



II-3.10(E) UNIVERSITY OF MARYLAND POLICY ON CONSULTING

(Approved by the President on an interim basis, pending University Senate review, October 14, 2022)

I. Purpose

Participation in consulting can provide an important means for professional development and allows individuals to maintain currency and experience in aspects of their professional fields outside the University of Maryland (“the University”). These activities can also provide a mechanism for the transfer of knowledge from the University to the public arena and contribute to the overall public good. Though such attributes of consulting may make University employees better scholars, teachers, and campus community members, the nature of the consulting process has in it the potential to create a conflict of commitment (COC) by diverting employees’ efforts from their primary activities and responsibilities and/or create a conflict of interest (COI) related to those institutional responsibilities and/or related research activities.

The purpose of the University of Maryland Policy on Consulting (the “Policy”) is to provide a general definition of “consulting,” clarify exclusions to this definition, define the limits on consulting, and establish a balance between those activities and a University employee’s regular institutional responsibilities, thereby safeguarding the interests of all parties.

This Policy is also designed to ensure compliance with the following internal and external requirements:

- The University System of Maryland (USM) Policy on Professional Commitment of Faculty (II-3.10), which states that “[e]ach institution of the University System of Maryland shall develop and publish procedures to implement this policy” and that “[s]uch procedures shall include provisions for regular reporting by faculty members to the institution on all outside professional consulting or teaching and substantial external Professional Services, whether paid or unpaid.”
- Federal requirements, including but not limited to National Security Presidential Memorandum-33¹ and the regulatory and contractual requirements of federal agencies such as the Public Health Service, the National Science Foundation, and the Department of Energy, which presume that institutions accepting federal funds have a formal policy in place to address consulting and other outside activities and ensure

¹ Guidance for Implementing National Security Presidential Memorandum 33 (NSPM-33) On National Security Strategy For United States Government-Supported Research and Development.

that these activities do not negatively impact the interests of the federal government and/or the University.

- The requirements of Maryland State Ethics Law², which are broadly applicable to all University employees.
- The University of Maryland Policy and Procedures on Conflict of Interest and Conflict of Commitment “COI/COC Policy and Procedures” (II-3.10[A]) and (II-3.10[B]), which are required by Maryland State Ethics Law and apply to all University employees.

Though comprehensive, this Policy cannot address every specific instance of consulting. In cases of doubt, consulting must align with and promote the interests of the University, and must be in compliance with the internal and external requirements listed above, and all applicable University policies.

II. Definitions

- A. “Banking” means accumulating multiple consulting days over time in order to use them at once for a larger consecutive period of time.
- B. “Conflict of Commitment” means a circumstance that arises when otherwise acceptable outside activities may compromise or appear to compromise the fulfillment of a University employee’s institutional responsibilities, as stipulated under Maryland State Ethics Law and/or otherwise determined by the unit head.
- C. “Conflict of Commitment (COC) Review Board” is the advisory board, appointed by the Senior Vice President and Provost or designee, to review unit head approvals of outside activities that are unrelated to research endeavors and may or may not constitute a Conflict of Commitment. The COC Review Board has the authority to issue requirements and/or guidance regarding the implementation of local approval processes.
- D. “Conflict of Interest” means situations in which members of the University community are in a position to gain, or appear to gain, financial advantage or personal benefit (broadly construed) arising from their University positions, either through outside professional activities or through their research, administrative, or educational actions or decisions at the University.
- E. “Conflict of Interest (COI) Committee” is the advisory committee, appointed by the President, in accordance with the University’s COI/COC Policy and Procedures related to research endeavors.
- F. “Consulting” means any additional activity beyond a University employee’s institutional responsibilities, professional in nature, and based on the appropriate discipline or area of expertise, for which the employee may receive additional

² The State Ethics Law, Maryland Code Annotated, General Provisions Article, § 5-525(e).

- personal remuneration, and where such activities primarily benefit the employee and not the University.
- G. “Fiduciary Role(s)” means a role that imparts an obligation (i.e., a fiduciary duty) upon an individual to act on behalf of another person(s) or entity and put those interests, which are typically financial, ahead of one’s own. Titles that include terms such as executive, officer, director, or manager and positions with titles such as CEO, Director, Scientific Officer, or Vice President are designations that may indicate a role with fiduciary responsibilities.
 - H. “Institutional Responsibilities” are an employee’s professional responsibilities on behalf of the University including, without limitation, research, education, administrative, and/or service responsibilities, and which may include such activities as research, research consultation, teaching, professional practice, committee memberships, and service on University committees, councils, or other institutional bodies.
 - I. “Management Role(s)” means any role wherein a University employee’s responsibilities include formal supervision and/or oversight of personnel activities, as part of an organizational structure. Titles that include terms such as executive, officer, director, or manager and positions with titles such as CEO, Director, Scientific Officer, or Vice President are designations that may indicate a role with management responsibilities.
 - J. “Moonlighting” means endeavors for financial profit that occur outside of a University employee’s Institutional Responsibilities and are not directly related to their professional field or discipline.
 - K. “Outside Professional Activities” means any additional professional activities, that may be paid or unpaid, are beyond a University employee's institutional responsibilities, are within their discipline or area of expertise, and could include professional service.
 - L. “Professional Service(s)” means activities that provide a benefit to the University, academia, and/or the public interest, regardless of whether there is personal remuneration.
 - M. “Publications” are scholarly communications or other products such as books, movies, television productions, art works, etc. that may result in compensation.
 - N. “Unit Head” means the administrator(s) responsible for a Unit and the individual(s) to which a University employee reports. A Unit Head may be a Director, Department Chair, Dean, Vice President, or a similar official in a non-academic Unit, unless a different individual is designated by proper authority.

III. Applicability

- A. This Policy and any associated procedures are applicable to all University employees, even if Consulting occurs outside of regular University business hours, such as on evenings and weekends or when an employee is “off the clock.”
- B. This Policy is separate and distinct from the University’s COI/COC Policy and Procedures, which also apply to activities regardless of whether those activities occur outside of regular University business hours.
- C. Compliance with this Policy does not relieve University employees of their obligation to:
 - 1. Disclose and receive approval for COIs/COCs, as required by University policy and Maryland State Ethics Law;
 - 2. Disclose the activity as part of the University’s Outside Professional Activities (OPA) Report; and/or
 - 3. Disclose activities as part of current and pending support documentation on federal proposals.
- D. Disclosures made pursuant to this Policy, as well as pursuant to the University’s COI/COC Policy and Procedures and Outside Professional Activities (OPA) reports are not automatically populated into other institutional systems and may need to be separately disclosed.
- E. Applicability of this Policy is subject to change per Maryland State Ethics Commission guidance and/or state and federal laws and regulations.

IV. Scope

- A. Consulting is permitted, provided:
 - 1. The University employee’s Institutional Responsibilities have been met;
 - 2. The limitations on Consulting, as defined in Section V. below, are not exceeded;
 - 3. The requirements of Section VI.A below are met; and
 - 4. The relationship and/or any related financial interest(s) are disclosed, reviewed, and managed as required by the federal government and/or University policies.
- B. Exclusions

1. Publications, including scholarly communications and/or other Publications in the form of books, movies, television productions, art works, or other products, which may or may not result in compensation for a University employee and/or external entity (e.g., publisher). When produced in the course of a University employee's Institutional Responsibilities, such Publications are not viewed as Consulting. It is not the purpose of this Policy to differentiate between specific types of Publications or the roles of those published works in different disciplines; however, if a University employee is listed as an author on any Publication resulting from performance of Consulting services, the Publication should include a disclosure stating that the work was performed as a consultant and was not part of the employee's Institutional Responsibilities to the University.
2. Professional Service is distinct from Consulting in that such service is for the benefit of public institutions and/or the University. Examples of Professional Service include but are not limited to service provided to (a) United States (U.S. or federal) national commissions; (b) U.S. federal, state, and local governmental agencies and boards; (c) federal and state granting agency peer review panels; (d) approved foreign governmental agencies, boards, and peer review panels; (e) philanthropic organizations or charities; (f) professional societies; (g) academic and/or professional journals, including editorial board service; (h) visiting committees; or (i) advisory groups to other U.S. or approved foreign universities, and analogous bodies.

Although an honorarium or equivalent sometimes is forthcoming, Professional Service is not undertaken for personal financial gain; therefore, such service does not fall within the Consulting category as defined by this Policy. Federal regulations and award requirements related to federally-funded sponsored activities consider income provided for service to some non-governmental organizations, including foundations and professional societies, to be Consulting and reporting is required as set forth in regulations and agency guidance.

3. Moonlighting by University employees is considered part of the employee's private life and is excluded from this Policy. However, Moonlighting activities performed for foreign entities such as foreign institutions of higher education, foreign governments, or foreign companies, must be disclosed to the University for federal compliance purposes.

V. Limitations

A. Time Commitment for Faculty

Faculty may undertake Consulting up to one (1) day per calendar week, across all consultancy agreements, during the period for which they provide the service, so long as the faculty member is appropriately meeting all University obligations as determined through unit-level reviews, and with the approval of their Unit Head. It does not matter if faculty Consult on evenings, weekends, or holidays; if faculty

perform activities that are defined by this Policy as Consulting, it counts towards their total number of Consulting days.

1. Faculty members on 9-month appointments may Consult a maximum of 39 days, across all Consulting agreements, during an academic year. This does not include the summer period. During the summer period, if the faculty member is not engaged in other compensated University work, such as working on grants through summer salary, the one (1) day per calendar week limit does not apply.
2. Faculty members on 12-month appointments may Consult a maximum of 52 days, across all Consulting agreements, during a given fiscal year.
3. This Policy does not currently apply to a) adjunct faculty; or b) faculty whose appointment is below 50% of full-time, unless otherwise determined by the Unit Head and next level administrator.

B. Time Commitment for Staff

1. Staff are permitted to engage in Consulting, in compliance with this Policy, only outside of their regular University work hours or during periods of approved applicable leave.
2. Staff must continue to meet all University obligations as determined by job descriptions and unit reviews and comply with Maryland State Ethics Law and Maryland State Ethics Commission guidance.
3. With the approval of their Supervisors, staff members on 12-month appointments may Consult a maximum of 52 days, across all Consulting agreements, during a given fiscal year.

C. Banking of Consulting days is not permissible without prior approval from the Unit Head and the next-level administrator.

D. Limitations and Exclusions to Consulting Activities Related to Research

1. For Consulting activities related to research, University employees cannot perform activities or hold titles that include Fiduciary or Management Role(s), unless otherwise approved under a COI management plan.
2. University employees who are chosen to serve on a company's advisory council or scientific advisory board may use titles associated with these appointments, as they are research-related and different from Fiduciary or Management roles and titles. For example, roles with the title, "Scientific Advisor," or "Technical Consultant," are permitted and must be disclosed.

VI. Responsibilities of University Employees and Unit Heads

A. University Employees

1. The responsibility for adhering to the limit on Consulting days, and other aspects of this Policy and related procedures, lies first with the individual employee.
2. University employees must disclose fully and accurately any professional activities that they intend to undertake outside their Institutional Responsibilities.
3. Disclosure must be made before engaging in the activity, so as to ensure that the University employee is adhering to the principles set forth in this Policy, and that the University community is not injured by the employee's activity. Questions and/or ambiguities should be resolved through collaboration with the Unit Head, Dean, and/or applicable University officials.
4. University employees entering into a Consulting or related agreement with an external entity must sign an internal Memorandum of Understanding (MOU) with the University related to working with external entities and provide a copy of the signed internal MOU, along with any required documentation pertaining to the terms and conditions of the agreement, to the external entity for which the employee is Consulting.

B. Unit Heads

Unit Heads are responsible for:

1. Ensuring compliance with this Policy, the University's COI/COC Policy and Procedures, and Maryland State Ethics Law, as applicable, including:
 - a. Reminding University employees to provide a copy of the signed internal MOU to the external entity and attach any required documentation pertaining to the terms and conditions of their Consulting agreement, if applicable;
 - b. Working with applicable University units to provide guidance on Consulting, COIs, and COCs; and
 - c. Escalating any instances of non-compliance to the next-level administrator.
2. Remaining informed about any Consulting undertaken by University employees within their unit.
3. Monitoring the level of outside activities for appropriateness relative to the mission of the unit and for compliance with this Policy and the COI/COC Policy and Procedures, Maryland State Ethics Law, and related procedures, as applicable.

4. Remaining knowledgeable about the types of activities that may lead to actual or apparent conflicts and, in consultation with the next-level administrator and the COI Committee, advising unit personnel so that they may avoid and/or manage COIs, COCs, or similar situations that may adversely affect the University.
5. Reporting approvals of non-research-related Consulting that may constitute a Conflict of Commitment to the COC Review Board, on a rolling basis.
6. Cooperating with all applicable University entities such as the COI Committee to resolve and/or manage any conflicts that may be identified through the disclosure process.

VII. Responsibilities of the University

- A. Oversight: The University has obligations to oversee Consulting undertaken by University employees and ensure compliance with applicable laws, regulations, and University policies. To that end, the University shall establish procedures through which disclosures are made, reviewed, mitigation plans established, and/or corrective actions taken.
- B. Penalties: The University has the right and obligation to protect itself from losses due to excess Consulting and to seek restitution for salary and benefits covering time spent on Consulting beyond the limits provided for by this Policy. Depending upon the severity of the violation, the University may also take employment actions, including but not limited to formal letters of reprimand, suspensions, and/or termination with prejudice, in accordance with relevant University policies.