

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 June 30, 2011**

Audit Team

Staff Auditor: Donna L. Barberi, CIA
University Audit Manager: Elaine C. Zincavage, CPA

Cheryl Chiaputti

Cheryl Chiaputti, CPA, Director of Audit Services

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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: no inappropriate use of university proprietary information; no interest in the activity that interferes with the proper discharge of the faculty member's employment with the constituent unit; and 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 (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 seventh semiannual audit of the University's faculty consulting activity, it is the third to include a review of an entire academic/fiscal year.

OBJECTIVES AND SCOPE

Our audit objectives were to evaluate:

- Compliance with the Policy, including the required annual faculty consulting reconciliation reporting requirement
- The effectiveness of the established faculty consulting activity approval and oversight procedures
- The identification and management of potential competition and/or conflicts of interest and commitment for faculty members performing consulting activities possessing certain high risk attributes.

Our review included all "*Request for Approval of Consulting Activities*" forms submitted during the period, July 1, 2010 through June 30, 2011 (FY11.) The number of consulting request forms submitted to the Storrs and the University of Connecticut Health Center (UCHC) Faculty Consulting Offices (FCOs) for this time period was 1,240 and 745 respectively. The corresponding number of faculty members submitting consulting requests to the Storrs and UCHC FCOs during this time period was 484 and 167 respectively. We also reviewed the Storrs and UCHC *Annual Consulting Reconciliation Reports for FY11*.

The FY11 Storrs and UCHC consulting requests included a total of 7,626 and 2,528 days respectively of which 2,984 (39%) and 793 (31%) were identified as “Days Consulting during Normal Work Hours.”

This audit did not include tests of management’s corrective actions with a completion date later than June 30, 2011. These actions will be evaluated in subsequent Faculty Consulting audits, which will be conducted on an annual basis as of July 1, 2012, due to state legislative action.

GENERAL OBSERVATIONS AND CONCLUSIONS

In our assessment of the annual faculty consulting reconciliation process, we concluded that the reconciliation process is operating effectively in compliance with policies and procedures, with time changes and compensation changes reported in the consulting database. However, while the majority of the Storrs faculty submitted the required annual reconciliation report in a timely manner, faculty who fail to respond in a timely manner created a significant follow-up workload for the administrative staff involved.

We continue to note potential conflicts and/or competition with the University for a small number of Storrs and UCHC faculty members, including faculty members consulting for entities in which they hold a significant equity/ownership interest and, faculty members performing both consulting and sponsored research activities with the same entity that appear to overlap significantly. The Faculty Consulting Officers have implemented more rigorous review of consulting requests that possess these attributes to ensure that potential competition and conflicts of interest are identified and managed.

In addition, the FCOs have conducted training sessions with incoming Deans and Department Heads to provide education relating to the key requirements of the University’s policies and procedures in these areas. We also note the formation of a Conflict of Interest/Commitment Committee with members appointed from both Storrs and UCHC which has taken on the task of identifying, reviewing and consolidating the various University policies related to this topic into a single, cohesive policy statement.

UCHC Research Compliance monitors compliance with the Health Center’s Conflict of Interest policy, including the federal Physician Payment Sunshine Act (PPSA), signed into law in March 2010. PPSA requires pharmaceutical, medical device, biological, and medical supply manufacturers to report any "payment or other transfer of value" to physicians and teaching hospitals. While the PPSA becomes effective in 2013, many of the applicable manufacturers have voluntarily compiled payment data for several years, with public access provided on corporate websites. The University has subscribed to a payment reporting service for UCHC, but has not addressed the manner in which the reports will be used to identify potential faculty consulting policy violations.

We observed inconsistent application of controls regarding summer consulting activities for Storrs faculty members which has resulted in summer salary charges to federal grants for faculty effort during periods in which the faculty member was performing private consulting activity.

Review of summer consulting activities for UCHC faculty is not required because the base term for fulltime UCHC faculty is 12 months.

In addition, all consulting requests that were received late were properly denied and received sanctions in compliance with the Sanctions Policy.

OBSERVATIONS & RECOMMENDATIONS

1. Annual Faculty Consulting Reconciliation Reports

We performed a review of the annual Consulting Reconciliation Reports for FY11 to test for existence, timeliness and completeness.

Two UCHC faculty members out of the 167 who submitted consulting requests did not complete the annual reconciliation report by the due date. Based on follow-up performed by the UCHC FCO, these faculty members had resigned prior to September 15, 2011.

We noted the timely submission of an annual reconciliation report for 443 (92%) of the 484 Storrs faculty members submitting one or more consulting requests for FY11. Our Storrs testing disclosed two reports filed after September 30, 2011, one undated reconciliation report, two FY10 reconciliation reports submitted for the FY11 period, and an "Annual Reconciliation Report for Pre-Approved SUMMER Activities" manually completed for a consulting activity that occurred during the academic year in the period September 11, 2010 through May 22, 2011.

Additional testing disclosed the following circumstances related to the remaining 35 (7%) Storrs faculty members who failed to submit a FY11 Reconciliation Report. Of these, 23 faculty members were no longer employed by the University or had submitted requests that were cancelled or submitted in error. No justification for the failure to submit a FY11 Consulting Reconciliation Report could be identified for the remaining 12, currently employed, faculty members.

We traced these 12 faculty members to the electronic Faculty Consulting Request workflow and noted that seven of the faculty received approval to perform FY12 consulting activities despite the failure to submit the required FY11 reconciliation report. Given that the prior year annual consulting reconciliation due date occurred near the end of the first quarter of the current fiscal year, faculty can be given permission to perform consulting activities spanning the entire fiscal year without submitting the prior year report.

Storrs FCO staff stated that with the exception of one faculty member, faculty identified as failing to submit a reconciliation report during our field work in late December 2011 had subsequently submitted an annual consulting reconciliation report. The CLAS Dean's Office was instructed to deny approval of any consulting request submitted by the non-compliant faculty member until a completed FY11 reconciliation was received by the FCO.

The Sanctions for Non-Compliance with the University's Consulting Policy and Procedures, effective as of January 1, 2009 did not contain provisions related to non-compliance with the

annual consulting activity reconciliation report requirement. We did note that the following, addition to the sanctions policy, was approved by the Provost on October 6, 2011:

Failure to submit required annual reconciliation reports by the published deadline will result in the following sanctions:

- 1. No further requests to consult will be approved until 3 months after the missing reconciliation reports are received.*
- 2. A notification letter will be sent to the faculty member and his/her department head. If the faculty member doesn't complete all overdue reconciliation reports within two weeks of this issuance of this notification letter, permission to participate in all currently approved consulting activities will be revoked.*

The sanctions for failure to submit required annual reconciliation reports by the published deadline will be reexamined during the future review of faculty consulting requests for FY12.

Recommendations

The FCOs should continue to remind department heads that annual reconciliation forms should be completed prior to a faculty member leaving University employment.

The Storrs FCO should return an incomplete and/or erroneous Consulting Reconciliation Report to the faculty member for correction.

Management Responses

Management agrees to remind department heads to encourage the completion of reconciliation reports prior to leaving employment. The use of the new on-line approval system should facilitate this process. **Completion date:** December 31, 2012

Management agrees that incomplete or erroneous reports should be returned to the faculty member for correction. **Completion date:** Immediately.

2. Conflict of Interest and Competition with the University

UCHC Research Compliance subscribes to *PharmaShine*, a service that makes it possible to track and report payments made to UCHC faculty from companies covered by PPSA. Utilizing this external reporting mechanism, we noted two UCHC faculty members reported to have received consulting payments from external entities. We traced the faculty to the FY11 consulting data and were unable to find consulting requests submitted to do so. The lack of an approved consulting request for an external activity resulting in remuneration to a faculty member is a violation of the Policy.

During our follow-up review and discussions with the UCHC FCO, we observed efforts by the FCO to obtain additional facts and circumstances related to potential conflicts and/or competition associated with the consulting requests in question and the payments to UCHC

faculty members reported by *PharmaShine*. The FCO's report concerning one of the two instances observed has been submitted to the Provost's Office to determine an appropriate response. The second instance noted is still under review.

The University is currently developing a standard protocol for UCHC to follow when it has been determined that a *PharmaShine* reported payment for a consulting activity cannot be traced to an approved consulting request for a faculty member.

In addition, it appears that the University has not yet addressed the oversight requirements related to the possibility of payment disclosures from pharmaceutical, medical device, biological and medical supply manufacturers to Storrs faculty in the Schools of Pharmacy, Nursing and other applicable academic departments university-wide.

Recommendations

The University should develop and implement university-wide procedures relating to PPSA, including, the extent to which the University will be responsible for monitoring the publicly reported payment data; and the offices/departments to which potential violations should be referred for investigation. Sufficient staffing levels should be determined to perform the functions identified in the policy and associated procedures.

The University should provide training to faculty regarding the PPSA and each member's personal role in ensuring the accuracy of the payment data reported and the relevant University policies and procedures as well as state and federal regulations.

Management Responses

Management agrees that university-wide procedures should be established in how PPSA information will be used and that responsible units have sufficient resources to implement these procedures. **Completion date:** January 31, 2013

The UCHC Research Compliance Office, part of the University's Office of Audit, Compliance and Ethics, has taken on the responsibility of training the faculty regarding the PPSA. To date these efforts have included adding a PPSA module to its required annual training and oral presentations in many departments.

3. Consulting Activities Performed while Drawing Summer Salary

During our review of the FY11 Storrs consulting requests, we identified 217 consulting requests, submitted by 145 Storrs faculty members, for activities taking place at some time during the summer periods, May 23 through August 22, 2010 and May 23 through June 30, 2011, which fall within the FY11 fiscal year. We traced a judgmentally selected sample of 65 faculty members with 100 summer consulting requests to the payroll, financial and sponsored projects systems to determine whether the consulting period specified overlapped significantly with externally funded, University paid, summer effort charged to sponsored grant accounts.

We noted no apparent University paid summer effort committed to externally funded sponsored projects for 59 (89%) of the 65 faculty in our test sample. Seven of the remaining eight faculty members in our test sample performed private consulting activities during periods in which special payroll authorizations and financial accounting records confirm that he/she had committed fulltime effort with corresponding summer salary and fringe benefits charged to projects funded by external sponsors.

These findings illustrate that department heads, deans and the Storrs FCO are not consistently cross checking summer consulting against compensated sponsored project effort commitments to determine whether faculty have uncommitted time available to perform the private summer consulting activity.

Recommendations

Full summer salary (100% effort) should not be approved for faculty members with approved private consulting requests during the period May 23rd through August 22nd. Special payroll authorizations should be reviewed against the online consulting request system to determine the existence of conflicts in faculty time commitments. Procedures should be implemented to prevent faculty from receiving compensation for committed summer effort charged to externally sponsored project accounts for periods in which unrelated private consulting occur.

Department Heads or departmental delegates should cross check summer consulting for coinciding or overlapping special payroll authorizations for summer research activities. When a faculty member submits a consulting request diverting time from compensated summer research activities, the Department Head should not approve the request.

When a faculty member submits a retroactive request for summer salary charged to an externally sponsored project, approved consulting activity should be cross check for previously committed effort. Retroactive summer salary requests should be denied if conflicting consulting activity has occurred.

Management Responses

Management is reconsidering whether faculty on full summary salary should be prohibited from performing consulting activities. While such consulting cannot be allowed to negatively impact on their commitments to the University (and grants or contracts they have been assigned to), it may be possible to perform consulting on time not due to the University, such as weekends or evenings and individual discussions with some of the faculty involved in this category indicate that all of them are completing all of their grant work with strong positive reviews from the granting agencies and continuations of their grants, and even additional grant funds. We would like time to consider the matter, work with the faculty and OSP to study the matter at hand.

This determination will be completed by December 31, 2012. If management's policy is not changed, then management will agree to comply with the auditor recommendations above for consulting activities that would take place in the summer of 2013.