

# Frequently Asked Questions

## Conflict of Commitment & Outside Professional Activities

### Reporting Requirements

#### 1. How do I know if I am eligible to participate in Outside Professional Activities (OPA)?

OPA can be pursued by faculty who are members of the Health Sciences Compensation Plan under certain circumstances. They must:

- Be in good standing;
- Fulfill all expectations as a salaried faculty member;
- Have the approval of their Department Chair to participate in the specific Outside Professional Activity (OPA); and
- Faculty who are not members of the HSCP, can pursue OPA as long as the activity does not interfere with their roles and responsibilities as a faculty member. Specific requirements can be discussed with the department chair and/or manager.

#### 2. Who is a member of the Health Sciences Compensation Plan?

[University Policy](#) requires that faculty members of the School of Medicine and School of Nursing be members of the Health Sciences Compensation Plan (HSCP) if they hold a University funded appointment at **greater than 50%** of full-time at all ranks in any of the following series: Ladder Rank, In-Residence, Clinical X, Adjunct, HS Clinical or Visiting. Faculty with joint affiliate appointments may also be members of the HSCP, even if their UCD appointment is 50% or less time. If you are not sure whether you are a member of the HSCP, please contact your department manager or the academic personnel analyst for your department for clarification.

#### 3. What if I am not in the Health Sciences Compensation Plan, do I still have to complete an annual report?

Yes, faculty not in the HSCP are governed by [APM 025](#) and are required to complete an annual report through the Outside Activities Tracking System (OATS).

#### 4. Do I still have to complete an annual report if I do not engage in outside activity?

Yes.

#### 5. What types of activities are defined as outside professional activities?

Outside professional activities are defined in [APM 671](#)-4 as: "Those activities that are within a faculty member's area of professional, academic expertise that advance or communicate that expertise through interaction with industry, the community or the public." Outside additional teaching, as described in APM - 671-10-a-(2)-(a), is included in this definition. Outside non-professional activities are defined as "activities that are part of the faculty member's private life and are not expressly governed by University regulations or by the guidelines on outside professional activities."

## 6. How do I report outside professional activity?

Outside professional activities must be reported through the [UC Outside Activities Tracking System \(OATS\)](#). All prior approval requests for engaging in Category I activity and requests to exceed time or earning threshold limits must also be submitted through OATS.

### **Types of Outside Professional Activities**

## 7. How is the income from outside professional activities managed?

The HSCP allows you to retain income earned from certain outside professional activities up to a maximum amount of \$40,000 or 40% of your fiscal year base (scale 0), whichever is greater, based on your rank and step. Note - departments can set a lower earning threshold, so please review the department compensation plan and confirm with department administration.

Income includes not only cash compensation, but also compensation in the form of stock (as the value of the shares at the time they are offered) or stock options valued as the difference between the market value and purchase price. In general, these thresholds apply to all faculty members and are not pro-rated based on percent effort. Please verify with the appropriate department manager. The amount of outside income you are allowed to retain must be taken as personal income to avoid IRS rules related to “constructive receipt” – meaning that if you are allowed to retain outside income, you must not have the funds paid to the University to avoid personal income tax on the compensation.

If your income from outside professional activities exceeds the earnings threshold, you must obtain **prior** approval for the outside work and additional compensation for these activities from your department chair. The Chair shall submit a written request to the Dean or his/her designee. The request to exceed the earnings threshold must include relevant details about the proposed activity, including the nature of the services to be provided, the person or entity who will pay for the services\*, the anticipated period of service and/or hours to be devoted to the activity, the total expected earnings from the activity, and the amount by which the Plan Participant’s total annual earnings from outside activities are expected to exceed the earnings threshold. The funds earned in excess of the threshold must be deposited to the Plan.

Although there is an income threshold under the HSCP, some income earned from OPA may be retained by you and does not count toward the earnings approval threshold of \$40,000 or 40% of your fiscal year base salary. Please refer to your department’s compensation plan for a list of outside professional activities for which you are allowed to retain compensation independent of the departmental threshold.

\*When required to ensure patient confidentiality, the person or entity to be reported as recipient/payer for professional witness activities is the attorney or the law firm requesting the services.

## 8. What are the categories of outside professional activity?

- Category I - activities related to training and expertise but are performed for a third party or that require a significant professional commitment.
- Category II - professional activities that are outside the course and scope of your University employment.
- Category III - activities considered within the course and scope of University employment and do not present issues of conflict of commitment.

## 9. What outside professional activities are subject to the time and earnings threshold limits defined in my department’s Compensation plan?

[APM 671](#) differentiates outside professional activities into three distinct categories, defined by the level of conflict of commitment that each activity may create. Time spent in and income earned from Category I and Category II activities are subject to the time and dollar limits specified in your department's compensation plan.

**CATEGORY I** activities are outside professional activities that are **most likely** to raise conflicts of commitment because: **1) they are activities related to the training and expertise which are the same as your qualifications for University appointment, but performed for a third party and/or 2) they require a significant professional commitment.**

Category I activities are not allowed without **prior approval by the Chancellor**, including, but not limited to, assuming an executive or managerial position in a for-profit or not-for-profit business; teaching, research or administration of a grant outside the University (normally not allowed if the University would ordinarily administer the grant); establishing a relationship as a salaried employee outside the University; assuming a founding/co-founding role of a company and engaging in other compensated or uncompensated outside professional activities which common sense and good judgment would indicate are likely to raise issues of conflict of commitment. Some other activities, such as serving on a scientific advisory board or providing consultation to a company, are allowed as long as the **conflicts of interest are disclosed and managed**. In such cases, the Compliance Office and Office of Research should be notified of the activity and should provide guidance regarding how to manage and disclose the conflict. These types of relationships also could impact your ability to simultaneously do research on behalf of the company with which you have a management or financial relationship.

Category I activities count toward the time limit on outside professional activities defined in the department's compensation plan and the income earned counts toward your earnings approval threshold. **Category I activities, whether compensated or not, must be reported to the University.**

**CATEGORY II** activities are typically shorter-term professional activities that are outside the course and scope of your University employment.

Category II activities are less likely to raise issues of conflict of commitment. Category II activities include the following examples:

- Providing expert testimony in administrative, legislative or judicial proceedings;
- Providing consulting services for government agencies and for for-profit and non-profit entities;
- Serving as a member of the board of directors of an outside entity;
- Consulting under the auspices of the University of California; and
- Additional University-compensated teaching, including teaching for UNEX courses and programs, other continuing health education programs administered by the University, and self-supporting UC degree programs outside the Plan member's teaching load; and providing workshops for industry.

Category II activities count toward the time limit determined by your department's compensation plan and the income earned counts toward your earnings approval threshold. **Category II activities, whether compensated or not, must be reported.** In some cases, disclosure to the Compliance Office is required to define the level of conflict and how best to manage it.

**10. Am I free to engage in Category I and Category II activity on my own time (e.g. on the weekend)?**

Yes, you may participate in outside activity on your own time, but the time spent, and the income earned count toward the time limit set by your department's compensation plan and your earnings approval threshold set by the Plan. The same requirements apply to accounting for these activities in the evening, weekends, or while on approved leaves with pay, such as sabbatical and vacation. Participation in activity that falls under Category I would require exceptional **preapproval** from the department, Dean's Office, and Chancellor's office. Contact School of Medicine or School of Nursing Academic Affairs for details.

#### **11. Do I have to report reimbursement for travel expenses?**

Reasonable reimbursement for travel expenses and per diem does not need to be reported.

#### **12. When do I need to obtain prior approval to engage in outside activity?**

If you plan to engage in Category I activity or anticipate exceeding time or earnings threshold limits.

### **OPA Threshold Limits**

#### **13. What is the earning threshold limit for outside professional activities?**

In accordance with APM 671 the earning threshold limit is \$40,000 or 40% of your fiscal year base salary, whichever is greater. Note, policy permits departments to set a lower threshold so please refer to your department's compensation plan. Your department chair or chief administrative officer can provide copy of the department compensation plan.

#### **14. How much time may I devote to outside professional activities?**

If you are in Good Standing, you may devote up to 21 days (168 hours) annually to compensated and uncompensated outside professional activities.

#### **15. What should I do if I anticipate that I will exceed the time or earnings threshold defined in the departmental compensation plan?**

If you anticipate that participation in an outside professional activity will cause you to exceed the threshold specified in your department's compensation plan, you must request prior approval through OATS before engaging in the activity.

#### **16. What income can I retain that is not subject to the HSCP earnings threshold or time limits for outside professional activities?**

Income from **OTHER ACTIVITIES** listed below may be retained by you and does not count toward your earnings threshold. The time, related to these activities, does not count toward your time limit as determined by your department's compensation plan. Participation in these activities is not subject to the Plan's reporting requirement.

##### **Other Approved Activities:**

- Prizes, defined as gifts in recognition of personal achievements and not for services rendered.
- Royalties, defined as shares or proceeds for contributions as authors or inventors, as allowed under the University's copyright and patent policies. Please note that *industry-supported payments for authorship, whether or not as part of a consulting agreement with a company or similar agency, are not considered to be royalties; retention/non-retention of such payments is subject to the time and/or earnings threshold for outside professional activities.*
- Honoraria, defined as payments by academic or scientific agencies outside the University for occasional lectures and similar public appearances beyond normal academic responsibilities to

the University of California, and are not in return for other services, whether given directly or indirectly. Please note the following exception: *Industry-supported payments for lectures and/or presentations, whether or not as part of a consulting agreement with a company or similar agency, are **not** considered to be honoraria; retention/non-retention of such payment is subject to the time and/or earnings threshold for outside professional activities. In addition, faculty members cannot participate on speakers' bureaus or provide educational sessions of any kind in which a company prepares the materials and uses it for marketing purposes internally or to potential users of their products.*

- *University honoraria, defined as payments for occasional lectures or similar services performed on a University of California campus as permitted by Academic Personnel Policy (i.e., [APM 666](#)), and applicable UCD policies.*
- *Administrative stipends, defined as payments by the University for responsibilities related to University administration beyond normal academic responsibilities ([APM 633](#)).*
- *Income from a profession or activity unrelated to training and experience that is your qualification for University appointment, as determined by your Department Chair in consultation with the Office of Academic Personnel.*

### **17. Are any outside professional activities exempt from the time and the earnings thresholds?**

Yes. **CATEGORY III** activities are allowed under the Plan. These activities are considered within the course and scope of University employment and do not present issues of conflict of commitment. According to [APM 671](#), the following are examples of Category III activities:

- Serving on a federal, state or local government agency committee, panel or committees;
- Acting in an editorial capacity for a professional journal; reviewing journal manuscripts or grant contract proposals;
- Attending and presenting talks at scholarly colloquia and conferences; and
- Serving as a committee member, an officer or board member of a professional or scholarly society.

Category III activities do not count toward the time limit determined by your department's compensation plan, and the income earned may be retained by you and does not count toward your earnings threshold. Category III activities are not subject to the Plan's reporting requirements.

### **18. When do I need advance approval to engage in outside professional activities?**

Advanced approval is required for all Category I activities. Under [APM 671](#), Category I activities require **advance written approval** from the Chancellor or designee because they are most likely to raise conflicts of commitment. Requests for approval of such activities are to be directed first to your Chair, followed by the SOM Vice Dean for Academic Affairs, then the Vice Provost for Academic Affairs before submission to the Chancellor. Contact your department administrator or SOM Academic Affairs for details on requesting an exception.

Advance approval is also required anytime the faculty member *anticipates* the time or earnings threshold will be exceeded. If you wish to engage in any Category I or Category II activity that might reasonably be expected to cause you to exceed the time limit or earnings threshold as described by your department's compensation plan, you must request *prior written approval for each engagement from your Chair before proceeding*. All income earned from these engagements is owed the Plan. The exception request form can be found [here](#).

## **Good Standing Status**

## 19. What is the criteria to be in Good Standing?

Plan Participants are presumed to be in Good Standing unless they have been found to have misconduct or other activities described below:

- Plan Participants must meet department or ORU guidelines regarding productivity in research, teaching, patient care, mentoring, and University service, as defined by their series, rank and step.
- Plan Participants are responsible for actively participating in activities that support the department/unit's objectives.
- Plan Participants are expected to demonstrate professional behaviors in all areas of work and share responsibility for the overall success and well-being, including financial well-being, of the department.

## 20. What could cause the loss of Good Standing?

Loss of Good Standing may occur in the following instances:

- Finding of faculty misconduct;
- Finding of research misconduct;
- Finding of unsatisfactory performance in a Five-Year review;
- Refusal or failure to participate in assigned duties;
- Loss of clinical privileges (as required);
- Loss of licensure and/or credentials (as required);
- Refusal or failure to complete required trainings;
- Lack of compliance with University policy and/or reporting requirements;
- Failure to meet expectations related to the generation of salary support and/or shared expenses; or
- Participation in clinical or patient care activities performed outside of the University without an approved Professional Services Agreement or affiliation agreement.

## Consulting for Industry

### 21. Are there any other rules that apply to consulting for industry?

Faculty members are allowed to consult with industry. Since outside consulting is allowed under the compensation plan, the agreements between an outside company and the faculty member are **personal agreements for which the University is not a party**. All outside consulting relationships have some limitations and could create conflicts of interest, particularly if you have or anticipate having other relationships with the company for which you are consulting. For example, there are limitations on any role you might have in research activities funded by an outside company if you are also consulting or receiving any compensation from the company. If you are a consultant to an outside company, there are also restrictions to what role you can have in research activities supported by the company. You should also report the relationship to the **Compliance Office** that can assist you in managing any conflicts that arise.

## Moonlighting and Outside Clinical Work

**22. I hold a paid position with an affiliate institution. Is this activity considered an outside professional activity that must be reported? Does my time spent and income earned there count toward my time and earnings thresholds?**

No. If you are a salaried employee of an institution that has a formal affiliation agreement with the University of California, your employment with that institution is not considered an outside professional activity. Your work performed within these organizations does not count toward your time and earnings thresholds. All other work performed outside of UCD or an affiliate must be reported as defined above.

**23. May I engage in outside professional activities for another hospital or clinic not affiliated with the University?**

No. Patient care (clinical) activities must be provided within the University setting or at an institution that has a formal affiliation agreement with the University. Such activities performed for another hospital or clinic not affiliated with the University may occur only under a **professional services agreement** (PSA) between The Regents and the outside hospital or clinic. If you require more information about the process for requesting a PSA, please contact your respective department manager.

**24. I am a physician and my professional activities at UCD are limited to my clinical specialty. May I moonlight and retain income for clinical activities distinct from those I practice at UCD?**

No. Moonlighting is prohibited by University policy for all faculty members of the HSCP. Plan participants can perform clinical work at another institution only when it is done under a formal PSA between the University and the outside institution. All income from patient care or any other type of clinical activities is owed the University and cannot be retained by the faculty member. In most cases, any income generated under a PSA will be paid directly to the University, so no transfer of funds is required by the faculty member.

**Types of Payment for Services**

**25. I accepted an invitation to provide a Category I or Category II service in my area of professional expertise to a company and they wish to pay me by check for services rendered. Who should the check be made payable to?**

The company should pay you directly. The company should **not** pay the University because it is not a contracting party to the agreement. If the check is paid to the University for outside professional activities performed under the terms of the HSCP, you may be at risk with the IRS for violating "constructive receipt" requirements and incur penalties.

**26. I am occasionally asked by a for-profit entity (e.g., pharmaceutical company, medical appliance manufacturer, etc.) to speak. They offer an honorarium. As it is honoraria given by an agency outside the University, may I retain this income and consider it exempt from my annual outside professional activities earnings threshold?**

These payments are not honoraria. They represent payment for a Category II service to for-profit entity and may be retained but do count toward your earnings threshold. Such income earned above the earnings threshold is owed the Plan. Occasional lectures or presentations to academic institutions or societies are legitimately claimed as honoraria and exempt from your earnings threshold; lectures or presentations to for-profit entities are not.

**27. A firm for which I have consulted wishes to pay me in stock, stock options or non-cash compensation instead of cash. What should I do with non-cash compensation or security received as payment for services rendered?**

You are required to disclose all non-cash compensation (stock and/or options) received in exchange for professional services **within 30 days of receipt**. For more information contact the Office of Academic Personnel.

**STOCK** received in lieu of compensation for Category I and Category II outside professional activities must be disclosed to the Department Chair and to the Dean's Office within 30 days of the date of receipt. The stock will be valued at the time of disclosure. If the stock is given to you at no cost, the stock may be retained by you, but the dollar amount equal to the stock's full market value on the date of receipt will count toward your earnings threshold. An amount equal to the stock's full market value on the date of receipt is owed the Plan if you have exceeded your earnings threshold. If the purchase price is equal to the market value on the date of receipt, no amount is counted toward your earnings threshold. And, if earned above your approval threshold, no money is owed the Plan. If the purchase price is below market value price on the date of receipt, the difference between the purchase price and the value of the stock on the date of receipt counts toward your earnings threshold. Dollars equal to the difference is owed the Plan, if earned above your approval threshold. Following a determination of the value of the stock, you will be notified of the nature of any Plan obligations, based on the above methodology. Should you neglect to disclose the stock at the time of receipt, the difference between the purchase price or value of the stock at the time of receipt and the value of the stock at the time of disclosure will be applied to your earnings threshold. If the disclosure occurs after you have reached your approval threshold, the dollar difference will be owed the Plan. Disclosure at the time of receipt is required regardless of the stock's potential valuation, and regardless of whether you believe that any dollars are due the Plan.

**STOCK OPTIONS** received in lieu of compensation for outside professional activities must also be disclosed to the Department Chair and the Dean's Office within 30 days of the date the stock option agreement is signed. The Dean's Office will obtain a valuation of the stock as of the date of the agreement. If the offer price is equal to or greater than the stock's valuation/market price on the date the agreement is signed, no amount is counted toward your earnings threshold. And, if earned above your approval threshold, no money is owed the Plan. If the option price is below the stock's valuation/market price on the date the agreement is signed, the difference between the option price and the value of the stock is counted toward your earnings threshold. And, if earned above your approval threshold, the difference in dollars is owed the Plan. Following a determination of the value of the stock, you will be notified of the nature of any Plan obligations, based on the above methodology. Should you neglect to disclose this information within 30 days of signing such stock option agreements, the difference between the offered option price at the time the agreement was signed and the value of the stock at the time it is disclosed will be applied to your earnings threshold. And, if earned above the threshold, the difference in dollars is owed the Plan. Disclosure of stock options is required regardless of 1) the stock's potential valuation, 2) whether you intend to exercise the options, and 3) whether you believe that any dollars are due the Plan.

**FOUNDERS' STOCK** received in lieu of compensation for outside professional activities must also be disclosed to the Department Chair and to the Dean's Office within 30 days of the time of receipt. It will be valued at the time of receipt and any value will be applied to your earnings threshold. And, if earned above your approval threshold, dollars equal to the stock's value is owed the Plan. Since the value of founders' stock is generally insignificant, in most cases, a negligible amount would be applied to your earnings threshold or, if earned above the threshold, owed the Plan. However, if the founders' stock is not disclosed upon receipt, the value of the stock at the time of disclosure will be applied to your earnings threshold or, if earned above the threshold, equivalent dollars will be due the Plan.

## **28. Where do I report stock/stock option compensation?**

Faculty who receive stock or stock options in lieu of compensation for outside professional activities must disclose that compensation through OATS. The disclosure must be made within 30 days of receipt and/or signing of grant offer notification, independent of vesting dates. For more information please contact the Office of Academic Personnel.

**29. May I request that payments for my consulting services be made payable to the University?**

No. All payments for consulting services personally provided by a faculty member to an outside entity should be made payable directly to the faculty member. The University is not a party to personal consulting agreement and should not receive payments on behalf of a faculty member. Doing so may put the faculty member at risk with the IRS for violating “constructive receipt” requirements and possibly cause him/her to incur penalties.

**30. I wish to purchase stock in a company for which I have consulted. Does the Plan limit such investments?**

No. You are able to make personal investments in companies for which you are consulting. Your money is your own to do with as you please. If you purchase stock at its current market value, you have no obligation to the HSCP. If you are given the opportunity to purchase stock *below market value*, you must account for the difference between your purchase price and the current market price according to the terms of the compensation plan. The difference between the current market value and your purchase price represents compensation to you. As a result, you may be required to pay the University an amount equal to the difference between your purchase price and the current market value of the stock. A delay in reporting the value of the stock could incur you considerable financial obligation if the stock price increases before fulfilling your reporting obligation.

In addition, whenever you own equity in a company with which you are consulting or performing research activities, you should be aware of Conflict of Interest regulations that govern the reporting of such holdings.

**Forming a Start-up Company**

**31. I wish to found a company that will pursue research in my area of expertise. What are my obligations under the HSCP related to my role as a founder of a company? Does the HSCP limit what roles I can have with the company?**

While each situation may have different requirements, some general principles must be met as a founder of a company. There are three fundamental issues to consider:

- Reporting obligations under the HSCP;
- The management of intellectual property related to inventions that were developed using University resources (including laboratory space, staff, etc.); and
- The management of investments and income associated with your role in the company.

First, if you are going to found a company, you must receive **PRIOR approval from the Chancellor to serve in a founding role**. To do so, complete a prior approval request through OATS.

Second, **all intellectual property must be managed according to University rules**. Before founding a company based on intellectual property created during employment at UCD, you are required to discuss the specific situation and how to manage the intellectual property issues with the Office on Innovation Access. The Innovation Access staff will assist you in determining how to manage the intellectual property, licensing and other issues to ensure that you do not compromise your responsibilities related to [UC Patent Policy](#) or relinquish intellectual property for which you and the University may have rights.

Third, **there are restrictions to the role(s) you can play as a founder of a company.** As a founder of a company, you can serve on a scientific advisory board. However, you cannot serve in any executive and/or managerial role in the company unless you receive prior approval by the Chancellor.

**32. If I receive no compensation for my efforts in an executive or managerial position, am I still obligated to pursue prior approval for my activities with the company?**

Yes, Category I activities, although performed without compensation, require prior approval and count toward your time threshold for outside professional activities as determined by your department's Compensation Plan.

**33. What are my obligations if I were to enter into a consulting arrangement with the company?**

Consulting is a Category II activity and does not require prior approval. However, the activity counts toward your annual time allotment as determined by your department's Compensation Plan and earned income counts toward the earnings approval threshold. If you have an equity position with the company, you should disclose your relationship to the Compliance Office to clarify how to manage any conflicts of interest that arise related to consulting or performing research activities funded by the company.