

The University of Connecticut
Office of Audit, Compliance and Ethics

Report on

Faculty Consulting Activities and University Procedures
For the Period July 1, 2014 through June 30, 2015

Audit Team

Audit Manager: Elaine Zincavage, CPA
Internal Auditor: Donna L. Barberi, CIA

Cheryl Chiaputti, CPA
Director of Audit Services

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BACKGROUND

The University has implemented a faculty consulting policy (Policy) and associated procedures for the prior approval of consulting activities, including disclosure, review and management of conflicts of interest / commitment relating to any such activity, to comply with the provisions of Connecticut General Statute (CGS) 1-84(r). The Policy and associated procedures have been refined since their inception in September 2007, with the most recent Board of Trustees approved revision dated March 25, 2015.

Faculty consulting requests are submitted and processed through an on-line faculty consulting approval system (OFCAS) used by both UConn and UConn Health faculty. The OFCAS transitioned to a new software platform during the period, July 1, 2014 through June 30, 2015 (FY 2015), which necessitated the development and implementation of a new user interface and data storage schema.

Faculty members are required to confirm, through OFCAS, whether the activity actually took place and to provide corrected reconciliation data when elements such as: dates; number of consulting days; level of compensation and use of University resources differ from the original consulting request. OFCAS provides faculty with functionality to reconcile each approved consulting activity at any time after completion of the activity. Faculty must complete the reconciliation of all consulting activities no later than September 15th following the end of a fiscal year.

OBJECTIVES AND SCOPE

Our audit objectives were to evaluate compliance with the Policy, including the annual faculty consulting reconciliation requirement, the effectiveness of the established faculty consulting activity approval and oversight procedures, and the identification and management of potential competition and/or conflicts of interest / commitment for faculty members.

Our review included all “*Request[s] for Approval of Consulting Activities*” submitted through both OFCAS’s utilized during FY 2015. The FY 2015 consulting request data used in the audit was extracted from the OFCAS database tables using queries written by UConn’s University Information Technology Services (UITs). We utilized this data to analyze consulting activity levels, assess compliance with the provisions of the Policy, identify potential risks related to conflicts of interest / commitment and effort reporting accuracy, and confirm the accuracy of the FY 2015 consulting request statistics presented in *The University of Connecticut Consulting Program FY 2015 Annual Report*, (Annual Report) which was prepared by the UConn and UConn Health Faculty Consulting Offices (FCOs).

We conducted interviews with and/or distributed questionnaires to judgmentally selected deans and/or department heads to assess management’s oversight of faculty consulting activities.

Finally, we reviewed the Annual Report for the status of corrective actions included in management responses to recommendations in prior audit reports. This audit did not include tests of management's corrective actions with a completion date later than June 30, 2015. These actions will be evaluated in subsequent annual Faculty Consulting audits.

GENERAL OBSERVATIONS AND CONCLUSIONS

Based on our audit fieldwork, we concluded that the Policy and associated procedures for the approval of consulting requests implemented by the FCOs comply with the intent of CGS 1-84(r). The *Consulting by Faculty* website, <http://consulting.uconn.edu/>, provides an abundance of information and links to on-line training materials, policies and procedures, statutes, audit reports, and Consulting Management Committee (CMC) actions and meeting minutes. In addition, the FCOs have written and presented training materials regarding faculty consulting policies and procedures to deans and department heads. In response to prior audit observations, the FCOs consistently communicate with the appropriate University offices to discuss and resolve questions of potential conflict of interest and competition with the University. We recognize the ongoing time and effort that is invested by the FCOs in these endeavors.

We concluded that the summaries included in the *FY2015 Annual Report on Consulting Activities* regarding the concerns reported in the prior year faculty consulting audit report and management's responses were accurately stated. In addition, the number of UConn and UConn Health Requests to Consult in FY 2015 reported in the *FY2015 Annual Report on Consulting Activities* materially agreed with our calculations. We verified the total requests to consult per School/College/Unit as well as the number of faculty who submitted requests from each area.

We found that 99.2% of the reconciled consulting requests submitted by UConn faculty and 99.8% of the reconciled consulting requests submitted by UConn Health faculty were created prior to the September 15 deadline and approved by the respective FCOs no later than October 15, 2015.

Our interviews with UConn department heads and deans confirmed an awareness of the faculty consulting policies and procedures and the oversight responsibilities required at the department level. A majority of the seven UConn department heads included in our sample population, indicated that attention was given to assessing the time commitment to the consulting activity as it may affect a junior faculty member's ability to attain tenure, as well as acknowledged that faculty who perform on-going, multi-year consulting activities may forget to submit a consulting request each year.

Based on our review of Open Payments data provided by the UConn Health Research Compliance Monitor, and consulting fee payments for calendar year 2014 available on the Centers for Medicare and Medicaid Services website, we concluded that all UConn Health faculty members who received a consulting fee payment from companies required to report did comply with the Consulting Policy in FY 2015.

We continued to identify a small number of UConn faculty members who performed consulting activities during periods in which special payroll authorizations and financial accounting records confirmed that he/she had committed fulltime effort with corresponding summer salary and fringe benefits charged to projects funded by federal sponsors. The current effort reporting

system, implemented by Sponsored Program Services to comply with federal regulations, relies on payroll records to generate institutional effort reports for the summer period. These reports do not account for overlapping outside consulting activities that reduce institutional effort associated with federally funded sponsored projects. We also noted a number of faculty members who did not submit a request to consult for faculty affiliated entities as required in the most recent Board of Trustee approved revision of the Policy, dated March 25, 2015.

In addition, we identified several fulltime management-exempt employees with faculty titles who consulted during normal work hours without utilizing accrued vacation for the period specified in the consulting request.

We would like to thank the FCOs for their cooperation and input during our review of FY 2015 faculty consulting activities.

OBSERVATIONS AND RECOMMENDATIONS

1. Non-Compliant Approved Consulting Requests

The University has established a policy titled, *Sanctions for Non-Compliance with the University's Consulting Policy and Procedures*, which delineates progressive levels of action to be taken “when a request to consult is submitted late on or after the start date of the activity or submitted before the start date, but without sufficient time to process it (i.e. ordinarily, at least one week).” First Occurrence sanctions include a “letter to or phone conversation with the faculty member and his/her superior explaining the implications of late submission.”

We found three (.5%) approved UConn Health and 35 (3%) approved UConn consulting requests in which the creation date occurred after the start date of the activity, ranging from 1 to 350 days. The UConn FCO communicated verbally with faculty members who submitted consulting requests that were not approved prior to starting / performing the activity. Unlike the UConn Health FCO, the UConn FCO did not issue formal warnings / sanctions to any faculty member in FY 2015. In the absence of written warnings, it is important to maintain an easily accessible record of verbal sanctions issued to faculty members to facilitate consistent implementation of the Sanctions Policy.

We noted four (.4%) UConn consulting requests with compensation exceeding \$5,000 that were approved utilizing the Accelerated Approval routing methodology. In addition, we found four (.6%) UConn Health consulting requests with the Accelerated Approval designation that exceeded the \$5,000 compensation threshold when reconciled.

Finally, we identified 22 (2%) UConn faculty members with total reconciled consulting days in excess of one day per week, ranging from 40 to 120 days.

Recommendations

The FCOs should revise the *Sanctions for Non-Compliance with the University's Consulting Policy and Procedures*, issued in September 2011 to account for the effects of the OFCAS on the request / approval process, clarify the exceptions process, and define with whom the

responsibility for issuing and tracking sanctions lies.

The UConn FCO should formally track verbal First Occurrence warnings issued to faculty members for late consulting request submissions to promote consistent enforcement of the Sanctions Policy by the UConn and UConn Health FCO.

The FCOs should consider adding functionality to the OFCAS to trigger an alert to the department head, dean and FCO when a consulting request is created by a faculty member that causes the cumulative total consulting days during a fiscal year to exceed one day per week. Management review of the nature and extent of a faculty member's consulting activities should be performed when an alert of this nature occurs.

Management Responses

Agreed. The FCOs will review the current Sanctions document, and recommend updates to account for the impact of OFCAS. Completion date: July 2016.

The UConn FCO has completed implementation of a formal tracking system for verbal warnings.

Through the discussion with UITs, it is not feasible to create an alert to faculty, department heads, deans, and the FCOs when a faculty member exceeds the one-day-per-week threshold for consulting. However, the current system calculates the number of days approved for the faculty member during normal work time, and UITs will make this field visible to the FCOs in the consulting dashboard.

2. Consulting Request Reconciliation

We calculated the variance between the original consulting days requested to the actual number of consulting days specified in the reconciliation. We found eight (1%) UConn Health faculty members with minimal increases in consulting days ranging from one to four days. We identified 18 (2%) UConn consulting request reconciliations that contained increases ranging from five to 40 days. One of the 18 reconciliations contained an explanation for the increase. No explanation was provided for the remaining 17 requests.

Increases in the number of consulting days of this magnitude, reported after the consulting activity was performed, suggest that timely, accurate details of the faculty member's participation in external consulting activities are not provided to the department head which may negatively impact his/her ability to provide appropriate oversight of faculty member's performance of his/her University duties.

We examined the reconciliation creation date of the approved UConn and UConn Health consulting requests. We found one late UConn Health reconciliation, which was reported in the Annual Report, and nine late UConn reconciliations, created between September 16, 2015 and October 13, 2015. We also found two actively employed UConn faculty members with three (.3%) FY 2015 unreconciled approved activities, all of which were submitted through the retired version of the OFCAS.

Additionally, we identified nine (1%) reconciled UConn Health requests with an invalid start date that did not occur in FY 2015 and four (.6%) reconciled UConn Health requests with end dates occurring after June 30, 2015.

Recommendations

The FCOs should implement procedures to deny and/or rescind approval to consult for actively employed faculty members who fail to complete a reconciliation of all prior year consulting requests.

The FCOs should implement a procedure to notify deans, department heads, and faculty of the need to submit an additional consulting request in those instances in which the number of consulting days significantly exceeds the original request. After the fact reporting of a significant increase in the number of consulting days should be prohibited.

The FCOs should remind faculty members that requests that might cover multiple fiscal years should have a consulting request submitted to cover each fiscal year.

Management Responses

The finding on late reconciliations is related to .8% of approved consulting requests for FY15, and the UConn FCO believes all active faculty reconciled prior to September 15, 2015. Procedures are already in place to deny and rescind approval to consult if faculty members fail to reconcile.

Future trainings will include reminders about submitting additional requests when activities significantly exceed previously approved allowances on the number of days. The FCOs will work with department heads and deans to determine if faculty work is not met satisfactorily due to consulting. Completion date: April 2016 and ongoing.

The FCOs will continue to remind faculty that new requests are needed each fiscal year for ongoing activities. Completion date: Ongoing.

3. Academic Appointments at Other Institutions

The *POLICY ON CONSULTING FOR FACULTY AND MEMBERS OF THE FACULTY BARGAINING UNIT, Section 5. j)*, states:

It is in the University's best interest to ensure that its faculty does not compete with the University for work it has or is planning to do itself by teaching a course at another institution for compensation. With this understanding, faculty members may request permission to teach elsewhere under the conditions of this policy and as long as the assignment is determined to be beneficial to the interest of the University.

This policy provision specifically addresses "*teaching a course at another institution for compensation.*" The Policy does not address the period of the teaching activity in relation to the UConn academic calendar, nor offers of employment to UConn faculty which result in a concurrent continuing appointment as a faculty member at another institution.

We identified one such request in the FY 2015 consulting records, in which a faculty member requested 120 days during the period January 8 through June 30, 2015 to consult at another institution of higher education, whose website portrays this individual as a Professor on the faculty. When considered as a whole, this activity appears to represent a traditionally defined employee / employer relationship, which falls beyond the definition of a consulting activity.

Recommendations

The UConn FCO should determine the nature of the appointment held by the professor described above. In the event that a concurrent continuing appointment exists, the FCO should bring the matter to the attention of the Human Resources Department, Office of General Counsel, and other applicable University Departments to establish well-defined contractual terms and conditions related to continuing employment at both institutions.

The FCOs should revise the Policy to include provisions to address the period of the proposed teaching activity in relation to the UConn academic calendar, and offers to UConn faculty which result in a concurrent appointment as a faculty member at another institution.

Management Responses

The UConn FCO spent extensive time with this faculty member and his department head, and the determination was made that this distinguished faculty member excelled in his work; much of this time away occurred during semester breaks and other times in which he was not teaching at UConn. We will, however, review the specific appointment with the faculty member, and if it is determined that the activity will continue, an MOA will be crafted. Completed: June 8, 2016.

The UConn FCO will review the Consulting Policy to ensure that full-time faculty engage in appropriate outside teaching during times that do not interfere with UConn teaching responsibilities. The revisions will note that requests by part-time faculty to perform external teaching will be reviewed on a case-by-case basis. Completion date: September 2016.

4. Management Review Process

Faculty consulting requests may be approved for a time period when the exact dates are not known. Once the dates become known, procedures require the faculty member to notify his/her department head of the dates for approval of time away during normal business hours. Based on our review of five (.8%) UConn Health open-ended consulting requests with no specific dates listed, three of the faculty members did not seek approval for specific dates.

While the POLICY ON CONSULTING FOR FACULTY AND MEMBERS OF THE FACULTY BARGAINING UNIT, dated March 25, 2015, Section 5.c) states, “*Approvals must be obtained for each consulting activity. Any on-going consulting activity must be approved on a fiscal year basis (i.e. July 1 – June 30.)*”, the requirement to utilize the fiscal calendar as the consulting request approval cycle is not expressed in CGS 1-84(r).

We continue to have concerns over those instances in which a UConn faculty member submits a request to commit a significant number of days to consult for a single entity over the course of an entire fiscal year. Approval of consulting requests with this characteristic become a “blanket approval” which diminishes management’s ability to provide sufficient oversight and may promote non-compliance with institutional effort reporting / certification requirements mandated by federal regulations referred to as “Uniform Guidance”. Our concerns are as follows:

- Ongoing requests to consult for 39 days or more, which is equivalent to one day a week, by faculty members with a 9-month term, for the same entity year after year, and reconciled in the same manner year after year give the appearance of “*form over substance*”. The UConn faculty are not required to inform the department head, dean or FCO of the actual dates on which consulting activities occurred.
- It is not possible to determine the days on which consulting occurred during the summer period. As a result, the impact of summer consulting in relation to the validity of summer effort certification conducted by the Sponsored Program Services Unit of the Office of the Vice President for Research cannot be accurately determined.
- A faculty member, who submits a single consulting request that covers the entire fiscal year at the beginning of such, may not know whether he/she will receive compensation in excess of academic year salary for summer effort associated with federally funded grants or contracts. As a result, no answer is provided to the question on the consulting request form regarding summer compensation on federal grants, or a negative answer provided at the time of submission becomes erroneous later in the fiscal year for a faculty member who subsequently has summer salary approved.

Recommendations

Faculty members and department heads should be reminded that when known dates are not listed on the faculty consulting request, the dates and times should be properly reported to the department head when they become known, and the documentation of these dates should be maintained in compliance with procedures.

The FCOs should consider changing the basis of the annual consulting request approval period to align with the academic year, which begins on August 23rd rather than the fiscal year, beginning on July 1st. Doing so would provide the ability to structure consulting requests to clearly distinguish between consulting activities that are performed during the faculty member's defined term of employment, typically 9-months, and activities occurring during the summer period, May 23rd through August 22nd.

Management Responses

The FCOs have and will continue to include a reminder to faculty and department heads that “unknown” consulting dates must be approved by the department heads in writing once known and such approval will be at least one day in advance of the consulting date to be taken. Completion date: April 2016 and ongoing.

The FCOs discussed the feasibility of switching to an academic year calendar with UITs. The current logic of the consulting system is based on the fiscal year calendar; converting to an academic year calendar requires a new system, which is not feasible at this time. However, if a new consulting system is designed in future years, the FCOs will seek to develop it with an academic year calendar.

5. Consulting Activities Performed while Drawing Summer Salary

We classified the approved FY 2015 UConn consulting requests into three categories based on the start and end date of each consulting request, including: Academic Year Only; Fiscal Year; and Summer Only. Given that the Policy is designed around a fiscal year (July 1 - June 30) rather than the Academic calendar, the audit must consider the summer component of Fiscal Year consulting requests, particularly for those requests with a large number of consulting days.

We identified 207 (45%) and 69 (15%) faculty members in the Fiscal Year and Summer Only categories, respectively. We traced these faculty members to the University's payroll system, Genesys, to determine whether the faculty received additional compensation during the summer periods relevant to our audit scope. We found 41 (4%) consulting requests with possible effort reporting implications for 27 (6%) UConn faculty members in the Fiscal Year category and seven (.7%) consulting requests with possible effort reporting implications for five (1%) UConn faculty members in the Summer Only category who were fully compensated for summer effort charged to sponsored program accounts.

Requests of this nature have the potential to impact the accuracy of effort certifications for faculty with summer effort compensated from federally funded sponsored projects.

Recommendations

Faculty members who plan to perform summer consulting activities should not buy out 100% of summer effort by charging full summer salary and fringe benefits to federally sponsored project accounts.

The UConn FCO should work with the Office of Vice President for Research to implement a procedure to inform Sponsored Program Services of faculty members who performed consulting activities during the summer that may impact the validity of effort reporting certifications.

Management Responses

The UConn FCO continues to remind department heads and faculty of the need to avoid buying out 100% of summer effort to federally sponsored research if consulting is anticipated. Completion date: April 2016 and ongoing.

The UConn FCO has begun informal conversations with the Office of the Vice President for Research to clarify reporting and policy.

6. Compensation for Consulting Activities

The Physician Payments Sunshine Act (Sunshine Act) requires manufacturers of drugs, medical devices and biologicals that participate in federal health care programs to report certain payments and items of value given to physicians and teaching hospitals (Open Payments data) to the Centers for Medicare & Medicaid Services (CMS). Based on a review of the Open Payments data for calendar year 2014, we identified four UConn Health faculty members who received compensation for consulting activities in excess of \$100,000.

We found 26 (6%) requests submitted by the four (2%) faculty members to perform consulting activities for pharmaceutical and medical device companies identified in the Open Payments data, with reported compensation totaling, \$922,730, in 2014. The number of consulting days requested totaled approximately 89.5 days. The OFCAS currently requires a faculty member to disclose the following minimal information regarding the expected compensation from the consulting activity: less than or equal to \$5,000 or greater than \$5,000.

While disclosure of consulting activity compensation greater than \$5,000 aligns with the financial conflict of interest disclosure required by federal granting agencies, the lack of more specific compensation levels in excess of \$5,000, may hamper the ability of the department head and FCO to provide adequate management oversight of consulting activities.

Recommendation

FCOs should consider modifying the OFCAS to include additional expected compensation ranges, for amounts greater than \$5,000, to enable the reviewers to identify high levels of compensation in relation to the number of consulting days requested. This information will alert reviewers to instances in which additional information may be necessary to reach a decision to approve and/or deny a consulting request.

Management Response

Management plans to enhance the oversight of clinical conflict of interest in three ways. First, a modification to the faculty consulting request form will collect more detailed data on the actual level of compensation. This will be collected using the same categories required by the NIH and that is currently being used on the annual research COI disclosure statement currently in place. Estimated date of completion: Fall 2016.

Second, the aforementioned annual research COI disclosure statement that is provided through an on-line system will be expanded to include all clinical providers. In addition to the current information collected by the faculty consulting system, there will be information concerning the faculty member's equity interests in pharmaceutical and medical device companies and the receipt of gifts. Estimated date of completion: May 2017.

Lastly, a Clinical Conflict of Interest Management Committee will be convened with representatives of the three major clinical entities (UConn John Dempsey Hospital, University Medical Group, School of Dental Medicine) as well as appropriate representatives

from other areas (ex. Procurement, Finance, Senior Counsel, Research Compliance, and Quality Improvement). This committee will review potential COIs and put management plans in place if and when necessary. The committee will convene in September, 2016, and initially develop rules of operations and it will then consider Open Payments data and the data from the annual disclosure statements.

7. Consulting Activities by Management-Exempt Employees with Faculty Titles

UConn deans and other management-exempt employees with faculty titles are included in the scope of the Consulting Policy. Unlike the majority of UConn faculty members, fulltime management-exempt employees with faculty titles are 12-month employees who accrue 22 vacation days annually. The Consulting Policy specifically states, “...if the proposed consulting activity will occur during the University’s normal business hours, management exempt employees must use paid vacation days, personal days, or accrued holiday time.”

We identified 13 (3%) management-exempt employees with faculty titles who submitted a total of 21 (2%) consulting requests in FY 2015. We traced the dates of the consulting requests to the vacation accrual data maintained by the Payroll Department. We found 11 (1%) consulting requests submitted by nine (2%) management-exempt that occurred during a period in which the employee's time and attendance data showed zero vacation hours taken. Failure to use vacation days for consulting activities that occur during the University’s normal business hours results in overstated accrued vacation balances, for which the University bears a future financial liability.

Recommendation

The Office of the Provost should work with the Payroll Department to correct the accrued vacation balance of those management-exempt employees with faculty titles whose payroll records do not agree with the FY 2015 consulting activities performed.

Management Response

The Office of the Provost will work with cited management-exempt employees to determine when consulting activities occurred. If it is determined that vacation time should have been utilized, we will work with Payroll to correct accrued vacation balances. Completion date: August 2016.

8. Unapproved Consulting Activities

As a result of the interviews conducted with seven judgmentally selected UConn academic department heads, we made an attempt to assess the existence of unapproved consulting activities by reviewing the online resumes for the faculty in the selected departments. We were able to trace a number of editorships, invited presentations, workshops, and other consulting activities with external entities listed on faculty resumes to a FY 2015 consulting request.

We also found instances of these activities for which no FY 2015 consulting request was found. In these cases, it is possible that no compensation was received; compensation

received was given to the University and deposited in a University account; and/or personal compensation was received for the activity without an approved consulting request.

The consulting policy requires submission of a consulting request by a faculty member who actively works in or manages a company or external entity in which he/she holds an equity / ownership interest regardless of the level of compensation received. In our review of requests to consult with faculty-affiliated companies, we found consulting requests submitted in FY2015 for 21 entities by seven (4%) UConn Health and 18 (4%) UConn faculty members. No consulting request was filed in FY2015 for seven (4%) UConn Health and 38 (8%) UConn faculty members affiliated with 37 entities.

Recommendations

The FCOs should consider adding functionality to the OFCAS to identify consulting activities that are likely to be performed in successive years which can be used to automatically “clone” the activity in subsequent fiscals, workflowed to faculty member for confirmation / withdrawal, and moved on through the approval process when appropriate.

The UConn FCO should instruct deans and department heads to encourage faculty members to submit a consulting request regardless of a guarantee of compensation to promote wider compliance with and reduce unintentional violations of the Policy.

The FCOs should work with the OVPR to implement procedures to promote compliance with the Policy by those faculty members identified as holding an equity interest in and/or management affiliation with an external entity.

Management Responses

UITS will add a check box towards the end of the consulting form, asking users if they intend to continue this consulting activity in future fiscal years. If checked, more information will be provided to the user about the need to submit additional forms for future fiscal years. This check box will also allow the FCOs to sort activities in the consulting dashboard that require updated forms for the upcoming fiscal year. Estimated date of completion: Fall 2016.

The UConn FCO will advise faculty who are unsure of whether compensation will be received to submit a consulting request. The UConn FCOs cannot predict – nor can faculty – when a contracting entity will provide money without warning. It is burdensome to ask faculty to submit consulting requests for every activity that may carry a lingering possibility of compensation.

The FCOs will continue to work with the OVPR to ensure that faculty submit consulting requests for activities with “faculty affiliated companies.” Completion date: Ongoing.