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Comments and responses to proposed amendments to UA Ethics Regulations R04.10.010 and R04.10.030
(May 2022)

Comment: "In light of the post-Covid remote workplace, the definition of 'outside activities' is very loosely written: What about sleep? Childrearing? Are we going to require employees to account for everything they do more than 10 hrs/week outside the university, and prohibit any activity consuming more than 27.5 hrs/week? Policy and regulations are a poor place for ill-defined terms. Please define 'outside activities' more clearly. I have no problem disclosing paid work that I do that is similar to the work I do for the university. Compensation and similarity to one's work for the university would seem to be better grounds than 'outside activities' as currently defined."

Response: Changing the UA definition of "outside activities" in Regents Policy P04.10.010.A ("In this section, 'outside activities' means work or activities that are not within the scope of the regular employment duties of the university employee") would require a change by the Board of Regents, while this proposed change is limited to the University Regulation.

While that Regents' Policy definition will not be amended as part of this change, there is guidance that can help clarify the commenter's concerns, in the Alaska Department of Law's "Frequently Asked Questions: Outside Employment and Volunteer Services," available at https://law.alaska.gov/doclibrary/ethics/EthicsFAQ.html. That indicates that what is to be disclosed is:

- Any compensated employment;
- Any compensated services benefiting a business or organization you are involved with;
- Any volunteer activity, if you receive any type of compensation, such as payment for travel or meals; and
- Any other volunteer or non-compensated work, if there is a possibility that such work conflicts with your official state duties.

That Q&A further states "You only need to disclose volunteer service if it is possible that your service may conflict with your official duties or you receive compensation. If your volunteer service is with an organization or for an activity that has no relationship to, or overlap with, your official duties and you receive no compensation, you do not have to disclose this volunteer service. When deciding what to report, consider the scope of your official duties and the specific volunteer activity you do. If you have a volunteer interest that is closely related to your official work duties, you should file a disclosure."

It should be noted that the employee is also to disclose in writing a personal or financial interest held by the employee or an immediate family member, in a state grant, contract, lease or loan that is awarded, executed or administered by the university, AS 39.52.2210(b). The Attorney General's Office has issued opinions indicating that an employee has a "personal interest" in a nonprofit if the employee is an officer or board member, such that the employee should disclose any agreements between that nonprofit and the university (e.g., a facility use agreement). Thus, it is a "best practice" to disclose as an outside activity any service as an officer or director of a nonprofit that is likely in the future to have a contract with the university.

The suggestion that a new definition should be limited to "paid work that I do that is similar to the work I do for the university" would not be one that would comply with the EBEA; work that one does outside UA that is *either* paid *or* similar to the work the employee does for the university should be disclosed.

Comment: Section 3 of this regulation does not equitably provide for the difference between part time and full time employees.

Response: The factors to be considered under R04.10.010.A.3.b (derived from 9 AAC 52.090) indicate that the outside activities should not take time away from the employee's university duties and should not limit the scope of the employee's university duties. While this applies to full-time as well as part-time employees, it is apparent that as a practical matter, a part-time employee will have more non-UA work time available to spend on outside activities without taking time away from the part-time UA duties, and is likely to have a smaller scope of official duties when compared with a full-time employee, thus presenting less potential for the outside activity to limit that scope.

Comment: Section 3, Part f: This puts an undue burden on supervisors for determining what is and is not an acceptable outside activity. Without explicit and concise guidance and resources, application of this regulation would be inconsistent across the UA system. This would increase levels of inequity and potentially create a liability for the system.

Response: The Attorney General opinions interpreting the EBEA emphasize that each outside activity approval will depend on the facts and circumstances in that situation. Circumstances will differ from position to position, and from employee to employee. Absolute uniformity of application is therefore not attainable. But some degree of consistency should be achievable from the fact that all work supervisors will be applying the same criteria of not taking time away from UA duties and not limiting the scope of UA duties. The synopsis of the guidance from AG opinions in subsection (f) should help guide work supervisor decisions. Review of the work supervisor decisions by the ethics supervisors should also help establish consistency of decision-making.

Comment: Section 3, Part g: As proposed, this still limits employees to less than 27.5 hrs/week on a regular basis. There is no definition of the term 'regular', nor is there any confirmation of a time limit in AS 39.52.170. Clarification is requested as to how this time limit was reached, why it does not follow the standards within AS 39.52.170, and why it is not consistent between outside activities and additional adjunct duties within UA.

Response: Changes have been made to the final version under which full-time employees are not absolutely limited to 27.5 hours per week, rather, each determination will be made based on the facts and circumstances. The timeframes listed in new subsection (f) are not found in AS 39.52.170, rather they stem from Attorney General opinions interpreting AS 39.52.170, and this has now been specified in the rewritten subsection (f). Since those timeframes were articulated in terms of hours per week, the term "regularly" in this context connotes an outside activity expected to continue on a recurring weekly basis for several weeks.

Comment: Examples of outside activities that would be penalized under these regulations:
1. A staff member volunteers for multiple organizations and does not keep track of where they serve or for how long.
2. A part time employee needs a second job to support themselves, therefore they need outside employment to supplement their income.
3. A staff member works a second job to support their financial situation which requires evenings and weekends.
4.A staff member owns a small business that requires a large amount of outside work.

Response: It is the case that examples 2, 3 and 4 would be outside activities requiring disclosure; example 1 may or may not require disclosure, see above. The change in regulation does not penalize outside activity work any more than the prior version, and in some respects is less burdensome and limited to statutory requirements of the EBEA itself. The work supervisor and the designated ethics supervisor review the disclosure to make sure the outside activities are compatible with the employee's university job. The employee may be contacted for more information about the nature of the employee's university responsibilities, the outside employment/volunteer activities, or both. If there is no conflict with your state job, the disclosure form is signed and returned to you for your records. In some instances, the employee may need to adhere to some timeframe parameters on the outside activity, or may need to have certain university responsibilities re-assigned to a different employee to address the potential conflict. In rare instances, the employee may not be able to participate in the outside activity consistently with university employment.

Comment: 1. UAF Staff Council requests UA General Counsel remove all time limits to outside activities for all staff on the basis that current State of Alaska employees are not limited within AS 39.52.
2. If a time limit is retained, UAF Staff Council requests an explanation of the decision from Leadership or General Counsel.

Response: Changes have been made to the final version under which full-time employees are not invariably limited to 27.5 hours per week, rather, each determination will be made based on the facts and circumstances. State Regulation 9 AAC 52.090(1), calling for a determination of whether the outside activity takes time away from the employee's official duties, is binding on State of Alaska employees within the Executive Branch as well as UA employees. The final version of the regulation specifies that the timeframes therein are based upon Attorney General opinions interpreting and applying the statutes, rather than explicit in the statutory language itself.

Comment: FAC reviewed this memo and thought that overall it looked reasonable. We particularly liked that it put bookends on the time spent on outside activities that might require more formal agreements. Our one comment is that article 3c implies that there is a process for appeal in case of a disagreement between the employee and the supervisor. While the nature of that process does not necessarily need to be spelled out in this regulation, it seems important that this process should exist, and be described somewhere else.

Response: The work supervisor does not have the final say on outside activity disclosures. The work supervisor indicates whether they see "no adverse effect" or "adverse effect possible." These get reviewed by the ethics supervisor for the regional university, who assesses that possible adverse effect where present, and may make suggestions as to how the potential for adverse effect might be satisfactorily addressed. This might be through approving with imposition of certain conditions; it might be through a partial redelegation of work duties; or through additional steps. If the employee and work supervisor are amenable to that solutions, the disclosure can be approved. If issues still remain, the disclosure and remaining issues get conveyed to the system office ethics supervisor for final resolution.

Comment: What about contractors? Are those contractors excluded from this ethics requirement? Is there any reason the university couldn't set an expectation that contractors abide by our own internal (BOR) policy rather than excluding those not considered public employees under Alaska Statute? Another way of asking this is: are we are limited by the state definition? Holding all to a similar standard would have multiple benefits: The University of Alaska would have uniform policy, any contractors would be aware of expectations should they ever be hired as employees, and the university would enjoy a privileged reputation in terms of ethical use of state funds.

Response: Contractors do not fall within the definition of "public employees" so would not be bound by the Executive Branch Ethics Act. It is rare, but possible, that the same person is both an employee and a private contractor (that situation usually has to go through a special review because the IRS has particularized requirements). A person who is both an employee and a contractor would be bound by the EBEA. But other contractors would be excluded from the EBEA and from this ethics requirement. (If contractors are engaging in activities that raise ethical issues, that should be reported initially to UA Procurement.)

The suggestion that contractors be brought under the EBEA is not implementable at the level of a University Regulation, and would at least require a change in policy by the Board of Regents, and more likely a change in the statute. UA's contractors of course can range from single individuals to very large corporate entities; it is likely that the practical problems would be at least as prohibitive as the legal problems. One significant legal drawback is that imposing employee-like obligations on individual private contractors can erode the distinction between the two categories and lead to individual contractors bringing litigation to argue that UA is exercising sufficient control over those contractors to qualify as their employer and thus liable for employer obligations to them. If higher ethical requirements are to be required for UA's contractors, that is likely something better undertaken by suggesting changes to UA's procurement policies and regulations.

Comment: Can someone please give examples of present and future UA employees who would not be subject to this, following the language in the change proposed here: “It does not include persons outside the definition of ‘public employee’ as defined in 9 AAC 52.990(b)(7).”

Response: Those categories falling outside the definition of "public employee" are specified under 9 AAC [Alaska Administrative Code] 52.990: " 'public employee' has the meaning given in AS 39.52.960 and includes a permanent employee of an agency on non-seasonal leave without pay status, but does not include an individual on layoff status, a seasonal employee of an agency during the period of time that the employee is not employed by the agency, or a temporary employee of an agency during the period of time that the employee is not employed by the agency." (The definition of "public employee" in AS [Alaska Statute] 39.52.960: " 'public employee' or 'employee' means a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service").