

The University of Connecticut
Office of Audit, Compliance and Ethics
Report on

**Faculty Consulting Activities and University Procedures
For the Period July 1, 2010 through December 31, 2010**

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BACKGROUND

Connecticut State Public Act (PA) 07-166, approved on June 19, 2007, allows a faculty member to “enter into a consulting agreement or engage in a research project with a public or private entity, provided such agreement or project does not conflict with the member’s employment with the constituent unit, as determined by policies established by the board of trustees for such constituent unit...Such policies shall (i) establish procedures for the disclosure, review and management of conflicts of interest relating to any such agreement or project.” Unapproved activities performed by faculty members for remuneration are subject to the provisions of Connecticut General Statutes (CGS,) Sec. 1-84, *Prohibited Activities*. In addition, PA 07-166 requires twice a year audits of the Consulting Program to ensure the University is making a good faith effort to comply with the act and its internal policies on consulting. Beginning with fiscal year 2013, Faculty Consulting audits will be conducted on an annual basis due to action taken in the 2012 Connecticut state legislative session.

Several revisions to the *Procedures on Consulting for Faculty and Members of the Faculty Bargaining Unit* were implemented, effective as of April 21, 2010, including increasing the compensation threshold from \$500 to \$1,000 for the delegation of the sole approving authority to the faculty member’s department head for a set of purely academic activities that faculty members are normally expected and encouraged to undertake. In addition, to a limited degree, faculty members were allowed to participate in “academic related consulting activities,” such as, making presentations or participating in federal grant review panels, during the summer without advance filing of a consulting request form when the faculty member has no assigned, contractual or grant related job responsibilities for which they are paid by the University. Post-summer reporting and reconciliation of such activities is required.

OBJECTIVES AND SCOPE

Our audit objectives were to evaluate compliance with the University’s faculty consulting policies and the effectiveness of the established faculty consulting activity approval and oversight procedures with regard to disclosure, review and management of conflicts of interest.

Our review included all “Request for Approval of Consulting Activities” forms submitted during the period, July 1, 2010 to December 31, 2010 and a review of the faculty consulting approval process implemented in the University of Connecticut Health Center (UHC) Cardiology; Neurology; Surgical; Genetics and Developmental Biology Departments; and Center on Aging and in the Storrs Colleges of Arts and Sciences (CLAS,) and Agriculture and Natural Resources (CANR;) and the Schools of Education, Engineering, and Pharmacy.

This audit did not include tests of management's corrective actions with a completion date later than December 31, 2010, some of which will be evaluated in the subsequent Faculty Consulting Audit #11-22.

GENERAL OBSERVATIONS AND CONCLUSIONS

The number of consulting request forms approved by the Storrs and UCHC Faculty Consulting Offices (FCOs) for the period under review was 782 and 502 respectively. The corresponding number of faculty members submitting consulting requests during this time period was 380 and 147 respectively. UCHC consulting requests included a total of 2,006 days of which, 522 days (26%) were identified as "Days Consulting during Normal Work Hours." The Storrs consulting requests included a total of 5,820 days of which, 2,307 days (40%) were identified as "Days Consulting during Normal Work Hours." During our analysis of the Storrs consulting requests we noted that CLAS bears the highest administrative burden related to faculty consulting review and approval with 145 faculty members (37%) submitting 242 consulting requests (31%) in first half of fiscal year 2011 (FY11.)

The Faculty Consulting Officers have provided ongoing leadership in the implementation of the faculty consulting policy and compliance with relevant state statutes. The Consulting Management Committee (CMC) meeting minutes provide documentation of ongoing attention to various prior audit report recommendations, faculty consulting concerns and the refinement of the associated faculty consulting policy and procedures.

The Storrs FCO began an organizational and staffing transition at the beginning of FY11 due to the retirement of the original Faculty Consulting Officer and other changes in Senior University Administration. We noted a number of minor data entry and filing errors that we attributed to this transition. We also observed instances in which Storrs consulting request forms processed with accelerated approval were not found in the FCO files or entered into the faculty consulting request database. As a result, we concluded that the Storrs FCO did not account for the all of the consulting days for all faculty members during the period under review.

Based on our audit procedures, we concluded that UCHC and Storrs consulting requests, received after the start date were properly denied and received the sanction specified in the Sanctions Policy.

In addition, we also noted the following accommodations made by the Storrs FCO for consulting requests that were received after the start date of the activity:

- The activity start date was modified after consultation with the faculty member to change the start date to comply with the prior approval requirement
- The consulting request was split into two separate requests, with one unapproved request for the period prior to the date on which the request was received by the FCO and a second approved request for the remaining period of the consulting request

The faculty consulting request approval process was converted from a manual system, in which a request form was physically passed from one office to the next for approval, to an online electronic submission and approval system, requiring no hardcopy form. The full use of this system was phased in over a five month period that began on July 1, 2011. As a result, activity start date modifications performed by the Storrs FCO should no longer occur.

OACE has chosen not to request management's corrective actions for these observations which have been incorporated in the online request and approval system. In addition, the interviews conducted with the administrative staff in the various Storrs Deans' Offices discussed current online procedures that do not correspond in their entirety to those that existed during the period under review.

The faculty consulting oversight procedures rely on a Department Head to possess sufficient knowledge of each faculty member's associations and affiliations with non-University entities, including ownership interests in private for-profit entities, to assess the impact that the consulting activity may have on the faculty member's University duties when a potential conflict or question of competition with the University arises. Based on our current and prior interviews with selected Department Heads and Deans' Offices administrative staff, we have concluded that the current departmental faculty consulting oversight process focuses more on concrete elements of a consulting request, such as, number of days, reasonableness of activity dates, address of the contracting entity, etc., rather than on the substance of the activity or the existence of significant faculty relationships with the contracting entity. It should be noted that the issues of conflict of interest and competition with the University are also considered by the FCOs in the final stage of the consulting approval process.

Throughout the course of the current and prior faculty consulting audits, we have identified and reported on a number of Storrs faculty consulting activities that possess certain attributes that we believe require a higher level of scrutiny and management oversight. Through the performance of these and other related OACE conducted audits, we have noted that numerous activities exist, in the course of a faculty member's University duties, in which faculty interact with and/or perform work for the same external entities for which private consulting activities are performed. Currently, the University provides decentralized oversight for some of these activities through separate offices. As a result, we have concluded that the University has not adequately addressed the larger areas of conflict of interest and conflict of commitment, of which faculty consulting is a portion of a larger whole.

While University faculty consulting disclosure requirements have grown more robust, in certain types of consulting activities, current procedures do not gather sufficient detailed information, related to the nature of work to be performed by the faculty member to adequately identify and manage potential conflicts of interest arising from any such private activity. Examples of faculty consulting activities that require a higher level of scrutiny and management oversight are presented in the *Observations and Recommendations* section which follows.

We would like to thank the staff of the UCHC and Storrs FCOs, the UCHC Department Heads who responded to our questionnaires and the Storrs staff in the Dean's Office for CLAS, CANR,

and the Schools of Education, Engineering, and Pharmacy for their cooperation during our review.

Management Responses - General Observations and Conclusions

While department heads are in the best position to consider issues of conflict of commitment (CoC), (whether consulting could be or is negatively impacting on a faculty member's ability to fully perform his/her duties), we know that many deans and our faculty consulting offices both identify and address questions and concerns related to conflict of interest (CoI) and competition. In previous audits OACE has emphasized such considerations should be handled at these higher levels.

The FCO's were not interviewed in this audit nor asked to demonstrate the degree to which they consider competition and CoI. Further, faculty, department heads and deans frequently pose questions related to such issues prior to submitting requests to consult and as a result, do not submit such requests. These cases are not, of course, addressed or included in the audit data collected.

Some high risk consulting engagements do exist, but they represent a small proportion of the requests processed. The vast majority of consulting requests are straightforward and fall into the low risk activities defined under the accelerated approval process, for example being paid a few hundred dollars to review grant proposals for the National Science Foundation or the National Institutes of Health.

OBSERVATIONS and RECOMMENDATIONS

1. Dean and Department Head Oversight

Based on the responses received from questionnaires completed by five judgmentally selected UHC Department Heads, two departments do not have a process in place to monitor the actual dates on which a faculty member is consulting when the specific dates are unknown at the time of the consulting request approval. In addition, the UHC Department Heads do not question whether a private consulting activity may compete with the Department / University. Only one Department Head provided examples of activities that would cause him/her to question this aspect of the activity.

Fieldwork related to Storrs Dean and Department Head oversight included discussions with the administrative staff member, identified as the faculty consulting contact by the Storrs FCO, from each of the five judgmentally selected Dean's Offices. We noted that the level of scrutiny occurring at the Dean's Office level varies significantly. Specific examples of consulting requests that were approved without adequate scrutiny will be included in the FY11 Faculty Consulting audit report which is currently in the report preparation phase.

In addition, the following question was asked of the Dean's Office and the member departments in the five Storrs Schools and Colleges selected for management review:
Do the Department Heads and/or the Dean's Office monitor the actual date(s) on which a faculty member is consulting when the specific dates are unknown at the time

of the consulting request, i.e. when the request is for more than one day over an extended time period?

No affirmative responses to this question were received. Consequently, it appears that once a Storrs consulting request has been approved, there is no management oversight of the actual time that a faculty member devotes to an approved consulting activity that occurs over an extended period of time at the department or school/college level. The Storrs consulting requests for this period included 290 requests (37%) that extended for most, if not all, of the academic and/or fiscal year.

For the period under review, we also noted that, unless a Department Head or Dean independently charges his/her administrative staff with the responsibility of maintaining a department/school/college specific consulting request log for constituent faculty, no cumulative or comparative report was available to promote adequate oversight.

Recommendations

Department Heads should require faculty to report the dates on which he/she will be performing consulting activities when the dates become known to adequately monitor the time used by a faculty member on private consulting activities.

The FCO should develop and distributed quarterly cumulative consulting request reports for each department/school/college to deans and department heads to promote adequate oversight of faculty consulting activity.

The University should issue specific guidelines for and examples of activities that represent competition with the University and/or possess a potential conflict of interest that must be disclosed, reviewed and appropriately managed.

Management Responses

Management agrees that faculty must obtain prior permission to consult on a normal work day. This is already a requirement, but department level monitoring to ensure such approvals are sought needs to be improved. To that end, management will develop a training session on this issue that all department heads and deans will be required to attend. Such training will include the need to consider competition and examples that represent competition and/or possess a potential CoI that must be considered and managed. A discussion was already conducted on this topic with all Academic Deans at the June Dean's meeting where a memo about this topic was distributed.

It should be noted that the on-line consulting approval system has the ability to generate year-to-date individual and department level summary reports and the use of this feature will be emphasized in the training session. During the audit period (i.e. prior to on-line system), the UCHC FCO did conduct a quarterly review of all consulting and alerted department heads if their faculty were "heavy hitters". Completion date: December 31, 2012

2. Ongoing High Risk Engagements

During our audit procedures, we compared the contracting entity specified on Storrs and UCHC consulting requests that spanned the full academic or fiscal year with prior years consulting requests. From this population, we further identified recurring faculty requests to consult for the same contracting entity in consecutive fiscal years, indicating ongoing, potentially permanent, involvement by the faculty member with the contracting entity. These instances contain potentially complex interrelationships between the faculty member, contracting entity and University. We observed

- Sixteen contracting entities in which the Storrs faculty member has an ownership interest
- Eight Storrs and two UCHC requests performed for contracting entities that are current or former participants in the University's Technology Incubation Program (TIP)
- Nine contracting entities that have past and/or current sponsored research grants and/or contracts with the University, on which the requesting Storrs faculty member is a principal investigator
- One contracting entity, an institution of higher education, currently employs a former UCHC faculty member who has participated in current and prior federally funded sponsored research grants with the UCHC requestor and a Storrs faculty member in the Computer Science and Engineering department

Given the variety of administrative offices responsible for managing elements relevant to a review of the consulting requests noted above, such as, sponsored research, conflicts of interest, intellectual property, payroll, economic development, and academic departments, the faculty activities in question appear to exceed the scope of the current faculty consulting oversight procedure which is not designed to provide comprehensive review and management oversight for such requests.

Additionally, the November 5, 2010 Consulting Management Committee (CMC) meeting minutes contain the following statement regarding faculty consulting performed while on sabbatical leave: *"A faculty member cannot do the same work sometimes as an employee and sometimes as a private citizen....In order to avoid confusion as to whether work done while consulting is work that should have been done as a State employee, it is imperative that the activities to be performed... are well described and on record..."*

While the same imperative exists with respect to consulting activities performed by faculty while on active University duty, the standard of disclosure described above is not required. As a result, the possibility exists that certain faculty activities, currently approved as private consulting activities, do not qualify for such classification.

Recommendations - FCOs

Faculty consulting procedures should be revised to include a more robust disclosure requirement for high risk faculty consulting requests, such as those described above. High risk activities should receive additional University oversight when appropriate.

Consideration should be given to granting provisional approval to the most current year of an ongoing multi-year consulting request, with final approval contingent upon the receipt and review of additional information requested by the FCO and reviewed by a committee with representation from the appropriate University Offices.

Management Responses - FCOs

See the response for “Senior University Administration” below.

Recommendation – Senior University Administration

Senior University administration should consider the formation of a University Faculty Consulting / External Activity Review Committee for both Storrs and UCHC with representation from the FCOs, the sponsored programs offices, the financial conflicts of interest committees, the Office of Economic Development and the Council of Deans to ensure that adequate communication occurs between offices in possession of information relevant to the faculty member and contracting entity. Alternately, these Offices and committees should be represented on the CMC.

Management Responses – Senior University Administration

Management agrees that there are higher risk consulting engagements that would best be considered by a University-wide committee with representatives from the different units that have specialized expertise in CoI and competition. Such a committee will be convened and as its first task it will develop the criteria for the types of high-risk cases it will need to review. It will also develop a list of the types of additional information it will need in its decision making of specific cases that are not currently requested on the consulting request form. Finally, it will review the identified high-risk cases.

Completion date: The committee will be convened and develop its ‘rules’ by December 31, 2012. The committee will review the current list of high risk activities by June 30, 2013.

3. Supervision of Students in a Consulting Activity

We observed one faculty consulting request in which the consulting activity involved the supervision of University students participating in the VA Connecticut Pharmacy Residency Program. This activity is closely related to the faculty member’s University duties. As a result, the faculty member’s University employment cannot be disassociated from the consulting activity.

Recommendations – Office of the Provost

A Memorandum of Understanding or other contractual relationship should be established between the University and contracting entity when University students are involved in activities taking place at the contracting entity’s site in the context of an academic program, rather than allowing a faculty member to conduct the activity as a private consultant. Funding from the contracting entity and compensation for related additional workload assigned to

faculty should be addressed through an adjustment to the faculty member's base salary, rather than allowing the activity to be performed as private consulting.

Management Responses – Office of the Provost

Agreed. Such activities should not be approved as consulting. If such activities are to take place, they must be done as State employees and under appropriate MoU or contractual terms. Completion date: Immediately

4. Other State Agencies / Dual Employment

The Connecticut Department of Administrative Services (DAS) issued General Letter No. 204, effective August 1, 1999, directing all state agencies to implement procedures for handling dual employment requests in compliance with CGS Sec. 5-208a. The secondary agency must initiate the dual employment process by completing the secondary agency portion of DAS *Form #: PER-DE-1: Dual Employment Request Form*, and forwarding it to the primary agency for completion.

This form is used to certify that the duties performed by the employee, who is compensated for rendering services to **more than one agency**, are outside the responsibility of the primary agency; ensure that the hours worked at each agency are documented; review the services performed to preclude duplicate payment; and ensure that no conflicts of interest exist between the services.

We observed inconsistent processing of Storrs faculty consulting requests that specified other state agencies as the contracting entity. Several requests were appropriately returned by the FCO without approval, noting that the requests were not consulting, while two consulting requests to perform work for Charter Oak State College, a state agency, were approved. Use of the faculty consulting approval process for the performance of these activities does not comply with DAS General Letter No. 204.

Recommendations

The staff of the FCOs should be trained to recognize Connecticut state agencies to ensure that faculty consulting requests with state agencies are directed back to the requestor with a reference to the dual employment approval procedure.

Management Responses

Agreed. Completion date: June 30, 2012

5. Significant Financial Interest Disclosures

The Office for sponsored Programs requires the submission of a completed *Significant Financial Interest Review Form* by the Principal Investigator and all key personnel named in the grant proposal. The following question is asked on this form:

Do you, your spouse or dependent children have or expect to have in the next 12 months a Significant Financial Interest (defined as actual or projected annual income valued at

greater than \$10,000 or an equity or ownership interest of more than five percent) *in any business whose activities **directly** relate in any way to your research/work as an employee of the University of Connecticut?*

During our fieldwork, we noted four faculty consulting requests submitted by four members of the Computer Science and Engineering Department. Each request contained the same contracting entity, activity description, approval, start and end dates, number of consulting days, remuneration in excess of \$10,000 and an “X” contained in the check box preceding the instruction on the form, “**Check here if you have a 5% or more equity interest in the contracting entity.**”

We traced these faculty members to the Office of Sponsored Programs grants database and identified an active sponsored grant, funded by the federal government through the state of Connecticut, in which all four faculty members were named as key personnel. The activities described in the grant proposal appeared to be closely related to the activities described on the consulting request form. The *Significant Financial Interest Review Form* attached to the grant proposal for each of the faculty members answered “NO” to the financial interest disclosure question, which is contradictory to the information contained in the consulting requests.

Recommendations

The Storrs FCO should work with the Financial Conflicts of Interest Committee (FCIC) and the Office for Sponsored Programs to ensure that an updated *Significant Financial Interest Review Form* has been submitted by each of the four faculty members noted above.

The Storrs FCO should inform the FCIC of consulting arrangements of \$5,000 or more per year per.

Management Responses

Agreed. It should be noted that both the CoI in Research and Consulting policies require such self-disclosure. Currently, many contracting entities voluntarily report on payments to faculty and various “Sunshine” laws will make such public reporting mandatory in the near future. Having the FCO provide such information is another safeguard to ensure the FCIC have the information they need and at UCHC this notification has been in practice for years.