

CLARIFICATION OF POLICIES ON PRIVATE CONSULTING AND SUPPLEMENTAL SALARY

The University of South Dakota adheres to Board of Regents Policy 4:19 (Private Practice, Consultation, or Outside Employment) and Policy 4:35 (Conflict of Interest), the COHE agreement (2005-2008), and the Expectations of the Faculty (August 2007) document. There are several important principles to be gleaned from these documents with respect to activities – substantially related to assigned duties – for which additional compensation may or may not be provided during the professional employee’s contract period. These principles are itemized below, with links to the relevant URLs and to key passages from the documents.

- Faculty have responsibility in all three areas – teaching, research/creative scholarship, and service – with the understanding that individuals within a unit may have differing assignments so that, overall, the unit may best accomplish its purpose.

http://www.usd.edu/acadaffairs/facinfo/Expectations_of_the_Faculty-Aug2007.pdf

http://www.sdbor.edu/administration/policy_planning/agreements/COHE_Agree/documents/agreement.pdf

Click here to view relevant sections of [Expectations of Faculty](#) or [COHE Agreement](#).

- If a faculty member will be *absent from duties* assigned by USD because of private practice, consulting, or other activity for which additional compensation is received, the faculty member will apply to the President for written approval before engaging in this activity, report on the activity, reimburse the university for any of its resources used for this activity, and limit the activity to no more than four (4) days per month with a maximum of six (6) days per contract period (*i.e.*, annually).

http://www.sdbor.edu/administration/policy_planning/agreements/COHE_Agree/documents/agreement.pdf

Click here to view relevant section of [COHE agreement](#).

- Faculty may engage in consulting or other employment outside of the institution’s regular day class schedule as long as it does not adversely affect or conflict with the faculty member’s performance of his/her primary responsibility to the institution. Given the tripartite role of faculty and the typical university schedule that includes weekdays, evenings, and weekends, activities that occur outside of the “8 to 5” non-academic business day are not by definition exempt from conflict. The faculty member has the burden of proving there is no conflict and that these activities are not expectations within the typical faculty role. Faculty must report, during the annual performance evaluation, compensated activities that emphasize their institutional affiliation.

http://www.sdbor.edu/administration/policy_planning/agreements/COHE_Agree/documents/agreement.pdf

Click here to view relevant section of [COHE Agreement](#) and [BOR Policy 4:19](#).

- Funds from grants and contracts may not be used to *supplement* faculty salaries during the contract period. When allowed by external sponsors, grants and contracts are charged for work performed on sponsored agreements by faculty members during the academic year, displacing the usual fund source of base salary. Salary and benefits charged to grants and contracts are based on the individual faculty member's regular compensation, *i.e.*, base salary, and in no event will charges to sponsored agreements exceed the proportionate share of the base salary for that period. During summer months or other period not included in the base salary period, charges for work performed by faculty members on sponsored agreements will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates.

http://www.whitehouse.gov/omb/circulars/a021/a21_2004.html

[Click here to view relevant portion of OMB Circular A-21.](#)

REFERENCED POLICIES AND DOCUMENTS
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COHE Agreement:

http://www.sdbor.edu/administration/policy_planning/agreements/COHE_Agree/documents/agreement.pdf

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9.1 UNIT MEMBER RESPONSIBILITIES

Upon accepting an appointment, a faculty unit member generally assumes responsibility in three (3) areas: teaching, research and scholarship, and service unless otherwise specified under item 6 of § 8.5; provided that faculty unit members who have been assigned to full thirty credit hour undergraduate instruction load or its equivalent may be relieved of some responsibilities for research and scholarship. Faculty unit members who have been relieved of some responsibilities for research and scholarship remain subject to shared-governance service obligations that are normally incidental to any full-time faculty appointment, including, without limitation, participation in curriculum review, faculty or student qualifications and expectations or academic unit programming or operations. A representative list of duties within these areas is found in Appendix G. In addition, a faculty unit member is expected to perform assigned responsibilities in accordance with recognized standards of professional ethics and departmental policy.

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9.5 PRIVATE PRACTICE AND CONSULTATION

A higher education faculty unit member who enters into private practice, private consulting, additional teaching or research, or other activity for which additional compensation is received during the faculty unit member's contract period and during the period of this agreement, and excepting as next provided, will not contract to devote more than four (4) days per month on such activity if said activity requires the faculty unit member's absence from duties. Such consultation and related activity privileges are cumulative to a maximum of six (6) days, with all accumulated time to terminate with the end of the faculty member's contract period. The activity for which the individual is released must be substantially and significantly related to assigned duties. Such activity must promote state and local economic development or must benefit the professional discipline and development of the individual, all as determined by the president under such guidelines and restrictions, as established from time to time by the Board. Release time is subject to the following conditions:

The faculty unit member will:

1. Apply in writing to the president, on established forms, for written approval before engaging in such activity or contracting to do so;
2. Report to the president through administrative channels the activity, duration of the activity, and the number of hours which were devoted to the additional activity;
3. Limit and restrict such activity so that it does not interfere with assigned responsibilities;
4. Reimburse the institution at the institutionally established rate for any institutional space, equipment, personnel, and materials used for such additional activity.

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9.6 OUTSIDE EMPLOYMENT

The statutory provisions regarding dual employment are at SDCL §§ 3-8-4 to 3-8-4.3. The Board and the institution will not infringe upon a faculty unit member's privilege to engage in consulting or other employment outside the institution's regular day class schedule during the academic year, so long as the other employment does not adversely affect or conflict with the faculty unit member's performance of

his primary responsibilities to the institution. In the event of any question about such conflict, the faculty unit member will have the burden of proving that there is no conflict. Faculty unit members who engage in outside employments or other endeavors for profit that relate to their academic expertise or that emphasize their institutional affiliation will report these outside activities as part of their annual performance evaluation.

Board of Regents Policy on Conflict of Interest (4:35):

<http://www.sdbor.edu/policy/4-Personnel/documents/4-35.pdf>

1.B. Professional employees should avoid entering into outside employments, occupations or endeavors for profit of any kind that may reasonably be thought to influence the decisions that they make in their capacity as Board employees, the degree of thought and effort that they devote to their responsibilities as Board employees or, in any other manner, the loyalty and diligence with which they pursue the best interests of the Board and of the students and citizens who rely upon the Board and its employees.

1.C. Absent prior consent, professional employees shall not engage in service businesses or enter into contracts to provide services where

1. the services to be provided by the businesses or under the contracts are also made available to the public by Board institutions, and
2. the professional employees are expected to provide such services on behalf of the Board as part of their regular assignments

The prior approval requirement stated in this section shall not apply to activities undertaken by professional employees with nine month, ten month or eleven month contracts outside the dates of active contractual service; except that any agreement to provide instructional service or consulting services of any kind to postsecondary institutions not governed by the Board, whether or not the course of instruction or services are offered by Board institutions, and whether or not the services are provided outside the dates of active contractual service, must receive prior approval.

1.I. Professional employees may not use for any purpose unrelated to the discharge of official duties supplies, equipment or staff provided by virtue of or in the course of their employment by the Board; except that, such use may be permitted where:

1. the use has been authorized in furtherance of approved consulting or private research, and appropriate arrangements have been made to reimburse the employing institution for such use, or
2. the use has been authorized as *de minimis* and consistent with the effective operation of the public work place and does not increase the cost of the resource to the state.

2. Institutional chief executive officers or their designees may direct professional employees to curtail or to abandon outside business endeavors, or they may, in their sole discretion, reassign the professional employees to duties that do not entail conflicts of interest, if professional employees have failed to observe limitations specified in this policy or have otherwise acted in a fashion, not

otherwise expressly addressed hereunder, that compromises the interests that this policy seeks to protect.

Board of Regents Policy on Private Practice, Consultation, or Outside Employment:

<http://www.sdbor.edu/policy/4-Personnel/documents/4-19.pdf>

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1. Preamble

The South Dakota Board of Regents recognizes staff sometime seek additional employment. In accordance with BOR Policy 4:32 and 4:35, relating conflicts of interest, the Board asks these employees to remember that, despite any outside employment, their position with the Board is his or her primary responsibility. It is the policy of the Board that private practice, private consultation, and outside employment is defined as any employment outside the Regental system. Any employment within the Regental system is considered work performed for the Regental system.

2. Higher Education Faculty Private Practice, Private Consultation and Outside Employment

A. A higher education faculty (instructional or research) member who enters into private practice, private consulting, additional teaching or research, or other activity for which additional compensation is received during the faculty member's contract period, and excepting as next provided, will not contract to devote more than four days per month on such activity if said activity requires the faculty member's absence from duties. Such consultation and related activity privileges shall be cumulative to a maximum of six days, with all accumulated time to terminate with the end of the faculty member's contract period. The activity for which the individual is released must be substantially and significantly related to assigned duties. Such activity must promote state and local economic development or must benefit the professional discipline and development of the individual, all as shall be determined by the institutional chief executive officer under such guidelines and restrictions as are established from time to time by the Board. Medical School faculty will follow the approved Medical Service Plan rules and regulations for private practice and consultation. Release time will also be subject to the following conditions:

The faculty member will:

1. Apply in writing to the institutional chief executive officer, or designee, on established forms, for written approval before engaging in such activity or contracting to do so;
2. Report to the institutional chief executive officer the activity, duration of the activity, and the number of hours which were devoted to the additional activity;
3. Limit and restrict such activity so that it does not interfere with assigned responsibilities;
4. Reimburse the institution at the institutionally established rate for any institutional space, equipment, personnel, and materials used for such additional activity.

B. The statutory provisions regarding dual employment are SDCL §§ 3-8-4 to 3-8-4.3. The Board and the institution will not infringe upon a faculty (instructional or research) member's privilege to engage in consulting or other employment outside the institution's regular day class schedule during the academic year, so long as the other employment does not adversely affect or conflict with the faculty member's performance of his primary responsibilities to the institution. In the event of any question about such conflict, the faculty member will have the burden of proving that there is no conflict. Faculty members who engage in outside employment or other endeavors for profit that relate to their academic expertise

or that emphasize their institutional affiliation will report these outside activities as part of their annual performance evaluation.

http://www.usd.edu/acadaffairs/facinfo/Expectations_of_the_Faculty-Aug2007.pdf

Expectations of the Faculty (August 2007):

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Tripartite Expectations of the faculty

The mission and vision of The University place certain expectations upon its faculty. First and foremost, its faculty is comprised of excellent teachers who are deeply committed to student learning and to providing an environment in which students can discover their potential and prepare for their future. Further, the faculty has the responsibility to apply its expertise in service to the broader community and the profession. Finally, the faculty has the responsibility to discover and disseminate new knowledge through research and creative scholarship. As a liberal arts institution with a variety of professional schools, The University recognizes that research and creative scholarship takes on many diverse forms, and it is that diversity that gives The University its unique character. Thus, traditional disciplinary research, creative writing, performance, artistic expression, and the scholarship of teaching and learning are all among the forms of research and creative scholarship celebrated and valued by The University.

As such, The University seeks to employ faculty members who view themselves as teacher-scholar-citizens, and who have as their own personal goals to excel at teaching, research or creative scholarship, and service. All members with professorial rank, therefore, have obligations in all areas of the tripartite mission, adapted to the unique situation represented by their home academic unit and discipline. The standards described herein are intended to stand up to the national norms appropriate to the discipline and degree level of the program.

The demands upon the faculty are substantial. The goal of The University is to have a faculty that is as productive and effective as is possible given the resource base and working conditions that exist at any given time. The standards set forth below are meant to be challenging, but not unrealistic, and the unit addenda should reflect a level of challenge that accounts for the staffing, workload, and degree-level of the unit. There must be a realistic correlation between the expectations of the unit and the specific mission and working conditions of the unit. The University will continually strive to optimize its support of faculty activities, and the units will, through its more senior faculty and leadership, provide appropriate mentoring to its junior faculty to help ensure that those faculty members contribute to the quality and effectiveness of the program while undergoing individual professional development.

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http://www.whitehouse.gov/omb/circulars/a021/a21_2004.html

d. *Salary rates for faculty members.*

(1) *Salary rates for academic year.* Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's [regular compensation](#) for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored

agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, 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.

(2) Periods outside the academic year.

(a) Except as otherwise specified for teaching activity in subsection (b), charges for work performed by faculty members on sponsored agreements during the summer months or other period not included in the base salary period will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates, and will be limited to charges made in accordance with other parts of this section. The base salary period used in computing charges for work performed during the summer months will be the number of months covered by the faculty member's official academic year appointment.

(b) Charges for teaching activities performed by faculty members on sponsored agreements during the summer months or other periods not included in the base salary period will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(3) Part-time faculty. Charges for work performed on sponsored agreements by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for the part-time assignments. For example, an institution pays \$5000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time to a sponsored agreement. Thus, his additional compensation, chargeable by the institution to the agreement, would be one-half of \$5000, or \$2500.

e. Noninstitutional professional activities. Unless an arrangement is specifically authorized by a Federal sponsoring agency, an institution must follow its institution-wide policies and practices concerning the permissible extent of professional services that can be provided outside the institution for noninstitutional compensation. Where such institution-wide policies do not exist or do not adequately define the permissible extent of consulting or other noninstitutional activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on sponsored agreements be allocated between (1) institutional activities, and (2) noninstitutional professional activities. If the sponsoring agency considers the extent of noninstitutional professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.