

# Overview

## Policy on Consulting for Faculty and Members of the Faculty Collective Bargaining Unit

### Introduction

There are numerous rules that apply to all employees of the State of Connecticut as well as additional rules specific to those employed by the University of Connecticut.<sup>1</sup> These are described in various statutes, bylaws, policies, regulations and procedures.

A subset of these rules apply when an employee (fulltime or part-time) is compensated for services rendered while not acting as a State employee. These rules apply regardless of the amount of time/effort involved or when the activity takes place. Compensation includes direct monetary payment, “honorarium,” and non-cash considerations such as luxury travel,<sup>2</sup> gifts, or equity in a product and/or company even if those currently have no monetary value. Compensation does not include purely necessary travel expenses, prizes, or royalties (as defined as solely receiving a payment for each copy sold.)

Chief among these rules are those that require that such activities: a) are not being conducted on “time due to the University”, b) do not create an unacceptable conflict of interest (i.e. the individual’s decision making as a State employee, or influence on decision making on State related business are not biased by the relationship or that if such bias exists,<sup>3</sup> it is appropriately managed), and c) do not result in the employee benefiting from his/her State position either in obtaining or carrying out the work. Another important requirement is that employees do not disclose proprietary and/or confidential information.

While the authority to interpret and enforce the rules related to “time due to the University” are under the jurisdiction of the University, the other rules cited above are under the jurisdiction of the Office of State Ethics (OSE) and the Citizen’s Ethics Advisory Board.<sup>4</sup> Usually, the OSE only responds to allegations of non-compliance, which trigger investigations. However, requests for advisory opinions can be sought in advance of a consulting activity, but obtaining a complete review can take considerable time. If and when a State employee is being investigated, s/he is usually not represented

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<sup>1</sup> Herein referred to as “Storrs+” for all those employed by the main campus, regional campuses and law school, and “UCHC” for those employed by the University of Connecticut Health Center.

<sup>2</sup> The additional expenses above and beyond what would be incurred if one was traveling as a state employee.

<sup>3</sup> This applies to even a perception of bias (i.e. would a reasonable person be concerned that a bias might exist?)

<sup>4</sup> State of Connecticut general statutes Section 1-84 b and c.

by the University's legal counsel and penalties are directed to the individual in his/her private capacity.

For several reasons, the University sought and obtained a change in jurisdiction over sections 1-84 b & c of the State Code of Ethics.<sup>5</sup> This change shifts such jurisdiction of interpreting and enforcing these sections of the Code from the Office of State Ethics to the University.<sup>6</sup> This shift only applies to a subset of University employees, those being faculty or members of the faculty collective bargaining unit (i.e. AAUP), and only when the following conditions are met:

- The Board of Trustees establishes policies that meet a variety of conditions including, but not limited to, the disclosure, review and management of conflicts of interest. These policies must include sanctions when behavior is inappropriate and when the University's established policy and procedures are not complied with,<sup>7</sup>
- Prior approval is obtained (i.e. before the outside work begins) with final approval by the chief academic officer, and
- The request to provide the services must be predicated on the person's expertise or prominence in a field.

As a result of these changes, it is possible for a faculty member or member of a faculty collective bargaining unit to obtain certification that they are not violating State statutes regarding conflict of interest, inappropriately benefiting from one's position as a State employee, and inappropriately disclosing the State's proprietary/confidential information. Employees without such certification are subject the jurisdiction of the Office of State Ethics.

A required element of this shift in jurisdiction is substantial internal and external scrutiny over the process. This includes annual audits by the Office of Audit, Compliance and Ethics and review by an Oversight Committee that includes three members appointed by the leaderships of the Legislature in conjunction with the Governor's Office and a member of the Citizen's Ethics Advisory Committee. The Oversight Committee will formally make recommendations to the University's Board of Trustees and to the joint standing committees of the General Assembly having cognizance of matters relating to higher education and government administration. If the University is found not be adequately discharging its new responsibilities in this area, jurisdiction may be transferred back to the Office of State Ethics.

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<sup>5</sup> Connecticut General Statutes 1-84(r).

<sup>6</sup> The actual language of the statute exempts Higher Education faculty and members of the faculty bargaining units from certain section of the State Ethics code, but only when a set of requirements are met that by in large mirror the intent of the Code of Ethics in these same areas.

<sup>7</sup> The "Policy on Consulting for Faculty and Members of the Faculty Bargaining Unit September 25, 2007" and the accompanying "Procedures" were initially approved by the Board of Trustees on September 25, 2007.

## Specific Rules Related to Consulting

### Eligibility

The University's policy on Consulting for Faculty and Members of the Faculty Bargaining Unit only applies when the person requesting permission to consult:

- Is an employee<sup>8</sup> of the University, full-time or part-time<sup>9</sup>.
- Is a faculty member or a member of the AAUP Bargaining unit.
- Was asked to engage in the consulting activity due to his/her professional expertise or prominence in a field. For those employees with teaching or research responsibilities, the consulting activity must contribute to the continued development of that person's professional expertise.

The University reserves the term "consulting" to situations in which an individual is compensated for services rendered while not acting as a State employee and the requirements above are met. Employees may still be eligible to be compensated for services rendered while not acting as a State employee, but such activities are not considered "consulting." Such activities are under the jurisdiction of other policies and processes.

Note – the shift in jurisdiction from the Office of State Ethics to the University only occurs when

- The University's Policy and Procedures on Consulting for Faculty and Members of the Faculty Bargaining unit are complied with, including that all information provided through the process is truthful.
- Approval is obtained prior to the start of the consulting activity.<sup>10</sup>

### Conflict of Interest

The Code of Ethics prohibits State employees from engaging in consulting activities that would create a conflict of interest that impairs their ability for independent judgment when serving in their State positions. This applies to their direct decision making and/or to the influence they have over the decision making of others. A conflict of interest may be 'real' in that bias is actually exercised or there may simply be a 'perception' of a conflict. In either case, it may be possible to successfully manage such situations.

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<sup>8</sup> Employees must be in the Storrs+ or UCHC payroll system. Persons on contract, personal service agreements, stipends, etc. are not employees.

<sup>9</sup> Those employed less than 50% time are exempted from the University's Policy on Consulting, but on an annual basis may choose to opt into the program in order to benefit from CGS 1-84(r).

<sup>10</sup> The State statute is clear, no backdating or retroactive approvals are allowed.

In order to identify such real or perceived conflicts of interest and in order to attempt to develop appropriate management plans for such persons, those requesting permission to consult will have to provide the following:

- Information as to how one's State duties, might be related to the contracting entity (the party engaging and paying the employee to consult).
- If there is even a perception that one's decision making as a state employee or influence on decision making by other state employees may impact the contracting entity, then information related to the level of compensation received for the consulting work, which will be used to determine if such compensation is appropriate in consideration of the services to be rendered.

The Consulting Management Committee has been convened to provide advice as to the existence of conflicts of interests and what may be appropriate plans for managing such conflicts. Such advice is available by request either from those seeking to consult or those who must formally approve requests for consulting.

#### Inappropriately Benefiting from One's State Position

State employees may not use their State positions for financial gain, either for themselves, their relatives, or their other employers/business partners. This benefit would include being asked to perform the consulting activity due to one's State position, or the free use of State resources to support such consulting. Any material use of State resources must be reimbursed. The rules on conflict of interest also address situations in which an employee may use their decision-making authority or influence with other decision makers to gain financial benefit.

#### Proprietary/Confidential Information

State employees may not disclose any information that that State considers its own intellectual property (whether that be in whole or in part) or trade secrets without obtaining prior permission. Such permission should be solicited from the Center for Science and Technology Commercialization. Disclosure of financial, patient or other types of confidential info may not be disclosed without specific permission.

#### Competing with the University

University employees may not engage in consulting activities that the University would have viewed as work it would have wanted to provide.

### Not Acting as a State Employee

When consulting, the individual is not acting as a State employee and must so notify the contracting entity. Therefore, s/he has no State liability protections of any kind, statutory immunity, etc.

### Use of the University's Name, Logo or Marks

The requestor may not inappropriately use his/her association with the University in connection with the consulting activity. Requestors may identify their employment status, but they shall not speak, act or make representations on behalf of the University or express institutional endorsement. Permission may only be obtained from the University to use the University's name, logos or other identifiable marks. The Consulting Management Committee is available to provide advice on the appropriate use of the University's name and/or affiliation.

### Time due to the University

Even for those members of the University in the Faculty Bargaining unit, there is no standard work week for those eligible for consulting under this policy. In general, the number of hours of work per week and the actual days to be worked are those required to adequately perform one's assigned duties, rather than a strict adherence to a calendar and time clock.

Therefore, consulting will only be approved when the requestor is adequately performing their current duties and can be expected to continue to adequately perform such duties when participating in the consulting activity for which approval is being requested. Being available to prepare for and/or teach classes, meet with students out of class, and/or to attend meetings with other faculty, administrators and staff, or cover other faculty for appropriate absences (e.g. trainee supervision, clinical call, etc.), are considered essential requirements when considering the impact of consulting on one's ability to perform one's duties.

### Normal work time / normal work days (aka NWT)

This pertains to the usual days and times a faculty member is expected to be carrying out his/her work duties. Since there is no defined standard work week for faculty, NWT is uniquely defined for each faculty member and may include time during nights, weekends, holidays, etc.

When consulting takes place during NWT, there is a greater risk it might disrupt the faculty member's ability to carry out his/her duties which include being present for classes, student related office hours, clinics, meetings, etc. Therefore, in addition to

obtaining permission to consult for a specified level of effort,<sup>11</sup> specific permission is required for consulting during NWT and such permission must be obtained at least one day in advance of the consulting during such time. This is required so that the department chair can ensure smooth operations. The department chair has the right to deny use of such time when it negatively impacts on operations.

Such permission to consulting during specific NWT can be obtained in one or both of the following ways: a) The specific dates/times are listed on the request to consult form. If this form is approved, these dates/times are locked in and cannot be unilateral rescinded by the chair at a later date; or b) Via letter or email at least 24 hours prior to day/time in question. Both the chair and the faculty member must keep written documentation of such approval to be presented to the auditors if so requested.<sup>12</sup>

## **Process**

### Initial Request for Approval

Requests to consult are made using the Online Faculty Consulting Approval System (OFCAS) at [consulting.uconn.edu](http://consulting.uconn.edu) by completing the online form titled "Request for Approval of Consulting Activities for Faculty (including administrators with faculty titles) and Members of the AAUP Bargaining Unit". All requested information needs to be provided and be truthful. Submission of this form should be sufficiently in advance to ensure the approval process can be completed prior to the activity beginning. Additional forms may need to be attached including Use of University Resources.

OFCAS operates on the Storrs IT network and requires a Storrs logon (Network ID and password). Network logons are created when a person is entered into the payroll system. If a logon is needed prior to employment, the Storrs+ or UCHC Faculty Consulting Offices can help to arrange obtaining one. Network passwords must be kept confidential and may not be shared. Assistance with Net IDs or passwords, can be obtained at 860/486-HELP (4357).

A request form may only pertain to a single fiscal year, July 1 – June 30. If an activity extends beyond a single fiscal year, a separate request will need to be submitted for the period of the next fiscal year.

At the end of the online form, the requestor must attest to the following:

1. S/he certifies that:
  - a. S/he has read the Policy and Procedures on Consulting for the Faculty and Members of the AAUP Faculty Bargaining Unit;
  - b. S/he understands that non-compliance with these rules may result in

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<sup>11</sup> This is reported as "days" with an assumption that one day is ten hours.

<sup>12</sup> Note that while the original request form may have indicated the number of normal work days approved for the consulting activity (aka "umbrella approval") this is NOT permission to use specific days/times.

- sanctions, including but not limited to losing the right to consult or any disciplinary action allowed under the Connecticut Labor Law and the requestor's union contract.
- c. For dates and times s/he will be consulting that are not specifically articulated on this request form, s/he will provide at least one working day (but more if possible), notification of them to their department head (or equivalent unit head) and that such head may require that s/he perform their University duties at that time rather than consult (i.e. until s/he has the approval to consult on specified normal work days, s/he's ability to consult is not guaranteed), and
  - d. If the terms and conditions of this consulting activity change in a significant way, s/he will immediately notify the appropriate Faculty Consulting Office.
2. S/he understands that when consulting,
    - a. S/he will not be representing the University,
    - b. S/he will not be acting as a State employee and will so notify the contracting entity, and
    - c. The University/State will not provide liability or malpractice protections and/or statutory immunity for these activities
    - d. The total amount of time s/he spends consulting during normal work time in any fiscal year, may not exceed the cap for that faculty members campus; and
    - e. Any travel is not on time due the University and at her/his personal expense and not that of the University.
  3. S/he understands, that to the best of her/his knowledge, her/his involvement with this consulting activity:
    - a. Is based on her/his professional expertise and/or prominence in her/his professional field and not due by her/his State position;
    - b. Will not interfere with her/his ability, on an annual basis, to perform fully her/his assigned duties;
    - c. Will not compromise the University in any of its external relationship, including those with the State or Federal governments; and
  4. S/he certifies that to the best of her/his knowledge, the consulting activity:
    - a. Is not in competition with the University (i.e. the University would prefer to conduct the consulting work itself rather than she/him performing it outside of her/his employment with the University)
    - b. Will not compromise the University's intellectual property interests or require her/him to disclose confidential or proprietary information; and will not require her/him to generate new data or information in her/his University laboratory.

A request can be initiated online by staff member using OFCAS and it will route to the faculty member for final completion of attestations and formal submission.

Significant changes in an approved consulting activity will require the submission of a new request form and approvals prior to the start of such changes in the activity.

### Approval

The electronically signed request form then needs to be reviewed and approved by the following:

- the requestor's department head,
- the requestor's dean (the Athletic Director for those in the Division of Athletics), and
- the Provost (or Provost's designee) for all those employed by Storrs+ and the VP for Health Affairs (or designee) for all those employed by UCHC. The President will serve as the Provost's designee for requests from members of the Division of Athletics.

These approvers must certify that:

- the requestor is adequately performing his/her duties,
- the addition of the requested activities will not interfere with assigned duties, and
- such activity is an appropriate professional activity, and
- the requestor is not competing for work that the University would choose to perform.

The Faculty Consulting Offices (FCOs) for Storrs+ and UCHC will review each request and make their respective recommendations to the Provost and VP for Health Affairs, (or their designees), but do not have approval authority. Requestors, department heads, and deans may also obtain advice from the FCOs. A Consulting Management Committee will be available to provide specific advice to all parties regarding the perception of Conflicts of Interest, acceptable management plans for such conflicts, and dealing in situations in which the University's names might or might not be appropriately used. This committee will have two members appointed by the Provost, two members by the VP for Health Affairs, and one by the President. The University's Ethics Officer will serve as a non-voting member.

### "Fast Track" (Accelerated) Approval Process

There is a set of purely academic activities that faculty members are normally expected and encouraged to undertake. Such activities would include reviewing books, articles and research proposals, giving occasional lectures, speeches, and colloquia, refereeing of manuscripts, creation of works of art, etc. The nature of such activities will vary from one discipline to another – but the underlying principle is that they are part of faculty member's expected academic professional development. For activities of this type, and

for which the compensation does not exceed \$5,000 (per contracting entity<sup>13</sup> per fiscal year), The Provost and EVP delegate to the faculty member's department head to be the sole approving authority. This means that the faculty member should fill out the required form using OFCAS. Upon submission, the system determines if the request is eligible for "fast track" routes it to the department head for approval in advance of the activity. Once the department head approves, the request will route to the appropriate Faculty Consulting Office to ensure completion of the online request.

### Reconciliation Reports

At the end of each fiscal year, all those who engaged in approved consulting activities must submit a reconciliation report using OFCAS. A list of all approved consulting activities for that fiscal year not yet reconciled will be listed under "Reconcile an Approved Request" on the faculty consulting page. The faculty member must: 1) Indicate if the activity actually took place. 2) Correct any information that has changed since the original request form was approved. 3) Indicate whether or not any necessary reimbursement for State resources was made and then submit the form. Reconciliation Reports can now be completed immediately on OFCAS following the end date of the activity but they must be submitted no later than September 15 of the fiscal year following the end date on the request forms.

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<sup>13</sup> There is an exception to this rule for consulting with any U.S. governmental agency.