

The Regents of the University of California

COMMITTEE ON COMPENSATION

May 31, 2016

The Committee on Compensation met on the above date by teleconference at the following locations: Carnesale Commons, Third Floor, Los Angeles campus, and 1130 K Street, Room A, Sacramento.

Members present: Regents Elliott, Gould, Island, Ortiz Oakley, Reiss, and Sherman;
Ex officio member Lozano; Advisory members Chalfant and Ramirez

In attendance: Faculty Representative Hare, Secretary and Chief of Staff Shaw, General Counsel Robinson, Executive Vice President and Chief Operating Officer Nava, and Vice President Duckett

The meeting convened at 1:00 p.m. with Committee Chair Reiss presiding.

1. **PUBLIC COMMENT**

There were no speakers wishing to address the Committee.

2. **REGENTS POLICY 7707, SENIOR MANAGEMENT GROUP OUTSIDE PROFESSIONAL ACTIVITIES**

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

Committee Chair Reiss introduced the discussion of Regents Policy 7707: Senior Management Group Outside Professional Activities, concerning outside professional activities for senior UC administrators, including chancellors. As the Board of Regents seeks to strengthen its governing documents, including policies, and to be responsive to recent incidents and concerns expressed by the public and legislators, this discussion would consider whether there should be changes to current policy, keeping in mind fairness to administrators and best practices at institutions of higher education across the U.S. An action item would be brought to the July meeting.

This discussion was prompted by an invitation to UC Davis Chancellor Katehi to join the DeVry Education Group board of directors and her attendance at a board meeting without receiving approval as required by policy. Public trust and confidence in the University are important. It was therefore appropriate to review current policy to determine if it could be strengthened with a view to avoiding problems in the future. To the University's knowledge, no public or private universities prohibit their senior managers and administrators from earning any outside compensation or prohibit service on any for-profit boards. Few other institutions set a limit on the number of outside boards on which an administrator may serve, but most have guidelines regarding conflict of interest and

time commitments. The University's current policy sets a limit to the number of for-profit boards on which a Senior Management Group (SMG) member may serve and provides guidelines regarding conflict of interest and time commitments. Whether SMG members serve on for-profit or nonprofit boards, they must provide documentation of the benefit to the University of such service as part of the approval process. Of the over 200 current SMG members, 20 were reporting income from serving on boards, serving in an advisory role, or consulting. The activities of these 20 individuals included service on 11 boards, seven advisory roles, and 23 consulting roles. In most cases the compensation received was modest. The University's policy makes it clear that SMG members' foremost commitment is to their UC duties.

Vice President Duckett noted that the current discussion item concerned a number of suggested changes to Regents Policy 7707. An action item for amendment of the policy would be presented at the July meeting. In the current policy, the SMG member's manager is the sole approving authority for outside professional activities. Some SMG members report to another SMG member, who reports to a chancellor or to the President. One of the proposed changes would require additional, higher-level review and approval, meaning that a chancellor or the President would always be included in the review and approval process. For SMG members who report directly to a chancellor, the chancellor and the President would be the approving authorities. For SMG members who report directly to the President, approval from the Chairman of the Board of Regents would also be required. For SMG members who report directly to the Regents, the Chairman would be the approving authority.

Committee Chair Reiss explained that the rationale for adding a second reviewer is that some approval guidelines are subjective. For example, there can be different viewpoints on what constitutes an appearance of conflict of interest, and it would be advisable to have a second opinion on these matters.

Mr. Duckett noted that the proposed changes would clarify the policy, reinforcing the requirement that SMG members must seek approval for all outside professional activities, compensated or uncompensated, before engaging in the activity or making any announcements about their intention to engage in the activity. A document would be added to the review and approval process, the Justification Letter, requiring SMG members to describe clearly the proposed service and the benefits of this service to the University. In addition, SMG members submit an Approval Request Form, which provides information on compensation, equity, deferred compensation, and the amount of time required to perform the service, and the Detailed Information Form, which collects details on newly proposed compensated activities. It requires disclosure of the entity's name, nature of the business and its location, as well as any proposed income, loans, gifts, travel, expense reimbursements, and investments in the entity, and whether such investments constitute more than ten percent interest or ownership. These three forms would provide the necessary details about the proposed activities so that the approving authorities can make an informed decision. Another change to the policy would implement a mid-year report to the Regents with information on any new activities since the beginning of the year.

Committee Chair Reiss commented that while two reviewers might find no appearance of conflict of interest in a proposed activity, a jury of 12 average citizens might disagree. The mid-year report would inform the Regents about approvals within six months and provide another check and balance, allowing the Regents to respond to any instances they might feel were not consistent with policy.

Mr. Duckett drew attention to another proposed change to policy language, from “apparent” conflicts of interest to “perceived” conflicts of interest. The policy recognizes that there may be instances of appearance of conflict of interest even when the SMG member does not have a financial interest as defined by the Political Reform Act. All SMG members are expected to conduct themselves with integrity and good judgment and must avoid the appearance of favoritism in all their dealings on behalf of the University. The responsibility for determining whether an actual or perceived conflict of interest or commitment may occur rests first with the SMG member, and then with the approving authorities. The suggested changes included additional language in the policy that addresses the potential for reputational risk, affiliations that could diminish the reputation of a UC campus or the system. Consideration of reputational risk would be part of the review and approval process.

Mr. Duckett then remarked on board service limitations. Current policy allows service on not more than three for-profit boards for which an SMG member receives compensation and where he or she has governance responsibilities. Compensated service as a member of the board of directors constitutes governance responsibilities, while service on an advisory committee does not. Another proposed change would limit the number of these for-profit boards to two, if the SMG member receives compensation and has governance responsibilities. There would be no limit on the number of compensated advisory roles for SMG members or nonprofit boards on which they may serve.

Committee Chair Reiss stressed that the proposed changes to the policy were concerned not only with the number of outside boards on which an SMG member may serve, but with conflicts of time commitment. She suggested that the Regents should discuss the question of how UC policy should regard service on advisory boards, and whether the same guidelines should be applied as in the case of service on a board of directors.

Chairman Lozano referred to the identification of approving authorities in Section II of the policy. For SMG members who report directly to the Regents, the Chairman of the Board is the approving authority. She asked that this language be modified to include the Vice Chair of the Board as an approving authority. She suggested that the disclosure forms include columns identifying the approving authority and indicating when approval was granted. She referred to a letter received from the Academic Council, who wished to review any policy before it is approved. She asked if the draft changes had been communicated to the Academic Council and what role the Council would play in amendment of the policy. She asked if there were any SMG members currently serving on three for-profit boards, if the change in policy limiting service to two for-profit boards would be effective for those individuals, and if the University would allow them time to leave one or more boards.

Committee Chair Reiss voiced concern about the legality of applying the policy changes, in particular a two-board limit, retroactively to SMG members who were hired with the understanding that they would be allowed to serve on three outside for-profit boards. It was also a matter of fairness to these employees. Mr. Duckett responded that the University had not considered retroactivity as part of the policy changes. He acknowledged that some SMG members may have begun work at UC with the expectation that they could serve on three for-profit boards, and that there was a question about the legality of asking them to quit boards. He noted that very few SMG members serve on more than two boards.

In response to Chairman Lozano's question about faculty review, Executive Director Dennis Larsen responded that faculty review would occur in June at a meeting of the Academic Senate's University Committee on Faculty Welfare (UCFW).

Faculty Representative Hare commented that discussion with the UCFW would be appropriate and expressed concern about there being sufficient time for the Academic Senate to review the suggested policy changes. He asked about proposed new language in the policy that would require that SMG members submit a request for approval of an outside professional activity at least one month before the beginning of that activity. He asked if this implies that approval would occur within one month or if it would be necessary to include some indication of how long the approval process might take. Mr. Duckett anticipated that approvals would be provided within one month.

Regent Elliott asked how long the approval process has typically taken over the past several years. Mr. Larsen responded that the approval process for new outside professional activities can be completed fairly quickly. At the beginning of each year, SMG members must report their anticipated outside professional activities, even if these are recurring. This approval process takes longer, since all these requests are received at once. Individual requests can be handled more quickly.

Regent Elliott asked how long the approval process for the UC Davis Chancellor and the DeVry board took. Mr. Larsen responded that these details were available but he did not recall them. The administration was prepared to present the request to President Napolitano when the DeVry appointment was announced publicly.

Committee Chair Reiss suggested that the approval process time could be extended to a range from 30 to 60 days. Regents Island and Sherman opined that 30 days was more than sufficient time for this process.

Regent Elliott suggested that the University review the hiring documents for those SMG employees now serving on more than two for-profit boards. He stressed that their primary duty is to the University and that it would be reasonable to ask them to reduce their outside service to two for-profit boards over the next year.

Regent Sherman noted that most for-profit board members are reelected annually or every two years. The SMG members in question should not seek reelection if they are serving on more than two such boards.

Regent Island requested justification for the change from three boards to two and asked why it would be meaningful. He stated his view that SMG service on outside boards brings benefit to the University and to the SMG members. These employees receive exposure and learn about the business world.

In response to Regent Island's remarks, Regent Ortiz Oakley acknowledged that a limit of two boards is arbitrary, as is a limit of three boards. Given current realities, the Regents were trying to determine what a reasonable amount of time would be for SMG members to be away from their day-to-day duties for the University. He stated that most or all the Regents view SMG service on outside boards in a positive light. Nevertheless, it would be difficult to argue that service on three outside boards would not take time and some loyalty away from UC operations. In addition, many of these SMG members were also serving on nonprofit and advisory boards. It was felt that a limit of two boards was a compromise that the Regents could support. The Regents must develop a policy they can support in light of concerns that have been raised.

Committee Chair Reiss recalled that the California State University (CSU) had decided on a limit of two outside for-profit boards. The Regents are concerned about public trust in the University and this limit would be consistent with rules at CSU.

Regent Island objected that there was no justification for this change. Regent Sherman stated his view that the operative criterion should be time. Service on a single corporate board can take weeks in a situation of a major corporate takeover. In addition, there is the question of time on advisory boards. He suggested that outside professional activities could be stated as a percentage of time.

Regent Ortiz Oakley stated his view that there should be a limit on advisory board service; this question was still open. He expressed concern about how this policy would be explained to the public.

Chairman Lozano observed that most corporations have governance guidelines for directors and chief executive officers. CEOs of corporate organizations are typically limited to service on one outside board, precisely because time and attention are taken away from this individual's primary occupation. Setting a limit on the number of outside for-profit boards an SMG member may serve on is a matter of judgment. She stressed that service on two for-profit corporate boards can take a significant amount of time. UC's chancellors and senior managers are hired to serve as full-time stewards of the University.

Regent Island again questioned the need for the new limit unless there was a real conflict or problem. Committee Chair Reiss responded that this limit would be consistent with CSU but not as extreme as the corporate limit mentioned by Chairman Lozano. She noted

that she and Regent Ortiz Oakley would like to include paid service on advisory boards included in this limit. From the point of view of the outside entity there was a difference between service on the board of directors and on an advisory board, but from the University's perspective both are paid outside service.

Regent Gould referred to the text of the policy in Section III.A.2, "Approval and Assessment," which outlines factors that should be considered by the approving authorities. He stated his view that this language should be stronger and set a different tone, making it clear that situations of conflict of interest would not be allowed. The Regents wish to avoid both apparent and real conflicts of interest.

Regent Island recalled that in the past, UC had accepted grant monies from a large oil company. There may have been an appearance of conflict of interest in such a situation, but the action was appropriate.

Regent Gould responded that the policy should state that defined conflicts of interest are not allowed. A situation with only an appearance of a conflict could be appealed. He found merit in a limit on the number of outside boards, like that set by CSU. The Regents are sensitive to the public reaction to SMG outside professional activities and this warrants an examination of existing policy. The limit of three outside boards was arbitrary but reflected a past effort to curtail SMG involvement in too many outside boards. The proposed change recognizes the serious time commitments on paid corporate boards.

Committee Chair Reiss stated that the Regents understand the value of SMG service on outside boards and wish to support it in a manner that builds public trust.

Regent Sherman observed that typical board service might involve 12 days a year. Service on two boards would amount to 24 days or about ten percent in additional time added to the work year, and this seemed to him to be a reasonable amount of outside service on the employee's own time. He stated that a template for overall time commitment would be desirable, including nonprofit and advisory services.

Regent Elliott emphasized that when an SMG member makes a request, the University should consider the entire number of hours that employee would devote to outside boards. Committee Chair Reiss agreed, stating that the University should carry out a complete review including nonprofit board service and that the policy should make clear that conflicts of time commitment are applicable to all outside activities.

Regent Sherman asked if the decision of the two approving authorities, two individuals, must be unanimous, and what would occur in case of disagreement. Regent Ortiz Oakley responded that the decision should be unanimous; this was the reason for a second opinion. Regent Sherman suggested that this should be explicitly stated in the policy. Mr. Duckett responded that the requirement for a unanimous decision would be added to the policy, as well as consideration of total time spent on outside service.

Faculty Representative Chalfant expressed agreement with the need for consideration of the total time commitment for outside professional activities.

Regent Ortiz Oakley remarked that one of the Regents' roles is to listen to concerns of the public. As the Regents evaluate these outside commitments, these should be primarily commitments that benefit the community and region and support the University, and secondarily commitments that support the SMG members' professional development and participation in governance. Chancellors and other SMG members should be encouraged to participate regionally, on boards that affect California communities.

Committee Chair Reiss suggested that the idea that the University values service on boards that affect communities and regions could be included in the guidelines. Regent Island questioned the value of doing so. Regent Ortiz Oakley responded that UC and California taxpayers fund these SMG positions. Value should be created chiefly for the University. Regent Island objected that this was not the sole reason for board service. One valuable aspect of board service is the potential for philanthropic contributions. He understood the public's interest in this matter, but the Regents must act in the best interest of the University, and this is not always aligned with public response. In his view, the sensitivity about service on outside boards was exaggerated. The University still needed an articulate statement about the substantial value of board service to the institution. While making changes to policy, the Regents should remain mindful that SMG members' associations with outside organizations can bring substantial philanthropic contributions to UC.

Committee Chair Reiss stated that current language in the policy, that "benefit accrues to the University" through SMG outside professional activities, might be adequate. Regent Ortiz Oakley responded that this would be acceptable, but stressed that the University must better articulate and communicate the value of this service to the public. Committee Chair Reiss suggested that a statement could be added to the policy about the various benefits that universities in general and UC in particular feel that outside service brings, including philanthropy. Regent Gould suggested that it would be helpful, rather than prioritizing activities, to give examples of the kinds of activities that are beneficial to UC.

Regent Island noted that outside board service had brought hundreds of millions of dollars to the University of Southern California (USC) and to Stanford University. He asked that the UC administration discuss board service with USC and Stanford to find out about the effectiveness of their policies. In revising the University's policy, the Regents should not unnecessarily hamper the ability of SMG members to associate with individuals and organizations that can make significant contributions to UC.

Regent Elliott stressed that the University should also examine itself in this respect and asked if UC has received any value from these outside professional activities in the past four years. The Regents cannot endorse these activities unless they know what benefits UC has derived from them.

Referring to foregoing suggestions about providing detailed information about the value of outside board service, Mr. Duckett suggested that another section could be included on the Detailed Information Form, requesting information on specific value.

Regent Sherman asked how important the factor of outside professional activities is in attracting job candidates to the University and how important it is for them to know that they can earn some extra income while working for UC. Mr. Duckett responded that candidates for SMG positions have expressed the view that the ability to serve on outside boards is an attractive feature, both for the benefit to the University and for their own professional development.

Regent Sherman asked how Mr. Duckett viewed the policy in terms of its effect on recruitment, whether it was positive, negative, or neutral. Mr. Duckett responded that the proposed changes were a balanced approach, addressing the concerns of the public and allowing for participation on outside boards.

Committee Chair Reiss stated her view that the proposed changes would not create a deterrent to recruitment, recalling that only a small number of SMG members were serving on more than two boards. She asked that the Committee consider changing the policy so that it would not distinguish between service on boards of directors and advisory boards, when these are compensated appointments. Members of boards of directors have different duties to an entity than members of advisory boards, who usually do not vote. She noted that she and Regent Ortiz Oakley felt that there should be no distinction in the policy between the two types of board in the case of for-profit outside entities, if the SMG member is being compensated. There was general agreement among the Committee members with this point. Regent Gould noted that the advisory role played by scientists might be different from service on a board of directors.

Committee Chair Reiss remarked that advisory boards often meet quarterly or monthly, so that time commitments are an issue of concern. If such service is compensated, it would logically fall under the same guidelines as service on boards of directors.

Faculty Representative Hare observed that UC policy for faculty divides outside activities into three categories. These activities are approved at the department level. The Regents should examine the differences between SMG policy and faculty policy.

Mr. Duckett stated that advisory board service, as understood in the policy, denotes a lower level or no level of fiduciary responsibility. By contrast, a governance position on a board entails specific and legally binding responsibilities and likely more time spent on service, a commitment that goes further than providing advice.

Chairman Lozano commented on the benefits that service on a scientific advisory board brings to the University. She expressed concern about the suggestion to limit service to two compensated board positions, whether governance positions on a board of directors or advisory positions. This might limit the ability of SMG members who are researchers to engage in important work in their fields.

Committee Chair Reiss noted that only seven SMG members were currently being compensated for service on advisory boards. The policy limitation on the number of boards reflected the need for public trust in cases of outside compensation for senior managers. The policy limitation regarding time commitment would address unpaid outside service.

Chairman Lozano suggested that if an advisory board offers compensation to its members, those members could opt not to accept compensation.

Regent Gould referred to a filing from the previous year for the Chancellor at UC San Diego, which reported time commitments for advisory services of three and four hours. He cautioned the Regents against micromanaging. The suggested policy changes regarding service on boards of directors were appropriate, but the role of advisor is more limited. Policy measures should not go into excessive detail.

Committee Chair Reiss anticipated that future SMG employees, when hired, would have to make a decision about whether to receive compensation for outside board service. If the service requires only a few hours and is of value to UC, they could choose to perform the service without compensation. She did not understand why the University would make a distinction between \$50,000 received for service on an advisory board and \$50,000 received for service on a board of directors.

Regent Ortiz Oakley asked if the chancellors had presented their point of view on outside professional activities. Mr. Duckett responded that the administration has not posed this question to the chancellors.

Regent Ortiz Oakley observed that advisory roles might take more variegated forms than service on a board of directors. There are many advisory opportunities in an environment such as San Diego, where there is significant entrepreneurial activity. The Regents must understand this issue and make a clear policy statement either to include compensated advisory board service in the limit of two outside boards, or to allow a broader interpretation of the advisory role, since opportunities for advisory service would grow over time.

Committee Chair Reiss expressed concern about applying the two-board limit retroactively to current SMG members. Regent Elliott stated his view that all SMG members should comply with the policy change. Those serving on more than two outside boards could be given a reasonable time frame to leave one or more boards. Chairman Lozano agreed that the University should provide a time frame, 12 to 18 months, so that SMG members could rotate off boards and comply with the policy limit.

Committee Chair Reiss stated that the Regents should receive a legal opinion on what a reasonable time frame would be. Regent Sherman opined that a two-year period would be reasonable and Regent Elliott concurred.

Regent Island asked about the impact of the proposed policy changes on UC medical faculty, who often serve in advisory capacities. Regent Elliott asked if this policy applies to faculty. Executive Vice President and Chief Operating Officer Nava explained that certain faculty members have SMG positions, such as provosts, vice chancellors, and chancellors. Committee Chair Reiss referred to information showing that none of these faculty were serving for compensation on more than two boards, either in governance or advisory roles. Chairman Lozano noted that this information referred to 2014 data; she asked if the University had more current data. Mr. Larsen responded that these data were currently under legal review and that a report should be released soon.

Regent Sherman asked about the difference between serving as a consultant and an advisory board member. Mr. Larsen responded that these titles or designations are provided by the SMG member. Committee Chair Reiss remarked that work as a consultant might be expected to be shorter-term than work on an advisory board. Regent Sherman observed that consulting on a recurring basis might become more like advisory board work. The final language of the policy must be written carefully to avoid ambiguities. Committee Chair Reiss agreed and acknowledged that an annual consulting agreement for compensation with an outside entity should be treated no differently than service on an advisory board.

Regent Gould suggested that this question should be considered in the light of how much time is spent on the activity. The policy focus should remain on governance board service.

Committee Chair Reiss reiterated her view that advisory board service or annual consulting agreements should be included in the two-board limit. Chairman Lozano, Regents Elliott, Ortiz Oakley, and Sherman, and Faculty Representative Hare agreed with this position. Regent Island disagreed.

As an example, Regent Island asked about the impact of this proposed policy change on the Chancellor of UC San Diego. Mr. Duckett responded that Chancellor Khosla would likely have to leave three compensated activities. Regent Island emphasized the need to proceed with caution on this matter. In this case, the compensation for these activities was probably not the primary motivation for the Chancellor to engage in them; these activities are of value to UC San Diego.

Regent-designate Ramirez asked what value is added through these activities and how they have benefited UC. Committee Chair Reiss responded that SMG members are already required to make a statement about the value of their outside professional activities to the University.

Regent Island observed that the amount of compensation for an activity, or whether or not it is compensated, is an entirely different matter than the amount of time spent on it. Compensation for board service can range widely. Committee Chair Reiss responded that conflicts of time commitment are taken into consideration for approval of any activity, paid or unpaid. The proposed two-board limit reflects UC's concerns about public trust.

Regent Elliott drew attention to information provided about one SMG member who earned \$600,000 a year in outside compensation. If this individual were to take on even more outside board service, even if such service fell within policy time commitment guidelines, the public perception would likely be negative and not serve UC well.

Regent Island countered that outside compensation for board service may help make up for a lower salary offered by UC compared to competitor institutions. He again expressed concern about the possible impact of the proposed changes, specifically that the University might lose outstanding employees. The proposed policy change might appear desirable but bring no positive benefit to UC. In the case of the Chancellor at UC Davis, the problem was caused not by the University's policy but by an individual's actions.

Chairman Lozano commented that in addition to the two-board limit, the policy changes would add approving authorities and ensure that matters are raised to an appropriate level. These were important improvements to policy.

Committee Chair Reiss stressed that the Regents would work to avoid the unintended consequence of losing valuable employees because of an arbitrary limit to the number of outside activities.

Regent Ortiz Oakley concluded that it was necessary to produce a report that would be meaningful not only to Regents but to the public, and that would explain the reasons for the policy changes and the value that outside professional activities bring to the University.

The meeting adjourned at 2:35 p.m.

Attest:

Secretary and Chief of Staff