

**The University of Connecticut
Office of Audit, Compliance, and Ethics
Report on
Compliance with Faculty Consulting Policies**

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, provided such agreement or project does not conflict with the member's employment as determined by policies established by the board of trustees for such constituent unit. PA 07-166 requires that the Internal Audit Department of each constituent unit perform a semiannual audit to assess compliance with faculty consulting policies. This audit is included in the annual Office of Audit, Compliance & Ethics (OACE) audit plan which has been approved by the University of Connecticut (UConn) Joint Audit and Compliance Committee of the Board of Trustees (BOT).

The BOT approved the University's "Policy on Consulting for Faculty and Members of the Faculty Bargaining Unit" on September 25, 2007. Operational procedures for implementation of the policy were also released on that date and subsequently revised on December 4, 2007 to allow for Fast Track processing of a certain class of activities normally expected of faculty members where remuneration does not exceed \$500.

The University Consulting Management Committee (CMC) has been formed to review and manage consulting activity requests that are identified as having a potential conflict of interest and a University "Request for Approval of Consulting Activities for Faculty and Members of the AAUP Bargaining Unit" (Consulting Request Form) has been created and is the primary vehicle used to implement the requirements delineated in the BOT approved policy.

OBJECTIVES AND SCOPE

Our audit objectives and scope were:

- To determine if established policies and procedures comply with PA 07-166;
- To test the University's compliance with the BOT approved faculty consulting policies and procedures; and
- To evaluate the effectiveness of the established faculty consulting activity procedures.

The number of Consulting Request Forms submitted to the Storrs and the University of Connecticut Health Center (UCHC) Faculty Consulting Offices (FCOs) for the period from inception (September 2007) through June 30, 2008 was 824 and 373 respectively.

CONCLUSION

Based on our audit work, OACE found that while the University's faculty consulting policy is in compliance with PA 07-166, the procedures, as currently implemented, do not fully achieve compliance with the policy. We observed some inconsistencies in the approved Consulting Request Forms selected for testing and attribute many of these to the fact that the consulting policy and the implementation of related procedures are less than a year old. We have noted several areas on the Consulting Request Form that should be revised to ensure compliance with University policy. Procedures at both the departmental level and in the FCOs should be strengthened to achieve compliance.

We have also concluded that the average of "ONE-DAY-A-WEEK" should not be used as the default approval criterion by Department Heads and Deans. This fails to address fluctuations in a faculty member's University responsibilities during the academic year and activities that conflict with a faculty member's administrative or grant related University commitments for which summer salary is being paid. Current teaching schedules, student advising responsibilities, administrative assignments and sponsored research commitments should be compiled and maintained at the department for each faculty member. This information should be reviewed by Department Heads prior to approval of a consulting request and be made available to the FCOs when necessary.

Finally, while the faculty consulting policy states that faculty members will be subject to sanctions for not receiving prior approval, there have been no sanctions imposed and there are no specific procedures in place for the process of issuing sanctions and penalties.

The management and staff in the Storrs and UCHC FCOs were accessible and helpful during our audit. We recognize that there has been a tremendous amount of effort invested in the implementation of the University's Consulting Policy and the FCOs are well on the way to achieving the goals of the policy. We thank them for their effort, professionalism and consideration.

OBSERVATIONS & RECOMMENDATIONS

1. Requests Approved On or After the Activity Start Date

The current University consulting policy requires advance approval consisting of signatures on the Consulting Request Form by the appropriate Department Head, Dean and the Provost or Provost's designee. Forms approved on or after the start date do not meet this requirement.

Utilizing the consulting activity request data provided by the FCOs, we compared the final approval date with the start date for each of the approved requests. We identified 187 Storrs

requests (24%) and 103 UCHC requests (28%) that did not comply with the prior approval requirement of PA 07-166 and University policy.

It should be noted that at UCHC, faculty members were issued a letter stating that the consulting activity was approved but because the Consulting Request Form was received after the activity start date the request was not in compliance with University policy or PA 07-166. Under these circumstances the Office of State Ethics has jurisdiction over the activity. As stated above, the consulting request should not have been approved because University policy requires advance approval.

Recommendations

All Consulting Request Forms received in the FCOs on or after the start date should not be approved. The FCOs should work with the administration of the various Schools and Colleges at the University to ensure an adequate and timely review of the request at all levels in the approval process.

When a request is not approved due to receipt on or after the activity start date, the faculty member and his/her Department Head should be informed in writing that the consulting activity is not approved; is not protected by the provisions of PA 07-166 and as such, is subject to the State Ethics Code provisions.

Management Responses

Management agrees with both recommendations. The Storrs campus FCO does not approve Consulting Request Forms received after the start date. In order to allow adequate notification of this change in practice and to alert potential consultants of the possible sanctions related to such late submissions as described under recommendation 7, this will be fully implemented at UCHC starting January 1, 2009.

Both UCHC and Storrs provide written notification to the faculty member and his/her Department Head when the consulting activity is neither approved nor protected by the provisions of PA 07-166 and as such, is subject to the State Ethics Code provisions.

2. Requests Approved without Sufficient Detail – Performance of State Duties

The current University consulting policy states that “permission to consult may only be granted when...the faculty member is currently, fully performing his/her State duties” and “The consulting activity will not interfere with a faculty member’s future ability to perform his/her duties.” As a result of our review of the consulting request data and a sample of approved Consulting Request Forms on file in the FCOs, we identified three characteristics of Consulting Request Forms that fail to provide the detail necessary to assess the impact of the activity on the requestor’s ability to perform his/her State duties.

Extended Duration: We calculated the period of time between the start and end date for each of the approved consulting activity requests. Our analysis identified 206 Storrs requests (26%) and 67 UCHC requests (18%) where the duration of the activity was three months or

longer. As the duration of an activity increases, it becomes more difficult to assess its impact on a faculty member's ability to perform his/her University duties.

No Time Commitment Given: The Consulting Request Form instructs the requestor to "exclude time not normally expected to be at work." Given the flexibility of scheduling associated with the teaching, administrative, service and research components of a faculty position, it is difficult to identify time not normally expected to be at work. We identified 80 Storrs requests (10%) and 30 UCHC (8%) in which the value "0" was given as the total number of days committed to the activity.

Multiple Consulting Requests: We identified 170 Storrs faculty members (43%) out a total population of 400 and 66 UCHC faculty members (53%) out of a total population of 125 with multiple consulting requests, numbering as high as 17 requests for one Storrs faculty member and 19 requests for one UCHC faculty member. Many of these activities were judged to be concurrent for specific requestors based on the recorded activity start and end dates. The FCOs do not have procedures in place to monitor the total number of consulting requests for individual faculty members.

Recommendations

The Consulting Request Form should be revised to include the total estimated time commitment for the consulting activity, including the associated travel time, broken out by days normally expected to be at work and days not normally expected to be at work. This information is necessary to fulfill the disclosure, review and management of faculty consulting activity as required by State Statute.

Department Heads should monitor the total number of consulting requests for each faculty members with attention to assessing the impact of multiple consulting activities on a faculty member's ability to perform his/her University obligations.

Management Responses

Management agrees with the first recommendation. For the purpose of clarification, "days not normally expected to be at work" are also referred to as "zero days." The recommended revisions to the Consulting Request Form will be made and implemented by January 1, 2009.

Management agrees that Department Heads and Deans are responsible for ensuring that each faculty member is fully performing his/her duties. The FCOs will alert the Department Heads and Deans as to the intent of OACE to include departments in the next round of audits. These messages will also be placed into all faculty consulting training materials.

3. Excessive Number of Days Consulting

PA 07-166 allows faculty members to participate in a consulting activity provided such activity does not conflict with the member's employment. As currently implemented in the University's consulting procedures, the approval signature of the faculty member's

Department Head and/or Dean is an attestation to the fact that when added to other activities already approved, the consulting activity will not exceed an average of one day per week.

The most liberal interpretation of the “one day a week” provision of the University policy applied to a faculty member at Storrs with a 9-month appointment would allow a maximum of 39 days of consulting activity during an academic year which normally runs from August 23rd through May 22nd. Aggregate consulting commitments in excess of 39 days per academic year would lead an objective observer to question the faculty member’s ability to perform his/her University duties. During our review, we identified five Storrs faculty members (1%) out a total population of 400 whose total number of days committed to consulting activities ranged from 40 to 60.5 days.

The most liberal interpretation of the “one day a week” provision of the University policy applied to a full time faculty member at UCHC would allow a maximum of 48 days of consulting activity per year or 24 days per half year. At UCHC, we identified two faculty members (1.6%) out of a total population of 125 members whose total number of days committed to consulting activities ranged from 25.5 to 29.3 days and one faculty member consulting from 8 to 16 hours per week.

We performed additional test procedures on the consulting requests for the five Storrs faculty members and 2 UCHC faculty members identified above and found no indication that the consulting activities conflicted with the faculty member’s ability to fulfill his/her University duties. We did find that the FCOs do not have procedures in place to monitor the aggregate time committed to consulting activities. Rather, trust is given that the Department Head and/or Dean approving the Consulting Request Form knows what each faculty member is doing and is cognizant of the combined impact of all consulting activities on the member’s ability to fulfill his/her University obligations.

Recommendations

The Consulting Request Form should be revised to include a question regarding the existence of other approved requests for the current academic year.

Procedures should be established to address full time faculty who are found to be nearing and/or surpassing a permissible number of days allocated to consulting activities.

Management Responses

Management agrees with these recommendations. The recommended revisions to the Consulting Request Form will be made and implemented by January 1, 2009.

The FCOs will develop written procedures for monitoring whether faculty are approaching their maximum allowable consulting time for each year. Further, records of all requests to consult are maintained in a data file in each FCO. The directors of the FCOs review this data when large requests of time are made or the name of frequent requestor is encountered. The primary consideration is not the number of forms submitted but the actual time and effort devoted to the consulting activity.

4. Documentation Issues

During our test procedures we traced a sample of 83 UCHC and 92 Storrs consulting request data records to the corresponding Consulting Request Form to test for existence, completeness and accuracy. For the most part, all of the forms reviewed were complete with the exception of some minor documentation issues attributable to the initial implementation of the faculty consulting approval process at both locations. We also observed eight Consulting Request Forms in our UCHC sample and nine Consulting Request Forms in our Storrs sample with required information missing from the form, including: no recorded identification number; no description of the faculty member's role as a state employee; no identified contracting entity; no description of the consulting activity; incomplete Use of University Resources check box and missing University Resources Form; missing signature of the requestor; missing signature of the department head and number of days specified as "unknown".

We also identified two Storrs faculty members who submitted Consulting Request Forms that identified a business operated by the faculty member him/herself as the contracting entity rather than identify the business or organization which is actually receiving the benefit of the faculty member's services. These consulting requests do not provide enough detail regarding the nature of the consulting activity. As a result, the University can not adequately review and evaluate the requests with respect to the provisions of the consulting policy.

Recommendations

Consulting Request Forms should not be approved when the form is incomplete or when a University Resource Form is required but has not been submitted with the form.

When encountered, the FCOs should provide training to faculty members who submit consulting requests without clearly identifying the contracting entity or providing a detailed description of the consulting activity.

Management Responses

Management agrees with both recommendations. Requests will not be approved until all necessary information is available. There may be times when a field of data is unnecessary, for example, if the activity is serving on an NIH study section, the role as a state employee in making decisions that affect the contracting entity is not pertinent. In such a case "NA" or a blank field is acceptable.

Management believes there was no material impact from these form errors.

5. Consulting Activities Performed while Drawing Summer Salary

During our review of the Storrs consulting records, we identified 365 consulting activities (46%) with end dates extending beyond the academic payroll year which ended on May 22, 2008. We traced the faculty members submitting the requests to the payroll system (Genesys) to determine if any were authorized to receive extra compensation during the three month

period, May 23 through August 22, 2008. We observed 100 consulting requests (13%) for 63 faculty members that had some degree of overlap between the dates committed to University research activities and the activity dates specified in the request. The extra compensation for 44 of the 63 faculty members was charged to federally funded grant accounts.

These observations raise questions about the accuracy of the attestation section of the Consulting Request Form in which the requestor certified “that my consulting activity will not compromise the University in any of its external relationships, including the State or Federal Government.” Faculty members earning extra compensation from the University have committed a corresponding percentage of “on duty time” to research activities funded by external sponsors. As a result, the “one day a week” provision of the consulting policy does not necessarily apply. In these instances, requests for time to perform private consulting activities with other contracting entities require additional review before approval.

We would like to note that we did observe one summer payroll authorization that correctly extended the end date of the “on duty time” to account for time allocated to a consulting activity performed during the time period covered by the extra compensation.

Recommendations

Faculty members earning extra University compensation during the summer for research activities funded by external sponsors should be more careful about the end date of a consulting activity when the activity extends beyond the academic year (May 22nd). Serious consideration needs to be given to the amount of time and effort that can be appropriately devoted to private consulting activities while fulfilling all commitments to the University.

Department Heads should cross check special payroll authorizations for summer research activities against approved consulting activities before approving any new requests. When a faculty member submits a consulting activity request diverting time from compensated summer research activities, the Department Head should submit a revised special payroll authorization to reduce the extra compensation commensurate with the reduced time allocated to the research activity.

Management Response

Management agrees that the responsibility for tracking and managing “Time and Effort” and extra compensation policies resides with the Principal Investigator, the Department Head and the Dean. The FCOs will continue to communicate the importance of these departmental procedures in the implementation of the University’s consulting policy.

6. Competition with the University

The current University policy on consulting states that “permission to consult may only be granted when...the faculty member is not competing with the University for work that may be perceived as being work the University would choose to perform.” During our review of the consulting request data records, we identified five requests at Storrs and at least one

request at UCHC in which the requestor is also the Principal Investigator (PI) on a University grant or contract sponsored by the same contracting entity named in the consulting request.

We also identified 16 consulting requests at Storrs in which the number of days, the estimated level of compensation and the description of the activity suggest that the University is already performing similar work or may choose to perform the work as a sponsored grant or contract.

Recommendations

The Consulting Request Form should be revised to include explicit disclosure of the requestor's current University research activities with the contracting entity.

Various Schools and Colleges currently offer non-credit, continuing education courses. Consulting activities that are educational in nature should be reviewed for conflicts with such educational offerings.

Department Heads and Deans should review consulting activity requests in which the number of days, the estimated level of compensation and the description of the activity suggest that the University may choose to perform the work as a sponsored grant or contract.

Management Responses

Management agrees with the first recommendation. The expected implementation date of a revised Consulting Request Form is January 1, 2009.

With respect to the second and third recommendations, Department Heads and Deans are in the best position to be aware of when a proposed consulting activity is in competition with the University (i.e. it is work the University would choose to do itself), and have the option of communicating with any other office in making such a determination. The FCOs will continue to provide training and guidance to the departments on the topic of faculty consulting and potential competition with the University.

7. Adequate Management Review

Section 5a of the Policy on Consulting Activity states: "All faculty members must receive written permission in advance from their supervisor and the Provost or Executive Vice President for Health Affairs (whoever has jurisdiction over that member), or their designees, in order to engage in consulting activities." We observed that 10 out of a group of 83 (12%) judgmentally selected UCHC Consulting Request Forms were approved by a single individual who signed as Department Head, Dean, and designee. This occurred because the positions of Executive Vice President for Health Affairs of UCHC and Dean of the School of Medicine are held by a single individual (EVP/Dean) with dual authority, wherein the EVP/Dean is also the Department Head for his direct reports. Delegation of consulting activity approval authority for the School of Medicine to a single individual resulted in instances where a Department Head approved his/her own consulting requests.

Recommendation

The consulting activity approval authority for the Executive Vice President for Health Affairs and for the Dean of the School of Medicine should be delegated in a manner to ensure compliance with Section 5a of the Policy on Consulting Activity and prevent instances where a Department Head approves his/her own consulting requests.

Management Response

Management agrees with the recommendation which has already been implemented.

8. Sanctions and Penalties

The Public Act requires that procedures be included that impose sanctions and penalties on any faculty member for failing to comply with the provisions of the board approved policies. The University policy and procedures state that faculty members will be subject to sanctions for not receiving prior approval, however, there have been no sanctions imposed and there are no specific procedures related to the process of issuing sanctions and penalties.

During our fieldwork, we observed that the FCOs at Storrs and UCHC use different procedures to notify faculty regarding the approval status of consulting requests. We also observed a disparity in the treatment of consulting requests received on or after the activity start date. As discussed in Observation 1, the UCHC FCO sends a letter to faculty approving the consulting request with the caveat that the consulting activity is subject to the State Ethics Rules because it did not receive prior approval. The letter explains that while penalties and sanctions should be imposed, it was decided that no sanctions would be applied due to the implementation of the new Faculty Consulting policy. In contrast, the Storrs FCO does not approve consulting requests received on or after the activity start date. The faculty member is notified via e-mail that the request has not been approved.

Based on discussions with the management of the FCOs, a sanctions and penalty policy and related procedures have not been developed. Consequently, the University is not in compliance with Public Act 07-166.

Recommendation

Management should develop consistent procedures relating to consulting requests received on or after the activity start date and explicit sanctions and penalties relating to noncompliance with University faculty consulting policies and procedures. The sanctions and penalties should include progressive levels of action and related procedures to impose such sanctions as required by PA 07-166 and the BOT approved University policy.

Management Response

Management agrees with the recommendation. In order to allow sufficient time for institutional review and for informing the faculty, no hard implementation date has been set. The expected implementation date is January 1, 2009.