

The Regents of the University of California

COMMITTEE ON COMPLIANCE AND AUDIT

January 7, 2009

The Committee on Compliance and Audit met on the above date by teleconference at the following locations: 1111 Franklin Street, Room 12322, Oakland; James E. West Alumni Center, Los Angeles Campus; 3750 University Avenue, Suite 610, Riverside; 931 Southwood Boulevard, Incline Village, Nevada; 505 Park Avenue, 21st Floor, New York, New York.

Members Present: Regents Cole, De La Peña, Reiss, Ruiz, Scorza, and Varner; Advisory member Croughan, Expert Financial Advisor Schneider, Expert Compliance Advisor Guyton

In attendance: Regent-designate Stovitz, Secretary and Chief of Staff Griffiths, Associate Secretary Shaw, General Counsel Robinson, University Counsel Thomas, University Counsel Abrams, Chief Compliance and Audit Officer Vacca, Vice President Broome, University Auditor Reed, and Recording Secretary Lopes

The meeting convened at 12:00 p.m. with Committee Chair Ruiz presiding.

1. PUBLIC COMMENT

Committee Chair Ruiz explained that the public comment period permitted members of the public an opportunity to address University-related matters. The following person addressed the Committee.

A. Ms. Yolanda Gonzales, an employee at UC Riverside, spoke on behalf of the service workers on that campus. She expressed the concern of her fellow workers regarding the lack of a contract and the poverty-level wages. She pointed out that the mediator, chosen by the University of California, had forwarded a letter that she hoped the Committee would read.

2. APPROVAL OF MINUTES OF PREVIOUS MEETING

Upon motion duly made and seconded, the minutes of the meetings of November 3, 2008 were unanimously approved, Regents Cole, De La Peña, Reiss, Ruiz, Scorza, and Varner (6) voting “aye.”¹

3. ADOPTION OF IDENTITY THEFT PREVENTION IMPLEMENTATION PLAN

Regent Ruiz recommended that the Regents approve:

¹ Roll call vote required by Bagley-Keene Open Meeting Act §11123(b)(1)(D) for all meetings held by teleconference.

- A. Adoption of the proposed University of California (“UC”) Identity Theft Prevention Implementation Plan (“Implementation Plan”), as shown in Attachment 1, pursuant to the Federal Trade Commission's Red Flags Rule (“Rule”), which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), and
- B. Delegation of authority to the Senior Vice President/Chief Compliance and Audit Officer to oversee and administer the Implementation Plan, including authority to modify or amend the Implementation Plan.

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

Chief Compliance and Audit Officer Vacca, noting that the background information had been provided to the Committee, reported that the Implementation Plan will be integrated with the overall compliance and ethics efforts rather than existing as a stand-alone plan that reflects only red flags.

Faculty Representative Croughan discussed a recent program as part of which it was decided, without faculty or employee input, to submit all employee W-2 information to an outside vendor. This task is now being done electronically within the University of California Human Resources and Benefits At Your Service website rather than through an outside vendor. Ms. Croughan expressed concern about the security of outside contractors and whether outside contractors are addressed in the Implementation Plan.

Ms. Vacca stated that the Office of General Counsel had provided legal guidance on the integration of the Implementation Plan. She introduced University Counsel Abrams, who reported, in response to Ms. Croughan’s stated concerns, that regulations require the University to monitor activities and to include provisions in all contracts that require vendors to comply with standard requirements. He noted that the Implementation Plan differs from the situation raised by Ms. Croughan. The Plan acts as a safeguard for maintaining the confidentiality of employee and student data.

Regent Scorza inquired about a past records breach at the UCLA campus which had proved costly to the University. He believed that efforts and resources committed must be appropriate to the size and complexity of the organization and the nature and scope of its activities. He inquired whether additional resources would be necessary to ensure successful implementation. Ms. Vacca explained that the Implementation Plan should not be viewed as separate and distinct. The risks it addresses are as important as those of protecting the privacy of information or preventing the breach of contracts. It is an extant program with expanded requirements that permit the University to use what resources it has available.

Regent Scorza asked whether increased costs would be associated with the implementation or enforcement of these compliance measures. Ms. Vacca believed that

there may be some information technology costs. Those would be addressed in the information technology assessment to be presented by Associate Vice President Ernst.

Regent Scorza expressed concern that the areas addressed by the Plan may not have been given adequate attention previously because the cost would have been prohibitive. Ms. Vacca assured him that, to the credit of the campuses, appropriate actions have been occurring. They need now to be inventoried, weaknesses identified, and capabilities expanded. She did not anticipate that the cost would be exorbitant.

Committee Chair Ruiz expressed the hope that the program would prove beneficial and would be cost-effective.

Upon motion duly made and seconded, the Committee approved the recommendation of Regent Ruiz and voted to recommend it to the Board, Regents De La Peña, Reiss, Ruiz, Scorza, and Varner (5) voting "aye."

4. **COMPLIANCE EFFORTS, IRVINE CAMPUS**

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

UC Irvine Provost and Executive Vice Chancellor Gottfredson was introduced by Chief Compliance and Audit Officer Vacca. Mr. Gottfredson discussed the campus' sexual harassment prevention training program, noting that public organizations must by law provide specified sexual harassment prevention training for individuals with supervisory responsibility. Additionally, the University of California has policies associated with that requirement.

Mr. Gottfredson informed the Committee that UC Irvine's initial training program resulted in a compliance rate of nearly 100 percent, only one individual's having refused the training. In response to a question asked by Regent Reiss about the consequences of refusing training, Mr. Gottfredson replied that, as the training is mandatory, anyone refusing to participate will not be permitted to supervise other employees.

In response to a question asked by Regent Scorza, Mr. Gottfredson reported that there is no obligation to train individuals who do not supervise others.

Faculty Representative Croughan reported that the Academic Senate has spent considerable time on this matter. She expressed the view that the law requires not that everyone must be trained but rather that the institution must offer the training to everyone. Further, the decision with respect to supervisory responsibility was made by the University of California system, notwithstanding the fact that there are no written guidelines or policies. While faculty are in agreement generally about the necessity of such training in order to improve the environment and culture, law school faculty have expressed concern about whether the University is going beyond what the law requires. Further, it is possible that the disciplinary measures for those who refuse to comply may

be stronger than for those who have been guilty of harassment. She observed also that those who have committed harassment are not always removed from supervisory responsibilities.

Mr. Gottfredson explained that UC Irvine's procedures are specific and consistent with the policy of the University and the law, which is that supervisors must have the training. This includes teaching assistants and staff working on research projects.

Committee Chair Ruiz suggested that the General Counsel determine what, if anything, the University needs to do to ensure compliance and fairness. He noted the potentially significant cost of failing to do so.

Mr. Gottfredson believed that the General Counsel had endorsed UCI's approach. University Counsel Thomas agreed that there is risk, but she stated that she did not see a legal basis for requiring compliance absent a willingness to comply.

Ms. Croughan maintained the view that the University is responsible only for offering the training. There is no policy that defines who has to be trained beyond what the law states in general terms.

Regent Scorza suggested that, as the law does not limit the University from creating a policy, perhaps the University should establish one.

Mr. Gottfredson reported that the campus has established a cabinet-level compliance committee, augmented by some non-cabinet officials at the University such as the athletic director, that meets monthly. The committee decided to create a two-dimensional risk matrix to animate compliance activities in order to ascertain the probability of an occurrence and the degree of the harm should there be an occurrence. Administrators are asked to meet with their senior staff to discuss what they perceive as the most problematic issues with respect to compliance. The compliance committee applies those concerns to the matrix in order to focus on high-risk and high-probability events. Steps are then taken to mitigate these risks.

Vice Chancellor Bailey discussed health affairs and the quality, safety, and regulatory compliance of UC Irvine's health care program. Dr. Bailey reported that the campus is involving department chairs, the medical group, and the faculty practice in establishing uniform departmental standards for practice and compliance plans. The effort is a work in progress. It may involve establishing a new oversight board and a University practice council in order to ensure a coordinated effort. He indicated that updates will be provided as the effort takes shape.

5. **ETHICS AND COMPLIANCE PROGRAM UPDATE**

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

Chief Compliance and Audit Officer Vacca drew the Committee's attention to an outline distributed earlier addressing compliance activities. She discussed the risk areas that were the focus of activity for the quarter, including the willd-body program and the implementation of the digital donor library. A brief summary of new or amended compliance regulations was discussed, including the Higher Education Opportunity Act. Ms. Vacca reported that, in cases of federal contracts, the Department of Homeland Security is now requiring use of its electronic system for verification of individuals, in addition to the I-9 forms.

Ms Vacca reported that compliance programs are being implemented. Every campus has an active compliance committee. Ms. Vacca reported also that Ms. Luanna Putney is the new Director of Research Compliance and that recruitment is under way for a systemwide privacy officer.

Ms. Vacca outlined the year-to-date information for the hotline, for which a new vendor has been secured. She addressed allegation types and defined "workplace misconduct," which includes violence or threatened violence, policy issues, substance abuse, and vandalism or destruction of University property. It is anticipated that, with the new vendor, a more detailed description of the hotline calls will be provided.

Ms. Vacca noted that there are many compliance issues, beyond the hotline calls. The hotline is commonly used for whistleblower and improper governmental activity calls; however, as more issues come forward, an increase in the hotline's use is anticipated.

In response to a question from Committee Chair Ruiz regarding rewards for hotline calls, Ms. Vacca reported that no individuals have received payment for hotline calls, but callers are updated and informed regarding the matters reported. Often the reward for the reporting individuals is in knowing that a matter was addressed and resolved as a result of their call. Ms. Vacca noted that approximately 25 percent of the issues which come forward are substantiated.

In response to a question asked Ms. Croughan regarding response time, Ms. Vacca reported that there is immediate action upon receipt of the call. Resolution is as expeditious as possible.

6. **UPDATE ON HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)-RELATED PRIVACY PROGRAM ACTIVITIES**

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

Chief Compliance and Audit Officer Vacca noted that the preceding update had provided a context with respect to the Health Insurance Portability and Accountability Act (HIPAA) and the University's progress in developing a more centralized, robust program. She reiterated that a privacy officer is being recruited and informed the Committee that, in response to two privacy breaches at UC medical centers, three strike teams have been

established. To assist the campuses, the Office of Ethics, Compliance and Audit Services is working to centralize information and educational aspects of HIPAA.

7. INTERNAL AUDIT QUARTERLY REPORT

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

University Auditor Reed reported that it has been a struggle for the department to maintain the resources it requires. Although understaffing remains a problem, progress has been made in keeping to the plan schedule, and care is being taken to apply the resources that the University does have available to the most important areas. His department has put together a plan to make its auditors available to UCOP departments to help them deal with control issues during restructuring. Mr. Reed briefly described two systemwide audits planned for the year – Effort Reporting, a review of the new effort reporting system and compliance testing, and Executive Compensation and Related Matters, including a review of the Annual Report of Executive Compensation.

8. PRESENTATION OF INTERNAL AUDIT SERVICES, DAVIS CAMPUS

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

Mr. Richard Catalano, Director of Internal Audit Services at UC Davis, described the audit program at Davis. The office of internal audit has 13 FTEs, including the director, three managers, one analyst and eight auditors. Mr. Catalano cited some examples of how his office works with campus management in such areas as improving information systems controls and security and with principal investigators in improving accountability of research projects. UC Davis has an audit committee that is chaired by the provost and includes campus and health system senior managers. Although his office faces challenges similar to other audit units on campuses, such as difficulty recruiting and maintaining qualified staff and the increased demands of external requirements, Mr. Catalano noted the opportunities that his team is confronting, including the facts that budget reductions and regulatory examination will increase the value of audit services. This is an opportunity to streamline campus business processes and increase operational efficiency.

9. PRESENTATION ON INDUSTRY TRENDS IN HIGHER EDUCATION

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

PricewaterhouseCoopers' lead higher education partner, Mr. John Mattie, spoke briefly about industry trends in higher education. He touched on some of the issues facing institutions of higher education, including economic and market conditions, the regulatory environment and compliance, faculty and institutional conflicts of interest,

privacy of information, research funding, and emerging financial report and accounting topics.

Mr. Mattie noted that federal agencies are choosing at this time to apply existing rules in an aggressive way and are imposing unfunded compliance mandates on the industry. In such an environment, the University must determine how to manage budget resources as prudently as possible while balancing risks to the institution. The effectiveness of compliance controls is a topic being addressed widely by audit committees and financial management teams generally. Issues involving conflict of interest, such as the reporting of outside activities by clinical faculty, are receiving renewed attention. Attention is being given also to the concept of establishing chief privacy officers at major institutions.

The meeting adjourned at 1:00 p.m.

Attest:

Secretary and Chief of Staff

The University of California Identity Theft Prevention “Red Flags Rule” Implementation Plan

Overview

In compliance with Part 681 of the Code of Federal Regulations implementing Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003 and pursuant to the Federal Trade Commission's Red Flags Rule (“Rule”), the University of California Board of Regents has adopted the following Identity Theft Prevention Implementation Plan (“Implementation Plan”) as developed by the Office of Ethics, Compliance and Audit Services (“ECAS”) with support from the Office of General Counsel and integrated into the University of California (“UC”) Ethics and Compliance Program Plan (“Program”). The objective of this Implementation Plan is to establish processes at the campuses and UC Office of the President (“UCOP”) to:

- Identify relevant Red Flags applicable to UC accounts and incorporate those into this Implementation Plan;
- Continually review UC accounts to detect those Red Flags that have been incorporated into the Implementation Plan;
- Respond appropriately to any Red Flags that have been identified to prevent and mitigate identity theft; and
- Ensure the Implementation Plan is periodically updated to identify new or changed risks to our relevant constituents.

This Implementation Plan has been designed to include, as appropriate, any existing UC systemwide and campus-specific policies and procedures currently in place that control reasonably foreseeable risks associated with identify theft.

Actions

Each campus and UCOP will be responsible for implementing the following:

- I. **Identify Covered Accounts** - ECAS developed and disseminated a Red Flags Rule Inventory Grid (“Grid”) to the campuses and UCOP to use as a tool for documenting applicable covered accounts across the UC system. It is the campuses’ and UCOP’s responsibility to:
 - A. Ensure the information contained within the Grid is accurate; and
 - B. Update the Grid quarterly to reflect current campus practices and activities to highlight evolving account activity risks.
- II. **Identify Relevant Red Flags** - In an effort to identify relevant Red Flags which may include, but not be limited to a pattern, practice or specific activity that indicates the possible

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existence of identity theft, campuses should consider a) the types of accounts it offers and maintains, b) methods to open and/or access accounts, and c) previous experiences with identity theft. The following list outlines several examples of potential sources to identify Red Flags:

- A. notifications and warnings from credit reporting agencies and other third parties;
- B. suspicious documents;
- C. unusual use of accounts; and
- D. Suspicious identifying information.

- III. **Review Mechanisms for Detection of Red Flags** - Campuses will review their current policies/procedures and systems to address detection of Red Flags for each covered account and/or processes within a identified account with a key focus on verifying identity, authenticating customers, monitoring transactions, and verifying the validity of address changes.
- IV. **Review Mechanisms for Responses to Identity Theft** - Campuses will establish processes to periodically review control mechanisms put into place to prevent and mitigate identity theft. These reviews will be reported to the Campus Ethics and Compliance Risk Committees in a timeframe defined by the campuses.
- V. **Integrate Red Flags Rule into Current Compliance Program Activities** - Once campuses have completed the steps above, here forward the campuses' activities around this area will be integrated into their compliance program efforts on an ongoing basis. At a minimum, quarterly monitoring on the Rule will occur on each campus through the Campus Ethics and Compliance Risk Committee to identify detection, prevention and mitigation efforts. The Systemwide Ethics and Compliance Risk Council will periodically review the monitoring efforts and identify trends related to these areas.
- VI. **Ensure Contract Compliance.** Campuses will review their current policies/procedures and systems to ensure appropriate and effective oversight of service providers. Each campus must further verify that vendors providing services in connection with covered accounts have established their own identity theft prevention programs and that such programs shall be subject to the campuses' periodic review and reporting requirements.
- VII. **Provide Employee Training** - Campus management and staff responsible for the covered accounts will be trained at the campus department level through their normal compliance training efforts related to their specific processes for the prevention, detection and response to identity theft issues, and contracting with vendors providing services in connection with covered accounts.
- VIII. **Provide Oversight and Review of the Program** - The UC Ethics and Compliance Program at the campus and system levels will provide oversight and assurance that these activities are

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occurring (assurance activities may be delegated but the Campus Ethics and Compliance Risk Committee will maintain oversight):

- A. Administering the Implementation Plan on their respective campus;
- B. Ensuring appropriate training of campus staff on the Implementation Plan;
- C. Reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating identity theft;
- D. Determining which steps of prevention and mitigation should be taken in particular circumstances and considering periodic changes to the Implementation Plan; and
- E. At a minimum, evaluating the effectiveness of their policies and procedures in addressing the risk of identity theft in connection with covered accounts. Recommendations for material changes will be provided and considered in this area as determined by each Campus Ethics and Compliance Risk Committee.

The UC Systemwide Ethics and Compliance Risk Council will periodically validate with the campus level oversight, progress and efforts made related to compliance with these rules. The Office of Ethics, Compliance and Audit Services will provide the status of system compliance with the Rule in the Annual Report to The Board of Regents through the Committee on Compliance and Audit.