

## **Guidance on Conflicts of Interest and Related Documentation in Faculty & Librarian Personnel Review Processes**

Office of the Provost

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### ***Context and Rationale***

Faculty and librarian personnel review processes are governed by policies of the University, by agreed-upon procedures in the Faculty Staff Union Agreement, and by Massachusetts laws regarding conflict of interest (COI). Each year, questions arise during reviews. There is also wide variation across campus in how reviews are carried out. Some of this variation is appropriate and necessary, as differences among disciplines and situations of individual candidates under review in their programs can lead to differences in carrying out the reviews within a range of what is appropriate. Variations primarily occur as processes are implemented, particularly impacting how committees are organized and external reviews are arranged. Complications that emerge during implementation often can be traced to decisions made at the beginning stages.

This guidance is provided as part of the responsibilities outlined in the Red Book (Doc. T76-081):

Section 3.7. In academic personnel matters, the Provost is responsible for the following:

- a) Ensuring that general criteria and procedural standards are consistently employed in all colleges and schools of the campus.
- b) Reviewing college and school plans and developing and maintaining, with appropriate faculty participation, long-range plans for the campus within the context of the current and long-range needs of the University, and keeping the campus informed of the status of those plans.

This guidance is also intended as a resource that facilitates the maintenance of the general criteria and procedural standards so that they can be consistently employed across the campus. Thus, this guidance supersedes guidance provided prior to the date of this document as well as by levels below the Provost Office (e.g., colleges, departments, programs). This guidance also builds upon our commitment to center equity as an essential principle as UMass Boston strives to become a leading antiracist and health promoting university.

This guidance for procedural standards in COIs, including external review letters for faculty or librarian personnel review processes, draws upon questions received by the Provost's Office and an analysis of documents from all relevant personnel review processes during AY 20-21. In the analysis, two data sources were examined: the text of the template solicitation letters sent to external reviewers which are included in basic files prepared for personnel reviews, and the composition of faculty or librarian review committees (e.g., departmental personnel committee<sup>1</sup>; college personnel committee) in terms of allowable relationships between committee members and faculty candidates whose basic files were reviewed. A finding from this analysis was that none of the template solicitation letters had explicit statements requesting that external reviewers declare whether they have a COI, nor was explicit guidance provided for how a reviewer, candidate, committee member, or administrator should determine whether they have a COI. There is language about COI in the policies governing these review processes, and the Massachusetts Conflict of Interest Law also informs our interest in personnel matters.

### ***Purpose of the Guidance***

This document is intended to provide guidance for the implementation of faculty and librarian personnel reviews, particularly concerning:

- Who may have COIs concerning their involvement in performing a personnel review,
- What to do if a COI should be declared by an employee of the University (i.e., a faculty member, librarian, or administrator involved in a review process),
- Who may have COIs if asked to provide external letters of evaluation of a candidate's work,

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<sup>1</sup> To reduce cumbersome repetition with many instantiations of review committees, department personnel committee (DPC) is used to stand also for librarian personnel committee or school personnel committee, where appropriate, and college personnel committee (CPC) also stands for school personnel committee when there are departments within a school.

- What information about external letters should be provided to the candidate under review, and
- Processes for mitigating impacts of conflicts of interest.

The relevant policy from the Red Book (Doc. T76-081) is:

Section 6.6. A faculty member or administrative official should withdraw from participation in any personnel recommendation or decision involving potential conflict of interest. (Red Book)

Relevant excerpts from the Massachusetts Conflict of Interest Law (G.L. c. 268A) are:

Section 23(b)(3)

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion;

All state employees complete a conflict-of-interest training once every two years. In addition, the Massachusetts State Ethics Commission publishes summaries of the Conflict of Interest Law. The summary for this section of the law may be found at <https://www.mass.gov/service-details/summary-of-the-conflict-of-interest-law-for-state-employees>.

The guidance offered in this document is not exhaustive, nor is that its goal. The purpose of the guidance is to provide clarification on COI issues that commonly arise in relation to faculty personnel reviews. For the full view of the policies, procedures, and laws, please consult the Red Book, the Implementation Guide, the current FSU Agreement, and the Massachusetts Conflict of Interest Law.

### *Types of COIs*

When there is a COI, it may be disqualifying or potentially disqualifying. A disqualifying COI prevents a person from participating in a review process. When a COI is potentially disqualifying, professional discretion, on the part of both the candidate and the individual who would have a role in reviewing the candidate, must be used to determine whether the COI is disqualifying. Useful gauges are whether the individual can reasonably provide an objective review and whether the review would be seen as being impartial by a reasonable person familiar with the relationship. If it is determined that the COI is not disqualifying, then the review may proceed as long as the COI is declared.

Appendix A outlines both types of COIs for faculty members, librarians, and administrators and provides examples of each. Appendix B does the same for external reviewers. These appendices may be detached and separately provided to individuals to guide their judgment.

Not all personnel processes require letters of reference from external reviewers (i.e., individuals who are not employees or students at UMass Boston). When external reviewers are solicited, they should be asked to identify and specify any COIs.

The current FSU Agreement states:

12.7.4 The solicited referees shall include scholars and professionals from among those suggested by the faculty member (if he/she wishes to do so), but the list is not limited to those the faculty member suggests. Prior to this solicitation, the candidate shall be provided with a copy of the solicitation letter and the list of proposed referees and shall be given an opportunity to comment on the appropriateness of both.

Thus, the candidate has the opportunity to review the names of proposed external reviewers and should determine at this point, from their perspective, whether there is a disqualifying COI with any individual. If it is determined that there is a COI and it is not considered disqualifying by either the candidate or the individual who would provide the external review, then the reviewer may provide a letter of reference to be included in the candidate's review process as long as the COI is declared. For example, an individual who is a co-author of a book with a candidate may provide a letter of reference for the candidate's review as long as the individual and the candidate both agree that an objective review can be provided and the external reviewer declares the COI in the letter of reference.

When an on-campus individual in a singular role designated as part of the review process has a COI, the review will proceed without that level included in the review. For example, if a Department Chair is undergoing a review for promotion then the review will proceed without the Chair's letter, due to COI, or if a Dean recuses themselves from reviewing an Associate Dean who is undergoing a review for promotion then the review will proceed without the Dean's letter. In addition, individuals who are asked to participate in personnel review processes have a right to recusal if they consider that they cannot provide an objective review. The same process as for COI is followed in the case of recusal.

When an individual in a non-singular role designated as part of the review process either has a COI or recuses themselves from performing a review, the Dean should follow the procedures outlined in the Red Book, Implementation Guide, or FSU Agreement. At this time, the 2017-2020 FSU Agreement states: "In a department with fewer than (3) eligible faculty members, the faculty and Dean shall agree upon the selection of a specific faculty member or members from outside the department who shall be asked to serve on the committee."

***Q1: May a person with a COI who does not participate in the review process advise the candidate?***

When an individual with a COI remains outside the personnel review process, they are able to serve as a consultant in support of the candidate.

***Q2: How can individuals be provided information to inform their identification of disqualifying or non-disqualifying COIs?***

The candidate and individuals at UMass Boston who are asked to serve in the candidate's personnel review process should be provided with the excerpted section entitled, "*Absolute COIs that Are Disqualifying, COIs that Are Potentially Disqualifying, and Recusals in On-Campus Review Processes.*"

The candidate and individuals external to UMass Boston who are solicited to provide letters of reference should be provided with the excerpted section entitled "*Absolute COIs that Are Disqualifying and COIs that Are Potentially Disqualifying for External Reviewers.*"

***Q3: If an external reviewer has a COI that is not disqualifying, the reviewer may provide a letter of reference for the candidate's basic file. How should the COI be declared by the writer, and how should the declaration be presented in the basic file?***

The external reviewer should be instructed to disclose the nature of the non-disqualifying COI in their letter of reference.

***Q4: When do candidates provide input on COIs with external reviewers?***

Before letters from external reviewers are solicited, the candidate is asked to comment on the appropriateness, including COIs, of the proposed referees (FSU Agreement 12.7.4). In most cases, additional letters of reference are not solicited at later review stages, but it is possible that they can be. The same process is followed for these.

***Q5: Does the candidate learn the identities of the external reviewers?***

There are several points at which the candidate is provided with information on who provided letters of reference. Before the basic file is forwarded from the departmental level, the Chairperson prepares a table of contents containing the source of each item in the basic file. This includes the names of the external letter writers, as well as

names of colleagues and students at UMass Boston who provide letters. Candidates who waive the right of access to the letters do not see the letters nor do they know which letter is the source of any quotes from letters in reviews. When a candidate has waived right of access to the letters, quotes included in letters should therefore mask the identity of the source (e.g., “Reviewer B wrote...”). The table of contents is provided to the candidate by the Department Chairperson when the basic file is forwarded from the departmental level. In addition to sending the table of contents at the time of sending the DPC’s recommendation to the candidate, a copy of the table of contents is also sent to the candidate when any subsequent recommendations (Department Chair, CPC, Dean, Provost and Chancellor, and President if relevant to the review) are sent to the candidate (see the 2017-2020 FSU Agreement 12.7.7 through 12.7.13). External reviewers should be apprised when solicited that their identities will be disclosed to the candidate, as this may influence their decision about whether to write a letter of reference.

***Q6: How can external reviewers be advised to take into consideration the impacts of the COVID-19 pandemic?***

Solicitation of letters of reference from external reviewers should include contextual guidance about the COVID-19 pandemic. On May 10, 2021, in consultation with the Faculty Council’s Ad Hoc Teaching Evaluations Committee and Dean’s Council, the Provost provided guidance on the evaluation of teaching due to the COVID-19 pandemic. The effects of the pandemic are not limited to teaching. Thus, it is appropriate that personnel reviews also address the impacts of the pandemic. The following language, or an appropriate variation, is recommended to be used in solicitation communications sent to prospective external reviewers during faculty and librarian review processes that take place between 2021 and 2026:

Beginning in Spring 2020, as elsewhere, faculty and librarians across UMass Boston experienced a significant disruption due to the COVID-19 pandemic. In March 2020, as a result of the crisis, all courses at the university were moved to remote instruction, research facilities including labs and the library were closed, and travel was suspended, limiting opportunities for field work, archival research, and professional visibility. In addition, many conferences were canceled after presentations had already been accepted to be presented. In conjunction with the disruptions experienced on campus, many worked from home while simultaneously providing childcare or care for other family members due to closures of daycare facilities and K-12 schools. The university remained primarily remote through the end of Summer 2021 and returns to on-campus operation beginning in Fall 2021. Due to the disruptions to academic productivity as a result of the pandemic, all pre-tenure candidates were granted the option of a one-year tenure delay as a matter of right. UMass Boston’s policy is that the criteria for tenure and promotions are the same for all faculty regardless of the length of their service in their current rank. We ask that you use this standard in your evaluation and that you bear in mind the disruptions due to the COVID-19 pandemic in your review. Candidates have also been asked to explicitly address pandemic-related disruptions in their personal statements.

***Q7: How should letters of reference by external reviewers be organized in the basic file?***

Since non-disqualifying COIs are disclosed in the letters of reference by external reviewers, it is unnecessary to separate external review letters into categories according to who nominated the reviewer. All external review letters should be included in the same folder, regardless of who nominated the reviewer. External reviewers should be asked to provide a CV. The CVs of external reviewers should be located in a different folder than the letters of reference from external reviewers.

***Q8: Is there recommended text for soliciting external review letters?***

Template language for soliciting external reviews is provided separately. This was constructed from current letters of solicitation.

## COI Guidance for Personnel Reviews: Appendix A

### *Absolute COIs that Are Disqualifying, COIs that Are Potentially Disqualifying, and Recusals in On-Campus Review Processes*

COIs that **disqualify** a faculty member, librarian, or administrator from serving at any level of a personnel review process (e.g., DPC, Department Chair, CPC, Dean) for the candidate's review include immediate familial relationships, close personal relationships, financial relationships, and supervisory relationships other than those called for in the personnel review. Examples of these are:

- A spouse, child, sibling, or parent of the candidate.
- A close personal friendship that might tend to affect the individual's judgment or be seen as doing so by a reasonable person familiar with the relationship.
- A PI of a grant on which the candidate is a co-PI or vice versa.
- A financial relationship or business relationship such as co-owners of a company.
- Present association as a thesis or dissertation advisor or advisee.

COIs that have the **potential to be disqualifying** in on-campus reviews (e.g., DPC, Chair, CPC, Dean) include collaborators in scholarly activities and relationships in which there is a power differential. Examples of COIs that have potential to be disqualifying are:

- Collaborator on a project or on a book, article, report, or paper.
- Co-editor of a journal, compendium, or conference proceedings.
- Past association as a thesis or dissertation advisor or advisee.

In these cases, professional discretion, on the part of both the candidate and the individual who would have a role in reviewing the candidate, must be used to determine whether the COI is disqualifying. Useful gauges are whether the individual who would participate in reviewing the candidate can reasonably provide an objective review and whether the review would be seen as being impartial by a reasonable person familiar with the relationship. If it is determined that the COI is not disqualifying, then the review may proceed as long as the COI is declared. For example, an individual who is a co-author of a book with a candidate may serve on a personnel review committee of the candidate as long as the individual and the candidate both agree that an objective review can be provided and the individual participating in the review declares the COI (e.g., in writing in the DPC review).

An individual who is asked to serve in a committee in the review process (e.g., DPC, CPC), or who is in a role designated as part of the review process (e.g., Department Chair, Dean), has the right to **recuse** themselves from performing the review if they consider that they cannot provide an objective review.

## COI Guidance for Personnel Reviews: Appendix B

### *Absolute COIs that Are Disqualifying and COIs that Are Potentially Disqualifying for External Reviewers*

When a personnel review process includes external reviewers, COIs that **disqualify an external reviewer** include immediate familial relationships, close personal relationships, financial relationships with the candidate or the University, and positions of influence over or under the candidate. Examples of these are:

- A spouse, child, sibling, or parent of the candidate.
- A close personal friendship that might tend to affect the individual's judgment or be seen as doing so by a reasonable person familiar with the relationship.
- A PI of a grant on which the candidate is a co-PI or vice versa.
- A financial relationship or business relationship (e.g., co-owner of a consulting business).
- Employment at UMass Boston within the past 12 months.
- Current financial arrangement with UMass Boston (such as consulting or an advisory arrangement).
- Received an honorarium or an award from UMass Boston within the past 12 months.
- Being considered for employment at UMass Boston.
- Currently on a visiting committee (e.g., AQUAD, accreditation committee) for the candidate's program, department, or unit (e.g., college) at UMass Boston.
- Holding an office, board membership (e.g., Board of Trustees), or influential committee chairpersonship at UMass Boston.

COIs that have the **potential to disqualify an external reviewer** include collaborators in scholarly activities and relationships in which there is a power differential. Examples of these are:

- Collaborator on a project or on a book, article, report, or paper.
- Co-editor of a journal, compendium, or conference proceedings.
- Past or present association as a thesis or dissertation advisor or advisee.

In these cases, professional discretion, on the part of both the candidate and the individual who would serve as an external reviewer, must be used to determine whether the COI is disqualifying.