

The Regents of the University of California

COMPLIANCE AND AUDIT COMMITTEE

May 17, 2023

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

Members Present: Regents Anguiano, Blas Pedral, Cohen, Elliott, Park, Pérez, Pouchot, and Sherman; Ex officio member Leib; Advisory member Cochran; Chancellors Christ, Gillman, Hawgood, Khosla, May, and Yang; Staff Advisor Mackness

In attendance: Regents Batchlor, Drake, and Kounalakis, Secretary and Chief of Staff Lyall, General Counsel Robinson, Chief Compliance and Audit Officer Bustamante, Executive Vice President Byington, Executive Vice President and Chief Operating Officer Nava, Vice Presidents Leasure and Lloyd, and Recording Secretary Johns

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

1. APPROVAL OF MINUTES OF PREVIOUS MEETING

Upon motion duly made and seconded, the minutes of the meeting of March 16, 2023 were approved, Regents Anguiano, Blas Pedral, Cohen, Elliott, Leib, Park, Pérez, Pouchot, and Sherman voting “aye.”

2. UPDATE ON MANDATORY TRAINING COMPLIANCE

[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.]

Chief Compliance and Audit Officer Bustamante introduced this discussion item. As requested, the Office of Ethics, Compliance and Audit Services (ECAS) had compiled a report on compliance rates for mandatory training across the UC campuses. President Drake had also sent a letter to the chancellors emphasizing the importance of this issue. ECAS findings showed that completion rates had remained relatively consistent since the last report, with some increases and decreases. ECAS had also identified areas in the Learning Management System that could benefit from improvement and was working with Systemwide Human Resources to achieve those improvements. ECAS had also provided the campuses with a variety of relevant tools and resources.

Committee Vice Chair Elliott expressed his and Committee Chair Sures’ frustration at some of the completion rate statistics. When this matter had been discussed a few meetings prior, the rates were not satisfactory, and the Committee had urgently asked the campuses to make improvements. There had not been marked improvement, and compliance rates

were less than stellar in some areas. This was mandatory training, but it seemed that there were no consequences for employees who did not complete the training. This was an issue for campus leadership and management. Committee Vice Chair Elliott advised the campuses that, at an upcoming meeting, in July or September, the Committee would require the campuses to explain why some compliance rates were not better and present their measures to improve these statistics, with an idea of how quickly improvement might occur. Based on the information presented, the campuses that appeared to be having the greatest difficulty were UC Berkeley, UCLA, and UC Santa Barbara.

President Drake concurred that some compliance rates were quite lower than they should be. Discussions at future meetings would bring forward more data and greater focus.

Regent Park commented that the Committee needed to take a closer look at this matter. There might be reasons for the less-than-desirable completion rates, but if one did not know these reasons, one was left to conclude that UC employees simply did not care about compliance. The Regents needed to know what the barriers to greater compliance were.

Regent Cohen expressed concern about the completion rates for sexual violence and sexual harassment prevention training by supervisors. He recalled that, at a previous meeting, it had been suggested that, because of data issues in the system, compliance rates would never reach 100 percent. He asked if this issue had been resolved, and if it would be fair for the Regents to expect 100 percent compliance. Mr. Bustamante responded that 100 percent compliance would be unattainable due to the ebb and flow of people coming into and leaving the UC system through retirements and new hires. Employees planning to retire in a few months might feel they did not need the training. In his view, completion percentages on the campuses in the high 80s to low 90s would be a significant achievement and indicate a high level of compliance. ECAS had identified data challenges, such as data coming from UCPath and the normalization of data from the Learning Management System. ECAS would track irregularities and any factors affecting completion rates.

Regent Cohen asked if there were consequences for employees who fail to complete the training, who continue to fail to do so, and who are not retiring soon but planning on staying with the University. Mr. Bustamante responded that this depended on the campus but noted that he had discussed this with Systemwide Human Resources and campus leadership. Within the statistics there was also a population of contract employees who might work at UC for a limited period, such as four to six months. The University had to reconcile how these individuals were reflected in the system.

Regent Anguiano expressed understanding of the fact that there would not be 100 percent compliance but expected that the percentage of non-compliant employees would be similar across the campuses. She asked if there had been sharing of best practices among the campuses. Mr. Bustamante responded in the affirmative. ECAS had convened all the chief ethics and compliance officers at UC locations who were at the forefront of this issue to share experiences and best practices. ECAS had left it to the campuses and their leadership to determine which practices to deploy.

Regent Pérez stated that he could understand that an employee who would soon retire might not complete mandatory training, but he had less understanding for lack of completion by contract or short-term employees. The mandatory training requirement should be built into the University's contracts and UC should have this expectation. Mr. Bustamante responded that the University still had to find out which employees were among the percentages of non-compliant individuals.

Committee Vice Chair Elliott raised the question of which tools management was using to ensure compliance. Ultimately this matter was a responsibility of management. He hoped that presentations at future meetings would provide clarity.

President Drake observed that compliance rates were comparatively high at the Office of the President. It was helpful for the chancellors to see these data. There were opportunities to improve completion rates. In his discussions with Mr. Bustamante, he was interested in the number of training courses for employees and in evidence indicating that training is making a difference in outcomes. He wished to see completion rates at a higher level, but also evidence that training was leading to real outcomes and was not simply a matter of checking off boxes.

Committee Vice Chair Elliott reiterated that there had been little or no improvement since the last time these data were presented, and some compliance rates were worse now than a few months prior.

3. **UPDATE ON CONTRACTING OUT AUDIT ACTIVITIES**

[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.]

President Drake recalled that, the prior month, the University shared the results of two audits undertaken to assess compliance with Regents Policy 5402, Policy Generally Prohibiting Contracting for Services, and Article 5 of two collective bargaining agreements with the American Federation of State, County and Municipal Employees (AFSCME). Both the Regents Policy and the AFSCME contract impose restrictions on the University's ability to contract out for certain services; the policy and contract create other obligations when UC does contract for services.

President Drake emphasized UC's commitment to support its employees. These recent changes require external UC suppliers to pay wages and benefits that are equivalent to those provided by the University, ensuring parity for workers at the University and supporting fair wages in UC's communities. The University was also committed to creating a pathway to career UC employment for those supplier workers who meet certain criteria. UC staff had been working diligently, even during the COVID-19 pandemic, to implement the new policy and collective bargaining provision. These were broad, complex changes that applied to a vast institution with multiple locations. Implementation had required the hard work of many UC employees and hundreds of thousands of staff hours. President Drake thanked all UC employees who were involved in this effort. While the pandemic

had affected the speed of implementation, UC was proceeding with this work in collaboration with its campuses, medical centers, and union partners to support full compliance across UC. Initial efforts had yielded positive results. The first audit, focused on current supplier compliance, showed that a majority of UC suppliers had fully complied with the new wage and benefit parity policy. The remaining suppliers were actively working to address non-compliance. Those who have not complied or taken steps toward swift remediation have had, or would have, their contracts with the University terminated. The second audit, which assessed the University's own internal processes, identified areas for improvement and a need for additional guidance from the Office of the President. UC was working to address these concerns and had made significant progress but recognized that more work remained to be done.

Associate Vice President Melissa Matella discussed the first audit of supplier compliance with wage and benefit parity requirements. UC had made diligent efforts toward compliance in this area and had taken several important steps even before the two audits were completed. The University had established a new office with dedicated employees and resources to support the UC workforce compliance obligations. This office would focus on strategically supporting recruitment, compliance with insourcing obligations, policy implementation, and education about UC's obligations. The University was also deploying new technology that would allow UC suppliers to track and verify their compliance with UC policies and procedures, especially those pertaining to Qualified Individuals and providing a career path at UC for those individuals. UC was making further updates to the terms and conditions of its supplier contracts; updating and communicating additional wage and benefit parity guidance to all UC locations; and establishing a regular audit program to provide continuous review of wage and benefit compliance in the future.

UC performed an initial audit of all suppliers with a contract value of over \$100,000. If UC locations did not have at least two suppliers that met those criteria, suppliers below that threshold were added to the audit scope. The University required these suppliers to initiate a third-party audit to ensure compliance with wage and benefit parity requirements, activating contractual clauses put in place to support Article 5 compliance. UC also implemented supplier remediation principles at the start of this effort that reflect its commitment to compliance and remediation of any identified issues. Those principles were as follows: For suppliers who do not respond to the audit, UC will terminate their contracts. For suppliers who did not comply with wage and benefit parity policies, UC will require them to remediate the underlying wage discrepancy by making supplier employees whole for any difference between the correct wage and benefit parity rate and the value of wages and benefits offered; suppliers must then provide verification of remediation and compliance. Suppliers who are still not compliant will have their contracts with UC terminated. For cases of UC's own non-compliance, the University will remediate any underpayment.

The first supplier audit showed that as of this day, a majority of UC suppliers, 83 percent, had fully complied, meaning that they were compliant before the audit began or had fully remediated the underlying discrepancy and provided proof of remediation to the University. The remaining suppliers were actively working to address and verify data and

their remediation would be completed by the end of May 2023. Suppliers who had not complied or taken steps toward swift remediation of verified non-compliance had or would have their contracts with UC terminated. Ms. Matella reiterated that the University expected all remediation to be completed by the end of May.

UC's remediation efforts to date had resulted in approximately 280 supplier employees receiving wage and benefit parity payments or notifications that they are eligible to receive those payments as soon as they provide deposit information. Data as of the start of the audit in late 2022 indicated that 61 percent of suppliers were fully compliant while 24 percent of suppliers were non-compliant; those 24 percent were now coming into compliance. For nine percent of suppliers, the supplier and UC were non-compliant, in three percent of cases UC was non-compliant, and three percent of suppliers did not complete the audit in a timely manner and their contracts were terminated.

Ms. Matella underscored the University's continuing commitment to working with small and diverse businesses. Given that commitment, many of the audited suppliers fell into that category: 12 of 64 suppliers or 19 percent included in the wage and benefit parity compliance verification were certified as a small business. One of the 12 was also certified as a veteran-owned business, and eight of the 12 were also certified as diverse businesses. Overall, nine of the small businesses were fully compliant, meaning that they provided wage and benefit parity at the start of the audit, or they had already completed and verified their remediation plan.

Chief Compliance and Audit Officer Bustamante discussed the second audit, an internal audit of compliance with contracting out requirements under Regents Policy 5402 and Article 5. This audit was part of the Office of Ethics, Compliance and Audit Services' (ECAS) annual audit plan as approved by the Regents, was conducted in coordination with internal audit departments systemwide, and included 18 locations in total: each campus, medical center, the Lawrence Berkeley National Laboratory, Agriculture and Natural Resources, and the Office of the President. The audit included process walk-throughs and sample testing. Overall, ECAS identified process gaps at the local level and opportunities for the Office of the President to provide additional guidance to assist UC locations with compliance. For each issue identified, a Management Corrective Action (MCA) had been designed to address the challenge and improve compliance. ECAS would track the MCAs to ensure implementation.

Systemwide Deputy Audit Officer Matthew Hicks reported that, overall, the audit found gaps in process and internal controls at all locations. In some cases there was a lack of a process in place to address compliance requirements, while in other cases there were process deficiencies. Article 5 contained some generic language and undefined terms requiring clarification. The Office of the President had provided some interpretive guidance in some areas, but there was a need for additional clarification and opportunities for the Office of the President to provide additional guidance. Many of the MCAs were already under way.

Mr. Hicks presented key findings. In the area of procurement and contracting, the audit found that, at most locations, processes to identify covered services purchasing activity required improvement, particularly for purchasing channels reserved for lower-value activities such as procurement cards, travel/entertainment cards, and low-value purchase orders. ECAS also identified instances of missing or incomplete documentation supporting decisions to contract out for covered services. In its sample testing, ECAS found contracts for covered services that did not include required contract language. There were also issues with annual wage and benefit parity amendments required for covered services contracts.

Regarding Qualified Individuals, those supplier employees who meet the eligibility requirements for conversion to UC employment, Article 5 outlined a process by which individuals may submit a request if they believe they have met eligibility requirements, but also stated that UC will exercise its best effort to identify individuals who meet these criteria. The audit examined processes in place at UC locations to identify these individuals. Most locations either did not have a process to identify Qualified Individuals or had significant deficiencies in the process. The audit discovered Qualified Individuals who had not been identified as such by their location. ECAS was recommending that the Office of the President provide additional guidance in this area. The audit also found problems in the process of converting Qualified Individuals to UC employment. In sample testing, ECAS found that most locations lacked a process or that the process needed improvement; there were cases when locations failed to move Qualified Individuals to UC career employment within the required 120-day timeframe.

Regarding the required provision of notice for contracting out decisions, under Article 5, the University was required to notify AFSCME of any decisions to contract for covered services valued at over \$100,000. The audit found non-compliance with this requirement at several locations. In testing of the administration of Article 5 grievances, ECAS identified missed process deadlines. There were instances in which management was unable to provide complete documentation supporting the administration of grievances, indicating a need for better recordkeeping. In the review of the process for reporting violations of the contracting out requirements, ECAS found that several locations had not established processes to provide notice to covered services suppliers to inform their employees about how contracting out violations can be reported, as required by UC. Regarding the annual report to AFSCME, Mr. Hicks noted that, due to the timing of the audit fieldwork, ECAS was not able to review the most recent report to AFSCME, but reviewed the prior year report, and found instances of inaccurate or incomplete information, which indicated a need for stronger quality assurance controls over the preparation of that report. Finally, ECAS found that the Office of the President's guidance on contracting out requirements was not easily accessible in a central location. ECAS was recommending that all guidance be consolidated in one easily accessible location.

Ms. Matella commented that the University was responding to these audit findings, providing relevant notices and clarification regarding Qualified Individuals, vendor employee rights, and reporting instances of non-compliance. In the coming months, the new office mentioned earlier would serve as a centralized source of information.

Staff Advisor Mackness asked about the impact on small and diverse businesses. The University had audited vendors with a contract value of over \$100,000, but it seemed likely that many small and diverse businesses had contracts with UC below that value. Ms. Matella responded that UC was making a strong effort in its procurement to engage small and diverse businesses, even for its larger contracts. Twelve of the 64 contracts reviewed in the audit were with small and diverse businesses. She acknowledged that the small and diverse businesses in this audit struggled more than others to comply with these new obligations. Many of these businesses were long-time vendors with UC, and these requirements represented a significant change from business in past years. The University was cognizant of this impact, would try to collect data about the impact, and would seek ways to support these businesses. UC's auditing of suppliers would likely increase, but the University would be sensitive to how this auditing might affect small and diverse businesses.

Ms. Mackness noted that some small and diverse businesses were not able to continue serving as vendors to the Berkeley campus because they could not meet the wage and benefit parity requirements while remaining profitable. Ms. Matella responded that this appeared to be occurring across the UC system. Ms. Mackness commented that UC must be mindful of the unintended consequences of these measures.

Ms. Mackness asked how many Qualified Individuals, when offered the opportunity to become UC career employees, had taken this opportunity. Ms. Matella responded that the numbers for 2021 were available; the data for 2022 were being gathered. Not every Qualified Individual had accepted the offer of UC employment. For the 2022 survey, the Office of the President was requesting that UC locations ask vendor employees who decline the offer of UC employment why they are declining it. Anecdotally, a significant reason for declining UC employment was that vendors provide a mix of compensation with higher cash amounts, while UC's compensation mix provided less cash and more benefits. It appeared that some vendor employees preferred more cash compensation rather than compensation in the form of benefits.

Ms. Mackness asked what the University had learned from this process of negotiation with AFSCME and implementation of the new requirements. Ms. Matella responded that UC was currently in a phase of intensive data gathering, including lessons learned, to prepare for future negotiations and to be able to support the Article 5 requirements in a way that would meet everyone's interests.

Regent Leib asked if the remediation process would be 100 percent completed by the end of May. Ms. Matella responded in the affirmative and noted that a small number of contracts would be re-audited before the end of the process.

Regent Leib asked how much of the University's contracting out occurs because UC does not have enough employees in a given area or labor pool. If the University is prohibited from contracting out, in some cases this might result in limiting the services that UC can provide to students. Ms. Matella estimated that this percentage might be close to 100 percent for UC Health, where the University must rely on registries and contingent

labor to meet patient care needs. On the general campuses, the percentage might be around 80 percent. As was the case for other employers in the U.S., contracting out had increased at UC due to the pandemic and resulting labor shortages, especially for healthcare workers.

Regent Leib asked about the 100 percent figure for contracting out at UC Health due to lack of UC employees to perform certain services. Ms. Matella responded that this figure would be close to 100 percent. There were exceptions to the contracting out rules for skilled trades and responding to one-time needs, but most contracting out was for services UC Health needs to maintain ongoing operations.

President Drake commented that UC had to increase wages and benefits to maintain parity in about 280 instances. Ms. Matella clarified that 280 employees had received remediation payment or been offered remediation and were waiting for payment. This number would increase as the University moved toward 100 percent compliance. UC compensation was over the parity level for wages and benefits in the healthcare arena.

Regent Pérez recalled that, according to an earlier UC policy, the University would never contract out solely for the purpose of saving money on wages and benefits. Another policy mandated a \$15 per hour minimum wage, and there was never a clear audit confirming the implementation of that policy. There were some instances of controversy surrounding contracting out that came before the Board, but the contracting out proceeded. There was a focus on a pattern of contracting out that appeared to be problematic. The requirement for parity was a guarantee against contracting out solely for the purpose of saving money, but the crux of the policy was to limit contracting out. Regarding the statements about UC's inability to recruit employees and thus the need to increase contracting out, Regent Pérez wondered how creative and thoughtful the University has been in trying to fill these positions. He also questioned the information presented about Qualified Individuals who declined the offer of UC employment. He outlined some of the motivations of contractors, who have employees working at multiple sites. The University's focus must be not only on compliance with parity requirements but also on the expectation to move away from contracting out for covered services. Regent Pérez expressed appreciation for the work UC had accomplished over the last several months, but there was much work to be done. The University was not doing as well as it should be in contracting with small and diverse businesses. A total of 12 of 64 suppliers, or 19 percent, was not an outstanding statistic. UC must consider how it can help these contractors to comply with the new requirements. Ms. Matella expressed agreement with Regent Pérez's concerns. She noted that the new office would help with compliance for both vendors and employees. UC would consider how it can strategically support the campuses so that they can hire where the University seeks to hire.

Regent Pérez did not believe that a contractor, especially in many of the covered services, would provide more talented individuals than employees already at UC locations. It might sometimes be easier to engage a contractor to backfill positions than to make the effort of hiring. The University could be more creative in the way it recruits for positions in the covered service areas. The fact that some Qualified Individuals declined a UC position should inform the University's compensation packages and was perhaps an indication that

UC should consider other sets of market forces. Ms. Matella responded that, as the University develops more data about Qualified Individuals, it would have a better understanding of the reasons for individuals declining an offer of UC employment and would use these data to address the concerns raised by Regent Pérez.

The meeting adjourned at 11:00 a.m.

Attest:

Secretary and Chief of Staff