

The Regents of the University of California

**COMMITTEE ON COMPLIANCE AND AUDIT**

September 13, 2011

The Committee on Compliance and Audit met on the above date at the following locations: UCSF-Mission Bay Community Center, San Francisco; 1608 Rhode Island Ave., N.W., Washington, D.C.

Members Present: Regents Crane, Makarechian, Mireles, Pelliccioni, Ruiz, and Zettel; Advisory member Anderson; former Expert Financial Advisor Schneider and Expert Financial Advisor Edrick; Staff Advisor Herbert

In attendance: Regents-designate Rubenstein and Stein, Faculty Representative Powell, Secretary and Chief of Staff Kelman, Associate Secretary Shaw, General Counsel Robinson, Chief Compliance and Audit Officer Vacca, Chief Financial Officer Taylor, Chancellor Leland, and Recording Secretary Johns

The meeting convened at 1:25 p.m. with Committee Chair Zettel presiding.

**1. PUBLIC COMMENT**

There were no speakers wishing to address the Committee.

Committee Chair Zettel noted that, the previous week, Chief Compliance and Audit Officer Vacca had been recognized for her expertise at a meeting of the Society of Corporate Compliance and Ethics.

Committee Chair Zettel announced that, in the preceding Regents Only session, the Committee had appointed Alan Edrick as Expert Financial Advisor to the Committee for a three-year term. Mr. Edrick is the Executive Vice President and Chief Financial Officer at OSI Systems, Inc. He received his M.B.A. from the Anderson School of Management and his B.A. in economics and business at UCLA. She welcomed Mr. Edrick to the Committee. She and Chief Financial Officer Taylor thanked former Expert Financial Advisor Schneider for his three years of service to the Committee.

Mr. Schneider stated that he enjoyed his period of service with the University. Mr. Edrick noted that it was an honor to join the University and said that he looked forward to working with the administration and the Regents.

**2. APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of July 12, 2011 were approved.

### 3. ANNUAL REPORT ON ETHICS AND COMPLIANCE 2010-11

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

Deputy Compliance Officer Lynda Hilliard outlined the elements of the annual report on ethics and compliance, its areas of focus, and the campus and Lawrence Berkeley National Laboratory activities. She noted that because each campus has a unique culture, environment, and risk profile, their activities in the past year differed. The campuses focused on projects that were most relevant and would provide the greatest value.

Regent Ruiz drew attention to the issue of social media and stated that the University would need to ensure that it is not misrepresented in these media. He requested clarification of one of the key initiatives identified in the background material to the item, work with the U.S. Department of Health and Human Services on the approval process for the Riverside and Irvine campuses for selection to participate in a pilot program to substitute payroll certification for the current time and effort reporting on government-funded research contracts. Chief Compliance and Audit Officer Vacca explained that this represented an effort to move from the current manner of reporting time and effort to grantors to a system based on payroll certification, on a monthly or quarterly basis. This system is expected to be less time-consuming for UC researchers, and Ms. Vacca expressed the hope that the pilot project would be successful at UCR and UCI.

Faculty Representative Anderson indicated that he believed that faculty are often asked to sign time and effort reports that do not accurately reflect payroll. This puts faculty in an awkward position. If faculty members correct inaccuracies in these reports, it creates additional work for staff.

Ms. Vacca stated that the University administration has worked to develop and improve the effort reporting system for a number of years. The implementation of the system varies by campus. There may be different mechanisms of control, and the University does not have a unified payroll system. She acknowledged that there are concerns about data integrity and that some faculty members may sign reports without validating the data. She stressed that the University's effort reporting management group was working to improve the system.

Regent Ruiz observed that the University must maintain compliance in this area because it involves government contracts. An additional motivation and potential benefit for the University of paying attention to details in this reporting was that the University might be undercharging for its research. Ms. Vacca emphasized that accuracy was most important.

Regent Ruiz indicated that this is also an area in which the government seeks to capture funds. Ms. Vacca pointed out that the payroll certification system would not solve all existing problems, but expressed the hope that with a common payroll system, it would be possible to ensure accuracy while taking less of researchers' time.

Mr. Anderson stated that there was a tension in the payroll system project between the goals of trying to implement a simple system and keep development costs low, and the need for the University to meet its reporting obligations. Chief Financial Officer Taylor concurred with this view.

Regent Makarechian asked when the Committee would receive a report on UC's international activities. He also asked about emergency response systems on UC campuses. Responding to the first question, Ms. Vacca reported that the University's current administrative framework for international activities was not up-to-date. A working group was now addressing this and considering revisions to UC delegations of authority as well as the development of tools and materials that campuses require in order to engage in international activities. The working group hoped to complete a draft policy for the President's review in the coming two months, and that an administrative framework would be in place by December.

Regent Makarechian expressed concern that campuses might be thwarted in efforts to pursue opportunities in other countries if an appropriate policy or procedure was not in place. Ms. Vacca responded that this was the reason she anticipated that a framework would be in place by December. She stressed that the University and the President do not wish to stifle entrepreneurial activity. The policy being developed would address essential points without adding unnecessary restraints.

Mr. Taylor added that his division provides information to faculty who are going abroad about insurance for which they are eligible through the University. The Chief Financial Officer Division also has access to faculty contracts with overseas partners, and it ensures that these contracts are consistent with UC insurance riders. This gives the Division an idea of faculty activities abroad, and it can use this information to identify best practices. Addressing Regent Makarechian's second question, he noted that, after the April 2007 campus shootings at the Virginia Polytechnic Institute and State University (Virginia Tech), UC hired a retired agent from the Federal Bureau of Investigation and others to work on simulations with each campus emergency operations center to test communications procedures in an emergency. Each campus has an emergency operations center including senior leadership. The emergency operations group at the San Diego campus had gathered the previous week to decide on the campus' response to a regional power outage. The University has greatly improved its emergency operations systems since the Virginia Tech incident.

Regent Makarechian asked about emergency communications with students and their family members. Mr. Taylor responded that every campus has a process for these communications. For example, a parent might receive an email message if a threatening incident occurred on campus.

Regent Pelliccioni expressed concern about data integrity in the University's time and effort reporting. She asked how and by when the University would address this issue. Ms. Vacca responded that the University's effort reporting system was built over time. There were differences among the campuses in their ability to gather effort reporting data

and ensure their accuracy. From a compliance viewpoint, she stated that UC Davis appeared to have the best controls in place in this area. UC effort reporting is monitored, but overall data accuracy is not easy to determine because of the variation among campuses. Ms. Hilliard added that the rules surrounding effort reporting are complex and that this makes the reporting process more laborious.

Regent Pelliccioni emphasized that effort reporting is not optional. She requested reports by campus on improvements in the campuses' reporting systems. Ms. Vacca responded that numerical data on effort reporting would be provided. She stressed that many University controllers are involved in improving the effort reporting system.

Regent Pelliccioni praised the breadth and depth of the compliance activities over the past year.

Regent Makarechian asked if the University was underreporting federal reimbursements. Mr. Taylor responded that the federal government is underpaying the University. The University records the amounts it should be receiving from the government and is actively pursuing higher rates of reimbursement for overhead costs for federal contracts and grants. Mr. Taylor estimated that, if the University were treated like a private university by the federal government, it would probably receive \$300 million more in reimbursements for overhead costs.

Committee Chair Zettel drew attention to the fact that intellectual property agreement audits had saved the UC system \$789,000. Paying attention to risk areas saves money. Ms. Vacca reported that the University recently achieved savings by merely making mention of a potential audit to one of its licensees. Contract language for licensees has been improved.

#### **4. PRESENTATION ON THE UNIVERSITY'S GRIEVANCE AND DISCIPLINARY PROCESSES**

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

General Counsel Robinson recalled that the Committee had requested information on the University's grievance and disciplinary processes. The request had been prompted by concerns about delays in one case. Mr. Robinson explained that in general, the University's processes recognize three classes of employees: Academic Senate members, non-Senate academic employees, and staff employees. For Academic Senate members, the University uses an adjudicatory model that involves an adversary proceeding, where parties are permitted to submit evidence before a privilege and tenure committee made up of Academic Senate members. A decision by that committee then results in a recommendation to the chancellor. For non-Senate academic employees and other staff, the University uses an administrative review process. The employee is entitled to successive reviews by increasingly senior levels of administrators. Senior managers are

subject to the most limited process, which is consistent with their status as at-will employees.

For the most part, the timetable for conclusion of these proceedings is determined at the UC locations. While the locations have established reasonable timeframes and rules, the University is aware of instances of substantial delays. In many cases, these delays have been due to efforts to accommodate requests by an employee; frequently there are also efforts to resolve matters informally, and this can also result in delays.

Mr. Robinson noted that a question had been raised about the use of counsel in these proceedings. The use of counsel is addressed in the University's whistleblower policy, but there is no established policy for counsel in grievance and disciplinary proceedings. As a matter of practice, employees have been permitted to retain their own counsel and to have counsel present during grievance and disciplinary proceedings. The University currently has no policy requiring that employees' attorneys' fees be advanced or reimbursed by UC. Mr. Robinson expressed his view that a policy requiring the University to provide counsel to employees in these proceedings would not be warranted.

Regent Makarechian asked about complaints brought against a chancellor's office. Mr. Robinson responded that if a complaint is asserted directly against a chancellor, the University undertakes steps to ensure that the matter is reviewed at a different location in the UC system. Campuses recognize that it is appropriate to refer such matters to the Office of Ethics, Compliance and Audit Services or to the Office of the General Counsel (OGC). If appropriate, OGC may direct matters to a location at the Office of the President or to a Locally Designated Official on a UC campus.

In response to a question by Regent Makarechian, Senior Counsel Michael Goldstein explained that Academic Senate Bylaw 336 establishes a detailed procedure related to disciplinary matters for Academic Senate members, including a process for prehearings and adjudication. The policy can be found on the Academic Senate's website.

Regent Makarechian asked about the possibility of reimbursing legal fees for successful grievants. Mr. Robinson stated that he would not recommend this, either for grievance or disciplinary proceedings. He expressed his view that the University should seek a balanced process that is fair and fully addresses employee concerns while not being so burdensome or expensive that it would deter administrators from ensuring compliance with UC procedures. He stated his opinion that the University's current system was properly balanced. Mr. Robinson reiterated that there was no existing procedure for reimbursement of attorneys' fees in these matters. Chief Financial Officer Taylor added that he had been involved in three termination procedures for underperforming staff. He stressed that a large amount of documentation is necessary to establish a substantial case. If a manager takes the correct approach to these matters, there should be no need for an employee to hire an attorney. Employees should also be able to obtain relevant advice from human resources professionals, so that appropriate discussions take place and documentation is established to resolve a matter. He stated his overall impression that most cases do not become highly contentious.

Regent Makarechian asked about the staff point of view of these procedures. Staff Advisor Herbert responded that she would need more detailed information from the Office of the President Department of Human Resources to be able to answer this question.

Committee Chair Zettel asked about the disparities in policy regarding the time allowed for filing grievances. Academic Senate members are allowed three years to file a grievance after an incident, while the other employee groups are only allowed 30 days. It would be difficult to investigate an incident after three years.

Regent Makarechian asked if these differences in policy were based on law. Managing Counsel Allison Woodall responded that the varying times allowed for filing grievances are based on University policy, not statute.

## 5. UNIVERSITY OF CALIFORNIA STRATEGIC INFORMATION TECHNOLOGY INITIATIVES

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

Associate Vice President and Chief Information Officer Ernst recalled that the Regents approved a resolution in July 2010 regarding administrative efficiencies. The resolution has important implications for generating additional savings for the University and for moving the campuses toward standardized infrastructure support and information systems in order to gain increased efficiencies. Implementation of the resolution would not be simple and would require significant change across the UC system.

Campus chief information officers have developed a description of a “target administrative environment” with three succinct objectives for the coming years. This environment would include a common set of administrative best practices; those practices would be supported by common, shared, and integrated software; and the software would be run in the environment best suited for the solution: outsourced, local, or shared.

The University is pursuing information technology reorganization and added capabilities at the Office of the President and the campuses. There is general agreement that certain technology services can be developed once and then promulgated throughout the UC system. This would take the form of a shared technology service, located largely at the Office of the President and supported by the campuses. Mr. Ernst reported that this effort was currently under way, running parallel to the payroll system project.

Mr. Ernst then provided brief updates on specific initiatives, mentioning three regional data center pilot projects now under way, a research computing initiative at UC Berkeley and UC San Diego, and an administrative computing initiative at San Diego. Campuses would receive the same quality of service, even if the computing were performed hundreds of miles away, and campuses would not have to build out data center space.

At the request of the campuses and others, the University has established a new position, chief information security and privacy officer, to coordinate these activities systemwide. Mr. Ernst reported that the University had found a suitable candidate who might be hired within a month to six weeks.

An online information security and privacy training and education program has been developed with assistance from the campuses. The program would be deployed to the campuses in October. Mr. Ernst anticipated that this program would yield positive results in reducing human error and educating employees about best practices.

Committee Chair Zettel stressed the need to reduce human error and praised the response plans for data privacy and security included in the annual report on ethics and compliance discussed earlier. Addressing errors quickly could help the University avoid financial and reputational risk. Chief Compliance and Audit Officer Vacca stated that there would be a presentation on data privacy and security at the medical centers at a future meeting.

Regent Makarechian asked about possible risks in the planned consolidation of computing in regional data centers, one of which would be in San Diego, given a recent major regional power outage that affected San Diego. Mr. Ernst responded that the consequences of an earthquake would be of greater concern than a power outage. Power outages can occur anywhere; it is essential that the University's systems have redundancy or backup. He noted that the core administrative computing functions housed at the San Diego data center are backed up in Oakland. The most important systems are backed up so that they can run or be restarted in the event of an earthquake, power outage, or other failure.

Faculty Representative Anderson stated that some faculty had noticed what appeared to be deterioration in bandwidth on campuses or between campuses, or that the amount of traffic is growing. He asked how the University would address this. He asked if the network connecting the campuses was robust enough to ensure that the consolidation of computing functions in two centers would function properly. Mr. Ernst responded that the Corporation for Education Network Initiatives in California (CENIC), of which the University is a participating member, has one of the most robust networks in the world. Degradation in the quality of service experienced on a campus was unlikely to be caused by lack of sufficient capacity through the CENIC network; there was more capacity available on the CENIC network than the University was currently using. He noted that UC and California State University campuses occasionally experience computing snags, but that these are campus-specific issues not due to the intercampus network. In some cases, these problems have been addressed by increasing local capacity. The University's most significant challenge related to capacity was to develop a set of network specifications attuned to the needs of research computing.

**6. REPORT ON INTERNAL AUDIT ACTIVITIES**

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

Chief Compliance and Audit Officer Vacca noted that the annual report on internal audit activities would be provided at the November meeting.

The meeting adjourned at 2:20 p.m.

Attest:

Secretary and Chief of Staff