

Guidance: Faculty Ownership and Operation of Businesses, Consulting, and Other External Professional or Business Activities

Purpose

This document provides guidance to members of the faculty and staff who wish to engage in private business activity in areas related to the substance of their research, teaching, and service at Lehigh University, and as an aid to department chairs in assessing whether faculty or staff involvement in business activities are complimentary and noncompetitive with university programs, research, and the faculty or staff member's obligations to the university.

Background

The [Rules and Procedures of the Faculty \(R&P\)](#), section 2.5, states,

The university recognizes the value to both the individual and the university when a faculty member engages in activities of a professional nature for added compensation. These external engagements may include but are not limited to consulting, short courses, liaison activity, and corporate board activity. The university approves and encourages that participation when it is complementary and non-competitive to the duties and goals of both parties, and contributes to the professional growth of the individual.

The duties of a full-time faculty member of Lehigh University include teaching, research and scholarship, and service to the user community. In order to fulfill these responsibilities to students, colleagues, and the university, activities for additional compensation should not exceed an average of one day per week.

Involvement in business activities that are separate from, and also related to, a faculty member's role at the university can be complementary to, and noncompetitive with, conduct of university research, teaching and service. For example, outside business activities can play a role in deriving additional social and economic benefits from the outcomes of university research.

R&P section 2.5, further states,

All faculty activities of a professional nature for which compensation is received shall be reported annually to the chairperson and, when appropriate, to the center director. Faculty having administrative responsibilities shall also report to their immediate supervisor.

Consistent with this aspect of the department chair's role, department chairs are in the best position to assess whether faculty involvement in business activities are complimentary and non-competitive. In a case in which the department chair has a conflict of interest (e.g., is involved in a related outside business activity) or in cases of disagreement regarding the appropriateness of an activity, assessment would fall to the dean.

The guidance provided here is intended as an aid to members of the faculty, department chairs and others seeking to ensure that external professional and business activities remain complementary to and noncompetitive with university programs and the faculty member's obligations to the university.

Distinct business purpose

It is essential that the business activity has a purpose that is clearly distinguished from the faculty or staff member's work at the university and from the purpose of other university programs.

As an example, a sole proprietorship formed to provide consulting services may meet this requirement because consulting activity, while making use of the person's professional expertise, does not have the goal of arriving at new knowledge or understanding as is the goal of academic research. Similarly, a business whose purpose is to incorporate results of academic research into new products or services has a purpose that is distinct from that of the original research activity. In contrast, engagement in a business whose purpose is to conduct research of a kind that could be conducted by the faculty member at the university and competes with the university for research funding, would be deemed non-complementary and/or competitive.

Clarity of roles and disclosure of external engagements

In common parlance, a faculty or staff member who undertakes separate business activity must be in a position to wear one hat at a time, and at all times it should be clear which hat is appropriate.

One aspect of keeping business and university activities clearly separated, and of avoiding real or perceived conflicts of commitment, involves how faculty and staff describe and disclose any relationship between the university and their businesses. As a general principle, a member of the faculty or staff is not expected to mask or conceal their roles at the university. For a faculty member in particular, a university title is understood as an aspect of a person's professional identity and evidence of their qualifications. It is, in fact, useful that members of the faculty and staff see their conduct in non-university activities as reflecting on their fields, their professions and the university as well as on themselves.

At the same time, the university grants no organization the permission to use the university's name for that organization's own purposes without the university's expressed, written, consent. It is also important that the business present itself, and that those involved represent the business, in a manner that carefully avoids confusing third parties regarding whether they are working with the university or with the separate business. Similarly, it is important to avoid stating or implying an exclusive relationship with the university when no such relationship formally exists. Faculty and staff who encounter the unauthorized use of the university's name should refer to the General Counsel's office for guidance.

Faculty members should clarify that opinions they express in work prepared in the course of any consulting or other external engagements are their own, and are not the official positions of the university. Whenever a faculty member is listed as an author on a publication resulting from, or engages in speaking activities related to, consulting or other external engagements, this or a similar disclosure is recommended: *"Dr./Professor [name]'s contribution to this publication/speaking event was as a paid consultant/representative of an external entity, and is not related to Dr./Professor [name]'s Lehigh University duties or responsibilities."*

Transparency is particularly important when a faculty member's university research supports, or could reasonably appear to a neutral observer to support, a position or agenda beneficial to or favored by an entity with which that faculty member consults or has another external

engagement. Publications and presentations reporting such research should always disclose the arrangement using accepted standards or the recommendations of the publisher, professional organization, or conference organizer.

Non-advocacy

A faculty member who is engaged in an outside business activity should avoid inappropriate advocacy within the university on behalf of the business. A faculty member with such engagement should refrain from attempting to compel others, especially students, staff and junior colleagues, to become involved with the business, or to convince colleagues to direct their scholarly agendas toward the business's interests. For example, one may identify a colleague as a potential consultant, or make a colleague aware of a sponsored research opportunity involving the business, in a manner that leaves colleagues free to determine whether the activity fits their professional priorities and interests. One may not, on the other hand, pressure that colleague to become engaged.

Similarly, a faculty member with an outside business activity should, to the degree possible, minimize her/his representation of the business in any involvement of the business with the university. For example, per the foregoing example, one may identify a colleague as a potential consultant for a company with which one is already engaged. Thereafter, arrangements with the colleagues and with the university should be left to the degree possible to officials of the business other than the faculty member.

Sponsored university research involving faculty or staff businesses

It is possible, under the right circumstances and with appropriate controls, for a company in which a faculty or staff member has a financial interest or operating role to sponsor university research. As a general principle, the company should be able to access university resources or sponsor university research under the same terms that are available to any other company under the same circumstances, as long as conflicts of interest can be avoided or appropriately managed, and conflicts of commitment, as articulated in the “complementary and noncompetitive” standard of R&P Section 2.5, are avoided.

It is generally impractical to put appropriate controls in place that would allow a faculty or staff member to direct research funding from the university to a company in which the faculty member has a financial interest or operating role (e.g., through a sub-award on a grant). This is because it is difficult to firmly establish that the faculty or staff member has not made choices of what research questions to pursue or how to pursue them for the purpose of supporting the company.

For more on management of conflicts of interests when a faculty or staff member has a financial interest or operating role in a company that sponsors university research, please see the guidance under [Conflicts of Interest in Sponsored Programs](#), including [Guidance: Managing Conflicts of Interest When Investigators Have Financial Interests or Operational Roles in Companies Sponsoring University Research](#).

Academic Integrity

Lehigh University's commitment to academic freedom includes freedom from direction and restraint in scholarship, university research, and creative expression, and in the discussion and publication of results thereof. Collaborative projects that do not permit the free and open publication, presentation, or discussion of results of importance to the academic community are not acceptable. Lehigh University investigators must have (and may not relinquish) the final authority on what research results are published or presented in academic venues.

Access to university resources

Per the general principle that, subject to conflict of interest and commitment considerations, a faculty or staff business can access university resources under the same terms and external commercial user rates that are available to other outside businesses, faculty and staff members should expect no particular priority in gaining access to university resources or in the costs involved, nor should they expect to access resources other than those accessible by businesses in general. For example, a faculty or staff business that purchases instrument usage time or testing services needs to pay the same fees that are charged to others and be subject to the same principles of prioritization as are other businesses. As for any business, it needs to be recognized that priorities are based on the university's mission of education, research and service. As such, services may become unavailable in favor of activities that are central to the university's mission. Members of the faculty need to avoid any attempt, or apparent attempt, to influence these priorities in favor of a business with which they have relationships.

Involvement of students and staff

The primacy of the educator-student relationship needs to be kept in mind if considering involvement of a student in an outside activity. It is essential that students be advised and directed in the best interest of their development and progress toward degree completion. A faculty member must avoid compelling, or giving the appearance of compelling, students to become involved in an outside business activity other than as part of, or appropriate to, students' degree programs. Similarly, it is inappropriate for a supervisor to set an expectation that a staff member will become involved in or contribute to a business with which the supervisor is involved.

University review of contractual agreements and intellectual property concerns

Individual faculty members are responsible for reviewing the business terms associated with consulting or other external engagements. General Counsel's office is available to review the terms of such agreements for the limited purpose of determining whether the terms are consistent with Lehigh University policy. If faculty intend to use information, including data or material, gathered in the course of consulting or other external engagements for Lehigh University research, the Lehigh University Office of Research and Sponsored Programs (ORSP) must review the terms and conditions for accepting such information for use in Lehigh University research, even if the data are provided free of charge. The terms of any such agreement may not be in conflict with Lehigh University policy.

Faculty may not sign consulting, employment, facility access, non-disclosure, or confidentiality agreements containing terms that conflict with the faculty's obligation to confer rights to Lehigh

University for certain inventions, specifically all those that result from activity conducted in the course of a university appointment and all those produced using university resources.

The Federal SBIR and STTR grant programs

Both the federal SBIR (Small Business Innovation and Research) and STTR (Small Business Technology Transfer and Research) programs are common sources of grant support for small companies working to incorporate results of university research into commercially viable products and services. By law, federal agencies with extramural research and development budgets in excess of \$100 million per year must devote a portion of those budgets to SBIR grants, and those with R&D budgets in excess of \$1 billion must also provide for an STTR program. It is common that small technology-based businesses include funding through the SBIR and/or STTR programs in their financial plans. Investors often expect them to do so because the funding is available and also because the SBIR and STTR peer review processes bring added credibility to the company. Detailed information about both programs is available at SBIR.gov.

Members of the faculty and staff who are involved in private business activity and contemplate seeking SBIR or STTR funding should be aware of the following:

- The SBIR program provides for grants only to a small business, with sub-awards to universities permitted. The STTR program allows for grants to either small businesses or to universities.
- Both programs require that the small business perform a substantive portion of the work, using its own personnel and facilities. The SBIR program has specific limits on sub-awards to other entities including universities, while the STTR program requires only that a substantive portion of the work be done by the company. For either SBIR or STTR grants, what is being done by the company and through sub-awards must be clear in the work plans and budgets, and it is never appropriate for the bulk of the work to be accomplished through sub-awards to a university.
- Both programs require that the Principal Investigator for the small business be employed by the small business, with at least 51% effort dedicated to activities of the small business. For someone who is also a university employee who is planning to serve as PI for the small business, this means reducing university employment to no more than 49%.

For more information, please see [Lehigh University ORSP Proposal Submission Requirements for SBIR/STTR Proposals](#).