

UC Legal - Office of the General Counsel

TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

## DISCUSSION ITEM

*For Meeting of September 22, 2022*

### OVERVIEW OF UNIVERSITY OF CALIFORNIA DELEGATIONS OF AUTHORITY

#### EXECUTIVE SUMMARY

In response to questions raised by the Regents at a special meeting in August 2022, the Office of the General Counsel will provide an overview of the University of California's delegations of authority; the scope of authority of Board leadership; and examples of key delegations adopted for various types of transactions, including delegation thresholds related to athletics contracts. This item is forward-looking and is intended to inform a discussion of potential future changes to approval authority for major developments in campus athletic programs. It is not intended to address the current discussions surrounding UCLA's plan to join the Big Ten Conference. Those discussions will be the subject of a separate closed session discussion during the September Regents meeting.

#### BACKGROUND

##### Board of Regents Overall Authority and Authority to Delegate

Article IX, Section 9 of the California Constitution provides that the corporation known as The Regents of the University of California, in the form of the Board of Regents, expressly is authorized to "delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise."

Regents Bylaw 22.1 implements this provision, recapping the broad authority of the Board of Regents to manage the University's affairs, its authority to delegate portions of its authority as it deems appropriate, and its ability to rescind such delegations:

**"Pursuant to Article IX Section 9 of the Constitution of the State of California, the full powers of organization and government of the University inhere in and originate with the Board, which has the authority to delegate those powers as it determines to be in the best interest of the University. Any authority delegated by the Board may be rescinded by action of the Board.** The Regents hereby delegate authority to the President of the University to oversee the operation of the University, in accordance with policies and directives adopted by the Board, and as further specified in Bylaw 30

(President of the University). This delegation is subject to the powers specifically reserved to the Regents in Bylaw 22.2 below (Reserved Powers), in Committee Charters, and in Regents Policies requiring that matters be approved or otherwise acted on by the Board. (Emphasis added).”

Consistent with this framework, the Regents have delegated broad authority to the President and to the Chancellors to manage the affairs of the University and to the Principal Officers of the Regents (the Secretary and Chief of Staff, General Counsel, Chief Compliance and Audit Officer, and Chief Investment Officer) in their respective areas of responsibility, *except* in specified areas deemed to be of particular importance by the Regents. In these areas, the Regents expressly have reserved authority for themselves to act.

Bylaw 22.2 includes a list of subjects for which authority is reserved to the Regents, although other reserved areas of authority are contained in Regents Policies and other governing documents. For example, in addition to reserving authority over the operation of the Board and its Committees, Bylaw 22.2 reserves to the Board of Regents approval authority over matters with strategic importance to the University such as:

- approving criteria for University admissions, upon recommendation of the Academic Senate;
- establishing or eliminating colleges, schools, graduate divisions and organized multi-campus research units;
- dismissal of tenured faculty;
- approval of the University budget and requests for State appropriations;
- setting tuition and other specified student fees;
- capital projects and external financing above certain thresholds specified in Regents Policy;
- appointment of and compensation for specified senior administrators;
- settlements of claims and litigation above certain thresholds specified in Regents Policy;
- bidding on prime contracts to operate a National Laboratory; etc.

#### Delegations of Authority to the President and Chancellors

Bylaw 22.1 delegates broad authority from the Board of Regents to the President to oversee the operations of the University, subject only to those powers specifically reserved to the Board in Bylaw 22.2, in Committee Charters, and in Regents Policies to the extent that those policies require that matters be approved or otherwise acted on by the Board. Bylaw 22.1 expressly provides that the Board of Regents may rescind any authority it has delegated by action of the Board.

Bylaw 30 further recognizes the President as the executive head of the University, with “full authority and responsibility over the administration of all affairs and operations of the University, except those activities within the responsibility of the Principal Officers.” In the execution of these responsibilities, the President “implements the policies and objectives of the Board, and keeps the Board informed of all significant developments affecting the University.”

The President may delegate any of the duties of the office except service as an *ex officio* Regent.

Bylaw 31 recognizes the Chancellors as the executive heads of their campuses who set the policies, goals, and strategic direction for their campuses. They are responsible for “implementing the policies and objectives of the Board and of the President of the University, and apprising the Board and the President of the University of significant developments affecting their campuses and the University.” They are responsible for “the organization, internal administration, operation, financial management, and discipline of their campuses within the budget and policies approved by the Board and/or the President of the University.”

The Chancellors also exercise authority delegated to them by the President through formal Delegation of Authority letters, which are maintained centrally and are publicly available on the University’s systemwide policies websites.

#### Regents Rescission of Delegated Authority or Reversal of Actions Taken Under Delegated Authority

As discussed above, Regents Bylaws – and general governance principles – permit the Board of Regents to rescind any delegation of authority previously issued. The Board of Regents can take action to rescind a delegation of authority over either an entire type or class of matters, or over an individual matter or transaction. Rescissions of authority over a type or class of matters should be codified in Regents Bylaws or Regents Policy, while rescission of delegated authority over an individual matter or transaction could simply take the form of the Board acting on that matter.

The Board can rescind authority over a particular matter or transaction by voting at a publicly noticed Regents meeting, or via the Interim Action process discussed further below, whereby the Chair of the Board and the Chair of the Standing Committee with jurisdiction over the matter have been delegated authority by the Board to take action on behalf of the Board on matters where time sensitivity requires action between Regents meetings.

As a matter of governance, the Board of Regents has the authority to attempt to reverse an action already undertaken by University administrators under delegated authority. However, dependent on the facts of the matter, such a reversal might be infeasible (e.g., a building approved for demolition might already have been demolished prior to the Board’s action attempting to reverse the approval), or might create legal, financial, or reputational risks to the University.

#### Delegation of Authority to Board Leadership to Act via Interim Action

Bylaw 27.5 delegates authority from the Board of Regents to the Chair of the Board and the Chair of the Standing Committee with jurisdiction over the matter to take action on matters that would otherwise require Board approval, but where there is time sensitivity that requires action between Regents meetings. Bylaw 27.5 also permits interim action by the Governance Committee, in lieu of the more typical interim approval by the Board and Committee Chairs, for matters requiring action between meetings of the Board. The Board is not required to ratify such

actions, but the Board receives notice of all actions approved through this interim action process in the materials of the next regular Regents meeting.

The purpose of this longstanding delegation of authority is to permit Board leadership to act on urgent matters without the University suffering the negative consequences of delay. Theoretically, the full Board has the authority to attempt to reverse actions taken under this delegation of interim action authority as discussed above, although again, such a reversal might be infeasible or might create legal, financial, or reputational risks to the University.

#### Board-Action Triggers Across Various Categories of Transactions/Matters

The Board has delegated authority in many areas subject to parameters or triggers, above which there is no delegation of approval authority to University administrators. The intention of such Board-action triggers is generally to reserve to the Board approval authority for those matters that are of the greatest import to the University, whether that be for strategic reasons, financial impact, or reputational interests. While it is important for the Board to reserve authority over matters of significance to the University, commentators have recommended that the Board delegate substantial authority to administrators and executives so that the Board can focus its energies on strategic matters rather than routine transactions.

Board-action triggers for different types of matters have been established by the Board for issues and transactions that are material or strategically impactful in a particular subject area. Several Regents commented at the August 2022 meeting that consideration should be given to achieving consistency among Board-action triggers across various types of University matters. For background information, the following chart contains a non-exhaustive list of Board-action triggers for various types of University transactions or matters. Such matters generally fall into several categories: approval and financing of capital projects; acquisition/disposition of real property; settlement of claims and litigation; compensation for executives, non-State funded UC Health employees, and coaches and athletic directors; and UC Health business transactions.

The Board-action triggers vary significantly by subject area because there are differences in the volume and nature of different categories of University transactions. The adoption of a single financial trigger could lead to unintended results. For example, a \$10 million construction project could be viewed as a routine transaction appropriate for delegated authority (and the volume of such transactions could overwhelm the Regents' agenda if Board approval were required), while a \$10 million settlement of litigation could be viewed as a significant and material matter requiring Regents' approval. Note that in many cases, the triggers below have been developed within the last few years in consultation with Standing Committees for matters within their jurisdiction. Other triggers have not been updated in recent years.

| <b>Examples of Transactions/Matters</b>                       | <b>Threshold for Delegation of Authority</b>   | <b>Delegee/Policy</b>   |
|---|--|---|
| Acquisition/Disposition of Real Property                      | \$70M  | President/RP 8103   |
| Budget and Design of Capital Projects (consistent with CFP)   | \$70M  | President/RP 8103   |
| Augmentations for Capital Projects Approved by Regents        | 15% or \$20M, whichever is less  | President/RP 8103   |
| Leases  | Term up to 20 years and annual consideration up to \$5M  | President/RP 8103   |
| External Financing (general)                                  | \$20M  | President/RP 5300   |
| External Financing (capital project consistent with CFP)      | \$70M  | President/RP 5300   |
| Endorsement of Fundraising Campaigns                          | \$250M   | President/RP 5201   |
| Settlement of Claims and Litigation                           | \$1M; or any matter that raises significant questions of University policy   | General Counsel/RP 4105   |
| Executive Compensation  | All SMG Level 1 = reserved to Regents<br>SMG Level 2 = Regents if exception to policy; or 75 <sup>th</sup> percentile of MRZ; or over 60 <sup>th</sup> percentile of MRZ and 10% increase over incumbent | President/RP 7701   |
| General Counsel to recover monetary claims due the University | No limit – reports due to Regents on matters over \$100,000  | General Counsel/RP 4102   |
| Athletic Coach/Athletic Director Compensation                 | Variety of parameters including increase of 30% on annual guaranteed compensation  | President/Regents action in 2007 and 2008   |
| UC Health Business Transactions                               | Up to 3% of annual operating revenue of health center (cumulative annual cap of 5%)  | HSC/HSC Charter<br><br>Note there is a further redelegation to HSC Chair, EVP and Chancellor for transactions up to 1.5% of operating revenue or \$25M, whichever is less |
| HSC Compensation  | No limit – approval of appointment of and  | HSC/HSC Charter   |

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|-------------------------|---|-------------------|
|                         | compensation for UC Health SMG positions funded by sources other than State general funds |                   |
| Significant IT Projects | Reporting required for projects over \$5M (but not approval authority)                    | President/RP 5103 |

Most of the existing Board-action triggers relate to University expenditures or other negative/downside impacts. However, a few do relate to University revenues or other positive/upside impacts, including, for example, requirements for Regents’ approval for settlement of affirmative recovery litigation over \$1 million, and Regents’ approval for the sale of real property over \$70 million. Many of the triggers are stated in absolute dollar values, some are stated in percentages of relevant budgets, and some are stated in qualitative rather than quantitative terms (e.g. litigation settlements that raise significant questions of University policy).

Some delegations of authority are unlimited in terms of dollar value, although they are governed by substantive policies and other administrative controls. For example, there is no dollar amount trigger that reserves authority to the Board of Regents for the general procurement of goods and services, even for very high dollar value transactions. Similarly, there is no dollar amount trigger that reserves authority to the Board of Regents for the purchase of investments, even for very high dollar transactions. In such cases, the delegated authority is controlled by Regents Policies, Presidential policies, and other governing documents imposing guidance and limitations based on important University principles.

Athletics Delegation Issues

At their August 17, 2022 meeting, the Regents discussed a proposal for future delegations and Board-action triggers in the context of athletics. The proposal was to reaffirm the general delegation to the President over athletics matters not already reserved to the Regents, while prohibiting re-delegation over athletics matters meeting one or more of the following criteria:

- The proposed transaction likely will have material adverse financial impact on other campus(es) in the UC system—for purposes of this provision, “material” means an adverse impact equal to or greater than ten percent of the operating revenue(s) of the athletic department(s) of the other campus(es);
- The proposed transaction raises a significant question of University policy; and/or;
- The proposed transaction likely will create significant risk of reputational harm to any campus or to the University.

The proposal discussed in August would also obligate the President to notify the Chair of the Board of Regents and the Chair of the Standing Committee with jurisdiction over the matter, in advance of any decision, when matters falling within the above criteria are expected to come to the President for decision.

The General Counsel will facilitate additional discussion to seek consensus of the Board around preferred future approval authority delegations for athletics matters.