

**Disclosure of External/Internal Consulting Activities and Conflicts of Interest
Guidelines for Faculty
from the Office of the Provost**

UAB encourages its faculty to engage in appropriate consulting activities because these activities generally serve the academic interests of UAB. Section 3.5 of the *UAB Faculty Handbook and Policies* states, “UAB recognizes the desirability of making available the services of the many highly trained specialists on its faculty to business, industry, government, professional societies or other appropriate groups.”

Appropriate disclosure policies and reporting requirements are necessary to protect the interest of all parties, preserve the integrity of the institution, and safeguard the privilege of engaging in these activities. Federal regulations and current *Handbook* policies on consulting activities (Sections 3.5.1 – 3.5.2) outline responsibilities of faculty members, Department Chairs, Dean/Library Directors, and the Provost in “exercising judicious oversight and control of consulting activities.”

On January 2, 2009, The University of Alabama at Birmingham launched a new online process for faculty and staff to disclose external or internal consulting activities and sponsored research submissions. This simplified, user-friendly process will hopefully promote compliance with consulting policies that are already in place.

The following specific disclosure guidelines are provided to assist you in determining whether disclosure is required under existing UAB policies, and, if so, what information needs to be disclosed, how to disclose it on the online form, and how it is reviewed.

External Consulting (or Consulting Outside UAB):

Section 3.5.1 of the *Handbook* sets forth appropriate types of external consulting and outlines the reporting/approval process: “[f]ull-time faculty members may . . . contract to perform independent research, to furnish services as a consultant, or both, provided such activity:

- (a) does not interfere with the performance of other responsibilities as a faculty member,
- (b) is limited in time,
- (c) is compatible with the interests of UAB as a public academic institution, and
- (d) does not require significant use of UAB resources or facilities.”

Prior approval to participate in external consulting activities must be obtained by submitting the activity through the online disclosure process (using Option A) and

receiving approval from the Department Chair and the Dean/Library Director (or approved delegates).

Certain activities are exempt from the requirement for prior approval. These exceptions include activities that, assuming they do not constitute a conflict of interest or conflict of commitment, are generally recognized as professional responsibilities, are limited in time, or do not involve significant use of UAB resources. Examples of such activities might include:

- (a) participation in compensated or uncompensated manuscript review, grant/contract review, or academic program review;
- (b) uncompensated professional studies or services for not-for-profit entities, and
- (c) occasional (defined as more than 1 time per year for the same entity) compensated or uncompensated seminars, presentations, or performances for civic groups or at schools, universities, research institutes, or for-profit businesses.

Internal Consulting (or Consulting Within UAB):

Section 3.5.2 of the *Handbook* addresses internal consulting, which is defined as the “[c]onsulting and the performance of duties by faculty members for special fees within UAB.” Special fees for internal consulting (those that UAB provides above institutional base salary) will not be subject to UAB’s normal retirement benefits (i.e., Teachers Retirement and TIAA-CREF). A faculty member’s internal consulting activity must be limited in time. Faculty will be permitted to perform consulting and other types of services within UAB when:

- (a) “the individual has specialized training or knowledge essential to the programs; and
- (b) the performance of these duties is such that it is above and beyond the commitments associated with the faculty appointment.”

Prior approval is required for all internal consulting and must be obtained by submitting the activity through the online disclosure process (using Option B) and receiving approval from the appropriate Department Chair and Dean/ Library Director(or approved delegates). If consulting is across school lines, the school or unit requesting the service and the Provost (or approved delegate) must also give approval. All approvals should be obtained before a commitment is made; however, if circumstances prohibit disclosure prior to an activity, the consultant should disclose the activity as soon as possible with an explanation of the circumstances that led to the late disclosure.

Additional Requirements: Federal laws relating to the administration of federal grants and contracts (*e.g.*, OMB Circular A-21; PHS 398 Grant Applications; PHS Grants.gov Application Guide SF424(R&R)), require additional considerations for internal consulting supported by extramural grants and contracts. These internal consulting activities must qualify as “incidental work” and be approved by the sponsor in writing to meet the federal standards set forth in the U. S. Office of Management and Budget (OMB) Circular A-21. Under these federal cost standards, “incidental work” for which separate pay may be made to faculty outside the faculty’s institutional base salary generally may **NOT** include work on sponsored agreements. The only exception is if the work qualifies as sponsor-approved intra-university consulting, as described in OMB Circular A-21.J.10d(1), as follows:

“In unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency...” [If approved], “charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base rate. In no event will charges to sponsored agreements, irrespective of the basis of compensation, exceed the proportionate share of the base salary of that period.” [In other words, pay must be commensurate with institutional base pay and level of effort.]

Faculty members MAY NOT consult on grants for work that would normally be performed by individuals who are considered key personnel or investigators on a sponsored project. In addition, internal consulting may not be used directly or indirectly to increment institutional base salary as a result of the award of a federal grant. The most direct federal rule on this issue appears in the NIH instructions for the standard PHS 398 and SF424 (R&R) grant applications: “Base salary may not be increased as a result of replacing institutional salary funds with grant funds.” For example, if a faculty member with a base salary of \$50,000, entirely supported by institutional funds, receives an extramural award that supports 20% (*i.e.*, \$10,000) of his salary, the university could not then increase the faculty member’s institutional base salary to \$60,000 and charge the external entity on that basis. Nor is it appropriate in such a case for the faculty member to be “released” from responsibilities in teaching, research, service and/or administration for such award and then for the unit to pay the faculty member in the form of internal consulting or “overload” to deliver the responsibility from which s/he has been “released.”

Conflicts of Commitment and Conflicts of Interest:

Section 3.5.3 of the *Handbook* defines a conflict of commitment as occurring “...when a faculty member assumes obligations outside UAB or elsewhere within UAB which interfere with the faculty member’s properly discharging his or her obligations and commitments to UAB.” A conflict of interest occurs “...when a faculty member influences, or makes use of, UAB’s academic, administrative or other resources or influences decisions in a way that could lead to personal financial gain or advantage to that faculty member or to that faculty member’s family or business.”

Intellectual Property Rights:

Consulting arrangements with external entities often incorporate contractual obligations regarding intellectual property generated during the consulting relationship. These provisions should be reviewed carefully. Section 3.10 of the *UAB Faculty Handbook* clearly states that a faculty member’s obligations to UAB under the UAB Patent Policy take precedence over any consulting arrangement with a third party. The UAB Patent Policy and Section 3.10 of the *Handbook* require disclosure of discoveries and inventions that may have commercial value and/or utility. The disclosure should be made to the UAB Research Foundation.

Ownership of any invention or discovery is assigned to UAB if it (1) is the result of research carried on by, or under the direction of, any employee of UAB and/or having the costs thereof paid from UAB’s funds or from funds under the control of or administered by UAB, or (2) is made by an employee of UAB and relates to the inventor’s field of work at UAB, or (3) has been developed in whole or in part by the utilization of resources or facilities belonging to UAB. Therefore, without a release from UAB, faculty may not assign or transfer to an external entity intellectual property developed by such faculty member during the course of their employment that would otherwise qualify to be assigned to UAB as set forth above.

Approvals and Reporting:

All full-time regular faculty members must disclose actual or potential conflicts of interest using the online disclosure process. **Disclosure is required as soon as the employee becomes aware of an actual or potential conflict of interest.** The *Handbook* further states that “the failure of an employee to disclose a conflict of interest or failure to eliminate a conflict when so directed may be grounds for disciplinary action up to, and including, discharge or termination for cause.”

While all faculty members must comply with UAB’s Conflict of Interest Policy, the existence of an actual or potential conflict does not necessarily preclude them from performing the activity. Appropriate due diligence and management of the issue can best be taken when faculty disclose as soon as they become aware of an actual or potential conflict.

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Disclosure – Consulting/COI
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The UAB Conflicts of Interest Policy in Section 8 of the *Handbook* describes the required disclosures, determinations and resolutions of conflict of interest for activities in two categories: those not involving extramurally funded research or education and those involving extramurally funded research and education. The policy also provides specific examples of each of these two categories. Conflicts of interest not involving extramural funds are determined and managed through the chain of command including one's supervisor followed by other appropriate administrative official(s), if necessary (usually a Department Chair and Dean/Library Director or their approved delegates). Conflicts of interest involving extramural funding and certain instances of internal research funding involving human subjects are the responsibility of UAB's Conflict of Interest Review Board (CIRB), which uses UAB policy and federal regulation to manage such conflicts. Conflicts of interest involving extramural funding must be disclosed prior to, or as part of, the UAB grant and contract application process. Additional information is available at the CIRB website: <http://main.uab.edu/CIRB>.