

**The University of Connecticut
Office of Audit, Compliance, and Ethics
Report on
Faculty Consulting Activities and University Procedures**

BACKGROUND

Connecticut State Public Act (PA) 07-166, approved on June 19, 2007, provides legislative relief in relation to the State Ethics Laws as they pertain to faculty or a member of a faculty bargaining unit of a constituent unit of the state system of higher education. The legislation allows a faculty member to enter into a consulting agreement with a public or private entity, subject to the following three provisions.

1. No inappropriate use of university proprietary information.
2. No interest in the activity that interferes with the proper discharge of the faculty member's employment with the constituent unit.
3. No inappropriate use of the faculty member's association with the constituent unit in connection with the activity.

PA 07-166 charges the University with establishing a faculty consulting policy, including procedures for the disclosure, review and management of conflicts of interest relating to any such activity and requires the performance of a semiannual audit to assess compliance with faculty consulting policies. While this audit is the third semiannual audit of the University's faculty consulting activity, it is the first to include a review of an entire academic/fiscal year.

OBJECTIVES AND SCOPE

Our audit objectives and scope were:

- To evaluate the effectiveness of the established faculty consulting activity approval and oversight procedures
- To determine whether or not Management's Corrective Actions per the prior Faculty Consulting Audit have been implemented and are functioning effectively
- To evaluate faculty compliance with the annual requirement to complete a year end reconciliation report describing all consulting activities in which they have engaged, including the actual amount of time spent on each activity and the total compensation received for such consulting

Our review included all “Request for Approval of Consulting Activities” forms submitted during Fiscal Year 2009 (FY09) which includes the period, July 1, 2008 to June 30, 2009, and the year end reconciliations for FY09 which were due by September 15, 2009. The number of consulting request forms submitted to the Storrs and the University of Connecticut Health Center (UCHC) Faculty Consulting Offices (FCOs) for FY09 was 1,374 and 790 respectively. The number of faculty members submitting consulting requests to the Storrs and UCHC FCOs during FY09 was 517 and 171 respectively.

GENERAL OBSERVATIONS AND CONCLUSIONS

The University faculty consulting policies, procedures and revisions implemented in January, 2009 address the need to acquire sufficient disclosure information from faculty members to fulfill the management oversight requirement of PA-166. These policies are implemented through review and oversight procedures executed within each academic department and by the FCOs as delegated by the Office of the Provost.

The language of PA-166 prohibits an interest in the [consulting] activity that interferes with the proper discharge of the faculty member’s employment with the constituent unit and specifically requires the University to “establish procedures for the disclosure, review and management of conflicts of interest relating to any such agreement or project.” Potential conflicts arising from participation in consulting activities by faculty members for personal remuneration from external entities must be evaluated not only for significant financial interest but also in terms of the amount of time and effort that can appropriately be devoted to such pursuits while fulfilling all commitments to the University.

The amount of time and effort that can appropriately be devoted to consulting activities may fluctuate widely at various times over the course of an academic year, particularly for full time Storrs based faculty members who are normally appointed for a nine month period. Based on our analysis of the Storrs faculty consulting requests, Audit observed 390 Storrs consulting requests (28%), totaling an estimated 1,199 days (22%) that occurred during periods in which classes are not in session, i.e., the fall or spring semester break, the fall/spring semester intersession or the summer months after the completion of the 9 month, 2008-2009, academic year (AY.) The remaining 853 Storrs consulting requests (62%), totaling an estimated 4,322 days (78%) occurred during periods in which classes were in session.

Based on our audit work with the Storrs and UCHC FY09 consulting requests, we identified 831 Storrs (61%) and 381 UCHC (48%) consulting requests which were performed for nonprofit and/or governmental contracting entities, promoting educational, social, cultural or scientific goals. The remaining 536 Storrs (39%) and 410 UCHC (52%) consulting activities were performed for business entities which were characterized as for-profit in nature.

As a result of our review, we conclude that a majority of the FY09 consulting requests met the three provisions of PA 07-166 and complied with the University’s Faculty Consulting Policy. At UCHC, a periodic review is performed on UCHC faculty members with a large number of consulting days and the department head is notified. In all instances, the department head has affirmed that the faculty member is adequately performing his/her job duties. Finally, no specific instances of competing with the University or potential conflicts of interest were noted

during the detail UCHC fieldwork. Therefore, it appears that the departmental review at UCHC is adequate. However, we did observe several Storrs consulting requests that did not contain documentation of adequate departmental and management review with respect to potential conflicts of interest and potential competition with the University. We conclude that deans and department heads do not have a consistent set of standards to use when evaluating a consulting request for potential conflict of interest and competition with the University.

Additionally, while the majority of the FY09 year end consulting reconciliation forms were completed accurately and submitted in a timely fashion, the year end consulting reconciliation does not include unapproved requests and sanction activity in the annual reconciliation.

OBSERVATIONS & RECOMMENDATIONS

1. Year End Consulting Activity Reconciliation

During our testing we reviewed the FY09 Year End Consulting Reconciliation Reports filed in the Storrs and UCHC FCOs to test for timeliness and completeness of the forms. We also traced the reports to the FY09 consulting request database records to test for existence and completeness of the reports submitted.

As a result of our testing, we identified six UCHC faculty members (4% of the total population) who signed his/her form after the September 15, 2009 deadline. Five hundred two of 507 (99% of the total population) Storrs faculty members with approved FY09 consulting requests returned the annual reconciliation form to the FCO. However, 76 (15%) of these faculty members submitted the form after September 15, 2009. A significant amount of Storrs FCO staff time was expended in pursuit of these late reconciliation forms.

Section 5.i of the “Policy on Consulting for Faculty and Members of the Faculty Bargaining Unit,” dated September 25, 2007, states: “All faculty members who were engaged in a consulting activity in a given fiscal year must complete a year end reconciliation report describing all consulting activities they have engaged in including the actual amount of time spent on each activity and the total compensation received for such consulting.” A consulting activity that was performed prior to seeking approval, even though not approved, is an activity in which the faculty member engaged and as such should be included in the year end reconciliation report. Contrary to the consulting policy, consulting reconciliation forms were not generated for ten Storrs faculty members who submitted a consulting request that was not approved. It was also noted that denied requests are not being incorporated into the UCHC annual reconciliation forms.

Additionally, 59 Storrs consulting requests from 44 faculty members tracked in the FCO consulting database were missing from the annual reconciliation forms. These requests included consulting activities that were categorized by the Storrs FCO as either “submitted in error” or not compliant with the consulting policy.

Consulting requests “submitted in error” are correctly omitted from the year end reconciliation report and include duplicate requests, activities with no remuneration or

remuneration in the form of royalties, activities compensated by the University and activities that were cancelled after the request had been submitted. Contrary to the consulting policy, noncompliant consulting requests were omitted from the year end reconciliation reports.

Recommendations

1.1 The annual consulting reconciliation form should be revised to include a section listing consulting requests that were submitted but not approved. The status of the activity, reason for non-approval and/or receipt of a non-approval notification from the FCO should be reported or disclosed.

1.2 Faculty members should be reminded that they are required to complete and submit the annual Year End Reconciliation Form for Faculty Consulting while on any type of University granted “discharge of duties,” i.e., sabbatical, extended leave of absence, workers compensation, etc. Department Heads should include completion of the year end consulting reconciliation form in employee exit procedures to ensure the protections provided to faculty members under PA 07-166.

Management Responses

1.1 Management agrees with the recommendation. The reconciliation report will be revised to include submitted but not approved requests. There has been insufficient lead time to reprogram the reconciliation reports for FY10 so this change will be implemented with the FY11 reconciliations reports. Also, a separate log will be kept on all requests submitted and not approved including the reason for non-approval and actions taken by the FCO. This log will be available for future audits. Estimated Implementation Date: July 1, 2010.

1.2 Management agrees with the recommendation. Employed faculty will be reminded of their obligation to submit a reconciliation report on time. Changes have been made to the Consulting Policy and Procedures that should facilitate completion of the forms in a shorter timeframe. Estimated Implementation Date: Completed

We will ask Human Resources to make faculty who are leaving the University aware of the FCO’s willingness to forward to them their annual reconciliation form in July when they are developed. Such faculty will have the opportunity to submit such forms if they wish to retain the carve-out from the State Code of Ethics for approved consulting activities. Faculty not electing to submit such forms will not be entitled to the carve-out. Estimated Implementation Date: September 1, 2010.

2. Faculty Consulting Office Review

We judgmentally selected 58 Storrs and 180 UCHC consulting request forms to test for evidence of adequate management review. All 180 UCHC consulting request forms reviewed documented an adequate management review from the FC Officer. Fifty-five (95%) consulting request forms and 180 consulting request forms (100%) in the Storrs and UCHC sample respectively contained no exceptions. We observed one Storrs request form that was not signed by the FC Officer during a period in which the FC Officer was unavailable to

perform the approval function. Procedures were not in place to forward the request to the Provost's Office or to an alternate designee for approval.

We also observed five concurrent consulting requests submitted by a faculty member for the period July 2, 2008 through June 30, 2009, with the total number of days represented in the format, "<.1/wk" and/or ".5/wk." These forms were approved by the Department Head without requiring the faculty member to specify the total number of days for the period stated on the form. This information is necessary to perform an assessment of the impact of the consulting activities on the ability of the faculty member to fulfill his/her University duties. Additionally, we noted a series of e-mails between the FCO and the faculty member in which FCO staff advised the faculty member on how to fill out these five concurrent consulting requests to accommodate the "average of one day per week rule." The FCO staff member modified the total number of days on each of the five requests without requiring the Department Head to approve the revised forms.

Recommendations

2.1 Consulting requests should be forwarded to the Provost or an alternate designee for approval during periods in which an FC Officer is unavailable to perform the approval and oversight function.

2.2 Requests that do not provide enough detail to allow proper oversight of the consulting activity in relation to the faculty member's ability to perform his/her university duties should be returned to the Department Head. Department Heads should not approve a consulting request when the total number of days has not been calculated over the entire period of the consulting activity.

2.3 FCO staff should not make significant modifications to consulting request forms that have been approved by the Department Head and Dean. Consulting requests that require modification of significant information should be discussed with and/or returned to the Department Head for approval of the modification.

Management Responses

2.1 Management agrees with the recommendation. The designee should be sufficiently familiar with the consulting system as to make valid decisions based on the data provided. If no such person is available, the request should not be acted on until a suitable person is available. Faculty should be encouraged not to wait until the last minute to submit requests in order to allow for sufficient time for a thorough review of such requests. In cases of emergency, the Provost's designee (in the Storrs FCO) may serve as the Vice President for Health Affairs designee for requests from UCHC faculty and the Vice President for Health Affairs designee (in the UCHC FCO) may serve as the Provost's designee for requests from Storrs faculty. Estimated Implementation Date: Completed

2.2 Management agrees with the recommendation. The staff of the FCOs will receive additional training regarding this issue. Estimated Implementation Date: September 1, 2010.

2.3 Management agrees with the recommendation. In addition to the recommendation, the dean of the school will be included in the approval of significant modifications to already approved activities. The staff of the FCOs will receive additional training regarding this issue. Estimated Implementation Date: September 1, 2010.

3. Management Review for Conflict of Interest and Competition with the University

Twenty-six Storrs consulting requests submitted by faculty for a multi-day activity spanning 20 weeks or more were judgmentally selected and reviewed. Particular attention was given to the description of the consulting activity, the contracting entity and the existence of a management or ownership association with the entity.

We observed eight requests in the Storrs sample that specified a contracting entity in which the faculty member occupied a management position and/or ownership interest. Several of these companies have active websites on which the faculty members' current association with the University is publicized. In one instance, the faculty member's University address is listed as the contracting entity's business address in the State of Connecticut's Commercial Recordings Division business database. We also identified three requests that specified the faculty member him/herself as the contracting entity.

We noted six Storrs requests to consult for universities and/or governmental agencies. Given the duration of the activities, the number of days requested and the level of compensation, the University may have benefited by contracting the activity as an externally sponsored research project with the faculty member in the role of PI rather than permitting the faculty member to act in the capacity of a private consultant.

Additionally, we identified several approved Storrs consulting activities to provide executive education to various Connecticut insurance companies. Remuneration for three of these activities ranged between \$13,000 and \$62,000. These activities appear to directly compete with the University's School of Business Executive Education Program which delivers customized executive education programs, tailored to the specific needs of a business.

Recommendations

3.1 The Consulting Request Form should be revised to include a disclosure of any existing management positions and/or ownership interests in the contracting entity.

3.2 The State of Connecticut Commercial Recordings Division's business database should be immediately corrected to remove the faculty member's University address as the business address recorded for the contracting entity.

3.3 The Office of the Provost should provide clear guidance to department heads and deans regarding what constitutes conflict of interest and competition with the University, i.e., instances where the University may benefit from contracting the activity as an externally sponsored research project or conducting the activity through an existing program.

Management Responses

3.1 Management agrees with the recommendation. The current version of the request form already asks whether the faculty member has a 5% equity interest or more in the contracting entity. The form will be revised to include a similar question concerning an existing managerial position. Estimated Implementation Date: September 1, 2010.

3.2 Management agrees with the recommendation. When we become aware that a University address is listed for a faculty business listed in State of Connecticut Commercial Recordings Division's business database, we will notify that faculty member to remove the University address. Estimated Implementation Date: September 1, 2010

3.3 Management agrees with the recommendation. Clarification of what constitutes competition with the University and conflict of interest for the institution will be ongoing. This will occur through department head training and dean information sessions. A means by which faculty has sufficient guidance to make the appropriate decision is being examined. Estimated Implementation Date: Ongoing.

4. Sanctions and Penalties

The University issued a sanctions and penalty policy in January 2009 for faculty members performing consulting activities without receiving prior approval. Per section E of this policy: "These sanctions will be effective January 1, 2009."

Review of the Storrs FY09 consulting request data records identified 26 consulting requests tagged as "LATE", i.e., received by the FCO on or after the start date of the activity. Ten of these requests were approved, including three requests submitted on the start date, three requests that were signed by the requestor and department head prior to the start date, but held up in the Dean's Office and submitted to the FCO after the start date, three requests that qualified for Fast Track approval and one request that was split into two separate activities by the FCO such that consulting prior to the date of submission was not approved while consulting from the date of submission to the end date was approved.

Fourteen of the 26 "LATE" requests were not approved by the Storrs Faculty Consulting Officer. A letter to this effect was sent to the faculty member and Department Head. However, the University's Policy on Sanctions for Noncompliance was not referenced in the letter.

We observed one UCHC consulting request out of 180 reviewed that was denied due to late submission but did not receive a First Occurrence letter in compliance with the Sanctions Policy.

Recommendations

4.1 Formal notification of non-approval of a faculty consulting request by the Faculty Consulting Officer due to lack of prior approval should include a statement regarding the University's Policy on Sanctions for Noncompliance.

4.2 Letters should be sent to the UCHC faculty member with a denied request due to late submission and his/her department head as notification of a First Occurrence, in accordance with the Sanction Policy.

Management Responses

4.1 Management agrees with the recommendation. The staff of the FCOs has received additional training regarding this issue. Estimated Implementation Date: Completed.

4.2 Management agrees with the recommendation. Letters have been sent to the UCHC faculty member cited in the observation. Estimated Implementation Date: Completed.