensure that your outside activity does not interfere with the discharge of your UTSA responsibilities.
- This is not a negative mark on your personnel record.

**The approval for my activity has been rescinded. What does this mean?**
- Approvals may be rescinded if information is received that indicates the activity is not consistent with the policy or any applicable law or UTSA or UT System policy or the management plan has failed to ensure consistency with policy and law or is not being followed.
- You will be given notice in writing and have an opportunity to respond in accordance with UTSA HOP 1.33, Section IX. C – *Appealing an Approving Authority’s Decision*. 
<table>
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<th>Activity Type</th>
<th>FULL-TIME: Yourself</th>
<th>FULL-TIME: Immediate Family</th>
<th>PART-TIME: Yourself</th>
<th>PART-TIME: Immediate Family</th>
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<tr>
<td>Outside Employment/Other Compensated Activity</td>
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<td>Yes (a few exceptions)</td>
<td>Only COI/COC</td>
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<td>Substantial Interest in a Business Entity</td>
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<td>No</td>
<td>Yes</td>
<td>Only COI</td>
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<tr>
<td>Service on Outside Boards</td>
<td>Most (a few exceptions)</td>
<td>Yes (a few exceptions)</td>
<td>Only COI/COC</td>
<td>Only COI</td>
</tr>
<tr>
<td>Other Outside Activity</td>
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<td>Yes</td>
<td>Yes</td>
<td>Only COI</td>
</tr>
<tr>
<td>Gifts Over $250</td>
<td>Only COI</td>
<td>No</td>
<td>Yes</td>
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