

The Regents of the University of California

**COMMITTEE ON COMPENSATION
COMMITTEE ON FINANCE**

November 20, 2008

The Committees on Compensation and Finance met jointly on the above date at UCSF–Mission Bay Community Center, San Francisco.

Members present: Representing the Committee on Compensation: Regents Blum, Cole, Hopkinson, Johnson, Kozberg, Pattiz, Varner, and Yudof; Advisory members Stovitz and Croughan
 Representing the Committee on Finance: Regents Blum, Gould, Hopkinson, Island, Kozberg, Scorza, Varner, Wachter, and Yudof; Advisory members Bernal and Nunn Gorman; Staff Advisors Abeyta and Johansen

In attendance: Regents De La Peña, Hotchkis, Makarechian, Marcus, Ruiz, Schilling, Shewmake, Faculty Representative Powell, Secretary and Chief of Staff Griffiths, Associate Secretary Shaw, General Counsel Robinson, Chief Investment Officer Berggren, Chief Compliance and Audit Officer Vacca, Interim Provost Grey, Executive Vice Presidents Darling and Lapp, Senior Vice President Stobo, Vice Presidents Beckwith, Dooley, Foley, Lenz, and Sakaki, Chancellors Birgeneau, Block, Blumenthal, Fox, Kang, White, and Yang, and Recording Secretary Johns

The meeting convened at 11:00 a.m. with Committee on Finance Chair Gould presiding.

**1. AMENDMENT TO THE POLICY ON SETTLEMENT OF LITIGATION,
 CLAIMS AND SEPARATION AGREEMENTS**

The President and General Counsel recommended that the proposed amendment to the *Policy on Settlement of Litigation, Claims and Separation Agreements* be approved as shown in Attachment 1. The amendment will increase the authority of the President to approve certain settlements of claims and separation agreements and will increase the authority of the General Counsel to approve settlements of litigation and claims in order to conserve the time of the Regents to address the most significant matters and to further streamline the Board's practices and procedures. Approvals by the Chairman of the Board and the Chairman of the Committee on Finance would be required at the \$500,000 level. Approval by the full Board would be required at the \$1 million level.

[Background material was mailed to Regents in advance of the meeting, and copies are on file in the Office of the Secretary and Chief of Staff.]

General Counsel Robinson explained that this item was a proposal to increase the administrative authority of the President and General Counsel to settle general litigation

and employee-related claims and to streamline this process. The intent is to conserve the time of the Regents during the meetings and the time of the committee chairs between meetings, so that Regents can focus on matters critical to the University.

Mr. Robinson identified the major changes in the proposal. It would double the dollar levels at which approval by the full Board or approval by the Chairman of the Board and the Chair of the Committee on Finance are required. The approval level for the Chairman of the Board and the Chair of the Committee on Finance would rise from \$250,000 to \$500,000; the approval level for the full Board would rise from \$500,000 to \$1 million. Generally, the proposal would align approval authority for employee claims and separation agreements with the approval authority for general litigation. It would eliminate some annual reporting by the President and substitute bi-monthly reporting by the General Counsel.

Full Board approval would still be required for separation agreements or employee-related claims involving Officers of the University. Mr. Robinson noted that "Officers of the University" constitutes a broad group including all executives in the Office of the President and the top two administrative levels on the campuses, the chancellors and vice chancellors. Any settlement that implicates UC policy would also require full Board approval.

Chairman Blum observed that he is currently obliged to approve litigation settlements for relatively small amounts several times weekly, when in fact he does not have the necessary time to study each lawsuit and determine whether the settlement should be approved or not. He suggested that the approval level could be set at a higher dollar amount.

Regent Hopkinson asked if the term "claims" in the item referred to litigation. Mr. Robinson responded that there are two distinct issues in question. "Employee claims" does not refer only to litigation.

Regent Hopkinson expressed misgivings about raising the approval level for settlement agreements up to \$500,000, which she deemed far from transparent. She stated that settlements at this level involve egregious circumstances and that the only justification for settling at this level with an employee who is leaving the University is because of a wrongful action. She found it inappropriate to delegate authority for a \$500,000 settlement when there is no formal claim and no litigation.

Regent Hopkinson recalled a recent settlement for a somewhat higher amount at one of the campuses which received media attention statewide and was controversial. She opined that it would be a mistake to raise the approval level for separation agreements from \$250,000 to \$500,000. In litigation matters, she found that a \$1 million approval level would be appropriate, with the approval of the Chairman, the Chair of the Committee on Finance, the President, and the General Counsel. Regent Hopkinson cautioned that matters not involving litigation can be ambiguous and advocated that a different approval level be proposed.

Regent Island opined that the Regents should not make legal risk assessments. Those settlements proposed by the General Counsel and agreed to by the President which do not require Regental approval should extend to a high dollar amount. Settlement agreements are an administrative burden. He found the limits in the proposal too low and suggested that the proposal might be further reviewed and revised. He expressed disapproval of eliminating annual reports, which provide a public forum for inquiry. Annual reports should be brought to the Board and made public.

Mr. Robinson explained that essentially, the same reports that are now submitted annually would be submitted to the Regents at each meeting. The proposal would result in more frequent reporting.

Regent Island observed that reports at meetings pass without comment. He found value in the present system of annual reporting of all settlements. He stressed the importance of candor and transparency.

President Yudof responded that reporting will occur at whatever periods are appropriate. An annual report will be provided according to Regent Island's request. Mr. Robinson stated that both bi-monthly and annual reports would be provided.

Committee on Finance Chair Gould recognized this amendment to the proposal.

Regent Hopkinson clarified that her concerns rested not with settlements of litigation, but with separation agreements, which are different in nature.

Committee on Finance Chair Gould noted that he shared these concerns as he reviewed the item before its presentation to the Committees. He stated that his concerns were allayed by the number of individuals included in the group for which full Board approval is required, the Officers of the University. Separation agreements for the most sensitive employees will still be brought to the Regents for approval.

Regent Hopkinson observed that controversial separation agreements have involved individuals not in the group of Officers of the University.

Regent Gould stated that the case Regent Hopkinson was referring to would be covered by the provisions of this recommendation.

Upon motion duly made and seconded, the Committees approved the President's and General Counsel's recommendation as amended and voted to present it to the Board, with Regent Hopkinson voting "no."

The meeting adjourned at 11:15 a.m.

Attest:

Secretary and Chief of Staff

Deletions shown by ~~strikeout~~; additions shown by underscore

POLICY ON SETTLEMENT OF LITIGATION, ~~AND NON-EMPLOYEE CLAIMS, AND SEPARATION AGREEMENTS~~

~~That~~ The Regents adopt, ~~effective October 1, 1995,~~ the following Policy on Settlement of Litigation, Claims and Separation Agreements ~~Litigation~~ establishing the settlement authority of The Regents, the President, and the General Counsel and requirements with respect to reporting of settlements and separation agreements.

(1) As used in this Policy, the following terms shall have the meaning specified:

a. "Claim" shall refer to any demand for payment from an entity or individual, including other than a University employee, which is disputed in whole or in part and is made other than through litigation. Commercial negotiations to adjust amounts payable under a contract shall not be treated as "claims."

b. "Litigation" shall refer to legal proceedings in the form of a lawsuit, arbitration proceeding, or internal or external administrative proceeding.

c. "Separation Agreement" shall refer to an agreement with a University employee by which the employee separates from University employment, but which does not involve a "claim" or "litigation," as defined above.

d. "Consideration" shall refer to a monetary commitment on the part of the University, whether in the form of a lump sum cash payment, or compensation for services for a specified term, or individually-negotiated payments for benefits (e.g., COBRA), or a non-monetary commitment on the part of the University; it excludes payments for salary and benefits previously earned by the employee (e.g., earned vacation leave) or continued employment on the same terms as existed prior to the agreement. When consideration is received by the University, it can also be monetary or non-monetary.

(2) Settlement Authority of the President

The President shall have authority to settle claims and to enter into separation agreements when the consideration paid or received by the University ~~shall have~~ has a value ~~not in excess of \$100,000~~ of \$500,000 or less. Settlement of claims or separation agreements when the consideration paid or received by the University exceeds ~~\$50,000~~ \$100,000 shall require the concurrence of the General Counsel. The release provisions of all settlements of claims and separation agreements, regardless of the amount of consideration, shall be in a format approved by the General Counsel. Settlement of claims and separation agreements by the President shall be subject to appropriate funding.

(3) Settlement Authority of the General Counsel

The General Counsel shall have authority to settle claims and litigation when the consideration paid or received by the University ~~shall have~~ has a value ~~not in excess of \$250,000~~ of \$500,000 or less. All litigation settlements shall be reviewed and approved by the General Counsel. Settlement of claims or litigation by the General Counsel shall be subject to appropriate funding.

(4) Reporting of Settlements and Separation Agreements Actions

~~The following reports of settlement actions shall be submitted to The Regents:~~

a. Annually by the ~~President~~ General Counsel, all settlements of claims and litigation, and all separation agreements, when the consideration paid or received by the University has a value greater than \$50,000.

b. At each regular meeting of The Regents, ~~by the General Counsel~~ The Regents shall receive a report from the General Counsel of all settlements of claims and litigation, and all separation agreements, when the consideration paid or received by the University has a value between greater than \$50,000 \$100,000 and up to \$250,000 \$500,000.

c. At each regular meeting of The Regents, ~~by the General Counsel~~ The Regents shall receive a report of all settlements of claims and litigation and all separation agreements approved by the Chairman of the Board and the Chairman of the Committee on Finance pursuant to section 5a. hereof.

(5) Settlement Actions Reserved to The Regents

The following proposals for settlements of claims or litigation or for separation agreements shall be submitted to the Chairman of the Board and the Chairman of the Committee on Finance or to The Regents for prior approval:

a. To the Chairman of the Board and the Chairman of the Committee on Finance, ~~settlements~~ when the consideration to be paid or to be received by the University has a value ~~between~~ greater than \$250,000 \$500,000 and up to \$500,000 \$1,000,000.

b. To The Regents, ~~settlements~~ when the consideration to be paid or to be received by the University has a value in excess of ~~\$500,000~~ \$1,000,000.

c. To The Regents, settlements or separation agreements of any amount involving significant questions of University policy.

d. To The Regents, settlements or separation agreements of any amount with Officers of the University (Standing Order 100.1(a)) and Officers of the Regents (Bylaw 20.1).

All settlement and separation agreement proposals which require approval by either the Chair of the Board and the Chair of the Committee on Finance, or by the full Board, shall be accompanied by the recommendation of the General Counsel and a statement of the applicable fund source.

With regard to faculty members with tenure or security of employment, in the event that a faculty member's resignation and severance compensation is deemed by the President to be in the best interests of the University, pursuant to Standing Order 103.7, any resulting separation or settlement agreement shall be subject to this policy.

