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Office of the General Counsel

TO MEMBERS OF THE GOVERNANCE COMMITTEE:

ACTION ITEM

For Meeting of May 20, 2020

AMENDMENT OF REGENTS POLICY 1112 – POLICY ON REVIEW OF ALLEGATIONS OF BOARD MEMBER MISCONDUCT

RECOMMENDATION

Regent Simmons recommends that the Governance Committee recommend to the Regents that Regents Policy 1112: Policy on Review of Allegations of Board Member Misconduct be amended as shown in Attachment 1.

BACKGROUND

At its meeting in March 2017, the Board adopted Regents Policy 1112: Policy on Review of Allegations of Board Member Misconduct to provide specific procedures for addressing allegations of misconduct involving Board members.

Regents Policy 1100: Statement of Expectations of the Members of the Board of Regents states that: "Regents' conduct, whether in their official or private capacity, must be consistent with the University's Statement of Ethical Values and Standards of Ethical Conduct and the University's Sexual Violence and Sexual Harassment Policy. Failure to comply with these standards shall be a basis for appropriate action." Effective July 31, 2019, the University issued an updated Policy on Sexual Violence and Sexual Harassment (SVSH Policy) that clarified and revised the standards and procedures for handling allegations of sexual misconduct by University employees.

A Regents working group, chaired by Regent Simmons, convened to revise Regents Policy 1112 to harmonize the procedures for addressing allegations of sexual misconduct by members of the Board with the general procedures in the SVSH Policy for University employees. (See Attachment 2 for the SVSH Policy.) In the course of its work, the working group identified additional policy changes designed to enhance the fairness and independence of the process.

The proposed amendments include the following:

1. For allegations of conduct in violation of the University's SVSH policy, the Systemwide Title IX Officer will follow the processes in, apply the standards of, and afford the

complainant and the respondent Regent the rights and procedures available under the SVSH Policy, including an equal opportunity to meet with the investigator, submit information, identify witnesses, respond to the evidence gathered, and have an advisor present during interviews and any related meetings. The Systemwide Title IX Officer will keep the three-member Regent panel mandated in Regents Policy 1112 informed throughout the process, consulting with them as necessary. If a conflict exists between Regents Policy 1112 and the SVSH Policy, the Systemwide Title IX Officer will apply the provisions of the SVSH Policy and may consult with the Regent panel as necessary when addressing such conflicts.

2. For other complaints of misconduct, a neutral Complaint Resolution Officer will oversee the processing of the complaint, providing information to and consulting with the Regent panel as appropriate. The Regents will select the Complaint Resolution Officer to serve for an established term, and the Complaint Resolution Officer will oversee any complaints that arise during that term. The Complaint Resolution Officer will assess complaints to determine if an investigation is appropriate, select the investigator, oversee the investigation, and recommend a sanction where the investigation substantiates a breach of the ethical principles or duties as set forth in the University Bylaws, policy, or applicable law. Where the matter involves an alleged violation of University policy, the Complaint Resolution Officer will consult with the appropriate University policy-owner to ensure a consistent interpretation of policy. Under current policy, the General Counsel serves in this oversight role and the investigation and complaint process is confidential under attorney-client privilege. Although the proposed process will not be privileged, the participants in the process will be afforded privacy and, consistent with existing University practices, complaints will be considered private and confidential to the fullest extent possible as allowed under law and policy.

3. Complaints of misconduct will fall within the scope of the policy if they relate to conduct by a Regent in their official capacity, or if a Regent's non-official conduct is covered by, and could constitute a breach of, the SVSH Policy. Under the current policy, a Regent's non-official conduct can be investigated when it violates the SVSH Policy, the Statement of Ethical Values and Standards of Ethical Conduct, or a University policy that applies directly to a Regent's non-official conduct and affects the University's reputation, integrity, or policy objectives.

4. Complainants will be explicitly entitled to procedural protections parallel to what the Regent is entitled to, such as the right to review and respond to the evidence upon which the Investigator will rely prior to the report being finalized; the right to bring a personal representative (including an attorney) to any personal conference; the right for their response to become part of the formal record; and the right to comment on appropriate sanctions. Both the complainant and the accused Regent will be afforded the opportunity to provide a statement to or appear before the Board before the Board votes on sanctions.

These procedures are intended to strike a balance that ensures that both complainants and respondents receive fair and impartial treatment, an opportunity to be fully heard, and privacy to the maximum extent consistent with University policy and applicable law.

Attachment 1: Regents Policy 1112 – Policy on Review of Allegations of Board Member Misconduct

Attachment 2: University of California Sexual Violence and Sexual Harassment Policy (for information)