

# Compliance Matters

A Publication from the Office of Compliance and Risk Management



## To Disclose or Not to Disclose: The Conflict of Interest Question

Among the existential questions that accompany us to work, whether a particular situation that we may find ourselves in presents a conflict of interest is not uncommon. The question arises at the intersection of the personal and the professional, personal benefit vs. professional obligation. Its answer, however, is not always apparent. It may depend on the specific facts and circumstances, have the grayness of nuance developing from the reality that conflicts of interest encompass not just actual conflicts but potential conflicts, and not just potential conflicts but the appearance of conflicts. A conflict of interest lies in the eye of a reasonable beholder. Notwithstanding, one answer is always right: Disclose the situation that may or may not be a conflict of interest.

This article focuses on the conflict of interest disclosure process applicable to faculty and administrators. As described in a prior article (see, [Compliance Matters](#), v.3, no. 2), there are University policies on conflicts of interest applicable to all members of the University community: [The Code of Ethical Conduct](#) applies to all; the [Conflict of Interest Policy for Trustees, Officers, and Senior Administrators](#) applies to those in the name of the policy; the [Employee Policy on Conflicts of Interest](#) applies to administrators; and the [NYU Policy on Academic Conflict of Interest and Con-](#)

[flict of Commitment](#) applies to faculty. These policies define conflicts of interest, provide examples and describe a process for disclosure and management of conflicts of interest. An overview of the faculty and administrative processes is provided below:

### [Faculty Disclosures](#)

Under the *NYU Policy on Academic Conflict of Interest and Conflict of Commitment*, a “Conflict of Interest” is defined as follows:

...[A]ny circumstance in which the personal, professional, financial or other interests of an individual (including the Immediate Family Members of the individual) may potentially or actually diverge from, or may be reasonably perceived as potentially or actually diverging from, his or her professional obligations to NYU and the interests of NYU.

A Conflict of Interest may exist whenever an independent observer might reasonably question whether the individual’s professional actions or decisions, including the ethical and objective conduct of scholarship, research or clinical care, are determined by considerations of personal gain, financial or otherwise.



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# Conflicts of Interest (Continued from page 1)

“Immediate Family Members” are defined to include a spouse, domestic partner, or person in a civil union or similar relationship, dependent children, and any other family members residing in the same household.

A “Conflict of Commitment,” also addressed in the same policy, “occurs when a faculty member’s Outside Activities [as defined in the policy] compromise or may compromise his or her ability to meet the faculty member’s obligations to NYU.

## **Ongoing Obligation to Disclose**

Any situation or activity with the potential to create a conflict of interest or conflict of commitment (current, proposed or pending) must be disclosed on an *ad hoc basis* to the School Dean as soon as the faculty member becomes aware of it.

## **Annual Disclosure**

Each year, during the Spring Semester, the Office of Academic Appointments in the Office of the Provost sends out an annual disclosure form to faculty. This form asks for information (for the specified reporting period) pertaining to several areas, including the following:

- Outside Activities, including consulting, employment outside NYU, executive, managerial or fiduciary responsibilities for public or private entities and professional or academic activities outside of NYU.
- Financial Interests, including remuneration from Outside Activities or Ownership Interests in specified entities.

- Royalty Income from an entity doing or seeking to do business with NYU or competing with NYU.

- Loans other than from NYU, or in the ordinary course of business from a banking or other financial institution.

- Gifts or Favors of more than nominal value from any entity that has or seeks a business relationship with NYU, or benefits from NYU.

- Non-financial Interests, including time spent on Outside Activities while receiving compensation from NYU.

- Human subjects research, and pre-clinical research (applicable to Investigators conducting sponsored or non-sponsored research).

- Immediate Family Members receiving remuneration from NYU reporting to the faculty member, directly or indirectly.

The annual disclosures are reviewed by the Deans or their designees.

Conflicts may be managed in a number of ways, including by eliminating them, waiving them if deemed to be in NYU’s best interest, or developing conflict management plans to mitigate them. The annual disclosure response rate is reported to the Audit and Compliance Committee of the NYU Board of Trustees by the Office of Compliance and Risk Management. Questions about the process may be directed to the Assistant Vice Provost for Academic Appointments; about research related

disclosures to the Associate Vice Provost for Research Compliance and Administration; about the policy to the Office of General Counsel; and requests for guidance, both general and specific, to the Office of Compliance and Risk Management.

## **Administrator Disclosures**

A “Conflict of Interest” is defined in the *Employee Policy on Conflicts of Interest*, applicable to administrators, as follows:

...[A]ny circumstance in which the personal, professional, financial, or other interests of an employee may potentially or actually diverge from, or may be reasonably perceived as potentially or actually diverging from, his or her obligations to NYU and the interests of NYU. It includes indirect conflicts, such as benefits provided to an Immediate Family Member of an employee. [An “Immediate Family Member” has the same definition as in the Faculty policy.]

## **Ongoing Obligation to Disclose**

Any situation or activity with the potential to create a conflict of interest (current, proposed or pending) must be disclosed on an *ad hoc basis* to a supervisor as soon as an administrator becomes aware of it.

## **Annual Disclosure**

Each year, during the Spring Semester, the Office of Compliance and Risk Management sends out an annual disclosure form to administrators who are designated by their senior executives or deans.

## Conflicts of Interest *(Continued from page 2)*

The form asks for information -- for the last fiscal year and through the date of the disclosure -- about the following:

- Whether you, or an entity with which you were affiliated, did business with NYU or sought to do business with NYU.
- Whether your Immediate Family Member, or an entity with which your Immediate Family Member was affiliated, did business with NYU or sought to do business with NYU under circumstances in which you or your Immediate Family Member were directly or indirectly involved in the NYU relationship.
- Whether you individually, or through an entity with which you were affiliated, provided services outside NYU that were/are similar to your job responsibilities at NYU.
- Whether you accepted any gifts or favors of more than nominal value from any individual or entity doing business with NYU, or seeking to do business with NYU.
- Whether you had any role in the hiring of any Immediate Family Member or had any supervisory or personnel decision making role over any Family Member employed at NYU.

These annual disclosures are reviewed by the Office of Compliance and Risk Management and follow up with administrators occurs as required. Conflicts are addressed and managed as appropriate. The annual disclosure response rate is reported to the Audit and Compliance Committee of the NYU Board of Trustees by the Office of Compliance and Risk Management.

### *When in Doubt Disclose / When Not in Doubt Disclose*

Where there is any doubt (and even where there isn't) as to whether a particular situation is or is not a conflict of interest the best approach is to disclose it when you first become aware of it. Upon review, it may be determined that no conflict exists, or that it does and can be managed. The possibilities only unfold after disclosure. One existential question that has an answer.

Questions about process, policy, training or guidance may be directed to Rachna Vaid, Senior Associate Compliance Officer, Office of Compliance and Risk Management, at 212-998-1060, or via email at [rachna.vaid@nyu.edu](mailto:rachna.vaid@nyu.edu).

## Travel and Compliance: U.S. Passport Requirements

International travel on the horizon? Check out our newest **Travel and Compliance** column in *Compliance Matters* featuring [NYU's Office of Global Services](#) (OGS). OGS will be a regular contributor focusing on the various visa and immigration related needs of our University community. This issue will focus on OGS Outbound matters - U.S. passport requirements.

OGS has offices at Washington Square and in Brooklyn. We assist the University community traveling into and outside of the U.S. Incoming international researchers and scholars work with OGS Scholar Services, international students coming to New York work with OGS Inbound Services while individuals traveling outside of the U.S. are directed to OGS Outbound Services.

OGS expertise includes information on:

- Passports
- Visas
- Immigration
- Area Consulates
- Relocation
- Foreign Taxation

### **Six Months Passport Validity Rule**

International travelers know a valid passport is required for visiting foreign countries. But did you know that with only six month validity your passport is of limited use? Many popular visa and non-visa destinations require a passport with at least six months remaining validity and the U.S. State Department recommends that you renew when you reach six months remaining. *-Continued on page 5*



# Iran, Trade Sanctions and the U.S. Visa Waiver Program

## Iran Sanctions

On January 16, 2016, the leading world news story was the announcement that trade sanctions on Iran were being lifted by the United States and the EU pursuant to a [Joint Comprehensive Plan of Action](#) (JCPOA). The JCPOA is an agreement reached among China, France, Germany, Russia, the United Kingdom, the United States, the European Union (EU) and Iran involving assurances about Iran's nuclear program and the related lifting or easing of certain sanctions. This article explains how and to what extent the JCPOA affects travel and activities that members of the University may seek to pursue.

While the EU lifted many trade sanctions against Iran, the United States primarily eased sanctions that had been designed to inhibit Iran's nuclear activity. The nuclear related sanctions that were eased had been directed toward non-U.S. persons and organizations for activities involving Iran that occurred entirely outside of U.S. jurisdiction and did not involve U.S. persons (so called "secondary sanctions").

These secondary sanctions included activities involving Iran's financial, banking, energy, petrochemical, shipping, shipbuilding, and automotive sectors. Most of the United States' comprehensive sanctions regime against Iran, however, remains in place. U.S. persons and organizations continue to be broadly prohibited from engaging in most transactions or dealings with Iran and the Government of Iran, with the exception of three categories of activities:

- 1) The U.S. took steps to allow for the export, reexport, sale, lease or transfer of commercial passenger aircraft and related parts and services to Iran for exclusively civil, commercial passenger aviation end-use.
- 2) The U.S. licensed the importation into the United States of Iranian-origin carpets and foodstuffs, including pistachios and caviar.
- 3) U.S. owned or controlled foreign entities were licensed to engage in activities that are consistent with the JCPOA, but the export or re-export of U.S. goods, services and technology to Iran are still generally prohibited under applicable U.S. laws and regulations.

If you plan to travel to Iran or engage in research or collaboration, remember that U.S. sanctions are in place.

## Amendments to the U.S. Visa Waiver Program

On January 21, 2016, five days after the lifting of nuclear related sanctions on Iran, the U.S. began implementing new restrictions related to Iran and three other countries pursuant to the [Visa Waiver Program](#) (VWP) Improvement and Terrorist Travel Prevention Act.

The VWP permits citizens of thirty-eight countries to travel to the United States for business or tourism for stays of up to ninety days without a visa. Under the VWP Improvement and Terrorist Travel Prevention Act, travelers in the following categories are no longer eligible to travel or be admitted to the United States under the VWP:

- 1) Nationals of VWP countries who have traveled to or been present in Iran, Iraq, Sudan, or Syria on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country).
- 2) Nationals of VWP countries who are also nationals of Iran, Iraq, Sudan, or Syria.

The Act also requires that all VWP travelers use an electronic passport for travel to the United States after April 1, 2016. All prospective VWP travelers must obtain pre-travel authorization via U.S. Customs and Border Protection's (CBP) Electronic System for Travel Authorization (ESTA) prior to boarding a plane or ship bound for the United States. ESTA travelers whose privileges are being revoked because of travel to the above-referenced countries have been receiving email notification. If you have not received a revocation email yet but you plan to travel to the U.S., the U.S. Department of State advises that you apply for a visa as soon as possible.

According to the State Department, "If a traveler has a revoked ESTA, and he/she is outside the United States, he/she will not be allowed to board a conveyance to the United States. The U.S. Government intends to conduct outreach with travel agents, airlines, cruise lines and other stakeholders to reach travelers who may not yet have heard about this new change in VWP eligibility." CBP recommends that any traveler check his or her ESTA approval prior to making any travel reservations to the U.S. at <https://esta.cbp.dhs.gov/esta/>.

## Travel and Compliance: U.S. Passport Requirements *(Continued from page 3)*

Don't miss out on your business trip to China or Brazil or your vacation to the Caribbean or many destinations in Europe. Airlines may not permit boarding and government officials can deny entry upon arrival. Avoid unexpected travel disruptions and uncertainty; renew your passport today.

### U.S. Passport Additional Pages Discontinued

The U.S. Passport Office has ceased adding pages to U.S. passports as of December 31, 2015. Individuals requiring additional pages are now required to renew their passport. Plan ahead.

If you don't have at least six months passport validity or you don't have at least two blank visa pages (the last few "endorsement" pages don't count), then apply for your passport well ahead of planned travel! There has been increasingly strong demand for U.S. passports in recent years, and it continues to grow. Whether you are renewing a passport or applying for the first time, the passport application process can be completed without added stress if done ahead of time.

### Emergency Service

If you are traveling in less than 2 weeks or need a foreign visa within 4 weeks, you may schedule an appointment at a [U.S. Department of State](#) passport agency. You must show proof of travel within 2 weeks in order to make an appointment and must pay the \$60 expedite fee. Call the [National Passport Information Center](#) to make an appointment.

Please contact Rob Sanford at [robert.sanford@nyu.edu](mailto:robert.sanford@nyu.edu) or Helen Newman at [helen.newman@nyu.edu](mailto:helen.newman@nyu.edu) in the Office of Global Services with any questions with regard to US passports or any other international travel related matters.

Visit OGS webpages on [Visa and Immigration](#) for additional resources. For additional OGS newsletter articles in *Compliance Matters*, click on the links below:

[-New Regulations from U.S. Citizenship and Immigration Services \(USCIS\)](#)

[-A New Service Model for the Global Network University](#)

## Iran and the U.S. Waiver Program *(Continued from page 4)*

These new restrictions do not apply to VWP travelers whose presence in Iraq, Syria, Iran, or Sudan was to perform military service in the armed forces of a VWP country, or to carry out official duties as a full-time employee of the government of a VWP country.

Finally, U.S. Homeland Security may, in its discretion, grant waivers on a case-by-case basis for those who travel to these countries for legitimate journalism, business, humanitarian and NGO purposes. As yet, however, there is no official guidance on the exercise of this discretion and travelers should bear in mind the exercise of discretion may depend upon the views of the U.S. government administration.

If you are not a U.S. citizen, or a permanent resident, your ability to visit the U.S. under the VWP may be affected if you traveled to Iraq, Syrian, Iran, or Sudan.

Please contact the [Office of Global Services](#) for further information and guidance prior to travel.



*Compliance Matters* provides updates about important compliance issues covering new regulations, new and updated University Policies, and risk management. We welcome feedback and suggestions from the NYU Community for articles in future issues. Please send your ideas or submissions to Diane Delaney, Associate Compliance Officer, at [diane.delaney@nyu.edu](mailto:diane.delaney@nyu.edu).