Outside Employment and Consulting

Brief

Title: Outside Employment and Consulting
Publication date: 1/27/2017
Effective date: 1/5/2010

BRIEF

Policy Summary

Employees may engage in compensated outside consulting and employment as long as such activities do not interfere with performance of their Laboratory duties, create a real or apparent conflict of interest, or subject the Department of Energy, the University of California, or the Laboratory to public criticism or embarrassment. Prior institutional review and approval are required for compensated consulting and employment activities related to the employee's Laboratory work. All outside employment and consulting activities must be conducted without the use of Laboratory time, supplies, equipment, or facilities.

Who Should Read This Policy

This policy applies to all employees, including those working part time and variable time, and those who hold faculty appointments with a University of California campus.

To Read the Full Policy, Go To:

The policy tab on this wiki page

Contact Information

Assurance & Integrity Office
COI@lbl.gov

Policy

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POLICY

A. Purpose

This policy establishes review principles and processes for employee participation in consulting, employment, and other compensated professional activities outside of Berkeley Lab.

B. Persons Affected

This policy applies to all employees, including employees holding joint UC faculty appointments and retirees, regardless of percent time employed or worked, or duration of employment.

C. Exceptions

This policy does not apply to honoraria given for one-time lectures or presentations (given to a broad audience) as long as the source of the honorarium is not DOE or UC. Institutional approval is not required for reviews performed for a U.S. public agency, nor for expert witness testimony. All such activities should be approved by the employee's supervisor.
Review and approval of uncompensated outside business and professional activities is at the discretion of the division. Any written agreement offered in connection with such uncompensated activities must be submitted to the Innovation and Partnerships Office for review prior to signature.

D. Policy Statement

1. General Policy
   a. Employees are required to obtain institutional approval prior to engaging in outside business and professional activities, such as consulting and service on science advisory boards or boards of directors, or employment. See Section D.2 and Section D.3 of this policy.
   b. Employees may engage in outside business and professional activities, such as consulting and service on science advisory boards or boards of directors, outside Berkeley Lab hours and away from the Laboratory as long as such activities do not interfere with performance of their Laboratory duties, create a real or apparent conflict of interest, or subject DOE or Berkeley Lab to potential or actual public criticism or embarrassment. As set forth below, Laboratory management review and approval are required for any of the following outside professional activities:
      i. Work with the potential to interfere with Berkeley Lab employment obligations
      ii. Work of any kind for a scientific or technical organization
      iii. Work involving an entity with whom the Laboratory does business or has the potential to do business, e.g., licensing, sponsored research, subcontracts
      iv. Work paid by federal funds or by a unit of the University of California
   c. If the outside activity is not in one of the categories listed above and is obviously unrelated to the Laboratory's interests, it does not normally need to be reported or approved. Examples include an outside job or business interest in ranching; retail sales; and music, art, or residential real-estate sales. Employees who are undecided as to whether their outside activity must be disclosed in accordance with this policy may refer the question to the Assurance & Integrity Office.
   d. All outside business and outside professional activities must be conducted without the use of Berkeley Lab supplies, equipment, or facilities. In general, employees are prohibited from engaging in compensated outside employment, activity, or consulting if that activity is sponsored or funded by any Berkeley Lab or University of California entity or through any Berkeley Lab or University of California contract. No amount of time due to the Laboratory may be devoted to private purposes, and no outside business or professional activity may interfere with the performance of Laboratory duties. The policy in this section is based on federal and state laws and regulations, the UC-DOE Prime Contract for management of Berkeley Lab and University policy. Failure to comply with this policy, including the requirement to obtain prior approval before engaging in compensated outside professional activity, may result in disciplinary action, including suspension without pay and/or termination from employment, in accordance with the Laboratory’s Policy on Corrective Action and Discipline.
   e. Policy concerning ownership or management interest in commercial entities with potential economic or technology connections to the Laboratory is covered in the RPM section on Outside Business and Ownership.

2. Review-and-Approval Principles and Time Limits
   a. Principles
      i. The following considerations are made in determining whether a real or apparent conflict of interest exists:
         1. Incompatibility between regular duties and private interests
            a. Employee outside business or professional activities must not be in competition with current or proposed Laboratory projects.
            b. Employee outside business or professional activities must not result in unfair competitive advantage to the outside business.
            c. Employee outside business or professional activities must not materially affect the Laboratory’s dealings with the outside business or substantially affect the environment of the economic/technology business sector in which the employee or a near relative has a financial interest as defined by the University of California Conflict of Interest Code.
            d. Employee outside business or professional activities must not limit the employee’s responsibility to fully and promptly report significant Laboratory research and development information to DOE.
         2. Protection of privileged and proprietary information. An employee engaged in outside professional activities shall protect information, skills, or knowledge that is material to current or proposed Laboratory research or development work, and that is proprietary to the Laboratory and not yet in the public domain.
   b. Time Limits. There is no specific time limit for an employee’s outside business or professional activities; however, approval is required on an annual basis and whenever there is a change in the scope or terms of work. See Section D.3 below for the review process.
   c. Other Review Factors. In approving any individual activity, the total amount of outside professional activities may be considered.

3. Review and Approval Process for Compensated Outside Business and Professional Activities. Compensated outside business or professional activities described in Section D.1.a.i–v require prior review and approval by Berkeley Lab management and institutional officials. Use the Request for Approval of Compensated Outside Professional Activity process to obtain required approvals. In accordance with Contract provisions, the Laboratory may provide the DOE Berkeley Site Office (BSO), and certain external funding sources, with information and/or copies of documents pertaining to compensated outside business or professional activities.

4. Other Payments from Outside Organizations. Generally, employees are permitted to accept honoraria for lectures or presentations from sources other than the Department of Energy or the University of California (including flow-through funds). However, the California Political Reform Act imposes prohibitions and/or limits on honoraria for employees in positions designated by the University of California Conflict of Interest Code. See the RPM policy on Designated Officials for details. Honorarium payments for one-time lectures do not require Laboratory approval under the Compensated Outside Professional Activity process; however, such income may trigger disqualification requirements. Any written agreement offered in connection with such one-time lectures must be submitted to the Technology Transfer and Intellectual Property Management office for review prior to signature.

5. Teaching and Other Services for the University of California. Refer to the Teaching or Other Services for the University of California
6. **Review of External Technical Proposals Involving Laboratory Inventions.** A Laboratory employee who is invited by DOE or any third party to review a technical proposal that describes (1) his/her own invention/s or (2) any other Laboratory invention that the employee is aware of through, for example, previous knowledge of the invention or background intellectual property, will so inform the Technology Transfer and Intellectual Property Management Office (ttd@lbl.gov), which will evaluate the information and notify BSO if the subject matter of the proposal involves an elected or waived subject invention in which the Laboratory holds or intends to elect title.

7. **Policy on Outside Professional Activities for the University Senior Management Group.** Outside professional activities of Laboratory employees who are members of the University of California Senior Management Group (SMG) are subject to certain additional special provisions. Consult your division's Human Resources Center for complete information concerning the necessary approval and reporting requirements pertaining to members of the University Senior Management Group.

8. **Written Agreements.** The text of any proposed consulting or employment agreement must be reviewed and approved by the Innovation and Partnerships Office before execution of the agreement by the employee. When a consulting or employment agreement containing a claim for invention and patent rights is offered to an employee, the outside organization must be advised, under the terms of the UC-DOE Prime Contract for Laboratory management, that the agreement must include the following or equivalent language to obtain Laboratory approval:

   a. "It is recognized that (1) Consultant is an employee of the University of California engaged in certain work conducted by the University at the Lawrence Berkeley National Laboratory under Contract ____________ with the United States Department of Energy (DOE) and (2) the University has rights to patents and other intellectual property arising from Consultant's services for that work. This consulting agreement is subject to those rights notwithstanding any intellectual property obligations to contrary in this agreement. Whenever any invention or discovery is solely or jointly made, conceived, or developed by Consultant under the Consulting Agreement, the Company must promptly furnish the University and DOE with sufficient information to timely determine whether the invention or discovery is within the purview of the patent agreement executed by Consultant with the University."

9. Questions regarding inventions and patent articles in a proposed consulting agreement should be referred to the Innovation and Partnerships Office.

**E. Roles and Responsibilities**

Managers, supervisors, and employees have the responsibility to adhere to the provisions of this policy.

**F. Definitions/Acronyms**

None

**G. Recordkeeping Requirements**

Records will be kept for at least three years after approval for the activity has expired, or for at least three years after a request has been denied.

**H. Implementing Documents**

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**I. Contact Information**

Assurance & Integrity Office

COI@lbl.gov

**J. Revision History**

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<th>By whom</th>
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**Document Information**

**DOCUMENT INFORMATION**

Lawrence Berkeley National Laboratory. The official or current version is located in the online LBNL Requirements and Policies Manual. Printed or exported versions are not official. Users are responsible for working with the latest approved revision.
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Next review date: 1/27/2020

Policy Area: Outside Business and Employment

RPM Section (home) Conflict of Interest

RPM Section (cross-reference) Section 10.02

Functional Division Assurance & Integrity Office

Prior reference information (optional) Section 10.02

Source Requirements Documents

- Contract 31, Clause I.78 Sec. 970.0371-6 Incompatibility between regular duties and private interests
- Contract 31, Clause I.78 Sec. 970.0371-7 Outside employment of contractor employees
- Contract 31, Clause I.78 Sec. 970.0371-8 Employee disclosure concerning other employment services

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