

The Regents of the University of California

COMPLIANCE AND AUDIT COMMITTEE

September 18, 2019

The Compliance and Audit Committee met on the above date at the Luskin Conference Center, Los Angeles campus.

Members Present: Regents Anguiano, Cohen, Elliott, Estolano, Makarechian, Park, Sures, Um, and Weddle; Chancellors Christ, Gillman, and Yang; Advisory member Bhavnani; Staff Advisor Klimow

In attendance: Secretary and Chief of Staff Shaw, General Counsel Robinson, Chief Compliance and Audit Officer Bustamante, Executive Vice President Stobo, Interim Executive Vice President and Chief Financial Officer Jenny, Acting Vice President Lloyd, Chancellor Larive, and Recording Secretary Johns

The meeting convened at 10:50 a.m. with Committee Chair Elliott presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of July 17, 2019 were approved.

2. **INTERNAL AUDIT ACTIVITIES REPORT**

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

Systemwide Deputy Audit Officer Matthew Hicks provided an overview of the risk assessment process. Each year, Internal Audit departments at the campuses, Lawrence Berkeley National Laboratory, and the Office of the President follow a consistent methodology to identify the areas of highest risk to be included in the internal audit plan. Work begins in January for development of the annual audit plan for the upcoming fiscal year, which starts in July. The process begins with data collection. Over the course of several months, Internal Audit analyzes internal and external data, including quantitative data such as financial trends and performance indicators, and qualitative data such as feedback from stakeholders in interviews and surveys. Internal Audit also considers industry and regulatory trends. Risk information is compiled and analyzed by Internal Audit departments using the systemwide risk assessment methodology. UC uses an “audit universe,” a tool with over 350 potential audit topics, to analyze and score risks. Each topic in the audit universe is scored on a scale of one to four, for five predictive risk factors. A risk score is calculated for each topic using the predictive risk factors. The factors are weighted differently depending on whether one is assessing a campus, Laboratory, or healthcare environment. For each of the highest-scoring topics, the University identifies

audit or advisory projects to address the associated risks. These include locally identified projects as well as a handful of systemwide projects identified by the Office of Ethics, Compliance and Audit Services (ECAS). The consolidated audit plan is then presented to the Compliance and Audit Committee for approval in July.

The University had recently completed a systemwide audit of the Fair Wage/Fair Work Plan. Mr. Hicks recalled that the Fair Wage/Fair Work Plan was initiated in 2015 and established a minimum wage for UC employees as well as for suppliers who perform work at UC locations. The audit focused on assessing compliance with the Plan's requirements for procurement contracts, which include a requirement for suppliers subject to the Plan, those performing services in excess of \$100,000 per year, to provide an independent annual verification of the hourly rates paid to their employees and subcontractors who are performing work at UC locations. The audit found that the overall rate of compliance had increased from 21 percent in the prior year to 52 percent in the current year, while the number of exemptions from the verification requirement granted to suppliers had decreased. The supplier verifications identified more instances of suppliers not paying a fair wage, compared to the prior year. In each of those instances, Internal Audit departments verified that an appropriate corrective action was taken, including retroactive pay increases. In addition, campus Internal Audit departments also identified control issues. As with any audit, ECAS assigned Management Corrective Actions (MCAs) to address these issues, which would be tracked to completion.

Committee Chair Elliott expressed concern about the fact that UC had not been successful with regard to compliance with the Fair Wage/Fair Work Plan. He asked if, in Mr. Hicks' view, the University was on the right track. Mr. Hicks responded that the level of compliance was not satisfactory. Overall compliance was at 52 percent, while compliance at the medical centers was at 32 percent. Of the verification forms received, 18 percent on the campuses and eight percent at the medical centers did not comply with all requirements. There was significant room for improvement. ECAS was working with management to improve controls and follow-up with suppliers to ensure that they are completing verification forms, and if suppliers are not completing the forms, to ensure that the University is taking appropriate action.

Committee Chair Elliott asked if there were additional actions UC should be taking to improve compliance. Mr. Hicks responded that ECAS would follow up with each location to ascertain what action was taken in cases of non-compliance, such as terminating a contract. ECAS would report back on this review. Committee Chair Elliott stated that he was glad that UC was ensuring that individuals are paid a fair wage.

Regent Estolano drew attention to the difference in compliance rates between the campuses and medical centers. UC medical centers were experiencing increased scrutiny. She asked that ECAS place special emphasis on medical centers and impress on them the importance that the Regents place on compliance with the Fair Wage/Fair Work Plan requirements. This was an important point to communicate.

Regent Park asked how MCAs applied to the Fair Wage/Fair Work Plan. Mr. Hicks responded that, when ECAS identifies issues with process and control, it assigns MCAs to improve those processes, such as processes to identify the suppliers subject to the Plan verification requirements and processes to follow up and take action. This audit had been carried out for three years. The first audit found challenges with raising general awareness of the requirements. In the second year, the audit found that campuses were starting to implement processes and track contracts. The current audit found that locations were following up but not taking the next step.

Regent Park asked why the University still did not have robust compliance with Fair Wage/Fair Work Plan requirements, even after three years and even when a chart in the background materials indicated a high rate of completion for MCAs in general. Mr. Hicks responded that UC was not able to determine the level of compliance in the first year because the locations did not have processes to track compliance. In the second year, ECAS was able to determine these levels and where corrective actions were necessary. MCAs were now in place. Chief Compliance and Audit Officer Bustamante explained that, as ECAS continued its analysis, new issues arose, and these issues resulted in new MCAs. MCAs were now targeted to the campuses, communicating that, if vendors do not demonstrate compliance, these business relationships must be terminated.

Regent Park asked who enforces the termination of contracts in cases of non-compliance. Mr. Hicks responded that this decision is made at the local level by the chief procurement officer. Regent Park asked if chief procurement officers understand that termination is the consequence or remedy for non-compliance. Mr. Hicks responded that this had been communicated by management through training and guidance.

Regent Park asked if there were a set date by which UC would have determined the compliance or non-compliance status for all suppliers. Mr. Hicks responded that the guidance did not specify a time frame. The guidance specifies action up to and including termination of the contract. Regent Park asked about actions “up to” termination; if this was discretionary, or if there were guidance on progressive actions that can be taken. Mr. Hicks responded that the guidance did not provide this level of specificity.

Regent Park asked what developments the Committee could expect in six months. Mr. Hicks responded that, included with actions to be taken on contracts found to be out of compliance, ECAS has made recommendations to UC Procurement, both for the campuses and medical centers, to clarify and enhance systemwide guidance about actions that need to be taken. He would expect campuses to have taken action on non-compliant contracts within six months. Mr. Bustamante emphasized that ECAS would follow up to ensure that MCAs are completed, and that he would inform the Committee about locations not completing MCAs. He could provide a “scorecard.” Implementation of MCAs was the responsibility of management at the locations. ECAS would work with campus audit directors to convey that MCAs must be addressed.

Committee Chair Elliott emphasized the importance of this matter, which should be understood not only by chief procurement officers, but also by chancellors and medical

center chief executive officers. He suggested that, if there were not significant improvement in compliance in a year's time, the Committee might wish to have representatives of campus management come to explain the situation. Mr. Bustamante responded that he would relay these concerns to the locations. ECAS would keep the Regents informed.

In response to questions by Regent Makarechian, Mr. Hicks responded that the Fair Wage/Fair Work Plan was not within the scope of topics reviewed by the University's external auditors. Mr. Bustamante clarified that the Internal Audit function looks at UC operations. Mr. Hicks and Committee Chair Elliott explained that in this case, the University was monitoring compliance with its own policy; there were no State or federal requirements involved. The University does not certify the results of this audit with any external agency.

Regent Makarechian asked why it was proving difficult to implement the Fair Wage/Fair Work Plan at the point of payment. Mr. Hicks responded that this was a question for management. Internal Audit observes controls and provides recommendations to improve controls.

Regent Makarechian suggested that the Fair Wage/Fair Work Plan requirements could be part of the payment process, so that vendors would not be paid if they failed to comply. Mr. Hicks responded that this was currently not part of the policy, but the policy could be changed to require this. Regent Makarechian suggested that the Committee might want to communicate this as a recommendation to management.

Committee Chair Elliott stated his view that the situation was not yet at the point where Regents might wish to make such a recommendation. There might be differences from case to case. The University has a policy, and management needs to meet that policy.

Regent Estolano drew attention to a chart showing current statistics by location for the Fair Wage/Fair Work Plan. For the medical centers overall, 32 percent of verification forms were received. The breakdown by medical center showed that only three percent of forms were received at UCLA and 13 percent at UC Davis. Compliance was very uneven. Internal Audit should endeavor to understand the reasons for these statistics at UCLA and UC Davis. Management at these medical centers needed to receive the message that this issue was important to the Regents. Mr. Hicks responded that ECAS has communicated with these campuses about this matter. She suggested that there be a report on these two locations.

Committee Chair Elliott suggested that there be follow-up discussions, and again, that the Committee might wish to have representatives of campus management come to explain the situation.

Mr. Hicks then briefly commented on the systemwide audit of Senior Management Group Outside Professional Activities (OPA). The audit assessed controls over the OPA process as well as compliance with policy requirements. The audit found general adherence to

policy requirements, but some instances when OPA were not approved in a timely manner or not approved at all. MCAs would be recommended and tracked to completion.

3. **UPDATE ON IMPLEMENTATION OF RECOMMENDATIONS FROM STATE AUDIT OF SEXUAL HARASSMENT CASES**

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

Systemwide Deputy Audit Officer Matthew Hicks recalled that, in June 2018, the California State Auditor had issued a report on the University's response to sexual harassment complaints. The report contained 32 recommendations. One recommendation was due in December 2018 and was assessed as fully implemented in January 2019 by the State Auditor. Of 29 recommendations due in July, 26 have been assessed as fully implemented by the State Auditor, while three have been assessed as partially implemented.

Systemwide Title IX Director Suzanne Taylor noted that speakers in the public comment period earlier that day had raised the issue of sexual violence and sexual harassment at UCLA Health. She emphasized that the University takes this issue very seriously and encourages complainants to come forward. UCLA Health had set up a web page with resources for patients with complaints of misconduct. The issue of sexual violence and sexual harassment in healthcare settings presents unique complexities. There were important initiatives occurring at the UC systemwide level to address this issue.

Ms. Taylor then discussed the three State audit recommendations that UC considers fully implemented, but that the State Auditor had assessed as only partially implemented. All three recommendations had to do with maximizing the use of complaint data. The Systemwide Title IX Office worked with its institutional research office as well as with the data managers on each campus to refine and expand the metrics for complaint data that the University collects. The new metrics improve Title IX officers' ability to recognize patterns and systemic problems; their ability to target prevention education and training; the quality and accuracy of data; and the Systemwide Title IX Office's ability to identify any outliers in the campuses' use of available resolution processes. UC has also issued guidelines requiring that the campus Title IX offices implement their own internal processes to assist them in regularly identifying patterns and tailoring their education and outreach efforts accordingly, and also adopt data control processes to improve accuracy and completeness. Additionally, the Systemwide Title IX Office adopted its own internal protocols setting forth how the Office will work with and monitor each campus so that desired outcomes are realized. The University believes that these steps were sufficient to satisfy the State Auditor's recommendations. Nevertheless, in addition, the Systemwide Title IX Office hired a full-time analyst who assists in data collection, quality control, and analysis, and entered into a contract with a vendor to implement a common case management system to be used by all UC Title IX offices. Implementation of this system was under way but would take several months to complete.

The State Auditor determined that UC had made significant progress on these recommendations but that they were only partially implemented because UC had not fully implemented the case management system at the time it made its report. The University communicated that it disagreed with the State Auditor's assessment, and that while the measures identified by the State Auditor would enhance UC's efforts, they need not be completed in order for the other important measures implemented by UC to be effective. UC would continue to implement the case management system and expected it to be fully implemented by winter, and would continue to implement the revised policies and guidelines that were developed in response to other recommendations of the State Auditor.

Committee Chair Elliott asked if it would be fair to say that the University feels that it has met the letter, intent, and objectives of the State Auditor's recommendations; that it took additional steps, and that it was still working on these additional steps, and that, for this reason, the State Auditor believes that these recommendations are only partially implemented. Ms. Taylor responded in the affirmative.

Faculty Representative Bhavnani thanked Ms. Taylor for her effective work.

Regent Weddle stated that prevention and prevention education need to be a key aspect in addressing sexual violence and sexual harassment. She asked about systemwide efforts to bolster prevention efforts. Ms. Taylor responded that, as part of the implementation of the State Auditor's recommendations, the University has improved the metrics it uses to analyze complaint data, and this would allow UC to better target prevention education. The University has also required that campuses adopt internal processes that will improve their ability to target prevention and outreach efforts. At the systemwide level, UC was near completion of a project to add more gender-inclusive content to mandatory online training. The new content would include education to promote understanding of the experiences of transgender and gender-non-binary students, resources for LGBT students, and recognition of lived names and pronouns. Responsible employee refresher training was also being developed at the systemwide level and would be implemented. Campuses also have comprehensive education and training plans. Ms. Taylor acknowledged that her Office had been responding to changes in Title IX rules, changes in State case law, and the recommendations of the State Auditor, and that prevention had not been at the forefront when it should be first and foremost. She also noted that, while the Systemwide Title IX Office might not have been focused on prevention, comprehensive prevention measures were being deployed on the campuses.

Regent Weddle referred to MyVoice, a survey at UC Berkeley, and asked if there were any plans for a systemwide effort on campus climate with regard to sexual violence and sexual harassment. Ms. Taylor reflected that replicating the MyVoice survey would be a significant undertaking, requiring much engagement. There was interest in pursuing such an effort.

Regent Weddle stated that the full Board should have a broad discussion about Title IX and sexual violence and sexual harassment.

Regent Cohen observed that one challenge in this field is that of disparate information and that complaints can be lost. He asked how the case management system would serve as a tool for future research. Ms. Taylor responded that the campuses collect extensive data related to reports of sexual violence and sexual harassment, such as the identity and affiliation of the complainant and respondent, where the conduct occurred, and type of conduct. One concern was to ensure that data are consistent, and the new case management system would be helpful by ensuring use of consistent definitions, thus facilitating reports and analysis which are of interest in preventing and responding to sexual violence and sexual harassment at UC and of interest to UC researchers.

Regent Weddle asked how the collection of data intersects with the responsibility to be transparent with students, staff, and faculty, and which data would be communicated to the UC community. Ms. Taylor responded that some campuses, such as UC Berkeley, have outward-facing, public reports. It would be desirable to issue such reports at the systemwide level, but the data must be consistent and accurate; this goal had not yet been achieved.

Ms. Taylor concluded by remarking that the University has made an extensive effort to revise its Sexual Violence and Sexual Harassment Policy, and that this was not just to comply with the State Auditor's recommendations. UC wished its policy to reflect best practices. Extensive input was received from students, faculty, and staff. As a result of changes in State case law, the University must revise its student adjudication framework. This has required considerable work by the campus Title IX offices. Their work reflected how much they care about students and these issues.

4. **UNIVERSITY OF CALIFORNIA HERBICIDE TASK FORCE UPDATE**

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

Executive Director of Environment, Health and Safety Ken Smith noted that the UC Herbicide Task Force had met seven times. He recalled that the University had instituted a temporary suspension, with exceptions, on the use of glyphosate-based herbicides. There were four exceptions: agricultural uses, fuel load management for wildfire abatement, native habitat restoration, and research. The Task Force had distributed a survey to UC locations, requesting additional details about their historical and current use of glyphosate-based herbicides. There were at least 46 responses. Initial data showed that, the previous year, UC used approximately 10,000 pounds of glyphosate-based herbicides, mostly in the "exception" categories. In the current year, UC anticipated that it would use only about 8,000 pounds. The continued use of glyphosate is mostly in the University's agricultural operations. The Task Force has received presentations by experts from outside the University. The last meeting of the Task Force was at UC Riverside, where the Task Force visited the Citrus Experiment Station, viewed apparatuses used to apply pesticides, and spoke with the director about pesticide management. The Task Force now had a member who was a union representative. The Task Force was examining Integrated Pest

Management plans and had carried out focus group sessions with applicators, the frontline employees who apply pesticides.

The Task Force advised President Napolitano to issue a second letter to better clarify exceptions to the chancellors and others. This letter clarified that weed control in landscaped areas is not an agricultural use; the exceptions apply to all UC-owned and -operated properties; timber harvesting is considered an agricultural use; and there can be no grandfathering. If a project or treatment using glyphosate had occurred prior to the suspension start date, the project participants would need to apply for an exemption in order to continue to use glyphosate. The Task Force had received two exemption requests. UC San Diego applied for an exemption in order to use glyphosate in a lawn removal project but then withdrew the application, citing time constraints. The second request was submitted by UC Berkeley for the Blake Garden. This was a well-prepared exemption request for glyphosate use to eradicate poison oak. The Task Force asked clarifying questions and recently approved this exemption request within a specific time frame. The Task Force believed that it would be able to present recommendations and a report to President Napolitano by the November 1 deadline.

Regent Makarechian asked why the suspension was termed a “temporary” suspension. Mr. Smith explained that the Task Force was asked to make a recommendation about whether the University should continue or not continue this suspension. President Napolitano’s suspension was temporary until she receives advice from the Task Force.

Regent Estolano asked about the size of the lawn removal project at UC San Diego. Senior Counsel Barton Lounsbury responded that this was 33,000 square feet. The campus was installing storm water features and needed to eradicate Bermuda grass. The campus withdrew the request because the Task Force took a few weeks to deliberate and the campus was constrained by a construction schedule. Mr. Smith added that UCSD used two alternative herbicides to get a similar effect. The challenge in this case is not to replace one herbicide with another which is more toxic or that requires a larger quantity to be used.

The meeting adjourned at 11:45 a.m.

Attest:

Secretary and Chief of Staff