Office of the President

TO MEMBERS OF THE COMMITTEE ON COMPLIANCE AND AUDIT:

ACTION ITEM

For Meeting of July 16, 2014

APPROVAL OF ETHICS AND COMPLIANCE PROGRAM PLAN FOR 2014-15

RECOMMENDATION

The Senior Vice President – Chief Compliance and Audit Officer recommends that the Committee on Compliance and Audit approve the Ethics and Compliance Program Plan for 2014-15, as shown in Attachment 1.

BACKGROUND

The Ethics and Compliance annual work plan for Fiscal Year 2014-15 (Plan) has been designed to reflect the ongoing maturation of the UC Ethics and Compliance Program which is going into its seventh year of operation. As with other industries, higher education continues to value a comprehensive, integrated ethics and compliance program, designed to positively affect the culture of the organization in its efforts to meet its mission and maintain its value. The UC Ethics and Compliance Program is recognized as a national leader in ethics and compliance program development and implementation by colleagues from other leading academic institutions who recognize the innovative and effective methodologies used by the Compliance Program to assist the individual campuses in their overall compliance efforts.

The Plan has been developed using prioritized risk assessment observations and work plan activities from each of the campus ethics and compliance risk committees which includes all ten campuses, Lawrence Berkeley National Laboratory, Agriculture and Natural Resources and the Office of the President. Additionally, campus compliance staff worked collaboratively with internal audit, and as possible, the risk management functions at each campus to more fully capture identified compliance risks for inclusion in the campus work plan. Prioritization of the risks was discussed and agreed upon by the campus ethics and compliance officers and is reflected in this systemwide Plan. The following systemwide compliance risk areas, listed in no specific order of priority, will be focused on in this Plan and include key mitigation activities. Outcomes will be measured in the review of management risk mitigation activities and resolution of identified risks.

1. Safety—Focus will emphasize continued efforts and improvements to prevent sexual violence and sexual assault on UC campuses. Specific focus will be on the Re-
authorization of the Violence Against Women Act (VAWA), Clery Act reporting, Office for Civil Rights guidelines and investigations, the California State Audit report and recommendations, and leadership of the Task Force on Preventing and Responding to Sexual Violence and Sexual Assault.

2. **Research Compliance:** Specifically focusing on the complexities of research in areas of government enforcement action, e.g., documentation, conflicts of interest and export controls.

2. **Government Reporting:** Focus on external regulatory activities, e.g., agency audits, and key risk areas where supporting documentation is needed for federal and/or State funding.

3. **Culture of Ethics and Compliance:** Continual emphasis across the system on supporting the cultural tone of accountability and “doing the right thing”.

4. **Data Privacy and Information Security:** Continual monitoring and training on protection of data across the UC landscape.

5. **Health Sciences:** Focus on the increased regulatory complexities associated with the Affordable Care Act, clinical research and related billing, and other regulatory enforcement areas.

6. **General Compliance:** International activities, complex business system initiatives such as UCPath, policy and procedure management, investigations and overall tracking of emerging themes.

(Attachment below)
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I. Executive Summary

Background and Overview
The Office of Ethics, Compliance and Audit Services (ECAS) is a Regental Office of the University of California (UC) that provides direction, guidance and resources on how to optimize ethical and compliant behavior through effective ethics and compliance programs. Our goal is to help the University fulfill its responsibilities to the people of California in an ethical environment that is compliant with applicable laws, rules and regulations and in which the public trust is maintained. Consistent with the Ethics and Compliance Program charter, ECAS develops an annual work plan in an effort to help mitigate non-compliance in high-risk areas and assure the Regents and the public that compliance controls supporting UC strategic goals are in place and evaluated on a regular basis.

The ECAS Annual Compliance Work Plan (Plan) for FY2014-15 (FY15) is developed in collaboration with the ten campuses, Lawrence Berkeley National Laboratory, Office of the President, Division of Agriculture and Natural Resources, and the five academic medical centers. The Plan strives to address key risks facing the UC system as a whole. The Plan is developed using prioritized risks and work plan activities from each of the locations’ ethics and compliance risk committee function. ECAS and campus compliance staff, including the Campus Ethics and Compliance Risk Committees (CECRC), the Campus Ethics and Compliance Officers (CECOs), and the Health Science Compliance Officers (HSCOs), worked collaboratively with the internal audit function and the risk management functions at each location to more fully capture compliance risks for inclusion in the campus work plan, and ultimate prioritization for this system-wide Plan.

Key Compliance Areas
The key systemwide, compliance risk areas of focus in FY15 include, the following, in no order of importance:

1. **Safety** — emphasis on continued efforts and improvements to prevent sexual violence and sexual assault on UC campuses. Specific focus will be on the Re-authorization of the Violence Against Women Act (VAWA), Clery Act reporting, Office of Civil Rights (OCR) guidelines and investigations; and the California State Audit report and recommendations

2. **Research Compliance** — complexities of research in areas of government enforcement, e.g. documentation, conflicts of interest, allowable costs, research misconduct, contract compliance, and export controls.

3. **Government Reporting** — external regulatory activities, e.g., agency audits, and key risk areas where supporting documentation is needed for federal and/or state funding.

4. **Culture of Ethics and Compliance** — supporting the cultural tone of accountability and “doing the right thing”.

5. **Data Privacy and Information Security** — auditing and monitoring, and continued training on protection of data across the UC landscape.
6. **Health Sciences** – complexities associated with the Affordable Care Act, clinical research and related billing, and other regulatory enforcement areas.

7. **General Compliance** – international activities, athletics, conflicts of interest monitoring, security assessment and monitoring for mitigating activities, policy and procedure management, investigations and overall tracking of emerging themes.

These key risk areas are outlined in more detail in Section III of this Plan.

### II. Plan Background & Development

**Higher Education Ethics and Compliance Program – State of the Industry**

Higher education continues to be the focus of regulatory pressures, new legislative mandates, and government oversight. The University’s ethics and compliance program is based on the nationally accepted foundation of the United States Sentencing Commission’s seven elements of an effective compliance program that is recognized by industry and government agencies as the hallmark for compliance programs. Guidance from the Commission recommends that an effective compliance program have:

- Clear oversight through governance structures
- Well-articulated policies and procedures
- General and targeted training addressing ‘top risks’
- Monitoring and mitigation of ‘top risks’
- Enforcement and appropriate discipline for non-compliance
- Transparency and optimal communication practices
- Methods for appropriate response and prevention

**An Adaptable Compliance Plan.** Having a compliance plan based on transparent assessment and accepted by the governing body with regular updates are key indicators of an effective compliance program. An effective compliance program must adapt to emerging issues, trends, and regulatory burdens. Legal and regulatory requirements affecting higher education constantly change, and universities need to have reliable and consistent processes in place to identify and comply with applicable laws and regulations. New or unanticipated regulatory requirements often re-direct the focus on emerging issues that drive our work and affect our Plan. This past year’s focus on sexual violence/sexual assault on campus is a key example of how the systemwide compliance plan must adapt and change when new risks emerge.
Budget constraints affect a compliance program. In addition to regulatory burdens, budget constraints often increase compliance risks as we continue to strive to increase efficiencies and streamline resources. Areas such as social media, online education, international activities, data privacy and information security, conflict of interest and the need to improve governance and accountability remain high priorities for higher education. While many colleges and universities have worked to establish compliance governance structures and communication frameworks, high-risk areas remain, and there is often a gap between policy and behavior.

Compliance Program Self-Assessment
‘Effectiveness’ is a critical benchmark of a model ethics and compliance program. Regulators consider the level of effectiveness of an organization’s ethics and compliance program in assessing penalties for non-compliance. To assess the effectiveness of the University’s compliance program ECAS conducted a self-assessment in FY13 and reviewed the results of this assessment, implementing changes as necessary. The ECAS program benchmarks itself to a number of ethics and compliance programs across the nation and is continually identified as one of the leaders in the higher education industry. However, as an industry best practice, the effectiveness of a program should be assessed on a regular basis and ECAS will continue an ongoing self-assessment and improvement process in FY15.

Risk Assessment Process
Our efforts to move the UC ethics and compliance program toward a more mature risk intelligent approach is reflected in the process we continue to use in the development of the Plan. “Risk intelligence” is an organization’s ability to think holistically about risk by utilizing a common framework to help senior leadership make better decisions in achieving strategic goals.

Coordination and common framework within the Plan. Mature risk programs promote coordination between areas and/or departments that are actively involved in risk assessments, including compliance, internal audit, and risk management. As in past years, we encourage and support collaboration among ethics and compliance, internal audit, and risk management. The process consisted of surveys and interviews of campus leadership and key risk owners, reviews of new regulations, guidance, and legal findings, followed by prioritization of risk based on probability, severity, and level of control. The goal is to work systemically from strategic goals to risk identification, analysis, and then prioritization with the objective of identifying a scalable list of risk priorities.

As the UC compliance program continues moving towards a more mature, risk intelligent model, cross-functional risk owners will coordinate their efforts to share different perspectives, reduce duplication of effort, and conserve resources. For FY15, ECAS will continue working with the Campus Ethics, Compliance, and Risk Committees (CERC) and mid-management compliance risk committees to help implement a “best practices” risk intelligent approach to continue implementing UC’s model of risk intelligence. In addition, ECAS will be reaching out to systemwide campus partners to develop data analytic metrics that can be used to measure and benchmark risks and associate mitigation strategies. Partners in this
collaborative model include risk management, legal and ECAS working to develop a deliberate and transparent approach to risk reduction and compliance.

*Identifying and prioritizing key compliance risks within the Plan.* Within the framework of the University’s overarching compliance program, key compliance risks were identified at each campus, then aggregated across the system and prioritized by the Campus Ethics and Compliance Officers. *Appendix A: Compilation of Common Compliance Risk Areas* reflects a quantifiable prioritization of the aggregated campus risks that generates the systemwide compliance risk priorities for the FY15 Plan.

The methodology for scoring is noted in the legend on Appendix A but the scoring allowed for a risk determination for *likelihood* and *severity* from 1-5 with 1 reflecting a low risk to 5 reflecting a high likelihood and severity. The *level of control* score, with 1-5 with 1 reflecting no control to 5 reflecting a high level of control, mitigates the seriousness of the first two categories. The resulting *residual risk exposure* score provides a basis for prioritizing and acting upon those risks priorities. For the purpose of this Plan, all risks with scores greater than 3.5 will be addressed in addition to other key areas.

Section III will outline key goals and related activities that will be undertaken by ECAS to assist the locations in mitigating their specific risks as identified in Appendix A, related to the systemwide prioritized risk areas.¹

### III. Key Compliance Risk Focus Areas

1. **Safety**

   *Sexual Violence/Sexual Assault on Campus*

   There is an elevated national awareness around sexual violence/assault on college campuses, in part due to Re-authorization of the Violence Against Women Act (VAWA), Clery Act reporting, OCR regulations and investigation, and the California State Audit report and recommendations. ECAS worked closely with a wide constituency of UC staff from Human Resources, Student Affairs, Title IX officers, Academic Affairs and other functional areas to revise University policy to comply with the Re-authorization of the Violence Against Women Act. On June 20, 2014, the President established the Task Force on Preventing and Responding to Sexual Violence and Sexual Assault at the University of California. ECAS is leading the efforts of this Task Force and will work with the above groups and campus police to ensure the University is the national leader in the awareness and prevention of sexual violence/assault in higher education.

¹ Due to the dynamic nature of risks, the goals may be revised during the fiscal year to meet additional priority or other business risks identified by the organization.
**Goal**

Researched, evidenced-based best practices will be reviewed by the Presidential Task Force on Preventing and Responding to Sexual Violence and Sexual Assault. Recommendations will be presented to the Regents for implementation of new processes for investigation, response, and prevention of sexual violence and sexual assault on University of California campuses.

**2. Research Compliance Risk**

*Export Controls and International Activities*

Compliance with the evolving export control regulatory and operational landscape remains a key compliance risk for UC in FY15 as evidenced by its systemwide, residual risk exposure score of 3.42 in Export Controls and a 3.53 in International Activities. The University needs to remain vigilant with the monitoring of international collaborations involving foreign travel and the shipping of tangible research materials as well as traditional UC concerns regarding fundamental research and academic freedom.

**Goal**

Systemwide policies and practices regarding international activities, including specifically export control, will be reviewed with UC location leadership and revised to develop a formal systemwide policy. Training and education related to federal export control laws will be delivered in-person and online, with focus on materials, tools, and training for researchers. The Foreign Corrupt Practices Act (FCPA) will also have an increased focus for campuses. Awareness training, necessary policies, and tools will be developed to assist campuses in complying with the FCPA.

**3. Government Reporting**

*Regulatory Activities*

Compliance with regulatory activities continues to be an area of risk focus for our campuses. Government agencies, such as the National Sciences Foundation (NSF), the Center for Medicare/Medicaid Services Office of Inspector General (OIG), the Office of Civil Rights in the Department of Health and Human Services, and the Office of Federal Contract Compliance Programs (OFCCP) and others, continue their reviews and visits across a number of UC campuses and medical centers. These activities increase the resource burden on the locations as evidenced by the residual risk exposure ranking of this risk of 3.23, 2.77, and 2.42 in health care, government reporting, and research respectively. Cost disallowances, paybacks and fines can be a result of audit observations that may negatively impact the system’s financial resources and national reputation. Consequently, this area remains a risk priority. Examples of resources we provide or will provide include coding compliance and training for national certification, etc. However, additional time and effort is required by campuses to respond to audit and review requests by these agencies to ensure the accuracy of the audited information. Moreover, burden is placed on campuses to assure that appropriate controls are in place and communications to administrative staff and faculty takes time.
Goal
ECAS will monitor external agency audit activities and facilitate systemwide response, as appropriate, to external agency audit activities. Summary reports of trended observations and/or recommendations will be shared with campus leadership to enhance local controls on high risk reporting requirements. ECAS will also conduct audits in the health sciences and/or research compliance risk areas including billing and coding.

4. Culture of Ethics and Compliance
   Supporting a culture of inclusivity and accountability
   ECAS continues to focus on activities related to maintaining compliance with relevant state laws and regulations as well as UC policy that addresses creating and supporting a positive and inclusive culture that makes education, teaching, research, and service productive experiences for students, faculty, and staff. Compliance with Child Abuse and Neglect Reporting Act (CANRA) and the Clery Act will be monitored and reviewed. Issues and questions raised by the Moreno Report and the UC Climate Survey will be reviewed and discussed with appropriate campus leadership. Policy and training recommendations will be made in tandem with the President’s Task Force on Preventing and Responding to Sexual Violence and Sexual Assault, the President’s Task Force on LGBT Issues, and campus committees reviewing the Climate Survey data.

Goal
ECAS will facilitate the review of questions and issues raised by various University reports such as the Climate Survey, the Moreno Report, and the work of Presidential Task Forces to develop necessary policies, trainings, and recommendations for senior leadership.

5. Data Privacy and Information Security
   Privacy and Information Security
   The areas of data privacy and information security residual risk rankings reflect scores of 4.01 and 4.26, respectively, compared to scores from FY14 of 2.38 and 2.22 respectively; this area remains an area of risk given the national focus on privacy security and of restricted information. Campuses have begun implementing the approved recommendations from the “UC Privacy and Information Security Steering Committee recommendations”. The evolving landscape of information technology conversions, including cloud computing, entails significant risk to privacy and information security management. A focus for ECAS in FY15 will be to support and enhance the privacy and security of restricted information across the system through its privacy office and in collaboration with information technology leadership, legal and risk management.
**Goal**

ECAS will collaborate with system and campus information security, risk management, and campus privacy committees to develop or revise policies as necessary, provide training, and implement appropriate monitoring programs to identify goals for management action to mitigate risks.

6. **Health Sciences Compliance**

**Clinical Research Billing**

Accurate and timely submission of billing and coding data to government reimbursement agencies continues to be a key compliance program risk that requires continual and focused vigilance as expressed in a residual risk exposure score of 5.29. Due to changes in California Medicare Administrative Contractor, the interpretation of reimbursable clinical items and services are being challenged, with requirements for enhanced documentation for claim payment and appeal processes. The consequences of non-compliance with clinical research billing rules may be disastrous in terms of negative publicity for UC and resultant lack of sponsorship, increased paybacks of inaccurately billed services to insurers, potential monetary (civil) fines for billing errors to the Centers for Medicare and Medicare, and undercharging or overcharging study accounts.

**Goal**

Clinical research billing readiness plans are completed timely per local plans, and management is included in the operational oversight for clinical research billing.

**Health Sciences Coding**

The residual risk ranking of this area is 3.64, compared to the risk ranking of 3.15 last year. The potential for increasing compliance risk over the next several years increases due to the continued need for qualified coding resources. This past year ECAS supported the training of 60 UC staff with a certified coding course. However, with changes in healthcare laws, ICD-10 implementation, and continued scrutiny on coding and documentation accuracy, coding continues to be a risk for the UC Academic Medical Centers, as it does to other institutions across the nation.

**Goal**

Continuing to implement a systemwide industry-sponsored, coding certification program will increase availability of skilled resources. In addition, ongoing training will be provided for current coding professionals, physicians, and a monitoring program will be initiated to track and trend retention of UC coding professionals, and coding accuracy rates.
7. General Compliance

International Activities

UC’s international activities continue to expand. With expansion has come increased monitoring activity and enforcement by the federal government. This increase reflects the climate of national security issues existing today. Changes in applicability of the Foreign Corruption Practices Act (FCPA) to higher education provide both opportunities and challenges for academia. Intercollegiate consortia, sponsored research, research collaborations, international alumni associations, foundations, trusts, and more. In FY14, ECAS revised policy to devolve much of the responsibilities for engaging in international activities to the campuses, and is providing a library of high-level risks associated with international activities for consideration of risk-mitigation.

Goal

Compliance risks associated with international activities will be mitigated through early implementation of controls around high-risk areas.

Athletic Compliance Regulations (includes NCAA)

Increased focus on compliance with athletic rules and regulations, and specifically NCAA Regulations, places this area on the risk area for FY15. Nationally, issues around recruiting, financial aid limitations and extra benefits garner increased scrutiny from outside agencies.

Goal

ECAS will review the organization and structure of NCAA compliance activities across the University and identify appropriate mechanisms for integrating athletics compliance programs into overall campus compliance activities. Areas of focus will include governance, risk assessment, communication protocols (including escalation of priority issues), reporting and training.

IV. Ethics and Compliance Program Focus Areas

In addition to the identified key compliance risks for the FY15 Plan identified above, we will continue to address areas within three ECAS units – the Office of Investigations, the University Policy Office, and the Office of Privacy Management. The Office of Investigations is responsible for coordinating, tracking, managing and/or conducting investigations at the Office of the President and systemwide. This Office is also responsible for oversight of an independent hotline to receive confidential reports of suspected misconduct. The overarching objective of the hotline is to help the University maintain its commitment to a culture based on the highest of ethical standards. The University Policy Office oversees the policy-making process in all areas for which the President has authority. The University of California systemwide policy process involves broad consultation with diverse University constituencies on ten campuses, and the office issues and maintains all Delegations of Authority from the President to the Chancellors and senior managers, and is the official repository of historical and current documents. The
Privacy Office is responsible for implementing the strategic goals accepted by President Mark Yudof in the Privacy and Information Security Initiative Steering Committee Report to the President.

**Investigations Office Goals**

The ECAS Investigation Office will increase support to the campuses in view of competing budget and workforce priorities at the campus level and continue to provide a wide range of services to assist campuses in a variety of investigations to include workplace misconduct, whistleblower retaliation and management reviews. The Office maintains a list of outside investigators available to complete employee misconduct investigations where the use of a neutral third party is recommended. It provides education to the campuses to increase awareness of the elements of the investigation process and whistleblower policies, and training for employees responsible for receiving and addressing complaints systemwide. It utilizes available tools to generate informative data and track campus and systemwide trends to share with the system.

**Policy Project Goals**

ECAS continues to provide clear and consistent guidance on Presidential policy development and governance, policy framework, and writing “plain language” policy. ECAS will continue to enhance the web-based tools to access policy, review schedules, provide training for campuses, and lead the policy development process for Presidential policies. The University Policy Office will also reach out to campus policy offices to coordinate the linking of policies to improve communication and referencing of all university policies.

**Privacy Program Goals**

ECAS will assist campuses in building their privacy programs, including providing web-based tools to foster awareness of UC privacy principles and practices across the system. ECAS will also provide guidance and work with other departments and campuses on such issues as incident breach response, privacy policies, and conducting privacy impact assessments.

**V. Summary**

In collaboration with the campuses, ECAS will further quantify the goals and objectives related to this Plan that will then be aggregated on a periodic basis and reported to the Regents’ Compliance and Audit Committee. ECAS also continues to collaborate with a variety of national universities to maintain our efforts to have “best practices” in place at the University of California. ECAS Staff continues a variety of external collaborations that provide a forum to discuss and review compliance program best practices and process improvements.
# APPENDIX A: Compilation of Campus-Identified Compliance Risk Areas from Draft Campus Compliance Work Plans FY2014-15

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<td>Third Party Relationships</td>
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<td>3.00</td>
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</tr>
<tr>
<td>Privacy and Security</td>
<td></td>
<td>3.43</td>
<td>3.29</td>
<td>3.29</td>
<td>3.86</td>
</tr>
</tbody>
</table>

**Risk Likelihood**
- Rare=1, Unlikely=2, Possible=3, Likely=4, Almost Certain=5

**Risk Severity**
- Negligible=1, Minor=2, Moderate=3, Serious=4, Critical=5

**Level of Control**
- None=1, Minimal=2, Moderate=3, Strong=4, High=5