



## Diversity and the Law: 2021

### **Sample Target of Opportunity Policy for Faculty<sup>1</sup>**

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*This document provides illustrative, adaptable policy language that can advance DEI goals in ways that are less likely to implicate the strict or heightened scrutiny reflected in federal non-discrimination law standards that apply to race- and ethnicity- (strict), as well as to sex- and gender- (heightened) conscious policies and practices. It is most relevant to institutions of higher education that maintain holistic hiring processes within their operations.*

This target of opportunity policy overlays and makes target of opportunity considerations and actions available in any competitive search, search waiver, internal search, or other hiring, research support, or promotion process at the University for any position classified by the University's policies as an academic or research appointment. (This policy does not apply to appointments of student teaching and research assistants.) This policy is designed to support efforts for recruiting and retaining academic and research personnel who can especially advance priority mission-driven goals, while affording the institution flexibility to expeditiously hire or promote and support the work of individuals who might otherwise be beyond reach, unavailable or more difficult to recruit or retain.

The University's mission requires broadly diverse, equitable and inclusive academic and research endeavors in which individuals of many perspectives, experiences, areas of knowledge, and talents engage creatively to achieve excellence in educational and research outcomes for all of the institution's students and its contributions to society. This target of opportunity policy furthers the benefits of educational diversity, equity, and inclusiveness as critical to excellence in the academic and research program, with fealty to legal requirements. In accordance with federal and state<sup>23</sup> law and University policies, the University is committed to providing equitable and equal opportunity in employment through inclusive, non-discriminatory recruitment, hiring, research support, retention, and promotion practices, including under this target of opportunity policy.

### **How To Use The Target of Opportunity Consideration In The Hiring or Promotion Process**

This policy applies to the following circumstances and in the following manner.

In any hiring or promotion process, every candidate's many qualifications and anticipated contributions to the University community and society are always considered, as a whole. The University's high standards of excellence are applied, encompassing quality of academic and research work and promise, as well as professional, ethical, and inclusive conduct. One or more individuals may be identified in any hiring, promotion or research support process who, not only fulfill those standards, but are expected to be able to uniquely or especially advance the University's priority mission-driven goals—overall or in a particular discipline of need or interest at the institution. That determination of special ability to contribute is based on particular accomplishments or promise included in the target of opportunity criteria.

**1. Target Of Opportunity Criteria include one or more of the following:**

**a. Evidence of Professional Distinction.** The candidate demonstrates exemplary promise or extraordinary accomplishments in and contributions to a field evidenced by:

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<sup>2</sup> This example form does not address state law requirements. Each institution should customize the form to suit its unique processes, as well as its state, local and institutional laws, and policies.

- being the recipient of , peer-determined, top academic prizes (e.g., Nobel or Pulitzer) or memberships in top scholarly academies (e.g., National Academy or American Academy),
- status as the only, or one of the few, experts in the field,
- having a record of innovative research, scholarship or teaching of substance that would especially enrich the academic or research environment and/or advance the field (even if not well-funded or recognized by traditional sources and expanding the boundaries of a field by reflecting minoritized perspectives),
- other notable accomplishments or promise.

Extraordinary professional distinction does not exist if an individual engages in exclusionary, unethical, or unprofessional conduct, as that adversely affects talent and the field.

**b. Evidence of Outstanding Record of Inclusive and Equitable Conduct in the Workplace.** Regardless of the candidate’s own race, ethnicity, gender, religion or other identities, the candidate demonstrates one or more of the following strengths that provide highly valued diversity-associated educational benefits to all students at, and advances the academic mission of, the University:

- brings knowledge, expertise, experience, however obtained, that would elevate broader understanding of issues affecting minoritized groups at the institution, in a field, or in society (including, e.g., minoritized races, ethnicities, genders, religions, socio-economic backgrounds, etc.), and would especially enrich the academic or research environment and/or advance the field;
- demonstrates an authentic action-backed commitment to ameliorating the causes of inequity and harm burdening individuals from minoritized groups, whether through service, research, and teaching focus, or other means;
- has a research and teaching focus on the subject matter of inequities and harm burdening minoritized groups—and related effects on equitable opportunities in society;
- has a research focus on effective inclusive pedagogy for all students (including those of minoritized groups), and/or has a strong record of employing effective pedagogy or otherwise demonstrating inclusive conduct for all students and colleagues in learning and work settings;
- has a strong research, teaching or service record of identifying and eliminating systemic barriers and developing more welcoming and inclusive climate and culture for a diverse student body and faculty, including people from minoritized groups, at academic institutions and/or in a disciplinary department or field;
- has a strong record of providing opportunities for students and/or colleagues to gain meaningful experience engaging in broadly diverse teams, enhancing their learning, research, and other work outcomes.

This criterion considers the candidate’s knowledge and expertise, commitment, and/or inclusive conduct/record, not other characteristics. A record of research, writing, specific expertise, practices or outcomes, or other evidence is required to assess each individual for satisfaction of one or more of these criteria.

**2. Consideration of Target of Opportunity Criteria.** In addition to filling a single position in a full search or promotion process, target of opportunity criteria may be used in an expedited or internal search process and to provide supplemental research support or special retention incentives. Target of opportunity criteria may also be used in the award of research support, compensation and other

employment benefits determinations, and retention incentives. The following opportunities are available, and requirements apply.

**a. Regular full search or promotion process; and regular research support, compensation, and benefits processes.**

Under this policy, target of opportunity criteria may be “plus criteria,” among the many qualifications considered, in of these regular processes without involving the [specify relevant office, e.g., Office of Provost].

**b. Additional position and retention incentives.**

Target of opportunity criteria may be considered to justify hiring or promoting one or more additional candidate(s) identified in any full search or promotion process, or to provide a retention incentive, without a further process. (This is a kind of expedited process.) Approval of the additional position or retention incentive, after confirmation of available funding (which may be provided by the Provost, a dean or other source), and approval of the desired candidate for the additional position or faculty member for the retention incentive, after confirmation that the candidate or faculty member meets a target of opportunity criterion, must be obtained from the [specify relevant office, e.g., Office of Provost]. Use this form [insert URL].

**c. Waiver of process/expedited process.**

A waiver of the search or promotion process, or conduct of an expedited or internal search or promotion process, always requires approval by the [specify relevant office, e.g., Office of Provost]. Use this form [insert URL]. Target of opportunity considerations may justify such approval.

Once a waiver of process or an expedited or internal process is approved, target of opportunity considerations may be “plus criteria,” among the many qualifications considered, in evaluating candidate(s) and making a hiring or promotion decision, without further involvement of the [specify the relevant office, e.g., Office of Provost].

**d. Advice.**

The [specify the relevant office, e.g., Office of Provost] will consult with the [insert names of the relevant offices covering Equity and Diversity, HR, and Legal] for advice in applying this policy. Those who participate in hiring and promotion advice or decision-making may also do so.

**e. Complete process.**

This policy overlays and applies to all academic and research personnel search, hiring and promotion processes, allowing target of opportunity criteria to be factored into opportunities that are available and decision-making. This policy comprises part of the process that applies to all relevant searches, hiring and promotions from the start. Thus, applying and acting on this policy does not constitute a change in any hiring process being employed.

**“Minoritized” people or groups**, as used in this policy, mean those whose identities (and related customs and/or experiences) are not included in the dominant “normative” identities at the institution, or in a disciplinary department or field, and/or in society. Such identities may relate to race, ethnicity, gender, religion and more. Minoritized people or groups are considered, in effect, as “other” and experience exclusion (even if that is not the intent). People and groups may be marginalized in their experience at the institution or in a department—regardless of their compositional representation at the institution or department—but they are also often not well represented.

**“Minoritized” perspectives and work** (including focus of research/scholarship) are those that do not reflect dominant norms in the department or field. Those whose perspectives and work are within the dominant norm at the institution or in a department or field may be incentivized to maintain the status quo; and that can cause stagnation in a field. Broad and diverse perspectives—dominant and minoritized—are critical for growth and innovation in fields. Some political perspectives may be minoritized. Regardless of political perspective, however, the institution’s mission requires faculty members who are committed to conduct, climate and culture that include a broadly diverse student body, faculty and academic community and enable all talent to thrive.