

# University of California



## Ethics and Compliance Program Plan

### INTRODUCTION

The University of California (UC) Board of Regents launched an initiative in October, 2007 to create and maintain a comprehensive Ethics and Compliance Program for UC. The voluntary implementation of an ethics and compliance program provides a foundation for UC to proactively demonstrate its adherence to its mission, as well as its commitment to ensure good stewardship of federal, state and private resources. The Regents approved the original Ethics and Compliance Program Plan in 2008 that provided structure and guidance for the Program's implementation. This document provides an update of that original Plan and the Regents affirmation of its support for this program.

### MISSION

The UC Ethics and Compliance Program ("Program") enhances the University's duty to perform its public responsibilities in an ethics and compliance-based environment where applicable legal, regulatory, Regental and UC policy, and other compliance requirements are followed and in which the public trust is maintained.

### FUNCTIONS

The UC Office of Ethics, Compliance and Audit Services provides direction, guidance and resource references to each UC location on how to optimize ethical and compliant behavior through an effective Program. Additionally, it provides relevant, timely, independent and objective assurances and advisory services to the UC community, including campus and the Office of the President senior leadership and the Board of Regents.

## ROLE of the BOARD of REGENTS

An effective and robust Program adds valuable support to UC's mission of teaching, research, and public service excellence, and ensures that the public trust is maintained. However, to maximize the value and effectiveness of the Program, it is critical that senior leadership at each University location and the Board of Regents become active participants in executing the Program and the continued strengthening and enrichment of the Program.

Effectiveness of an ethics and compliance program is dependent upon the "tone at the top". Regental engagement in the development and oversight of the Program sends an unequivocal message that UC is resolute about "doing the right thing" and protecting the interests of the students, faculty and public. The Regents, in collaboration with the SVP/Chief Compliance and Audit Officer, set the tone from the highest governing level of the organization and create the momentum to drive the Program forward. This oversight by the Regents aligns with best practices across industry and guidance from Federal agencies.

Generally, board members have three primary fiduciary responsibilities to the organizations of which they are members. These duties are: duty of care, duty of loyalty and duty of obedience to purpose. Under cases such as *In re Caremark International Inc. Derivative Litigation* (1996) 698 A.2d 959 and *Stone v. Ritter* (2006) 911A.2d 362, the courts have established that board members of an organization must oversee the activities of their organization's ethics and compliance program. In particular, board members must assure that an effective program exists, that reporting systems are adequate to bring material compliance information to their attention in a timely manner, and that the program has the resources needed to be effective. Therefore, the Board's engagement, as well as understanding of high-level compliance risk areas and applicable action taken to prevent, detect and remediate those risks, is critical for the success and growth of the Program. In 2016, in what is known as the "Yates Memo," <https://www.justice.gov/dag/file/769036/download>, the Department of Justice reinforced that individual board members should be held accountable for any proven misconduct by the organization. Thus, the involvement of the UC's Board of Regents in the Ethics and Compliance Program is appropriate and necessary to comply with best practice and guidance from the Department of Justice.

The SVP/Chief Compliance and Audit Officer is an Officer of the Regents and reports to the Regents through the *Committee on Compliance and Audit*. A key element of the role of the SVP/Chief Compliance and Audit Officer is to assure the Regents that compliance controls exist in high risk compliance areas of UC operations and mechanisms to support UC's strategic goals. The Regents would look to this role to: assist with education on compliance risks; report on performance metrics of the Program; assess high priority risks to UC; and assess and evaluate management's response to mitigating high priority risks. In addition to reporting directly to the

Regents, the SVP/Chief Compliance and Audit Officer has a direct reporting role to the President. As such, the SVP/Chief Compliance and Audit Officer not only has the reporting relationship necessary to ensure the Regents are regularly updated on the efforts of the Program, but also the ability to address significant ethics and compliance issues directly with the Board. This direct line of access ensures that the Board will meet its duty of care obligation and provides an open line of communication that instills public confidence and trust that UC is committed to ethics and compliance at the highest levels.

## **ETHICS & COMPLIANCE PROGRAM PLAN**

The Program has been designed to promote adherence to standards of conduct and to ensure compliance with legal, regulatory, Regental and UC policies that govern all aspects of UC operations *including but not limited to* the following:

1. Assisting the campuses in the development of policies, procedures and internal controls that help to reduce compliance risks in all aspects of UC operations, including but not limited to the following:
  - a. Conduct of the “agents” of UC related to our business and in carrying out UC’s mission
  - b. Health Sciences, i.e.: reimbursement, quality of care, program initiatives and consistencies in operations and care standards, vendor relations, etc.
  - c. Research Compliance, i.e.: human subjects, animal care, IRB matters, administration, extramural funds accounting, contracts and grants, conflict of interest/commitment, time and effort reporting, etc.
  - d. Student Financial Aid Services, i.e.: vendor relationships, accounting and management, etc.
  - e. Human Resources, i.e.: Equal Employment Opportunity and Affirmative Action, Title IX compliance, immigration and employment eligibility, labor relations, Family and Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), executive compensation and benefits, etc.
  - f. Campus Safety, i.e., Clery Act, sexual violence/sexual assault regulations and training, the Child Abuse and Neglect Reporting Act (CANRA), etc.
  - g. Financial areas, i.e.: appropriate allocation of monies, investment compliance, travel and expenses, payroll, etc.
  - h. Records retention and disposition
  - i. Information Technology, Privacy and Information Security, i.e.: protection of health information, protection of personal identifiable information, protection of financial information, cybersecurity, technical and administrative and Cybersecurity.
  - j. Intellectual Property, i.e.: licensing, export control, copyright, etc.
  - k. Environmental Health & Safety, i.e.: radiation safety, biosafety, chemical safety, security, hazardous waste management, air and water permits, etc.
  - l. International activities, i.e., export control, Foreign Corrupt Practices Act (FCPA), data security, etc.

2. Establishment of communication methodologies to effectively disseminate compliance policies to administrative and academic employees;
3. Development and implementation of a comprehensive reporting and compliance tracking mechanism for academic and administrative employees to report suspected violations of UC policies or regulatory obligations without fear of reprisal and which ensures the prompt investigation of all appropriate reports of alleged violations;
4. Development and implementation, with consideration of campus culture, of training programs, including mandatory training, utilizing the most appropriate methodologies to reach all constituent audiences to ensure that UC policies are clearly understood and faculty and staff are able to carry them out effectively;
5. Ensuring the development and implementation of ongoing audit and monitoring activities that span the scope of UC functions to assess the effectiveness of internal controls and monitor compliance with applicable UC policies and applicable standards of practice and regulatory obligations; and
6. Development and implementation of an effective system to reinforce individual accountability and responsibility for ensuring compliance to UC policies and/or regulatory obligations by the administration of equitable disciplinary actions commensurate with the severity of the infraction.

## **STANDARDS OF ETHICAL CONDUCT**

In May 2005, the Regents adopted a Statement of Ethical Values and Standards of Ethical Conduct applicable to all UC operations. The University of California also has codes of conduct which apply to specific constituents, i.e.: faculty, health sciences, staff, and students which guide them in carrying out daily activities within appropriate ethical and legal standards. These codes, the Program and related policies and procedures codify UC's commitment to compliance with legal, regulatory, Regental Policies, UC Policies, and other compliance requirements.

## **COMPLIANCE COMMUNICATION STRUCTURE**

Communication will flow from key compliance risk areas within the UC locations (campuses (10), Lawrence Berkeley National Laboratory (1), UCOP (including UCDC) (1) and ANR (1)) to the diverse and comprehensive Campus Ethics and Compliance Risk Committees ("Committees"), comprised of senior leadership responsible for the compliance efforts across the campuses and the health science areas, as well as Academic Senate representation. Campuses with medical centers/health science areas

may have additional ethics and compliance risk committees for “campus” and “medical centers” and these committees should work to coordinate their work. Each Compliance Committee is chaired by a senior leader of the campus/medical center and/or the designated Campus Ethics and Compliance Officer (CECO) or Chief Compliance Officer for the Medical Center. Each Committee will assure that high risk compliance priorities for the campus and medical center are addressed and will provide regular communications to the UC Compliance Risk Council related to their location’s compliance activities.

A University-wide Ethics and Compliance Risk Council (“Council”) will be comprised of the campus CECOs and medical center Chief Compliance Officers, as well as other university-wide leadership and faculty representatives. Communication to and from the Campus Ethics and Compliance Committees and Council will be facilitated through the CECOs, the Chief Compliance Officers from the medical centers, and the SVP/Chief Compliance and Audit Officer. The Council will be chaired by the SVP/Chief Compliance and Audit Officer.

In addition, compliance issues will be reviewed and discussed as necessary in the President’s Advisory Group (PAG). The SVP/Chief Compliance and Audit Officer is a standing member of PAG and will be responsible for raising and reporting compliance issues to the senior leadership in the Office of the President.

The SVP/Chief Compliance and Audit Officer will provide communication, metrics reports and updates to the Regents through the Board’s Compliance and Audit Committee, unless it is determined that the full Board is required for a communication or report.

## **UC ETHICS & COMPLIANCE RISK COUNCIL-- CHARTER**

The Council will be chaired by the SVP/Chief Compliance and Audit Officer and will include the CECOs/Chief Compliance Officers, representatives from campus senior leadership, Office of the President leadership, and the Academic Senate. The Council will meet regularly to provide oversight and advisory services to the UC system on the Program and compliance risk areas. The Council will be charged with the following, including but not limited to:

- Providing oversight for and advice relating to the UC-wide implementation and ongoing process of the Program;
- Sharing campus information and tools for system-wide use in identifying and mitigating high risk compliance areas in the system;
- Monitoring the compliance environment, including the Systemwide Compliance Plan approved by the Regents, as it relates to the UC enterprise performance metrics;

- Making recommendations on compliance policies and best practices to be implemented at the system-wide level; and,
- Facilitating submission of campus updates and annual reports to the SVP/Chief Compliance and Audit Officer for inclusion in regular compliance reports to the Regents.

## **CAMPUS ETHICS & COMPLIANCE RISK COMMITTEE-- CHARTER**

Each Campus/Location and Medical Center compliance and ethics committee will provide Program oversight and will be advisory to the SVP/Chief Compliance and Audit Officer. The Campus/location and/or Medical Center Committee will comprise senior campus leadership responsible for various areas of campus compliance risks including internal audit, risk services, academic leadership, research, and one or more members of the UC Office of Ethics, Compliance and Audit Services. The location's Committee will be chaired by a Senior Leader and/or the CECO and/or Chief Compliance Officer. The Committee will be charged with the following, including but not limited to:

- Responsibility and support for overall Program including implementation, performance metrics and ongoing processes of the Program;
- Conducting an annual risk assessment process leading to the development of a compliance plan for each location;
- Developing risk assessment tools for campus use in identifying and mitigating high risk compliance areas;
- Advising on the need for campus-specific guidance documents, education materials, and training courses, monitoring the compliance environment as it relates to specific risk areas and recommending compliance policies and best practices for system-wide implementation; and,
- Reporting compliance risk areas of high priority and proposed risk mitigation activities to the Council, both on an ad hoc basis, and through updates and annual campus compliance reports.

### • **PRESIDENT'S ADVISORY GROUP (PAG)**

The President's Advisory Group (PAG) is a regularly occurring meeting of the President and senior leaders at the Office of the President. During these PAG

meetings, compliance issues will be reviewed and discussed as necessary. The SVP/Chief Compliance and Audit Officer is a standing member of PAG and will be responsible for raising and reporting compliance issues to the senior leadership in the Office of the President.

## **CAMPUS ETHICS & COMPLIANCE OFFICER--ROLE DESCRIPTION**

The CECO for the campus and the Chief Compliance Officer for the medical center are senior leaders with appropriate authority to carry out the required duties and responsibilities of a compliance officer. These positions provide facilitation/leadership to the campus and/or medical center community on communication of compliance risks and, where appropriate, advice and counsel to the Chancellor and senior management on matters of compliance and advice on ethical standards of practice. Reporting to the Chancellor and to the SVP/Chief Compliance and Audit Officer, the CECO and Chief Compliance Officer will have independent authority and autonomy necessary to objectively provide a review and evaluation of compliance issues within all levels and in all subdivisions, subsidiaries and holdings of the campus. The CECO and Chief Compliance Officer will be a role model and champion for ethical and compliant conduct throughout the UC community. Specific duties of the CECO and Chief Compliance Officer include but are not limited to:

- Advising the Chancellor and the UC Office of Ethics, Compliance and Audit Services on the development, dissemination and implementation of an appropriate compliance infrastructure with performance metrics that are designed to detect and prevent non-compliant or unethical conduct throughout the campus and/or medical center.
- Facilitating a compliance risk assessment process and development of an annual compliance plan and annual compliance report for the location.
- Working with senior leadership from the location and the Committee designed to provide oversight, assistance and direction to the CECO and/or Chief Compliance Officer on the operation of and communication around the campus-wide or medical center-wide Program.
- Serving as a campus representative at the Council meetings.
- Coordinating ethics and compliance activities and Program initiatives with the Chancellor and/or Chief Executive Officer of the Medical Center and SVP/Chief Compliance and Audit Officer.



## **AUDITING AND MONITORING**

The auditing function and certain monitoring activities of the Program will be conducted by the UC Internal Auditors at each of the respective campuses and Lawrence Berkeley National Laboratory. The SVP/Chief Compliance and Audit Officer will lead an annual risk assessment for compliance and internal audit and determine the high-risk priorities for the audit and compliance auditing and monitoring plan from a system-wide perspective. Each campus will also provide its individual campus risk areas to be audited on the overall plan.

Compliance will assist in determining several university-wide audits which will be conducted each year based on high priority compliance risks identified through the risk assessment process and through further vetting with the location's Committees, Council and the Regents.

Monitoring will be done primarily through the management functions of each UC location and will be tracked by the respective Committees and Council. Over time, as the compliance monitoring activities carried out by management mature and become more robust, the role of the UC Internal Auditors will shift from one of auditing and monitoring to assess UC's state of compliance, to auditing the effective execution of the compliance activities within functional areas. However, as new high risk compliance areas are identified, Internal Audit and Compliance will continue to work together in a manner to assure the risks are being mitigated appropriately through either auditing and/or monitoring.

## **INVESTIGATIONS**

Assuring effective stewardship of UC's resources by guarding against misuse and/or waste of federal, state and other sources of funds is a priority shared by the Regents, faculty, administrative management and staff of the UC system, as well as the citizens of California. The UC Whistleblower Hotline ("Hotline") allows interested parties to report, confidentially and anonymously, instances where UC funds may have been misapplied or misused. The Hotline may also be used to report alleged instances of potential and/or actual non-compliance with UC policies and procedures and allegations of suspected Improper Governmental Activity.

The investigations function is responsible for coordination, tracking, investigating (where applicable) and managing complaints of suspected improper governmental activity made under the UC Whistleblower Policy and the Program. This process is carried out through a comprehensive program at all UC locations to ensure compliance with federal and state whistleblower laws and to provide a communication mechanism for all constituents within the UC environment to report real and/or potential non-compliant behavior. Information of suspected improper governmental



activity and real and/or potential compliance matters are received through a variety of reporting channels to include an independently operated anonymous hotline service. All reports are investigated as appropriate and through the Program are coordinated with the Office of General Counsel to ensure that there is no duplication of effort and investigative services are optimized. Additionally, advice from leaders in risk management, areas of specialty law and human resources, or other specialty areas, are provided, as appropriate.

The Program will continue to review existing whistleblower training, informational and educational programs as well as deliver training to provide assurance that the UC Whistleblower Policy and the Policy for the Protection of Whistleblowers from Retaliation is understood, system-wide. The investigations function will conduct system-wide investigations in circumstances where the investigation process requires independence and objectivity, both in fact and appearance. All substantiated reports and subsequent resolution data will be tracked, aggregated and trended to enhance system-wide process improvement activities.

## **RESPONSE AND PREVENTION**

The response and prevention function of the Program will be managed in a distributed and collaborative framework. Working within the communication structure of the Program, non-compliant events and trends will be analyzed by the Committees and reported to the SVP/Chief Compliance and Audit Officer (within or outside formal Council meetings, as appropriate). Response to non-compliance will be the responsibility of the campus Chancellor and managed at the campus level in consultation with the UC Ethics and Compliance Program leadership. All actions in response to non-compliance will follow UC policy.

The SVP/Chief Compliance and Audit Officer (and other designees as appropriate) will work with the location's Committees, Council, and other appropriate UC leadership, including Academic Senate leadership, to analyze non-compliant trends from a system-wide perspective and to recommend revisions to policy, as needed, to provide consistent responses to specific violations.

Prevention of non-compliance will be the responsibility of the Chancellor and addressed directly at the campus level, with assistance from the Program, through efforts and resources committed to enhance education/training and monitoring/auditing functions. Prevention of non-compliance or reoccurrence of non-compliance on a system-wide basis will also be addressed through targeted training and auditing efforts generated from the advice of the Committees, Council and the Program leadership.

## ANNUAL EVALUATION

The United States Federal Sentencing Guidelines ("FSG") were revised in November 2004 to include a "periodic measurement of program effectiveness" among the criteria for an effective ethics and compliance program (U.S.S.G. §8B2.1 (b) (5) (B)) and to "assess their risk" in an effort to identify operational gaps that might put the organization at greater compliance risk and to then develop and implement processes to remediate that risk. One of the goals of an effective compliance program is to effectuate the change needed to improve operational processes to ensure compliance with regulatory requirements. The change or process improvement effort should include an evaluation element to determine the effectiveness of the change that was made in an effort to re-focus future activities and distribute limited resources in the most efficacious manner.

Annually, the SVP/Chief Compliance and Audit Officer is responsible for developing a report of Program activities to present to the *Committee on Compliance and Audit* of the Regents. That annual report will include the measurement of the system-wide office and the individual campuses to pre-established performance metrics and outline key observations and recommendations for ongoing Program improvement.

The metrics used to measure the Program will be consistent with those typically used by the compliance industry. The compliance industry often measures program effectiveness by assessing a compliance program's integration of each of the seven elements of an effective compliance program, and may include the following analyses:

1. Conducting an employee survey to gauge the employees' understanding of how compliance is integrated into their daily job functions and their ability to identify potential compliance issues and to respond according to policy;
2. Summarizing the numbers, categories and attendance rates at mandatory compliance education offerings;
3. Identifying trends in investigation and audit/monitoring activities and whether or not performance improvement activities occurred to mitigate the identified risks;
4. Measuring the effectiveness of compliance program structures, such as local and system-level compliance committees through an analysis of outcomes against pre-established performance/measurement criteria; and,
5. Developing or revising policies and procedures to address identified compliance risks.

## **SUMMARY**

This Updated Program Plan is provided as a high-level summary of the Program's purpose and mission, roles and responsibilities of the Regents, campus leadership and respective Committees and structure and elements of the Program. This Program Plan was originally established in 2008 as an effective means to add value to and protect UC's mission of teaching, research and public service excellence in the complex and highly regulated higher education environment. The Program Plan achieved success in establishing an effective Compliance and Ethics Program through the Regents participation in oversight; the accountability and ownership of UC's leadership at each of the UC locations and the ability of the UC system to provide the necessary direction, resources, references and guidance. It is the goal of this Program Plan to sustain the continued development of an effective UC Ethics and Compliance Program by detecting and preventing improper governmental activity and promoting UC's compliance with legal, regulatory, Regental policies, UC policies and other compliance requirements.