

Research Policies

Consulting

Consulting for Companies (SC-510)

Scope

This policy applies to all HHMI laboratory employees, other than directors or managers of Janelia shared resource facilities.

Laboratory employees covered by this policy include HHMI laboratory heads. Laboratory heads are Investigators and, at Janelia Farm Research Campus, Group Leaders and Fellows. Under this policy, HHMI laboratory heads have significantly more flexibility to engage in consulting than most other HHMI laboratory employees.

Directors or managers of Janelia Shared Resource facilities are not considered laboratory heads for purposes of this policy and are not permitted to consult for companies under this policy. Any consulting they propose to do is subject to review and approval under HHMI's Outside Affiliations policy, which is more restrictive than this policy.

Senior Scientists are also not considered laboratory heads but are permitted to consult for companies under this policy in the same way as laboratory heads. However, because Senior Scientists are included in the personal time off (PTO) system, they will need to take PTO for any time that they take off from their HHMI work in order to consult.

Policy

What is Consulting?

HHMI considers consulting activity to include nearly any service on behalf of a company, including service on a company's scientific advisory board (SAB) or panel; service as a member of a company's board of directors; service as a founder of a company; service in connection with litigation (for example as an expert witness); or giving a talk or seminar for a company.

Please note that in addition to the general limits on consulting, there are special rules for the following types of consulting:

- Giving a talk or seminar at or for a company;
- Service to a start-up company, including as a founder;
- Service as a member of a company's board of directors;
- Service in connection with litigation (for example as an expert witness); and
- Service for a venture capital or other investment firm.

There are also special rules for consulting in connection with a clinical trial or study. These are described in the policies on Clinical Research rather than in this policy. Laboratory heads who engage in human subjects research should note that, as described in more detail in the Clinical

Research policies, they are not permitted to receive any compensation from a company that is sponsoring a clinical trial or study with which they are involved.

Writing or reviewing scholarly books, articles, or other material for publication is not considered consulting and is not subject to this policy, even if the publisher is a for-profit entity. Similarly, because of the importance of the peer review and publication process to the scientific community, serving as an editor or reviewer for an academic journal is not considered consulting that is subject to this policy, even if the publisher is a for-profit entity. Accordingly, agreements for this type of service need not be reviewed and approved by HHMI.

Consulting and Collaborating

Working with a company on a joint scientific project is a research collaboration, not consulting, and is addressed by HHMI's policy on research collaborations.

Because of the need to keep HHMI research separate from consulting activities, no one in an HHMI laboratory may consult for a company with which the laboratory is collaborating. Laboratory heads may choose between consulting and collaborating if both are possibilities. Alternatively, once collaborative work is completed, a consulting relationship often can be established.

Laboratory heads should be careful to avoid other scientific interactions with a company for which they consult, if those interactions may constitute or become a research collaboration. For example, a collaboration with an academic colleague who in turn collaborates with a company on the same project may constitute a collaboration with the company. A materials transfer agreement with a company may, depending on the circumstances, also constitute a collaboration with the company. Questions about whether a materials transfer agreement or other relationship amounts to a collaboration should be directed to the HHMI scientific officer or attorney responsible for the site, or at Janelia to the Director of Administration and Finance or the Chief Operating Officer, who should discuss the question with the HHMI attorney responsible for Janelia.

Who May Consult for Companies

HHMI laboratory heads and Senior Scientists may consult for companies subject to the limits described in this policy.

Postdoctoral Associates, because they are in an intensive training period of their careers, may not consult for companies.

Other HHMI laboratory employees, such as bioinformatics specialists or technicians, may consult for companies only if their laboratory is not collaborating with the company, and their laboratory head and the appropriate HHMI Vice President (or at Janelia, the Chief Operating Officer) approve the arrangement in advance after review by the HHMI attorney responsible for the site.

Such consulting is more likely to be approved if HHMI does not have an ongoing business relationship with the company and the employee has provided written assurance that he or she:

- Will not allow the consulting work to interfere with his or her HHMI work;
- Will not use HHMI resources to perform the consulting work; and
- Will not disclose to the company any confidential information that results from HHMI research (i.e., the employee will not be providing access to the laboratory's research)

or any information about HHMI's operations or facilities that HHMI does not make public.

It must also be clear that the employee is engaging in the consulting activities in his or her individual capacity and not as an employee or agent of HHMI, and that HHMI will not have any responsibility or liability in connection with the consulting activities.

In addition, laboratory employees, such as bioinformatics specialists or technicians, must take PTO for any time taken off from their HHMI work to consult.

General Limits on Laboratory Head and Senior Scientist Consulting

36-Day Per Year Maximum: Laboratory heads and Senior Scientists may consult for up to 36 days per calendar year. Please note that calculation of this limit is based on the maximum number of days of consulting called for by the written consulting agreement, not the actual days of consulting services provided.

For Investigators, time spent consulting for companies does not count toward the 75% of time that is required to be spent on research; for Group Leaders and Fellows, time spent consulting for companies does not count towards the 75% of time that is required to be spent at Janelia working on Janelia research. As noted above, Senior Scientists must take PTO for any time that they take off from their HHMI work in order to consult.

Types of Services Permitted: Because the role of a consultant is advisory, consulting must be limited to the exchange of ideas; laboratory heads and Senior Scientists may not conduct research for a company or direct others in doing so. For this reason, service as an officer of a company, or in any other managerial or operational role, is not permitted.

Laboratory heads and Senior Scientists working in the area of bioinformatics may be asked to write code for a company as a consultant. Because HHMI considers writing code to be the conduct of research, this type of service is not permitted. However, a laboratory head or Senior Scientist may advise the company as to how its personnel should write code, or comment on code written by company personnel. Similarly, laboratory heads and Senior Scientists may not build equipment for a company as a consultant, but may advise a company on how it should build equipment, or suggest improvements to equipment built by company personnel.

Compensation for Consulting: Compensation for consulting may include fixed amounts of cash and equity (such as stock or stock options) but may not include incentive or contingent features, such as bonuses based on performance or upon achievement of operational milestones. As described below, there are additional limits on compensation for consulting in connection with litigation and consulting for a venture capital or other investment firm. Also, as described in the Clinical Research policies, no compensation may be accepted from a company that is sponsoring a clinical trial or study with which the consulting laboratory head or Senior Scientist is involved.

Consulting and Holding an Equity Interest: Laboratory heads and Senior Scientists are not permitted to consult for companies in which they hold a significant equity interest. Generally, this means any interest that exceeds 5% of any class of the company's outstanding equity. However, an interest of less than 5% may also be significant, depending on the circumstances. In reviewing equity interests, HHMI will consider all equity the consulting scientist owns or would be entitled to receive directly as a founder or other investor, as a consultant, or as an inventor, as well as the amount of equity held or proposed to be held indirectly, for example through a trust or partnership or by the consulting scientist's immediate family members.

There is a narrow exception to the 5% limit that applies in the case of start-up companies. This exception is explained in the policy on Consulting and Equity Ownership in Start-Up Companies.

Access to HHMI Research: Consulting arrangements may not confer upon a company any rights in HHMI research or any preference in access to information or inventions resulting from HHMI research.

Giving a Talk or Seminar for a Company

Some companies request that a scientist sign a confidentiality or similar agreement before giving a talk or seminar at the company. Because these agreements impose legal obligations on the scientist, laboratory heads and Senior Scientists in this situation should ask the company well in advance whether it will be necessary to sign an agreement, and if so, to consider asking the company to waive the requirement. If the company does not require that an agreement be signed, the laboratory head or Senior Scientist is free to give the talk without obtaining further approval from HHMI, and the commitment is not counted against the 36-day annual limit on consulting.

If the company insists that a confidentiality or similar agreement be signed, the agreement must be reviewed and approved by HHMI. These agreements should be sent to the HHMI attorney responsible for the site at least thirty days before the talk or seminar to allow for review and negotiation of any changes.

HHMI has developed a model consulting agreement for one-day talks or seminars that may be used by companies to streamline the review and approval process. Alternatively, HHMI has developed “uniform provisions” for these types of commitments; these may be attached to the company’s own confidentiality or consulting agreement and signed by the parties. Use of the model agreement or “uniform provisions” will facilitate timely review and approval of an agreement.

Service as a Founder of a Start-Up Company

HHMI considers a scientist’s service as a founder of a company to constitute consulting for the company, and therefore to require prior approval by HHMI, even if there is no written consulting agreement in place. Please refer to the Start-Up Handbook for a detailed explanation of HHMI’s review of start-up proposals. Major points to consider are:

- Only laboratory heads and Senior Scientists may consult. No other HHMI laboratory employees may serve as founders of a start-up company.
- Ownership of start-up equity will be subject to significant restrictions. Although there is an exception from the general 5% cap on a consultant’s equity ownership in the company, this exception is quite limited. The exception is explained in the policy on Consulting and Equity Ownership in Start-Up Companies.
- The HHMI attorney responsible for the site will need adequate time to review not only the completed start-up questionnaire and proposed consulting agreement, but copies of other documents requested in the questionnaire, such as the start-up company’s business plan and capitalization table.
- As noted above, HHMI’s review of start-up documentation is more involved than the review of other consulting relationships, and thus may take more time.
- If it is proposed that the start-up company license technology developed by the HHMI founder, the company’s research must be easily distinguishable from the ongoing work in the founder’s HHMI laboratory.

- From the company's inception, the company must have individuals other than the HHMI founder acting as its representatives and taking the steps needed to transform the company into an operating business. The HHMI founder should not at any time function as, or be identified in corporate documents as, an officer or director of the company. The activities of the HHMI founder during the initial phase of the company's development must be limited to review of strategic plans and occasional discussions with company representatives about the company's progress in commencing operations, for example in recruiting scientific and business personnel and obtaining licenses and research space.
- Throughout the course of the HHMI founder's relationship with the company, he or she must not provide the company with access to the results of HHMI research prior to the time that these results are made generally known to the scientific community at large.

Service as a Member of a Company's Board of Directors

Service by a laboratory head or Senior Scientist as a corporate board member may entail fiduciary obligations and time commitments that are inconsistent with HHMI policies. For this reason, HHMI restricts the situations in which such service is permitted.

A laboratory head or Senior Scientist may not serve as a member of the board of directors (as opposed to an SAB) of a start-up company with which he or she is involved. Otherwise, a laboratory head's or Senior Scientist's proposal to serve as a member of a company's board of directors may be approved depending on the circumstances, in particular the following factors:

1. Is the company relatively new? Service on the board of a relatively new company is less likely to be approved than service on the board of a large, established company which is publicly traded.
2. Is any of the company's work related to ongoing HHMI research of the laboratory head or Senior Scientist? If so, service on the company's board is less likely to be approved.
3. Is technology developed by the laboratory head or Senior Scientist licensed or proposed to be licensed to the company? If so, service on the company's board is less likely to be approved.
4. Does the laboratory head or Senior Scientist otherwise consult for the company, for example as a member of the company's SAB, or otherwise have more than incidental scientific contact with the company? If so, service on the company's board is less likely to be approved.
5. Does the laboratory head or Senior Scientist directly or indirectly own more than a minimal amount of stock in the company because of his or her consulting services, or through a license of intellectual property to the company? If so, service on the company's board is less likely to be approved.

Consulting in Connection with Litigation

HHMI does not encourage service by a laboratory head or a Senior Scientist as an expert witness or similar consulting in connection with litigation, unless the service is in the public interest. However, HHMI generally will approve this type of consulting work without reference to the nature of the litigation if (1) the compensation does not exceed \$2,500 per day, and (2) the consulting

commitment is not expected to intrude upon the operations of the laboratory or HHMI's administrative offices.

Laboratory heads and Senior Scientists should be aware that although consulting in connection with litigation can be lucrative, it can also be time-consuming and burdensome. For example, this type of commitment can lead to extensive requests for information and documents relating to the consulting scientist's expertise, experience, and credentials.

Consulting for a Venture Capital or Other Investment Firm

Laboratory heads and Senior Scientists may be asked to consult for venture capital or other investment firms, including those involved in launching or acquiring companies. Because the excitement of these activities has great potential to draw consultants into managerial or operational roles that are not permitted under the general limits on consulting described in this policy, agreements for this type of consulting must clearly delineate that the consulting duties are advisory only and separate from operational or management functions. If there are offering materials for a particular investment firm, they must be consistent with the consulting agreement in describing the services to be provided by the consulting HHMI scientist. In addition, the consulting scientist's affiliation with HHMI should not appear in any company materials, including offering materials and information posted on the company's website.

In addition, compensation for this type of consulting must take a form that is determinable in advance on an annual basis, such as a daily or meeting fee and/or an annual retainer. Accordingly, the compensation payable to the consulting HHMI scientist (directly or indirectly) may not include a percentage participation in the investment firm's profits or fees, such as a percentage of a carried interest.

Procedures for HHMI Review and Approval of Consulting Agreements with Companies

Investigators and host institution-based Senior Scientists wishing to enter into a consulting relationship with a company, or to modify or extend an existing arrangement, should complete the HHMI Consulting Questionnaire (or the Start-Up Questionnaire in the case of start-ups) and forward it to the HHMI attorney responsible for their site. Janelia laboratory heads or Senior Scientists wishing to enter into a consulting relationship with a company, or to modify or extend an existing arrangement, should complete the version of the consulting questionnaire that is posted on the Janelia intranet and forward it to the Janelia Director of Administration and Finance or the Chief Operating Officer, who should coordinate review of the questionnaire and consulting agreement with the HHMI attorney responsible for Janelia.

HHMI has a model consulting agreement that includes provisions that are required to be in all consulting agreements for Investigators and host-based Senior Scientists, and a similar agreement for Janelia laboratory heads and Janelia Senior Scientists. Alternatively, to facilitate the negotiation and approval of these agreements, HHMI has developed attachments that incorporate the required provisions into a company's standard agreement.

As noted above, there is a streamlined model agreement and attachment for talks and seminars for companies. The Consulting Questionnaire is not required for this type of proposed consulting.

Laboratory heads and Senior Scientists should not sign any consulting agreement with a company until it has been approved by HHMI. Approval for an agreement to give a talk or seminar may be given by the HHMI attorney responsible for the site. Approval for consulting agreements involving more than a talk or seminar must be given by the Vice President and Chief

Scientific Officer (or in his or her absence, another scientific officer), or at Janelia, the Director or the Chief Operating Officer.

Purpose of HHMI's Review of Consulting Agreements

Please note that HHMI's review of a proposed consulting agreement is solely to consider whether the consulting arrangement conforms to HHMI policies. Laboratory heads and Senior Scientists may wish to seek their own legal counsel to advise them of their rights and obligations under a proposed consulting agreement, including any non-compete provisions that may limit their ability to consult for other companies.

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