



NEW YORK UNIVERSITY

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Office of the Provost

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Paul Horn *Senior Vice Provost for Research
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June 22, 2012

MEMORANDUM TO: Ted Magder, Chairperson, Faculty Senators Council

FROM: Paul Horn 
Senior Vice Provost for Research

RE: NYU Policy on Academic Conflict of Interest and Conflict of
Commitment

Together with my colleagues in the Provost's Office and the Office of General Counsel, I reviewed the June 18 FSC comments and recommendations about proposed revisions to the current NYU Policy (July 1, 2011). We thank you for your timely review of the Policy and your cooperation in helping us meet federal regulations to update the policy by August 24.

As you know, in addition to consulting with FSC, we circulated the proposed revisions widely, engaging Deans and senior leadership. The Policy was revised as appropriate to incorporate input from all these sources, and will be reviewed by the Board of Trustees. I attach the updated policy, which will be announced and posted after Board review.

We appreciate your thorough and thoughtful comments, and address each of them below.

Recommendation 1: The Faculty Advisory Committee should be a Standing Committee

Our policy envisions that the Provost may convene a committee as needed, reflecting in part our experience with the 1994 policy provisions that contemplated a standing committee - which in actuality was not active. We believe that an ad hoc committee will be more attentive to immediate needs. It may be that in time the merits of a standing committee become more compelling; nothing in the policy prevents a standing committee from being established.

Recommendation 2: An annual ledger of COI actions and periodic review of the Policy

Given the complexity of the policy, we agree on the need for a periodic review that can involve representative members of the Faculty Senators Council, other representative faculty, Deans and administrators.

The University's Policy on Policies mandates such a review, which in this case would be conducted under the aegis of the office of the Senior Vice Provost for Research: "... the Responsible Officer should ensure appropriate review of the policy periodically, as necessary to assure that the policy reflects obligations imposed by current laws and best practices." (See <http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/Policy-on-Policies.html>)

With respect to a compilation and review of actions undertaken under the COI policy, we believe this responsibility resides in the first instance in the schools, and thus, the policy retains the flexibility for the schools to establish their own committees. It may be that, in time, the periodic review will establish the desirability of a University-wide level review of the 'ledger;' the policy does not preclude that possibility.

Recommendation 3: Faculty Advisory Committee as Grievance Committee

The policy provides for appeals in that the faculty member may appeal to the Provost/ EVP for Health "who will consider the case in consultation with the School Dean, and, at his or her discretion, an appropriate Committee as contemplated by this policy." The policy preserves the discretion of the Provost/ EVP to decide whether to consult with an appropriate committee, and importantly, how to convene that membership with experts to address the issues raised by the academic discipline, or the industry, or the Policy.

Recommendation 4: Outside activities and academic endeavors

We agree that the Policy needs to better address the routine engagement of faculty in uncompensated scholarly and professional activities – a point raised by the Deans as well. Accordingly the Policy was revised as follows:

- The definition of Remuneration (Section II, pages 4-5) was changed to provide that honoraria paid/ travel paid/ travel reimbursements do not need to be disclosed in the annual disclosure form if such payment/reimbursement is made by the government or a non-profit university or medical college for scholarly and professional activities performed in connection with a faculty member's appointment to NYU.
- Section III.B(2) (pages 6-7) was revised to make it permissible for the Dean or Provost to exclude from the 1-day-in-7 rule uncompensated scholarly and professional activities performed in connection with a faculty member's appointment to NYU.
- The annual disclosure requirements in Section V.A(1) (p. 15) were revised to provide that unless required by the school, Outside Activities that are uncompensated scholarly and professional activities performed in connection with a faculty member's appointment to NYU will not be required in the annual disclosure form.

Recommendation 5: Definition of Investigator

The Policy provides that 'persons identified by the Office of Provost as Investigators (through processes it determines)... must complete and submit to their School Dean the applicable annual disclosure form then in effect...' The intent of the language is to reserve to the Office of Provost the responsibility for determining how it identifies the Investigators who should complete the annual disclosure form; consider that in fact it may not always be a simple matter

to determine who is an “Investigator.” (The intent is not to permit the Office of the Provost to expand the definition of Investigator.)

Recommendation 6: Personal Activities

The FSC’s questions about the definition of the phrase ‘other personal activities’ led us to carefully re-assess this language. We concluded that the phrase is satisfactorily defined in the Policy and further, that were we to delete this phrase, we would exclude some important sorts of activities that should be subject to the policy. To clarify: The effective definition for the phrase "personal activities" appears in paragraph IV.C(a) which states "the following Outside Activities and other personal activities create a Conflict of Interest:" (i) Competing, directly or indirectly, with NYU ... ; and (ii) Appropriating or diverting a business or financial opportunity ...; and (iii) Soliciting business..." (See pages 8 -9 of the attached Policy)." The notion is, if an activity falls within the three categories contained in IV.C(a) but is not a "business activity and external professional/academic endeavor"(this being the operative phrase in the definition of "Outside Activities") it qualifies as an "other personal activity." One example of other personal activity could be an employee who influences, indirectly, the University's procurement of certain goods or services: the employee may not be motivated by business reasons, or professional or academic reasons, but by say, personal friendship, or family loyalty.

Again, many thanks for your careful review of this policy.

Cc: David W. McLaughlin
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