Conflict of Interest, Conflict of Commitment, and Outside Activities

UTSA HOP 1.33

Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff
The following slides are for PART-TIME Non-Tenure Track Faculty not engaged in research AND PART-TIME 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.
Is This the Right Training Module for You?

If you answer YES to ALL of these statements, then this is the correct training module for you.

1. I am NOT engaged in research
   • “Research” means any systematic investigation, study, or experiment designed to develop or contribute to generalizable knowledge. The term includes both basic and applied research and product development
   • Those engaged in research would include anyone who is a principal investigator, co-investigator, or project director, or is otherwise responsible for the design, conduct, or reporting of research

2. I am a part-time employee

3. I am an exempt employee
   • An exempt employee is NOT paid overtime, based on the Fair Labor Standards Act

   OR

I am a non-exempt employee with fiduciary responsibilities
   • Examples of fiduciary responsibilities include: administering grants, executing or influencing the execution of contracts, directing budgets, and purchasing

If you answered NO to any of these statements, this is NOT the correct training module. Please return to the UTS 180 Reference Page to locate the training applicable to your employment status.
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What Is Covered in This Training?

UTSA has policies that delineate the nature and amount of permissible outside work or activity, including outside board service, for its employees. These policies include an approval process and a disclosure process, both of which require your understanding and action.

The training today will cover HOP 1.33 – Conflict of Interest, Conflict of Commitment, and Outside Activities as well as the UT System policy (UTS 180), governing:

- Outside activities
- Conflicts of interest
- Conflicts of commitment
What Is the UTS 180 Policy?

• The UTS 180 policy protects the credibility and reputation of the UT System Administration, of each UT institution, and of their employees
• It provides a transparent system of disclosure, approval, and documentation of employees’ outside activities
• The policy ensures and supports compliance with State ethics laws and Regents’ Rules
• It provides the framework for rules and procedures that define permissible outside activities
• It is the foundation for HOP 1.33 – Conflict of Interest, Conflict of Commitment, and Outside Activities
Do the UTS 180 and UTSA HOP 1.33 Policies Affect Me?

• The **UTS 180** and **HOP 1.33** policies apply to *all* employees
• The policies regulate conflicts of interest, as well as conflicts of commitment for all employees
• Non-compliance with these policies may subject an employee to discipline in accordance with applicable procedures – up to and including termination of employment

*This will be discussed in detail later in this presentation*
What Is an Outside Activity?

• An outside activity is any activity – compensated or uncompensated – that occurs outside the duties and responsibilities of your UT appointment

• The types of outside activities covered in this training include:
  • Outside employment
  • Other compensated activity
  • Service on outside boards
  • Substantial interest in a business entity
  • Acceptance of gifts
  • Uncompensated outside activity
Can I Have Outside Activity?

- The primary responsibility of employees is the accomplishment of his/her duties and responsibilities to UTSA.
- An employee may engage in outside activities, as long as the activities comply with applicable Regents’ Rules, UTS/UTSA policies, and related state and federal codes.
- The outside activity must not create a potential conflict of interest or conflict of commitment when considered in combination with your UTSA job duties and any other outside activities.
What Is a Conflict of Interest?

- A significant outside interest or activity of an employee or immediate family member can be considered a conflict of interest if it could or could appear to a reasonable person to directly or significantly affect the employee’s performance of his/her institutional responsibilities.
- It is also considered a conflict of interest if the proper discharge of an employee’s institutional responsibilities is directly or significantly affected by the employment, service, activity, or interest to the extent that:
  - it influences the way an employee performs his/her institutional responsibilities;
  - the employee knows or should know the interest is or has been offered with the intent to influence the employee’s conduct or decisions;
  - the activity is reasonably expected to impair the employee’s judgment in performing his/her institutional responsibilities; or it requires or induces 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.

(cont’d)
What Is a Conflict of Interest?

• A UTSA employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the employee’s duties for UTSA

Conflict of interest is generally an issue of financial or personal gain
What Is a Conflict of Commitment?

• When the time or effort that an employee devotes to an outside activity directly or significantly interferes with the fulfillment of his/her UTSA responsibilities
• When the employee uses State property without authority in connection with his/her outside activity
• When the employee exceeds the amount of total time permitted for outside activities by UTSA HOP 1.33 – Conflict of Interest, Conflict of Commitment, and Outside Activities

(cont’d)
What Is a Conflict of Commitment?

- Activities on behalf of outside entities or individuals must not interfere with an employee’s fulfillment of his/her duties and responsibilities to UTSA.
- Conflicts of commitment may arise regardless of the:
  - Location of these activities (on- or off-campus)
  - Type of outside entity (individual, for-profit, not-for-profit, or government)
  - Level of compensation (compensated or uncompensated)

*Conflict of commitment is generally an issue of time*
Prohibited Outside Activities

The following outside activities are prohibited if they are in conflict with the performance and fulfillment of an employee’s duties for UTSA:

• Having direct or indirect interest in a business entity, including financial and other interests
• Engaging in a business transaction or professional activity
• Incurring any other obligation that presents a conflict
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

THE DISCLOSURE PROCESS
What is Disclosure?

• Providing a description of outside activities to prevent, identify, and resolve conflicts of interest and conflicts of commitment
How Is a Disclosure Different from Approval?

• In general, an approval is for an activity that *will* occur—something you will do in the *future*.

• A disclosure is for an activity that *has* occurred—or *is occurring*. It is also more comprehensive, covering activities and interests that may be a conflict of interest. Disclosures also cover immediate family members.
Who Needs to Make Disclosures?

• Full-time faculty
• Full-time Covered Staff—defined as those UTSA employees who have been determined to be exempt from the Fair Labor Standards Act and are, therefore, not entitled to overtime pay. It 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.
• Full-time faculty and full-time covered staff with immediate family members who have activities or substantial financial interests that appear to a reasonable person to create a conflict of interest.
• Part-time faculty and part-time covered staff if the activity appears to a reasonable person to create a conflict of interest.
• Part-time employees are **not** required to disclose for immediate family members

(cont’d)
Disclosure Requirements

- Part-time covered employees are required to disclose:
  - The nature and extent (but not compensation range) of any outside activity and any substantial interest in a business entity* that could appear to a reasonable person to create a conflict of interest
  - Again, part-time employees are not required to disclose for immediate family members

*Business Entity: Any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust.
When in doubt in determining whether an activity or interest should be disclosed, the individual should resolve the doubt in favor of disclosure.
## Summary of Disclosure Requirements

### Part-time Faculty and Covered Staff

<table>
<thead>
<tr>
<th>Outside Employment/Other Compensated Activity</th>
<th>When is Activity Reported?</th>
<th>Requires Prior Approval</th>
<th>Online Public Database</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only COI</td>
<td>Only COI</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

| Substantial Interest in a Business Entity   | Only COI                  | No                      | No                     |

<table>
<thead>
<tr>
<th>Service on Outside Boards (except religious and/or primarily personal)</th>
<th>Only COI</th>
<th>Only COI</th>
<th>No</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Other Outside Activity</th>
<th>Only COI</th>
<th>Only COI</th>
<th>No</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Gifts Valued at More than $250</th>
<th>Only COI</th>
<th>No</th>
<th>No</th>
</tr>
</thead>
</table>
## Summary of Disclosure Requirements

### Part-time Faculty and Covered Staff - Immediate Family

<table>
<thead>
<tr>
<th>Activity</th>
<th>When is Activity Reported?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside Employment/Other Compensated Activity</td>
<td>N/A</td>
</tr>
<tr>
<td>Substantial Interest in a Business Entity</td>
<td>N/A</td>
</tr>
<tr>
<td>Service on Outside Boards</td>
<td>N/A</td>
</tr>
<tr>
<td>Other Outside Activity</td>
<td>N/A</td>
</tr>
<tr>
<td>Gifts Valued at More than $250</td>
<td>N/A</td>
</tr>
</tbody>
</table>
The Disclosure Process

*Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff*

REVIEW
The Disclosure Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

Scenario:

Dr. Keith Richards is a part-time adjunct in the geology department. He has been asked to teach at a private university in the summer; he will earn $10,000 for the summer. Additionally, he has been asked to consult for an oil company of which his wife Mary is CEO and a principle owner.
The Disclosure Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Question:** Does Dr. Richards need to get prior approval for teaching during the summer?

- Yes
- No
Correct Answer:

✓ No

Part-time members of the faculty are not required to get prior approval unless the activity could appear to a reasonable person to create a conflict of interest.
Question: Must Dr. Richards disclose his outside teaching?

- Yes
- No
Correct Answer:

✓ No

Because he is part-time, Dr. Richards is not required to disclose the outside teaching, unless it could appear to a reasonable person to create a conflict of interest.
The Disclosure Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

Question: Does Dr. Richards have to disclose his range of compensation for the outside teaching?

- Yes
- No
Correct Answer:

✓ No

Since Dr. Richards’ outside teaching is not considered a conflict of interest, he does not have to disclose the activity or compensation. If it were a conflict, Dr. Richards would be required to disclose the activity but not the compensation (due to his part-time status).
The Disclosure Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Question:** Does Dr. Richards have to get prior approval or disclose his consulting work?

- [ ] Yes to both
- [ ] No to both
- [ ] He must get prior approval only
- [ ] He must disclose only
Correct Answer:

✓ No to both

Since the consulting does not appear to a reasonable person to create a conflict of interest, Dr. Richards, a part-time employee, does not have to get prior approval for or disclose the consulting.
The Disclosure Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Question:** Does Dr. Richards have to disclose his wife’s substantial interest in a business entity?

- Yes
- No
Correct Answer:

✓ No

Dr. Richards does not have to disclose information regarding his wife because part-time employees are not required to disclose for family members.
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

THE APPROVAL PROCESS
Prior Approval May Be Required

• Part-time members of the faculty and part-time covered UTSA staff are required to obtain prior approval for the following activities **ONLY IF** the activity would appear to a reasonable person to be a conflict of interest:
  • All outside employment or other compensated activities – except as excluded specifically below in “Exceptions”
  • Service on outside boards (some exclusions)
  • Any uncompensated activity that could appear to a reasonable person to create a conflict of interest or conflict of commitment

• Annual re-approval is required for ongoing activities
  • Even in the case of a multi-year contract that has already received approval, employees must re-apply for approval on an annual basis
What Information Is Required to Get Approval?

- Nature and extent of the activity
  - Description major duties to be performed
  - Basic information about the organization
  - The anticipated time commitment
  - The anticipated length of time the activity is expected to continue

- Compensation*
  - Salary
  - Retainer
  - Sponsored travel or reimbursement
  - Honoraria
  - Intellectual property rights or royalties
  - Promised, deferred, or contingent interest

*Compensation does not include 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 an U.S. institution of higher education.
Exceptions – Outside Activities

• Outside Activities and Outside Board Service during the summer (i.e., those months in which a faculty member on a 9-month appointment does not have an employee appointment) are considered pre-approved, requiring no further approval, unless otherwise required by HOP Policy 10.04 – Conflicts of Interest in Research & Intellectual Property or the Outside Activities or Outside Board Service, appears to a reasonable person to create a conflict of interest. In these cases, prior approval is required.

• In rare instances, an Outside Activity or Outside Board Service may be approved retrospectively when the employee is called upon to assist in an emergency or urgent situation where it would be impossible or unreasonable to obtain advance approval. In such cases, the activity must be fully disclosed and approval sought from the appropriate Approval Authority as soon as reasonably possible.
Exceptions – Outside Activities

• There are some activities that are considered pre-approved such that approval need not be obtained prior to engagement in the activity. Examples include:
  • Serving on a federal, state, or local government agency committee, panel, or commission
  • Acting in an editorial capacity for a professional journal
  • Reviewing journal manuscripts, book manuscripts, or grant or contract proposals
  • Attending and presenting talks at scholarly colloquia and conferences
  • Developing scholarly communications (e.g., books, journal articles, movies, television productions, and similar works, consistent with intellectual property and other applicable System and UTSA policies and guidelines)
  • Serving as a committee member or officer of a professional or scholarly society, school board, or non-profit organization
  • Accepting a commission for an architectural, artistic work or performance that is considered an integral part of a faculty member’s academic portfolio (e.g., a work of art or a dance performance)
Exceptions – Confidential Activities

• Prior approval is still required even for those activities for which the details must remain confidential by law if the activity would appear to a reasonable person to create a conflict of interest.

Examples include:
• Third-party proprietary information
• Classified government work
• Other information made confidential by law

Please note:
An employee engaged in a confidential activity should contact their Approving Authority (typically their supervisor) for instructions
Exceptions – Board Service

• Service on a non-religious board requires prior approval if the service would appear to a reasonable person to create a conflict of interest.

• Exception: Participation (regardless of compensation) on Outside Boards or activity in which the service is primarily personal rather than professional in nature and is done on one’s own time is permitted without the requirement of approval and disclosure if it does not OR does not appear to a reasonable person to create a Conflict of Interest or Conflict of Commitment.

• Examples of boards that are considered primarily personal in nature include:
  • Municipality
  • Neighborhood association
  • Political organization
  • Public, private or parochial school
  • Social advocacy organization
  • Other similar boards
Exceptions – Religious Boards

- Service to a local religious congregation that is primarily personal in nature, and does not create a conflict of interest or a conflict of commitment, does not require prior approval, regardless of compensation

**However**

- Serving on a board of a religious organization that provides services that the employee’s UT institution provides – such as a religious hospital or academic institution – *does* require prior approval
What if My Request Is Rejected?

- An employee is allowed to appeal a decision. The process to appeal a decision is found in [HOP 1.33 – Section IX.D – Appealing an Approving Authority’s Decision](#).
- Even if an employee received approval to engage in an activity, the approval may be rescinded at any time for cause. The appeals process is also available in this circumstance.
- Your request for approval of an outside activity may be rejected if it does not comply with applicable policies, regulations, and laws, or if it creates a conflict of commitment or conflict of interest that cannot be managed.
The Approval Process

Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

REVIEW
The Approval Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Question:** What types of activities require prior approval IF the activity appears to a reasonable person to create a conflict of interest?

- Outside employment
- Other compensated activity
- Service on outside boards (in some cases)
- Substantial interest in a business entity
- Acceptance of gifts
- Uncompensated outside activity that is a conflict
Correct Answers:
✓ Outside employment
✓ Other compensated activity
✓ Service on outside boards (in some cases)
✓ Uncompensated outside activity that is a conflict

Interest in a business entity and acceptance of gifts may require immediate disclosure, as opposed to prior approval, if they appear to a reasonable person to create a conflict of interest.
The Approval Process – REVIEW

Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Scenario:**
You are asked to make a presentation at a conference. It is agreed that your travel expenses will be reimbursed, but you will not receive an honoraria.

*Based on the above scenario, please answer the following questions.*
Question: Is this speaking engagement at a conference considered outside employment?

☐ Yes
☐ No
Correct Answer:

✓ Yes

Any activity performed by an employee for an organization other than The University of Texas System Administration or a University of Texas institution – for which remuneration is received – is considered an outside activity.
The Approval Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Question:** Does a speaking engagement at a conference require prior approval?

- Yes
- No
Correct Answer:

✓ No

This particular outside activity is considered a pre-approved activity, since it contributes to the mission of the institution and does not create a conflict of interest.
The Approval Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Question:** Are the travel expenses related to this activity considered compensation?

- Yes, reimbursed travel expenses are considered compensation
- No, reimbursed travel expenses are not considered compensation
Correct Answer:

✓ Yes, reimbursed travel expenses are considered compensation
The Approval Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Scenario:**

Dr. Stephen Tyler is part-time faculty with a 9-month appointment at UTSA. A local community college asks Dr. Tyler to teach a night-time extension course, which is scheduled during Dr. Tyler’s appointment with UT. He is paid $10,000.

During the summer months, when the professor is not teaching, he serves on the board of his son’s Youth Soccer League.
The Approval Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Question:** Does Dr. Tyler need approval for his outside employment at the community college?

- [ ] Yes
- [ ] No
Correct Answer:

✓ Maybe

Dr. Tyler, as a part-time faculty member, Dr. Tyler would be required to obtain prior approval for his outside employment at the community college only IF the activity appears to a reasonable person to be a conflict of interest.
The Approval Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

Scenario:

Lola Gatz is a part-time exempt employee in the accounting office.

She is a competitor on the amateur rodeo circuit. She enters barrel racing events, but is paid no winnings. However, her travel to the rodeos requires her to take time off from work on a regular basis, usually 4 days a month.
The Approval Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Question:** Does Lola need to get approval for this uncompensated activity?

- Yes
- No
Correct Answer:

✓ Maybe

While Lola receives no compensation for her rodeo activities, she does take time off from work on a regular basis to attend the events. In this case, she may be required to obtain prior approval for this uncompensated activity because her activities may appear to a reasonable person to create a conflict of commitment. Regardless, Lola is required to follow the University’s leave policy and process regarding requesting vacation time.
The Approval Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

Scenario:
Bob Cratchit is part-time exempt staff in the economics department. He serves on the board of the non-profit Texas Association of Business.
The Approval Process – REVIEW
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

**Question:** Does Bob need to request prior approval for his board service?

- Yes
- No
Correct Answer:

✓ No

Most service on outside boards does require prior approval. However, because Bob is a part-time employee, he does not need to request prior approval, unless the activity may appear to a reasonable person to create a conflict of interest. Part-time employees generally cannot have conflicts of commitment.
Part-time Non-Tenure Track Faculty and part-time Covered UTSA staff

ADDITIONAL PROCESS REQUIREMENTS
Conflict Management Plans

• In addition to the approval and disclosure requirements listed earlier, the policies include a process for establishing a plan to manage conflicts or potential conflicts of interest or commitment
  • All conflicts must be managed
  • Conflict management plans must be recorded for future use or reference
  • Conflict management plans will be made available to the public by a request made under the Texas Public Information Act
What Will Be Reported to UT System?

For **part-time** members of the faculty and part-time members of the covered staff:

- A description or the nature and extent of any outside activity and any substantial interest in a business entity that appears to a reasonable person to create a conflict of interest
Public Display of Information

The following information will be available on a publically accessible and searchable website hosted by UT System:

• The nature and extent of the activity, and the range of compensation if over $5,000, for all managed Conflicts of Interest or Conflicts of Commitment, unless deemed confidential
• All information disclosed by the President
• Instructions for gaining access to a copy of any conflict management plan via the Texas Public Information Act, except for any confidential information

NOTE: Information regarding Immediate Family Members will not be posted publically
Additional Information

• For questions regarding the UTSA HOP policy, please contact the Office of Institutional Compliance & Risk Services at (210) 458-2667 or compliance@utsa.edu