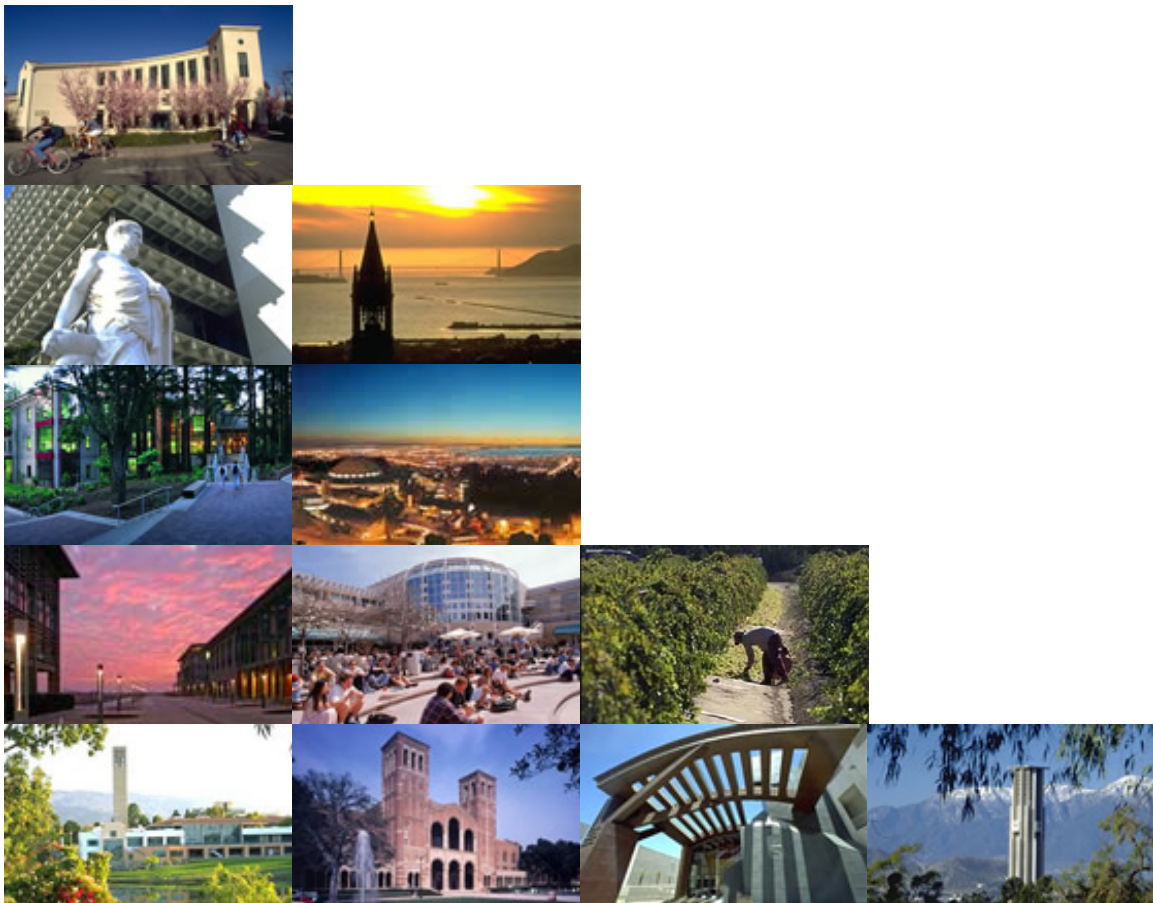


# University of California Ethics and Compliance Services

## Annual Report for 2007-08 (10/2007 - 6/2008)



## I. Program Executive Summary

A formal plan for the University of California's Ethics and Compliance Program was requested by The Board of Regents in 2006 in response to several high profile compliance issues. In the fall of 2007, Sheryl Vacca, Senior Vice President and Chief Compliance and Audit Officer ("CCAO") was recruited to develop a Systemwide Ethics and Compliance Program ("Program") which was presented for approval to The Regents July, 2008. Obtaining input from key leadership at the campuses, LBNL, ANR and UCOP was critical to getting the Systemwide ethics and compliance efforts initiated. It was important for leadership to understand that the model was developed to help facilitate risk-based communications, identification of risks and assuring that mitigation of compliance risks were being addressed across a campus, between campuses and ultimately to The Regents. Identifying a lead campus compliance officer for each location, obtaining commitment and ownership from each location on the concept of a Systemwide ethics and compliance effort and assisting with compliance risk identification and mitigation efforts were recognized as key concepts that would ultimately lead to a positive impact for the University.

In addition to establishing the Systemwide program, a compliance inventory of policies, procedures, training, education and audit efforts surrounding four identified areas of risk: research, conflicts of interest, contracts and management, and executive compensation was conducted. This involved site visits to every campus, meeting with several different constituents in these risk areas, collecting documentation, communication and validation efforts.

Several education opportunities were identified during this period which provided for risk areas to be addressed such as the National Institutes of Health ("NIH") PubMed rules, Clery Act, and research-related time and effort reporting.

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There are many compliance risks which are priorities for our University but the following were particularly focused on this past fiscal year due to internal/external activities surrounding them:

1. **Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Breaches** – several high profile instances of privacy breaches occurred across the System that exposed the fragmentation of a Systemwide approach to HIPAA Privacy and Security rules compliance, staff education and monitoring activities.
2. **Research Time and Effort Reporting** – the accuracy of time and effort reporting by principal investigators as per grant or contract requirements are under intense scrutiny by the Federal Government across higher education industry. Efforts have been initiated Systemwide to provide a web-based reporting system that will assist in identifying gaps in compliance to the regulations. At the time of this report, seven of ten campuses have implemented the web-based reporting system with one in the implementation stage (UCSB) and two (UCI and UCSC) continuing to use the manual paper-reporting system. The two paper-based campuses report that their processes are adequate to accurately monitor and capture the needed data per UC policy.

The UC Whistleblower Confidential Hotline and anonymous reporting process was in operation this past year and 503 new investigations were initiated with 541 investigations being completed (both new and ongoing). The largest single type of complaint received this year related to workplace misconduct. The majority of these allegations was reported through the hotline and most reflected management issues rather than true “Improper Governmental Activities” (IGAs). The prevalence of workplace misconduct complaints is consistent with industry-wide findings. One goal of the overall program for fiscal year 2009 is to identify a

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more robust reporting system that will include a detailed case management and trended reporting system that will allow the Program Office to better manage individual cases and identify potential Systemwide trends for discussion of potential resolution and monitoring efforts.

The following report outlines in detail the activities of the Program as it was being developed during fiscal year 2008. The Board of Regents was presented with the Ethics and Compliance Program Plan at their July, 2008 meeting and we have no reason to believe the plan will not be completed in FY09. Additionally, assurance that our UC locations are proactively identifying and discussing real and/or potential high risk compliance issues across the University to develop solutions to mitigate those risks are priority for the overall efforts of the Program.

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## II. Program Development and Structure

With the recruitment of Sheryl Vacca CCAO in the Fall of 2007, the University's Systemwide Ethics and Compliance Program started to become a reality. A search of higher education corporate compliance programs was conducted to provide a model foundation to build a unique Ethics and Compliance Program, one which was based upon identified "best practices" from public universities of similar size/multiple campuses and scope of services. However, since no single university system mirrored the University of California, the Program was designed from a compilation of corporate compliance best practices gleaned from academia and the healthcare industry using the Federal Sentencing Guidelines ("FSG", Chapter 8) as the foundation for its structure. The FSGs span all industries and are recognized as a cornerstone for an effective compliance program. Additionally, several different federal contractual requirements mirror these guidelines in the mandatory compliance components, i.e.: National Institute of Health (NIH), Federal Acquisition Regulations (FAR), etc.

### *Ethics and Compliance Program Structure Development*

As the draft structure of the Compliance Program began to take shape based upon the complex and unique needs of the University of California, the CCAO went "on the road" to solicit the input of key Systemwide stakeholders. Presentations of the Program Structure and updates on the status of the Program were periodically scheduled and provided to various constituency groups during the first and second calendar quarters of 2009, such as the President's Cabinet, Council of Chancellors, Vice Chancellors for Administration, Vice Chancellors for Research, Controllers, ABOG, Internal Audit Directors, Health Science Compliance Officers, Chief Human Resources Officers (CHROs), as well as key Academic Senate

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leadership, Agriculture and Natural Resources (ANR) senior management and other UCOP support services functions.

The Ethics and Compliance Web Site was also developed to assist with combining related links to compliance efforts at the Office of the President and within UC, as well as to establish a site for compliance reference and easy identification of “go to” resources, when needed.

### ***Ethics and Compliance Services Office Staffing Model***

While working on the development of the Program structure, the CCAO simultaneously built the Office of Ethics and Compliance Services (“Office”) by developing and implementing a staffing model (please refer to Appendix E – Ethics and Compliance Officer Organization Chart) that focuses on the support of the campuses as they identify and attempt to mitigate compliance risks. Integral to this model are the following Program Office functions:

1. *Compliance Operations* which includes two directors of ethics and compliance who report to the Deputy Compliance Officer and who each have liaison responsibilities for five campuses. The Northern campuses include Davis, Berkeley, Merced, Santa Cruz and San Francisco and the Southern campuses include Los Angeles, Santa Barbara, Irvine, Riverside and San Diego. An education analyst and a general analyst support the Ethics and Compliance Directors.
2. *Investigations Unit* includes the Director of Investigations who manages, with the assistance of an Investigations Analyst, the Whistleblower Hotline. The functions of the investigations unit are detailed later in this document.

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3. *Research Compliance* was singled out as a primary focus of the Program due to the convergence of large amounts of Federal and State research funding and the accompanying complexities of compliance issues specific to the scope and contractual and/or regulatory requirements of the research activities. The Research Compliance Director was recruited from within UCOP and has extensive UC experience supporting Research.

At the close of Fiscal Year 2008, it was anticipated that The Board of Regents would review and approve the UC Ethics and Compliance Program Resolution and Plan (please refer to Appendix C: Approved Ethics and Compliance Program Resolution and Appendix D: Ethics and Compliance Program Plan Document).

### III. Program Activities

#### *Compliance Program Inventory—January 2008 to Present*

At initial meetings and interviews with the Board of Regents and key campus and UCOP leadership, the CCAO identified four major areas of concern regarding compliance risk: 1) research; 2) conflicts of interest and conflict of commitment; 3) contracts and grant management; and 4) executive compensation. In addition to developing the Program Office and Systemwide Ethics and Compliance Structure, one of the first projects undertaken by the newly created department was a comprehensive inventory of compliance activities related to the above four identified areas across the ten campuses and the ANR Division. The inventory of current campus activities surrounding the four key compliance risk areas was leveraged to incorporate existing activities into an Ethics and Compliance Communications Model that would highlight campus activities and formalize a compliance reporting mechanism from the campuses through The Compliance and Audit Committee of The Board of Regents.



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As this inventory was designed as a identification of current compliance activities in the aforementioned areas, we were able to highlight the status of each campus relative to the oversight, existence of policies and procedures, audit and monitoring activities and education programs related to those areas. One of the goals of the inventory was to identify “Good Works”, processes that differentiated one campus from another, and could be shared among the campuses as requested. This process of inventorying current compliance activities related to specific compliance risks has been designed for use as needed for future reviews of UC compliance efforts in high risk regulatory areas.

At this time the inventory database is being technically reviewed and refined for ease of use in analyzing and identifying areas for enhancing compliance efforts, such as audit and monitoring and education and training in FY 2009.

### ***Incorporation of Research Compliance Activities***

As part of the Office development noted above, the position and responsibilities of the Director of Research Compliance moved from the Office of Research to the Program Office in an effort to consolidate regulatory compliance activities and provide oversight by the CCAO. The Director continued to lead the Research Compliance Advisory Committee (RCAC) monthly conference calls and held the bi-annual in-person committee meeting in May 2008. The Research Compliance program continues to focus on the areas of human subject research, animal welfare regulation, and conflicts of interest in research, research misconduct, export controls, and safety regulations affecting laboratory research, such as biosafety, radiation safety, and general laboratory safety. In addition to the RCAC meetings, the Research Compliance program leads the Institutional Animal Care and Use Committee (IACUC) Directors workgroup and participates in a number of system-wide committees and taskforces including:

- Institutional Review Board (IRB) Directors,

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- Conflict of Interest Coordinators
- Attending Veterinarians
- Animal Records Workgroup
- Contract and Grant Officers
- Biosafety Officers
- Radiation Safety Officers
- EHS Leadership Council

The Research Compliance unit is regularly asked by these groups to present compliance related information during their Systemwide meetings. The unit also provides guidance to campuses on ad hoc issues, identification of new research compliance requirements, and assists in the development of operational responses to new research compliance challenges. In an effort to coordinate the Office of the President efforts and responses to Systemwide issues, the Research Compliance unit regularly meets with other Office of the President units including the Office of Research, Office of Technology Transfer, and the Research Administration Office.

### **Key Compliance Areas of Concern in Research**

Key compliance risks identified during this FY08 reporting period include the following:

#### *Export Controls and Fundamental Research*

- As a matter of longstanding University policy, UC maintains the freedom to publish its research results and select the members of its research teams on the basis of scientific merit, rather than citizenship or visa status. This allows the University to take advantage of certain protections for basic, fundamental research that are contained in the U.S. export control laws. Recently, however, federal funding agencies have attempted to impose publication and citizenship restrictions in

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some research awards. Accepting such restrictions not only violates University policy but significantly increases the risk of violating the export control laws. This point was highlighted by the recent criminal prosecution of a university professor in another state for violating export control laws in a research project that contained citizenship restrictions. The Research Compliance office has assisted in producing guidance documents and model language for research agreements and has conducted extensive training for campus Sponsored Programs offices.

### *Animal Rights Extremism*

- In the past several years, physical attacks against researchers and their families and vandalism of their homes and property have greatly increased. Many of the researchers are targeted through documents obtained in requests under the California Public Records Act (PRA). The Research Compliance office has worked with campus Attending Veterinarians, Institutional Animal Care and Use Committee directors, members of the Office of the General Counsel, and other Office of the President units to strike a balance between producing the information required under the PRA while protecting the identity and personal information of researchers to the greatest extent legally possible. In addition, Research Compliance office has worked with OP units to communicate with campuses about funding for physical security services and measures to guard against such attacks.

### *Health Sciences Compliance*

At the close of fiscal year 2007-2008 and due to budgetary reductions, the Program was given the responsibility for oversight of the Systemwide Health Sciences Compliance efforts that were previously managed by the UC Health Sciences Compliance Officer/Chief Medical Officer in the Division of Health Affairs.

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That position also included the designated UCOP HIPAA Privacy and Security Officer. In preparation for additional responsibilities in this area, the CCAO appointed the Director of Research Compliance as the Interim Systemwide HIPAA Privacy Officer and the UCOP Information Technology (IT) Security Officer as the HIPAA Security Officer. The Program provided leadership to the Health Sciences Compliance and HIPAA calls, and prepared for the semi-annual on-site Health Sciences Compliance meeting scheduled for August 2008.

### Key Compliance Areas of Concern in Health Sciences

Key compliance risks identified during this FY08 reporting period include the following:

#### 1. Breaches of HIPAA privacy and security at the Medical Centers

- The highly visible HIPAA privacy and security breaches at UCLA and UCSF identified a need for review and revision of Systemwide HIPAA policy and procedures, implementation strategies and enforcement activities. Three Systemwide work groups were established with representation from all Medical Centers and campuses to address patient, student and employee HIPAA privacy concerns and develop solutions for complying with HIPAA regulations. Work continues at this time with a planned report to The Board of Regents in early Fall on the status of HIPAA policies and procedures.

#### 2. Conflicts of Interest

- The UC Health Care Vendor Relations Policy was approved following two years of vetting among campus and UCOP leadership and the Academic Senate and was signed by the UC President with a July 1, 2008 implementation date. The *Physician Payments Sunshine Act of 2007* which amends Part A of Title XI of the Social Security Act requiring companies or their agents that manufacture drugs, medical

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devices, or medical supplies to disclose all payments of over \$25 in value made to "to a physician, or to an entity that a physician is employed by, has tenure with, or has an ownership interest in" was the impetus for this Presidential Policy. The Medical Centers are working on implementation strategies.

### IV. Investigations

The University's Whistleblower Program implements California Government Code 8547 and 8548 through the Systemwide Whistleblower Policy and Policy for Protection of Whistleblowers from Retaliation.<sup>1</sup> Working collaboratively with the Human Resources Department, the Investigations staff notifies the campuses, Lawrence Berkeley National Laboratory (LBNL), ANR, and UCOP of their requirement to post flyers describing the Whistleblower Program and to send an electronic reminder about the program to all employees with e-mail accounts by July 1<sup>st</sup> of each year.

#### *Monitoring/Investigating Activities and Specialized Training*

During the past year, the Program Office Investigations unit accomplished the following.

- Conducted investigations within OP and on behalf of LBNL and the Berkeley, Davis and Merced campuses.
- Consolidated system-wide investigations statistics for all four quarters of the fiscal year and conducted a trend analysis of the year's portfolio.
- Established a database of external consulting resources for investigation, training and legal services that are available for referral.

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<sup>1</sup> Details of the system-wide Whistleblower Program are available at <http://ucwhistleblower.ucop.edu>. In addition, each campus and the Lawrence Berkeley National Laboratory (LBNL) maintain whistleblower pages on their websites, describing local procedures and contacts.

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- Established a Professional Services Agreement (PSA) in the form of a master contract with an investigative resource, for purposes of rapid engagement, state-wide. Negotiated with a computer forensic business to establish a professional consulting relationship for specialized investigation support.
- Conducted a workshop for the campus and lab Whistleblower Coordinators (WBCs) and Retaliation Complaint Officers (RCOs) in March.
- Participated in Investigations Work Group meetings at the Santa Cruz, Riverside, Los Angeles, Irvine and San Diego campuses, and at LBNL.
- Developed and delivered training in the Whistleblower Program to the Council of Deans and Vice-Chancellors at the Merced campus and at the November and June sessions of the Business Officers Institute (BOI).
- Developed requirements for an investigations case management product with a system-wide, integrated database that would support statistical and trend analysis, as well as benchmarking with other higher education institutions.
- Created an Investigations section within the CCAO's web domain, making educational resources available to University employees<sup>2</sup> and leaders in the hotline and investigation areas.

### ***Monitoring and Assurance Activities with Significant Findings***

During the fiscal year, 503 new investigations were initiated and 541 investigations were completed (both new and ongoing). The majority were conducted by Internal Audit, Human Resources, LDOs or a Compliance Officer. However, a total of 22 different functional areas participated in investigations, including University Police, Academic Personnel, the Title IX Office, the Institutional Review Board and Environmental Health and Safety.

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<sup>2</sup> <http://www.universityofcalifornia.edu/compaudit/educationtrng.html>

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The largest single type of complaint received this year related to workplace misconduct. Most of these allegations were reported through the hotline and most reflect management issues, rather than true “IGAs”. The prevalence of workplace misconduct complaints is consistent with industry-wide findings. Our current method of receiving information does not provide a breakdown of categories or outcome detail of investigations for accurate trending purposes. Because we utilize a 3<sup>rd</sup> party for the hotline calls, allegations resulting from the anonymous hotline are the only instances where reliable specifics are reported. Examples of workplace misconduct that has been reported include mistreatment of staff by faculty or administration, in the campus setting or, in the medical centers, mistreatment of staff by physicians. As the majority of workplace misconduct reports are personnel issues, any resulting actions are typically not disclosed. Our focus for FY2009 is to convert the current capabilities to a Systemwide compliance issue reporting program, allowing us to gather detailed information about all allegations, regardless of source, their dispositions and corrective actions. At that point we will be able to accurately aggregate and trend such information to provide a more quantifiable basis for Systemwide process improvements.

The importance of an anonymous reporting vehicle is illustrated by 72% of our hotline callers requesting anonymity, against an overall 42% anonymity rate for all reporting methods. This percentage of anonymous hotline calls has remained consistent during the last two years (68% and 74%, respectively) and compares favorably to the higher education average of 81%, identified by EthicsPoint. A major hotline service provider, EthicsPoint has a significant higher education client base. The Ethics Resource Center’s (ERC) 2007 National Workplace Ethics Survey<sup>3</sup> indicates that a combination of fear of retaliation and a sense of futility prevent employees from reporting observed violations of law and policy. Both of these factors are reported as prevalent in the government and non-profit sectors.

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<sup>3</sup> Available at <http://www.ethics.org>.

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The Association of Certified Fraud Examiners (ACFE) reports that fraud and economic waste allegations are expected to rise in coming years. Their finding relates to a laxity following the intense awareness and compliance resulting from the financial scandals of 2000 and subsequent legislation in 2002.<sup>4</sup> Currently, our allegations of fraud and economic waste complaints together comprise a number equal to reports of workplace misconduct.

### *Confidential Reporting*

The University utilizes several confidential reporting mechanisms available to the general public. Our independently operated hotline, The Network<sup>5</sup>, permits a caller to remain anonymous while simultaneously providing for future contact and follow-up. In addition to hotline complaints, reports of potential improper governmental activities (IGAs), violations of University policies and other compliance issues may be registered with the President, the Regents, CCAO, LDO, or the Office of General Counsel (OGC); with external agencies, such as the DOE or the California Bureau of State Audits (BSA); or locally at the campuses, medical centers and lab through the LDO, various departments such as Human Resources, Internal Audit and the campus Police Department, or, in the case of an employee, directly to a supervisor or manager. The investigations function of Ethics, Compliance and Audit Services is responsible for coordinating, tracking, managing and investigating (where applicable), regardless of the point of origin, all reports of suspected IGAs.

The investigation process is initiated by the LDO, assisted by a convened Investigations Work Group, determining whether the allegation, if true, would constitute an IGA or a violation of University policy. If not, the complaint may be referred to management for resolution. The LDO monitors and tracks all

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<sup>4</sup> The Sarbanes-Oxley Act affects the corporate sector and California's Whistleblower Protection Act affects state agencies.

<sup>5</sup> <http://www.tnwinc.com>



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investigations, to completion, including notification of the whistleblower, subject(s) and management of the investigation's results. The LDO also follows through with any management corrective actions (MCAs) or personnel actions ensuing from the investigation. The LDO notifies the System-wide LDO of any significant or sensitive investigations. At the end of each quarter, the LDO provides UCOP with summary statistics on the cases newly opened and closed during that period.

Workplace Misconduct allegations are our most frequent form of complaint. Fraud, Theft or Embezzlement and Economic Waste or Misuse of University Resources, both typically investigated by Internal Audit, also reflect just over a quarter of our investigations.

Complaints are received from a variety of sources, but the majority (57%) originates within the system, from University employees reporting suspected misconduct they encountered in the course of their daily work. The categorization of complaints was based on whether the complaining party used the hotline (nearly 40%) and whether they chose to remain anonymous. While 72% of the hotline callers remained anonymous, only 23% of those who reported incidents through another means declined to disclose their identities.

Overall, only 25% of allegations are substantiated. Substantiation rates vary by type of allegation. While Privacy Violations/Computer Security and Conflict of Interest/Conflict of Commitment are relatively rare allegations, they have high substantiation rates. When allegations are substantiated, administrative remedies may be necessary. Remedies may include personnel actions as well as procedural changes to mitigate risk of recurrence of that particular misconduct. In 15% of substantiated cases, the employee(s) responsible immediately separated from the University.

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### V. Auditing and Monitoring

Due to the mid-year institution of the Ethics and Compliance Program Services Office and the focus on building and communicating the development of the Systemwide Ethics and Compliance Program Plan this past fiscal year, there were no pre-planned Systemwide compliance audit and monitoring efforts. However, the Internal Audit Department of each Campus and UCOP enacted their Regent's-approved Internal Audit plan for 2008 which included audits that had a focus on high risk areas.

### VI. Systemwide Compliance Training Efforts

#### *Mandatory Systemwide Training Efforts*

During Fiscal Year 2008, Sexual Harassment Training to comply with the requirements of California State Law – AB1825 was the primary focus of Systemwide mandatory training. Conflict of interest training for all designated officials is currently available. Work groups have been established to review current mandatory trainings to determine if there are synergies to be able to combine courses in an effort to reduce resource commitment and improve time efficiencies. The following describes both mandatory and specific training opportunities that are either in place or being developed at the close of this fiscal year.

#### *1. Sexual Harassment Prevention Training – AB1825*

The 2006-2007 version of Sexual Harassment Training created frustrations for required participants for a variety of reasons, including web browser

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inconsistencies, system availability, data integrity problems and frustration from system not tracking when participant completed the course.

The Office of Ethics, Compliance and Audit Services in conjunction with the Office of General Counsel, Human Resources' Information Systems Support division, campus Title IX Officers, and interested Training Coordinators are working to overhaul the prior version of the Sexual Harassment Prevention Training Program and prepare a new course for fiscal year 2009. The goal of this overhaul will be to increase ease of use, efficiency, and on-time compliance completion rates while ensuring that the learner will have a more positive training experience. The data integrity issues will also be addressed and corrected.

### ***2. General Compliance, Ethics, and Conflicts of Interest Training***

As noted earlier in this section, a work group has been established to review the goals for an annual, mandatory general ethics and compliance training, the current UC Ethics training and the two conflicts of interest training, for the researcher and for the designated official for fiscal year 2009.

### ***Systemwide Specific Compliance-Related Training***

#### ***1. Audio/Web Conferences Provided***

The Program Office provides access to Systemwide participants for specific compliance-related education periodically. In FY08, approximately 500 individuals benefited from this type of access to education.

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- ***Webinars***

As the Program was being developed, a need was identified to provide internal webinars on specific issues relevant to various constituencies across the UC system. Webinars were developed and presented that focused on hot topics that have a compliance impact on the campuses and/or medical centers. The goal of the webinars was to provide one or more campuses the ability to showcase their implementation strategies on specific regulatory compliance efforts as a model(s) for the other campuses to use in developing their response to the governing policy, regulation, and/or industry standards. The following list details webinars presented during fiscal year 2008:

- **National Institutes of Health (NIH) Public Access Policy** Webinar was held on April 17, 2008. This training focused on the new NIH requirement that all investigators deposit manuscripts pursuant to research funded by NIH in a central, public repository, PubMed Central. The requirement went into effect on April 7, 2008. The UCOP Research Administration Office presented along with the research administration, copyright and librarian experts from UC Davis and UC Los Angeles.
  - Attendance included 265 individuals spanning all 10 campuses and UCOP.
- **Export Control Provisions in Research Agreements** Webinar was held on June 23, 2008. This training covered basic concepts related to the fundamental research exclusion, and provided advice on accepting, modifying, and rejecting certain export control provisions in research agreements. The panel discussion was led by the UCOP Research Administration Office and the

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Director of Research Compliance from the Office of Ethics,  
Compliance and Audit Services.

- Attendance included 53 individuals spanning all 10 campuses and UCOP.

## VII. Plan for Fiscal Year 2009

Following The Board of Regents approval of the Program Plan, the department leadership has set the compliance program agenda for Fiscal Year 2009 as one focused on fully supporting the Campuses to implement their campus compliance and risk activities in an effort to meet the effectiveness guidelines and objectives of the Systemwide program.

### *Ethics and Compliance Performance Metrics*

Based upon higher education industry compliance benchmarks and linked to President Yudof's Accountability Measures for the University of California Board of Regents, the Program Office has developed a core list of performance measures for fiscal year 2009. The measures include both process-based and outcomes-oriented measures that have been designed to reduce compliance risks while improving cost efficiencies within our organization as we strive to improve the quality of services provided by the University to the people of California. For a detailed list of the performance measures and their link to the Accountability Measures, please refer to Appendix B.

Plans are in development for the identification, collection, aggregation and trending of campus-specific and Systemwide data related to the implementation of the Campus Ethics and Compliance Risk Committees and the Systemwide Ethics and Compliance Risk Council to determine the impact of management

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focus on identified key compliance issues in mitigating either financial, operational, regulatory, or public perception risks. The Program Office, in collaboration with Risk Management, Human Resources, OGC, Student Affairs and other UCOP departments will work to identify from internal operations or develop from industry, Systemwide best practices to improve our processes and more efficiently utilize our limited resources.

UC is collaborating with the Society of Corporate Compliance and Ethics (SCCE) on their national "Return on Investment" Study which will attempt to measure the impact of ethics and compliance in the workplace on employee behaviors. The project is in its initial stage and at the time of this report, two campuses have expressed interest in being involved in the study.

### ***Key Compliance Areas of Concern for Fiscal Year 2009***

There are many areas of focus which will be further detailed in future communications. Below is a list of a few of the Systemwide compliance risk identified as needing attention in fiscal year 2009:

#### ***1. The Federal Trade Commission's RED FLAG Rule/Identity Theft Prevention***

- The above noted rule related to identity theft becomes effective on November 1, 2008 but enforcement of this rule has been delayed until May, 2009. It stems from the 2003 Fair and Accurate Credit Transactions Act and its intended purpose is to prompt organizations to make sure that people are who they say they are. These rules stipulate that organizations establish a written identity theft prevention program to "detect, prevent and mitigate identity theft in connection with the opening of certain accounts or existing accounts.

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## **2. Privacy and Security**

- The Office will continue with its Systemwide coordination of the HIPAA privacy and security policy and procedures development, implementation strategies, and enforcement activities, as well as focusing on recently enacted new regulations related to penalties for breach of privacy. The three Systemwide work groups that were established with representation from all Medical Centers and campuses to address patient, student and employee HIPAA privacy concerns and develop solutions for complying with HIPAA regulations will present their findings and recommendations for implementation at all campuses.
- Additionally, there are several areas of privacy and security outside of HIPAA that are a focus and we are working closely with IT and other areas involved in these efforts.

## **3. Higher Education Accountability Act Compliance**

- Congress completed reauthorization of the Higher Education Act (HEA) by passing the Higher Education Opportunity Act and the President signed the bill into law on August 14, 2008. The Program Office in collaboration with Office of General Counsel, other UCOP Divisions and campus leadership will be reviewing current operational areas in fiscal year 2009 to determine compliance and identify areas needing improvement with the following issues covered under the Act:
  - College Costs
  - Accreditation
  - Student Financial Aid Provisions
  - Key Disclosures and Compliance Provisions
  - Provisions Applicable to Federal Student Loans
  - Provisions Applicable to Private Student Loans

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- Teacher Professional Development
- International Education

### **4. Export Control and Fundamental Research**

- In FY2009, our goal is to collaborate with, and develop a systematic process for each campus, national laboratory and UCOP location that includes the identification of individual entity resources and formalizes answers to specific export control questions that have been raised at other campuses across the nation. The Research Compliance office will facilitate discussions with the identified campus liaisons on the above issues to maintain and update any written information. Education efforts will also continue with further education and outreach efforts with faculty.

### **5. Health Science Compliance Areas**

- Our Academic Medical Centers and their related businesses have many competing priorities related to their mission of providing quality patient care in the communities they serve. These priorities are complex and have multiple legal, regulatory and compliance requirements related to them. Due to the complexities, there are several areas of compliance focus related to these organizations that will be considered with the HS leaders in the next year. A few of these areas include but are not all inclusive:
  - HIPAA Privacy and Security (as noted above)
  - Billing and Coding
  - Conflicts of Interest (with special emphasis on Physician Relationships with outside vendors)
  - Documentation requirements
  - Applicable accreditations



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### *Compliance Audit and Monitoring Activities*

The Program Audit and Monitoring function is currently being provided by Internal Audit UC wide. To be efficient, compliance risk Auditing and Monitoring is integrated into the FY 08/09 Internal Audit Plan. Based on activities within the Research Compliance and Health Sciences Compliance areas, the need for a formal compliance audit in the following risk areas were identified and approved for incorporation in a combined System-wide Internal Audit/Ethics and Compliance Audit Plan for Fiscal Year 09:

- **HC Vendor Relations Policy**— the scope of this fiscal year 09 audit is planned to include a review of the implementation status of the Vendor Relations Policy at the Medical Centers.
- **HIPAA Privacy/Security**—the scope of this fiscal year 09 audit is planned to review the Medical Centers' screening processes for unauthorized access of "VIP" patient medical records.
- **Indirect Cost Waivers**—the scope of this fiscal year 09 audit is planned to review campuses practices related to compliance to UC policies for the request and processing of grant waivers.
- **Effort Reporting**—the scope of this fiscal year 09 audit is to determine if applicable campuses have appropriate electronic effort reporting procedures, or equivalent, in place per UC protocols.

### *Education and Training*

An Education Plan will be developed for fiscal year 2009 and will include a quarterly webinar plan that is designed to be timely and flexible in an effort to

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cover relevant and real time compliance issues on a monthly basis. The goal is to maintain an open and informative line from the Program Office to the System on responding to relevant compliance concerns.

- **Proposed Webinars for FY2009**

- **Time and Effort Reporting** – in light of several recent National Science Foundation (NSF) audits, and planned UC System-wide reviews, campuses have asked for guidance related to the NSF findings.
- **HC Vendor Relations Policy** – UC is following the recommendations of several prominent medical bodies and industry leaders to ban gifts from health care vendors to UC health care individuals. Campuses are expected to implement the policy by July 1, 2008.
- **Clery Act** - in anticipation of the campuses' annual reporting requirements related to their Clery Act obligations, the Program Office will facilitate the development of a webinar focused on reviewing the Act's core regulatory obligations, key updates and implementation strategies.

- **Annual Compliance and Audit Symposium**

The University of California's First Annual Compliance and Audit Symposium is being planned for February, 2009. The purpose of this 2.5 days internal conference is to provide education to UC employees on compliance and audit topics with emphasis on health sciences, investigations, research and potential high risk fraud in higher education settings. The conference will feature internal subject matter experts as

## Ethics and Compliance Program Annual Report

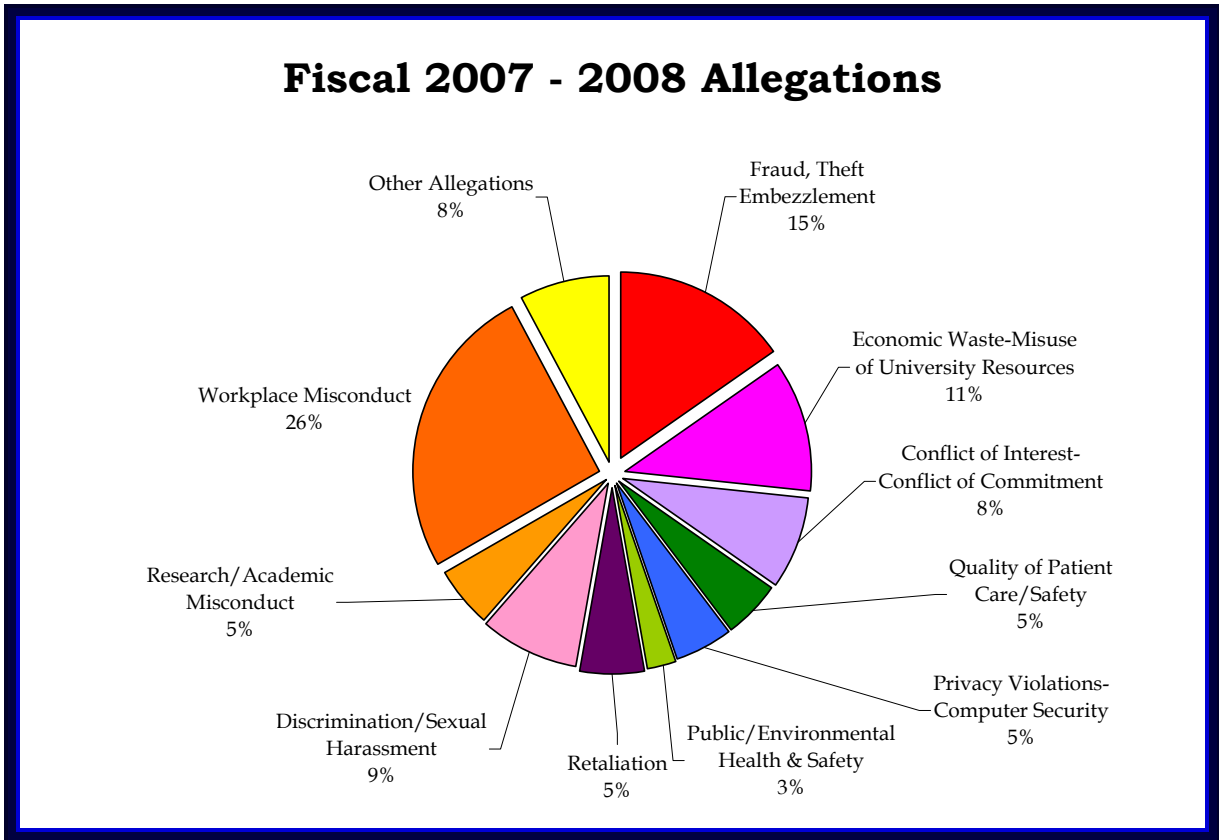
well as industry leaders who will present best practices on operational compliance issues.

### **VIII. Summary**

The Office of Ethics, Compliance and Audit Services has had a productive 8 months in establishing its office and developing the framework for the Systemwide Ethics and Compliance Program. We will continue to work collaboratively with our colleagues across the System to identify potential compliance risks and assist in developing plans to mitigate those risks and monitor their compliance.

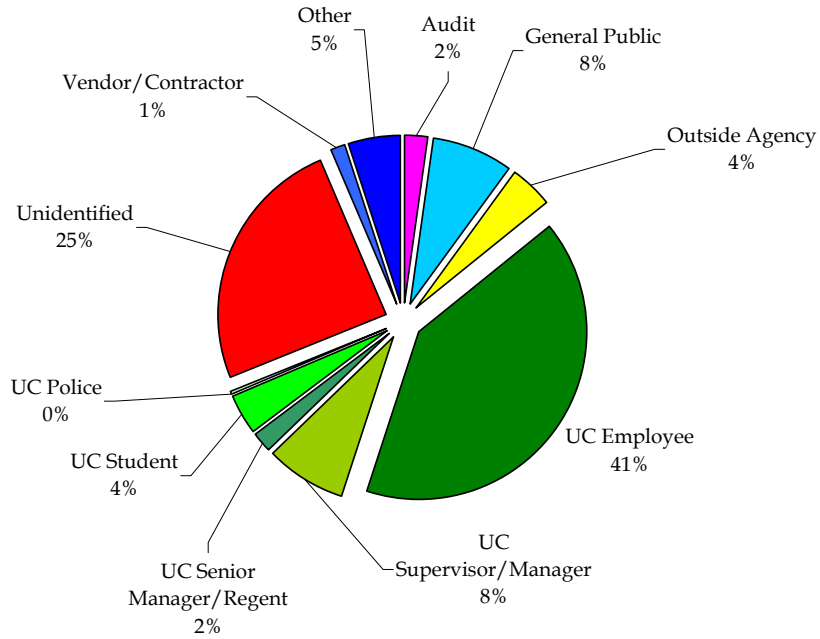
# Ethics and Compliance Program Annual Report

## Appendix A: Whistleblower Hotline Investigations - Summary Graphics

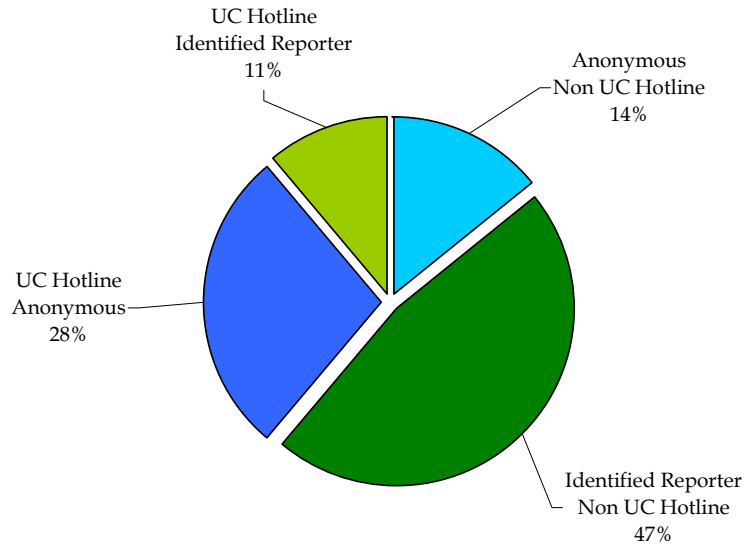


# Ethics and Compliance Program Annual Report

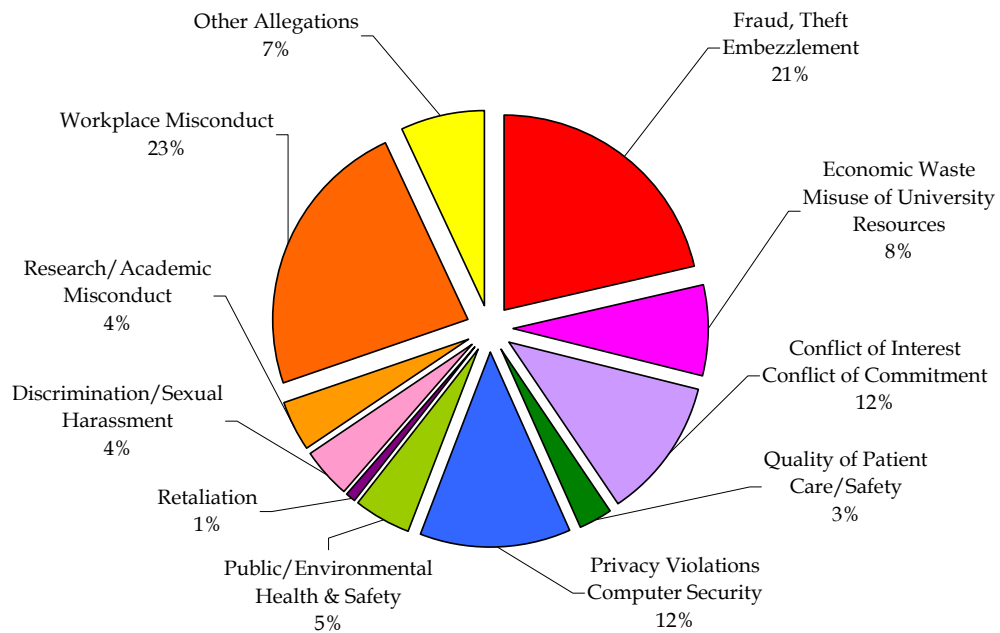
## Fiscal 2007 - 2008 Complaint Sources



### Fiscal 2007 - 2008 Complaint Methods

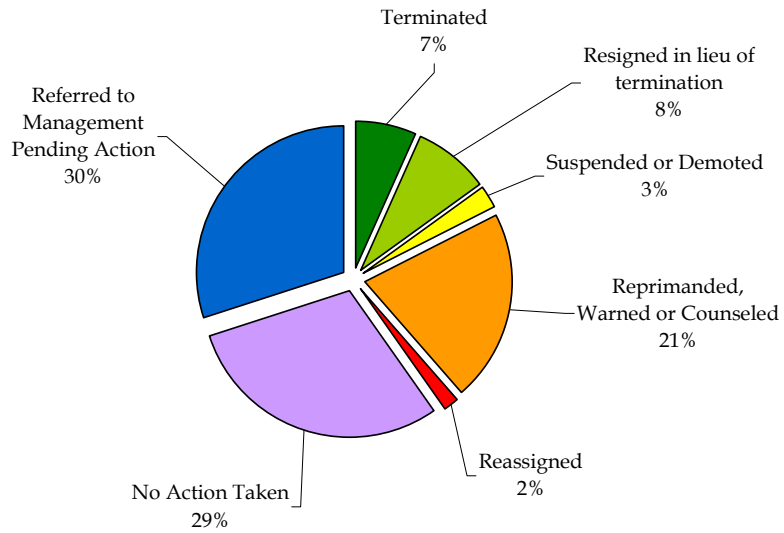


### Fiscal 2007 - 2008 Substantiated Cases



# Ethics and Compliance Program Annual Report

## Fiscal 2007 - 2008 Remedies



## Appendix B: Ethics and Compliance Program Performance Metrics

<b>Office of Ethics, Compliance and Audit Services</b>					
<b>Performance Metrics - fiscal year 2008-2009</b>					
			<b>Specific Metrics for Each Area</b>		
<b>Ethics and Compliance Services Performance Metrics</b>	<b>Link to President Yudof's Accountability Metrics(*)</b>	<b>System/Campus Indicator</b>	<b>Research Compliance</b>	<b>Investigations</b>	<b>Compliance Operations</b>
Campus Ethics and Compliance Risk Committees ("Committee") formed	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Annual meeting calendar	Collaborates with Compliance Operations and Campuses on forming most effective committees for operationalizing communication model following approved timeline	N/A	Collaborates with Compliance Operations and campuses on forming most effective committees for operationalizing communication model following approved timeline
Campus Ethics and Compliance Officer ("CECO") named	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Committee meeting minutes	N/A	N/A	Collaborates and communicates with campus leadership toward timely designation of CECO
UC Ethics and Compliance Risk Council ("Council") formed	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Annual meeting calendar	Provides advisory support to SVP/CCO and DCCO in operationalizing Ethics and Compliance Program	N/A	Establishes structure that is approved by the President (including charter, agendas, meeting minutes, membership, etc)
Committee and Council - quorum maintained for 90% of scheduled meetings	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Attendance records from Committee and Council meetings	Collaborates with Compliance Operations and campuses on action plan to effectuate mandated attendance at meetings	Collaborates with Compliance Operations and campuses on action plan to effectuate mandated attendance at meetings	Collaborates with Compliance Operations and campuses on action plan to effectuate mandated attendance at meetings



## Ethics and Compliance Program Annual Report

Office of Ethics, Compliance and Audit Services					
Performance Metrics - fiscal year 2008-2009					
			Specific Metrics for Each Area		
Ethics and Compliance Services Performance Metrics	Link to President Yudof's Accountability Metrics(*)	System/Campus Indicator	Research Compliance	Investigations	Compliance Operations
Office of Ethics, Compliance and Audit Services ("ECAS") staffed per structure criteria and approved budget	N/A	Documented ECAS new hires and inclusion of contact/bio on ECAS website	Participates in hiring and training as applicable	Participates in hiring and training as applicable	Participates in hiring and training as applicable
Performance standards and evaluation metrics established for all ECAS position descriptions and utilized in fiscal year 2009 performance evaluations	N/A	Documented performance metrics with fiscal year09-10 performance evaluation criteria for each ECAS position description	Participates in developing performance goals and metrics for each applicable ECAS position description	Participates in developing performance goals and metrics for each applicable ECAS position description	Participates in developing performance goals and metrics for each applicable ECAS position description
Obtain applicable compliance certifications for operations staff	N/A	Documented certifications	Provides support to operational staff for appropriate certification	Provides support to operational staff for appropriate certification	Provides support to operational staff for appropriate certification
Campus-driven, compliance-related policies/procedures/guidance developed/revised as needed	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Documented policies, procedures and/or guidance	Provides system-wide advisory support (100%) as applicable and general campus support (as evidenced by campus-driven request) to help develop/revise policies/procedures/guidance as needed	Provides system-wide advisory support (100%) as applicable and general campus support (as evidenced by campus-driven request) to help develop/revise policies/procedures/guidance as needed	Provides system-wide advisory support (100%) as applicable and general campus support (as evidenced by campus-driven request) to help develop/revise policies/procedures/guidance as needed
Establishment of system-wide guidance on the initiation, monitoring and completion of investigations	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Documented guidance	Collaborates with Investigations to develop/revise applicable policies/procedures/guidance	Provides system-wide support (100%) to develop/revise applicable policies/procedures/guidance	Collaborates with Investigations to develop/revise applicable policies/procedures/guidance

## Ethics and Compliance Program Annual Report

<b>Office of Ethics, Compliance and Audit Services</b>					
<b>Performance Metrics - fiscal year 2008-2009</b>					
			<b>Specific Metrics for Each Area</b>		
<b>Ethics and Compliance Services Performance Metrics</b>	<b>Link to President Yudof's Accountability Metrics(*)</b>	<b>System/Campus Indicator</b>	<b>Research Compliance</b>	<b>Investigations</b>	<b>Compliance Operations</b>
Webinars offered on appropriate and timely compliance issues on quarterly basis	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Quarterly webinar schedule	Participates in developing and arranging for the delivery of specific training in applicable areas	Participates in developing and arranging for the delivery of specific training in applicable areas	Participates in developing and arranging for the delivery of specific training in applicable areas
Offering of Annual Compliance and Audit Conference	N/A	Conference agenda, list of attendees, and session evaluations	Participates in organizing and delivering applicable Conference training sessions	Participates in organizing and delivering applicable Conference training sessions	Participates in organizing and delivering applicable Conference training sessions
ECAS web site established and maintained	N/A	Documented website location, content and changes	Promotes posting of applicable and timely compliance information/resources/contacts	Promotes posting of applicable and timely compliance information/resources/contacts	Promotes posting of applicable and timely compliance information/resources/contacts
Completion of mandatory education offerings meet UC-wide timelines as established by the Regents	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	LMS and/or campus reports of mandatory training completion, including % completion and time to completion	Provides system-wide advisory support (100%) as applicable and general campus support (as evidenced by documentation) in problem-solving/advising on specific issues as identified	Provides system-wide advisory support (100%) as applicable and general campus support (as evidenced by documentation) in problem-solving/advising on specific issues as identified	Provides system-wide advisory support (100%) as applicable and general campus support (as evidenced by documentation) in problem-solving/advising on specific issues as identified
Development and implementation of Sexual Harassment training for supervisors	N/A	LMS and/or campus reports of mandatory training completion	Collaborates with Compliance Operations to contribute to training content as needed	Collaborates with Compliance Operations to contribute to training content as needed	Collaborates with LMS, OGC and campuses to develop and implement training

## Ethics and Compliance Program Annual Report

Office of Ethics, Compliance and Audit Services					
Performance Metrics - fiscal year 2008-2009					
			Specific Metrics for Each Area		
Ethics and Compliance Services Performance Metrics	Link to President Yudof's Accountability Metrics(*)	System/Campus Indicator	Research Compliance	Investigations	Compliance Operations
Development and implementation of consolidated ethics, compliance and conflict of interest training	Indicators 6.0, 6.8, 8.1, 8.3, 8.4, 8.5, 8.6, 8.7, 8.9	LMS and/or campus reports of mandatory training completion	Collaborates with Compliance Operations to contribute to training content as needed	Collaborates with Compliance Operations to contribute to training content as needed	Collaborates with LMS, OGC and campuses to develop and implement training
Ethics and compliance-related education items presented at each CECRC meeting	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Committee meeting agendas	Collaborates with Compliance Operations to contribute to educational items presented at Committees	Collaborates with Compliance Operations to contribute to educational items presented at Committees	Ethics and Compliance Regional Directors to establish schedule of educational item
All applicable campuses have implemented the web-based time and effort reporting system (research)	Indicators: 6.0, 6.8, 8.1, 8.3, 8.4, 8.5, 8.6, 8.7, 8.9	1) Report from task force on implementation of reporting system. 2) Random sample from all campuses to determine compliance	Provides advisory support to system-wide task force on implementing system as documented by meeting minutes, emails., etc and monitors progress of completion and report to SVP and CCO	N/A	Provides advisory support to system-wide task force on implementing system as documented by meeting minutes, emails., etc and monitors progress of completion and report to SVP and CCO
Submission of 100% of all applicable SMG compensation statements within established timeframes and meet accuracy and completion standards	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	1) Reports from each campus on status of completion; 2) IA report of completion and accuracy of data	N/A	N/A	Provides advisory support to campuses and works with HR Compensation Group to improve system-wide process

## Ethics and Compliance Program Annual Report

Office of Ethics, Compliance and Audit Services					
Performance Metrics - fiscal year 2008-2009					
			Specific Metrics for Each Area		
Ethics and Compliance Services Performance Metrics	Link to President Yudof's Accountability Metrics(*)	System/Campus Indicator	Research Compliance	Investigations	Compliance Operations
System-wide billing and coding audit to include all UC Academic Medical Centers ("AMCs"); indicators to be determined by AMCs	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 10.8, 10.9, 10.10, 10.11, 10.12	Billing and Coding Audit Report	Colloborates with Audit Services and campuses to effectuate audit	Colloborates with Audit Services and campuses to effectuate audit	Colloborates with Audit Services and campuses to effectuate audit
Compliance issue reports (actual and/or potential) of whistleblower complaints are initiated within 72 hours (correspondence to complainant)	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Compliance Investigation Log/Report, to contain dated timeframes for initiation of investigation process	Provides advisory/investigatory input to Investigations as requested	Reviews each complaint within 72 hours of submission to ECAS and documents receipt and initiation of investigation to complainant	Provides advisory/investigatory input to Investigations as requested
Fact finding for investigations completed with appropriate level of subject matter expertise	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Compliance Investigation Log/Report, to include investigators and competency levels	Provides advisory/investigatory input to Dtr, Investigations as requested 100% as evidenced by documentation included on Investigations Log	Assigns investigations to appropriate SMEs -100%	Provides advisory/investigatory input to Dtr, Investigations as requested 100% as evidenced by documentation included on Investigations Log
Investigations initiated and completed (tracked) in timely manner (100% of delays documented and submitted to CCO)	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Compliance Investigation Log/Report, to include updates and evidence of communication to CCO of delayed investigation	Provides timely advisory/investigatory input to Investigations as requested	Monitors and tracks all investigations and documents deviations from estimated completion timelines and rationale for delay	Provides timely advisory/investigatory input to Investigations as requested

## Ethics and Compliance Program Annual Report

<b>Office of Ethics, Compliance and Audit Services</b>					
<b>Performance Metrics - fiscal year 2008-2009</b>					
			<b>Specific Metrics for Each Area</b>		
<b>Ethics and Compliance Services Performance Metrics</b>	<b>Link to President Yudof's Accountability Metrics(*)</b>	<b>System/Campus Indicator</b>	<b>Research Compliance</b>	<b>Investigations</b>	<b>Compliance Operations</b>
Quantification of value of UC Ethics and Compliance Program through prevention, early detection and deterrence of compliance risk event (ROI - will quantify, where and as appropriate)	ALL	Documented system-wide compliance effectiveness review	Participates in developing tools to evaluate effectiveness and implements as planned	Participates in developing tools to evaluate effectiveness and implements as planned	Participates in developing tools to evaluate effectiveness and implements as planned
Eminence Building	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Documented involvement in appropriate trade organizations	Participates in request-driven and self-initiated compliance-related presentations as appropriate	Participates in request-driven and self-initiated compliance-related presentations as appropriate	Participates in request-driven and self-initiated compliance-related presentations as appropriate
<b>Performance Metrics - fiscal year 2010</b>					
System-wide risk assessment	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Campus-specific audit plan and risk assessment; fiscal year08-09 Committee Meeting minutes	Conducts reviews as assigned	Conducts reviews as assigned	Establishes task force to assess enterprise-wide risk and conducts reviews as assigned
Develop process to distribute applicable regulatory information to campus stakeholders in a timely manner	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Regulatory Roster/Log and documented distribution method	Participates in identification, maintenance and distribution of applicable compliance information	Participates in identification, maintenance and distribution of applicable compliance information	Participates in identification, maintenance and distribution of applicable compliance information

## Ethics and Compliance Program Annual Report

Office of Ethics, Compliance and Audit Services					
Performance Metrics - fiscal year 2008-2009					
			Specific Metrics for Each Area		
Ethics and Compliance Services Performance Metrics	Link to President Yudof's Accountability Metrics(*)	System/Campus Indicator	Research Compliance	Investigations	Compliance Operations
Eminence Building	Indicators: 8.1, 8.2, 8.3, 8.4, 8.5; 8.6, 8.7, 9.1, 9.2, 9.3, 9.4, 9.5, 10.8, 10.9, 10.10, 10.11, 10.12	Documented involvement in appropriate trade organizations	Participates in request-driven and self-initiated compliance-related presentations as appropriate	Participates in request-driven and self-initiated compliance-related presentations as appropriate	Participates in request-driven and self-initiated compliance-related presentations as appropriate
	<i>(*) Indicators are referenced in the second legend below</i>				
<b>LEGENDS</b>					
<b>Compliance "Dashboard Element"</b>					
1. <b>Customer Service:</b> <i>maximize value of services</i>					
2. <b>Financial Performance</b> - <i>maximize use of financial allocation</i>					
3. <b>Internal Processes</b> - <i>operational improvements</i>					
4. <b>Learning &amp; Growth:</b> <i>attract and retain skilled staff; professional development</i>					
<b>Accountability Metrics</b>					
6.0 Graduate & Professional Student Profile - Enrollment;					
6.8 Graduate Degrees Awarded by Discipline;					
7.10 Faculty Recipients of National & International Awards					

## Ethics and Compliance Program Annual Report

Office of Ethics, Compliance and Audit Services					
Performance Metrics - fiscal year 2008-2009					
			Specific Metrics for Each Area		
Ethics and Compliance Services Performance Metrics	Link to President Yudof's Accountability Metrics(*)	System/Campus Indicator	Research Compliance	Investigations	Compliance Operations
7.12 Faculty Recipients of Annual Awards and Honors					
8.1 Total Research and Development Expenditures, Annual Growth;					
8.3 Rankings of Total NSF Research and Development Expenditures;					
8.4 Federal Research and Development Expenditures, Annual Growth					
8.5 Research & Development Expenditures, by source;					
8.6 Federally Funded Research and Development Expenditures, by Agency;					
8.7 Number of Patents and Inventions;					
8.9 Licensing Income					
9.1 National Research Council's Ratings of UC Doctoral Programs					
9.2 The Center for Measuring University Performance: Top American Research Universities					
9.3 <i>U.S. News &amp; World Report's</i> Graduate Program Rankings					
9.4 <i>U.S. News &amp; World Report's</i> America's Best National Universities					
9.5 <i>U.S. News &amp; World Report's</i> America's Top 50 Public National Universities					
10.1 Revenue by Source					
10.2 Revenue by Function					
10.8 Total Five Year Giving					
10.9 Total Inflation Adjusted Annual Private Support					
10.10 Donor Restrictions on Support					
10.11 Endowment per Student					
10.12 UC Endowment and Endowment per Student					

# Appendix C: Ethics and Compliance Program Resolution

(For Regental Approval – July, 2008)

# RE \_\_\_\_\_

**Office of the Secretary and Chief of Staff**

**TO MEMBERS OF THE COMMITTEE ON COMPLIANCE AND AUDIT:**

## ACTION ITEM

*For Meeting of July 16, 2008*

## **REGENTS RESOLUTION TO APPROVE THE UNIVERSITY OF CALIFORNIA ETHICS AND COMPLIANCE PROGRAM**

### **RECOMMENDATION**

Following a presentation to the Committee on Compliance and Audit regarding the proposed Ethics and Compliance program by Senior Vice President Sheryl Vacca, Regent Ruiz, and Chairman of the Committee on Compliance and Audit, will recommend that the Committee recommend to the Board of Regents that it approve the following resolution:

**WHEREAS**, the Regents of the University of California made the decision in May 2006 to establish a university-wide program of corporate compliance and established the new position of Senior Vice President – Chief Compliance and Audit Officer, an officer of the corporation, by amending the Bylaws and Standing Orders accordingly; and

**WHEREAS**, President Yudof strongly endorses and recommends that the University of California have a robust ethics and compliance program, and

**WHEREAS**, Senior Vice President – Chief Compliance and Audit Officer Sheryl Vacca assumed the position in October 2007 and has developed the proposed program and structure for an effective Ethics and Compliance Program for the University; and

**WHEREAS**, voluntary adoption of such a program is considered a best business practice that will serve to enhance the public trust and meet expectations of the Regents and external stakeholders by demonstrating the Regents' commitment to good stewardship of federal, state and private resources; and

**WHEREAS**, the proposed program, in consultation with the campuses, includes a reasonable timeline for development of all requisite elements of an effective Ethics and Compliance program including:

1. Written standards of conduct as well as appropriate policies and procedures;
2. Oversight by the Regents' Committee on Compliance and Audit and the Senior Vice President – Compliance and Audit with the primary responsibility for the campus ethics and compliance activities assumed by the Chancellors and delegated to the Campus Compliance Officer, as appropriate. Advice on compliance matters and risk mitigation activities will be provided from the campus risk committee and UC Ethics and Compliance Risk Council



## Ethics and Compliance Program Annual Report

3. Development and implementation of regular, effective education and training programs, as well as mandated education such as sexual harassment prevention, conflicts of interest, ethics and compliance, and other areas of concern,
4. Effective communications and processes maintained for reports of potential and/or perceived compliance matters or improper governmental activities with timely responses which provide the ability for a complainant to remain anonymous and free from retaliation;
5. Development and maintenance of compliance systems and controls that can be objectively assessed monitored and audited for effectiveness;
6. Assurance that management is enforcing appropriate disciplinary action for those who have violated University policies, procedures or applicable legal requirements; and
7. Assurance that management is taking appropriate corrective action and remedial measures when problems are identified to resolve and prevent reoccurrence of those problems; and

**WHEREAS**, Senior Vice President – Chief Compliance and Audit Officer Sheryl Vacca and the office of Ethics and Compliance are primarily responsible to assure that campus responsibilities are executed related to ethics and compliance matters and to assess and monitor that campus compliance systems and controls are effective, and

**WHEREAS**, the proposed program committee infrastructure includes a broad cross-section of individuals from all University locations and specific risk areas; and

**WHEREAS**, performance metrics will be developed to assess and evaluate identification of risks and the performance of related compliance systems to ensure rules, regulations, Regental and UC policies and other compliance requirements are met,

**NOW, THEREFORE, BE IT RESOLVED**, that the Regents of the University of California do today approve and adopt the UC Ethics and Compliance Program and structure as proposed.

### **BACKGROUND**

The Regents created the role of Senior Vice President – Compliance and Audit (SVP) as a corporate officer reporting directly to the Regents through the Committee on Compliance and Audit in May, 2006 with the intent that a comprehensive Ethics and Compliance structure would be developed under the leadership of this role. In October 2007, the Regents appointed Sheryl Vacca to the SVP position. Upon arrival, SVP Vacca consulted with Regents and University leadership to identify four major risk areas for initial focus and created a project team to conduct a compliance activities inventory for the four areas at all campus locations. Insight and information gained from this process provided a foundation for understanding the complexity and scope of the University as well as the many regulatory requirements that govern its operations.

## Ethics and Compliance Program Annual Report

The Department of Health and Human Services (“HHS”) and other federal funding agencies have outlined program guidance on the structure of an effective ethics and compliance program based on the Federal Sentencing Guidelines, listing the seven elements contained in the proposed program and identified in the language of the resolution. Since UC is a recipient of significant federal, state and private research dollars, it was determined that federal guidance would be used as the foundation for establishment of the UC Ethics and Compliance Program.

The proposed program and structure recognizes the size and complexities of the University of California and takes into account the need for a university-wide approach sufficient to address these complexities. Respect for the individual and unique culture of each UC location, while providing a venue for communication and leveraging good works within the UC system, are important aspects of the program structure. If the Regents approve the program and structure at this meeting, next steps will include implementing the approved model at all UC locations, identifying further performance metrics for the University at all locations, further developing each element of the program and continuing communication with the Regents related to progress of the implementation, reporting on performance metrics and on high risk areas. The proposed Ethics and Compliance Program is described in further detail in the attached document, "University of California Ethics and Compliance Program Plan" ("Plan").

The Federal Sentencing Guidelines require that a governing board be “knowledgeable about the content and operation of the compliance and ethics program.” For that reason, the proposed program and its structure is to be presented at a meeting of the Committee on Compliance and Audit to which all Regents are invited. Following the presentation, it is recommended that the Committee on Compliance and Audit recommend to the Regents that it approve and adopt the proposed program by approving the resolution.

## Appendix D: Ethics and Compliance Program Plan

*(Regental Approval - July, 2008)*

# 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 the University of California. 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.

### 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 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

## Ethics and Compliance Program Annual Report

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". Board engagement in the development and oversight of the Program sends an unequivocal message that UC is serious 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, sets the tone from the highest governing level of the organization and creates the momentum to drive the Program forward.

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* (Court of Chancery of Delaware, 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, the 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.

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 SVP/Chief Compliance and Audit Officer role is to assure The Regents that compliance controls in high risk compliance areas of UC operations and mechanisms to support UC's strategic goals are in place. 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. Furthermore, the SVP/Chief Compliance and Audit Officer reports directly to the President and the Board of Regents. As such, the SVP/Chief Compliance and Audit Officer not only has the reporting relationship

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needed 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 business conduct and to ensure compliance with applicable rules and regulations 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.: EEO and affirmative action, immigration and employment eligibility, labor relations, FMLA, ADA, executive compensation and benefits, etc.
  - f. Financial areas, i.e.: appropriate allocation of monies, investment compliance, travel and expenses, payroll, etc.
  - g. Records retention and disposition
  - h. Information Technology, Privacy and Information Security, i.e.: protection of health information, protection of financial information, security-physical, technical and administrative, etc.
  - i. Intellectual Property, i.e.: licensing, export control, copyright, etc.
  - j. Environmental Health & Safety, i.e.: radiation safety, biosafety, chemical safety, security, hazardous waste management, air and water permits, etc.
2. Establishment of communication methodologies to effectively disseminate compliance policies to administrative and academic employees;

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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 in an effort 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 regulatory, Regental and other compliance requirements.

### COMPLIANCE COMMUNICATION STRUCTURE

Communication will flow from key compliance risk areas within the campuses (13) (campuses (10), Lawrence Berkeley National Laboratory (1), UCOP (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. Each Committee will be co-chaired by the Executive Vice Chancellor/Provost of the campus and the designated Campus Ethics and Compliance Officer ("CECO"). Each Committee will assure that high risk compliance priorities for the campus are

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addressed and will provide quarterly and annual communications to the UC Compliance Risk Council related to their campus compliance activities.

A University-wide Ethics and Compliance Risk Council (“Council”) will be comprised of campus leadership representatives, as well as university-wide leadership and faculty representatives. Communication to and from the Committees and Council will be facilitated through the CECO and the SVP/Chief Compliance and Audit Officer. The Council will be co-chaired by the UC President and the SVP/Chief Compliance and Audit Officer.

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 co-chaired by the UC President and the SVP/Chief Compliance and Audit Officer and will include representatives from campus senior leadership, Office of the President leadership, and the Academic Senate. The Council will 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 as it relates to the UC enterprise performance metrics and making recommendations on compliance policies and best practices to be implemented at the system-wide level; and,
- Facilitating submission of campus quarterly and annual reports to the SVP/Chief Compliance and Audit Officer for inclusion in quarterly and annual compliance reports to The Regents.

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

The Committee will provide Program oversight to the campus (including lab and health science) and will be advisory to the SVP/Chief Compliance and Audit Officer through the Council. The Committee will comprise senior campus

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leadership responsible for various areas of campus compliance risks, academic leadership and one or more members of the UC Office of Ethics, Compliance and Audit Services. The Committee will be co-chaired by the Executive Vice Chancellor/Provost and the CECO. 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;
- 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 formal quarterly and annual campus compliance reports.

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

The CECO will be at the level of Vice Chancellor or above and will provide facilitation/leadership to the campus 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 (with dotted line reporting authority if the role is assumed by an existing position with other primary responsibilities), the CECO 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 will be a role model and champion for ethical and compliant conduct throughout the UC community. Specific duties of the CECO 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,



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- Co-chairing, with the EVC/Provost, the Committee designed to provide oversight, assistance and direction to the CECO on the operation of and communication around the campus-wide Program; and,
- Serving as a campus representative at the Council meetings (or the EVC may serve in this role), and coordinating ethics and compliance activities and Program initiatives with the 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. The University Auditor, in conjunction with 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 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 fashion 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 Board of 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 alert, confidentially and anonymously, the Program to instances where UC funds may have been misapplied or misused, as well as report alleged instances of potential and/or actual non-compliance with UC policies and procedures that have been developed to

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ensure compliance with applicable regulatory, Regental and UC policy and other appropriate compliance requirements.

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 provide training as a means 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 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.

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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 in order 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 summary report of Program activities to report to the *Committee on Compliance and Audit* of the Board of Regents. That 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.

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## **SUMMARY**

The Program Plan is provided as a high level summary of the Program's purpose and mission, roles and responsibilities of the Board, campus leadership and respective Committees and structure and elements of the Program. Each of the elements will have further detail developed as the Program is implemented across UC and in Program policies and procedures. Success of the Program depends on 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 resources, references and guidance as needed for effectiveness.

# Appendix E: Ethics and Compliance Program Services Organization Chart

