AUDIT AND ADVISORY SERVICES

Governance – Policy
Development, Promulgation,
and Maintenance
Audit
Project No. 14-631
September 30, 2014

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September 30, 2014

Nicholas B. Dirks
Chancellor

Chancellor Dirks:

We have completed our audit of Governance–Policy Development, Promulgation, and Maintenance per our annual service plan in accordance with the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing* and the University of California Internal Audit Charter.

Our observations with management action plans are expounded upon in the accompanying report. Please destroy all copies of draft reports and related documents. Thank you to the staff of the Office of Ethics, Risk and Compliance Services for their cooperative efforts throughout the audit process. Please do not hesitate to call on Audit and Advisory Services if we can be of further assistance in this or other matters.

Respectfully reported,

Wanda Lynn Riley
Chief Audit Executive

cc: Associate Chancellor Linda Morris Williams
        Assistant Vice Chancellor and Controller Delphine Regalia
        Deputy Chief Ethics, Risk and Compliance Officer Barbara VanCleave Smith
        Risk Manager Andrew Goldblatt
        Senior Vice President-Chief Compliance and Audit Officer Sheryl Vacca

University of California, Berkeley
Audit and Advisory Services
Governance – Policy Development, Promulgation, and Maintenance

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OVERVIEW

Executive Summary

The purpose of the audit was to determine whether management's design and implementation of business processes and internal controls related to the development, review, approval, dissemination, and ongoing maintenance of campuswide policies are effective, efficient and satisfy objectives outlined in the Management of Campuswide Policies (Policy on Policies) and better practices established by external groups such as the Association of College and University Policy Administrators (ACUPA).

Based upon our audit fieldwork, we observe that the design and implementation of business processes and internal controls related to the development, review, approval, dissemination, and ongoing maintenance of campuswide policies are generally effective to satisfy objectives in the Policy on Policies. In addition, we identified opportunities to improve current processes related to campuswide policy development, review, and approval that would likely increase operational efficiency for policy review, approval, dissemination, and subsequent maintenance.

- The Compliance and Enterprise Risk Committee's (CERC) jurisdiction as to which policies require their approval requires clarification.

- The campus does not have internal controls in place to ensure timely and regular review of existing policies for continued relevance, accuracy, and applicability.

- The Academic Senate and Vice Chancellor—Administration and Finance organizations are not currently represented as stakeholders on the CERC Policy Subcommittee despite efforts by the policy coordinator to solicit representation.

- Although not a unique challenge to our campus, the current Policy on Policies does not provide clear guidance on the difference between the concepts of policy, guidelines or guidance, and practices. In practice, we observed occasions where the term "policy" is used when in fact there is no approved campuswide policy, but rather guidelines or practices have evolved to the point of being considered as a *de facto* policy. This situation is complicated by the interchangeable use of terms such as "must", "shall", "may, and "should" with respect to expectations for compliance.

- The current process for vetting policies through the CERC Policy Subcommittee does not provide sufficient assurance to CERC that key issues have been raised and addressed by key campus stakeholders. The absence of assurance delays CERC's approval of policy.

- Current staff resources dedicated to campuswide policy coordination, equivalent to five percent of a full-time equivalent (FTE) position, appears insufficient given the number of proposed new or revised policies and existing policies that may require updating in any given year.

- The communication of new and revised policies by responsible offices has been inconsistent, particularly since the policy listerv function was discontinued in 2013.

Management has acknowledged these observations and has proposed action plans to address the issues identified above.

Source and Purpose of the Audit

The purpose of the audit was to determine whether management's design and implementation of business processes and internal controls related to the development, review, approval, dissemination, and ongoing maintenance of campuswide policies are effective, efficient and satisfy objectives outlined in the Management of Campuswide Policies (Policy on Policies) and better practices established by external group such as the Association of College and University Policy Administrators (ACUPA).

Scope of the Audit

The scope of the audit encompassed the business process and internal controls related to the development, review, approval, dissemination, and ongoing maintenance of campuswide policies as of May 2014, with a retrospective consideration of CERC policy-related activities in calendar year 2013 and the beginning of 2014 through April.

Our audit procedures included the following:

- Review of the Policy on Policies;
- Review of the website that serves as the central repository for all campuswide policies;
- Review of policies issued in 2013 and 2014 (through May 2014);
- Review of 2013 and 2014 (through May 2014) minutes for the CERC and CERC Policy Subcommittee;
- Inquiry with the campus Policy Coordinator;
- Inquiry with members of CERC and the CERC Policy Sub-Committee; and
- Interviews with a sample of representatives from offices functioning as responsible offices for campus policies.

We conducted fieldwork for this audit between March and May 2014.

Background Information

The campus is subject to both systemwide and locally-developed policies. Locally developed policies are developed, approved, and disseminated campuswide to address unique local needs and requirements.

On July 16, 2012, the Berkeley campus issued the most recent version of a policy document entitled "Management of Campuswide Policies". The document is commonly referred to as the Policy on Policies and is applicable campuswide. The Policy on Policies is administered by the Office of Ethics, Risk and Compliance Services (OERCS), CERC, and staff responsible for developing, interpreting, maintaining, and/or publicizing policies. The current responsible executive for the Policy on Policies is the Associate Chancellor and Chief Ethics Risk and Compliance Officer (CERCO).

The Policy on Policies was initially established in 2005 in response to a comprehensive study conducted in 2003 which found that the campus needed a formal process for developing, approving, and promoting campuswide policies. The study found that campuswide policies were

difficult to find, not always clear regarding implementing procedures, and frequently omitted contact information for policy inquiries or interpretation questions.

According to the Policy on Policies, a campuswide policy meets one or both of the criteria:

- "It affects a broad range of the campus community, either because it is of general interest or applicability, or because one control unit establishes a set of principles and procedures that other controls units must abide by; [or]
- It coordinates compliance with applicable laws and regulations across control units, promotes operational consistency and efficiency, and/or reduces institutional risks."

Academic Senate policies, as well as policies that control units (or subdivisions thereof) establish for their own operations are not governed by the Policy on Policies.

According to the Policy on Policies, the responsibilities for campuswide policy development, review, approval, and dissemination are distributed among several campus entities and offices including:

- The Chancellor, Executive Vice Chancellor and Provost, Associate Chancellors, Vice Chancellors, and Chief Information Officer;
- The Compliance, Accountability, Risk, and Ethics Committee (CARE);
- CERC;
- The Policy Subcommittee of CERC;
- Responsible offices from which the policies originate; and
- OERCS.

OERCS, CERC, the CERC Policy Subcommittee, and the policy coordinator play the most active roles in campuswide policy development, review, approval, and dissemination. Together with the responsible offices, these offices, entities, and campus officials form the core of the campuswide policy development, creation, review, approval, and dissemination process.

CERC is chaired by the Associate Chancellor and CERCO and has the authority to approve campuswide policy. CERC's work is done to a large extent through the CERC Policy Subcommittee which is chaired by the campuswide policy coordinator. The policy coordinator is part of OERCS, and currently also serves as the campus risk manager.

The Policy on Policies requires a robust collaborative effort between the policy coordinator, the responsible office, and the CERC Policy Subcommittee with the expectation that draft policies reviewed and approved by the CERC Policy Subcommittee will be sent to CERC for approval with only brief discussion.

Some of the components of the current governance structure are consistent with better practices as promoted by ACUPA, such as employing a system of standardized policy templates and submission forms, establishing a policy archive and website, and developing a process through which policies with campuswide impact are required to be submitted.

Per our review of the CERC minutes and correspondence for calendar year 2013 and 2014 (through the end of our fieldwork in May), eight policies have been presented to CERC for

approval. Five of those polices have been approved. The other three draft policies are pending comment and further review.

Summary Conclusion

Based upon our audit fieldwork, we observe that the design and implementation of business processes and internal controls related to the development, review, approval, dissemination, and ongoing maintenance of campuswide policies are generally effective to satisfy objectives in the Policy on Policies.

However, we identified opportunities to improve current processes and controls that would likely improve operational efficiency and better align campus practices with those proposed by external groups such as ACUPA.

- CERC jurisdiction as to which policies require their approval requires further clarification. The current definition of campuswide policy is sufficiently broad in that there are likely areas (such as with academic, business, accounting or financial policies) that have authority to set campuswide policy, including interim policies, without CERC involvement through regental policies or standing orders, systemwide policies and manuals, delegated authorities, or external laws and regulations. Clarifying CERC's jurisdiction would likely reduce potential confusion within responsible offices as to what policies they can establish themselves versus campuswide policies that require CERC approval.

- Although the Policy on Policies states that campus policies should be reviewed at least once every five years by the responsible office, the campus does not have internal controls in place to ensure timely and regular review of existing policies for continued relevance, accuracy, and applicability.

- The Academic Senate and Vice Chancellor—Administration and Finance organizations are not currently represented as stakeholders on the CERC Policy Subcommittee despite efforts by the policy coordinator to solicit representation.

- Although not a unique challenge to our campus, the current Policy on Policies does not provide clear guidance on the difference between the concepts of policy, guidelines or guidance, and practices. In practice, we observed occasions where the term "policy" is used when in fact there is no approved campuswide policy, but rather guidelines or practices have evolved to the point of being considered as a *de facto* policy. This situation is complicated by the interchangeable use of terms such as "must", "shall", "may", and "should" with respect to expectations for compliance. Establishing a standard for the consistent use of these concepts across policy, guidelines, and other guidance or practice is another opportunity we identified.

- The current process for vetting policies through the CERC Policy Subcommittee does not provide sufficient assurance to CERC that key issues have been raised and addressed by key campus stakeholders. The absence of assurance delays CERC's approval of policy. Members of CERC indicated that they would be more likely to expeditiously approve a draft policy if they had greater visibility and comfort that the relevant campus subject-

matter experts had been consulted and their input was fully reflected in the draft policies coming to CERC after vetting by the policy subcommittee. Members of CERC also indicated that allowing more time for consideration and deliberation at the CERC level would reduce the likelihood that a policy is not approved because they felt they were not fully prepared and informed to vote on it.

- Current staff resources dedicated to campuswide policy coordination equivalent to five percent of a full-time equivalent (FTE) position appears insufficient given the number of proposed new or revised policies and existing policies that may require updating in any given year.

- The Policy on Policies also requires responsible offices to notify the campus of new or revised campuswide policies through methods such as a campus listserv or campus administrative memos. In recent practice however, the communication of new and revised policies by responsible offices has been inconsistent, particularly since the policy listserv function was discontinued in 2013.

SUMMARY OF OBSERVATIONS & MANAGEMENT RESPONSE AND ACTION PLAN

Policies Requiring CERC Approval

Observation

Campus policy requirements should be well defined and explicit in order for responsible offices and other campus stakeholders to be compliant. The Policy on Policies' definition of policies requiring CERC approval does not appear to provide adequate direction to campus stakeholders to ensure that all polices with campuswide impact are submitted to CERC for review and approval.

According to the Policy on Policies, CERC and its policy subcommittee has jurisdiction for review and approval of all campuswide policies, in practice we observed an opportunity to clarify what constitutes a "campuswide" policy. The current definition of campuswide policy is sufficiently broad in that there are likely areas (such as with academic, business, accounting or financial policies) that have authority to set campuswide policy, including interim policies, without CERC involvement through regental policies or standing orders, systemwide policies and manuals, delegated authorities, or external laws and regulations. Clarifying CERC's jurisdiction would likely reduce potential confusion within responsible offices as to what policies they can establish themselves versus campuswide policies that require CERC approval.

Certain CERC Policy Subcommittee and CERC members we interviewed as part of our fieldwork asserted that sufficient clarity and direction does not exist regarding the types of policies that require CERC approval. In addition, the policy coordinator as well as CERC and policy subcommittee members asserted that responsible offices need direction regarding the type of policies that must receive CERC approval.

The Policy on Policies does not define interim policies or how those policies should be developed, reviewed, and approved. As a result, responsible offices that decide to create an interim policy with campuswide impact may not be aware that such a policy needs to be submitted to CERC for approval. The potential exists for interim policies with campuswide impact to circumvent the CERC process.

A lack of clarity and awareness regarding the type of policies that are required to receive CERC approval may result in dissemination of policies that impact a broad range of the campus community without the review and approval of CERC. These policies may undermine the Policy on Policies and the campus' governance structure.

Management Response and Action Plan

Management agrees that the definition of a campuswide policy can be strengthened.

The Policy on Policies (which, to clarify, applies to administrative policies only and excludes academic policies) includes a broad definition of a campuswide policy.

A campuswide policy meets one or both of the following criteria:

- It affects a broad range of the campus community, either because it is of general interest or applicability, or because one control unit establishes a set of principles and procedures that other control units must abide by;
- It coordinates compliance with applicable laws and regulations across control units, promotes operational consistency and efficiency, and/or reduces institutional risks.

The broad definition is by design. Management's working assumption is that campus faculty, staff, and students are looking for guidance, and the campus should therefore maintain an expansive definition of the term "campuswide policy". Defining the term more rigidly could lead to less review and dissemination of campuswide policies, which would run counter to the larger goals of transparency and accountability.

That said, there are indeed circumstances where systemwide policies authorize campus units to implement local policies and procedures, and there are other areas where policy authority is gray. It may not currently be clear to the campus when they need to engage with the policy coordinator and CERC's Policy Subcommittee.

Therefore management will discuss with the Policy Subcommittee how to clarify when a policy should come before CERC, including related issues such as the definition of an administrative policy and the use of interim policies. This discussion may lead to changes to the policy, "Management of Campuswide Policies". Policy review will be completed by April 1, 2015.

Management will also provide additional guidance regarding which policies require CERC review by developing a decision tree that will walk the responsible unit through the process, indicating if and when they must work with the Policy Office. This decision tree, based on current policy, will be uploaded to the policy web site by April 1, 2015. Any changes in the decision tree that are required due to changes initiated by the subcommittee will occur when those changes are approved.

Policy Update Controls

Observation

The Policy on Policies states that policies should be reviewed every five years by responsible offices. In addition, the policy requires responsible offices to be alerted when policies have existed for five years and are due for review.

Per our fieldwork, while a repository of policies exists, the policy coordination function has not been able to dedicate the necessary resources to effectively manage a process of communicating the need for required policy updates and revisions. As a result, a control is not currently in place to ensure that policies that reach the five year threshold are identified, reviewed, and updated as required.

Policies that are not periodically reviewed may become outdated and if revisions are not made, those policies could inaccurately state the campus' position on issues. Also, policies may provide outdated information to campus stakeholders that could put the campus at risk.

Management Response and Action Plan

Current resources will support preparing a listing by responsible executives indicating those policies that have reached the five-year review point. The list will be distributed to the CERC Policy Subcommittee and each control unit liaison on the subcommittee will be asked to contact the responsible units in their control unit to initiate reviews of the respective policies. The first listing will be prepared and distributed by April 1, 2015.

Representation of Campus Stakeholders on CERC Policy Subcommittee

Observation

The Policy on Policies states that there should be representation on the CERC Policy Subcommittee from the Academic Senate and from each vice chancellor to ensure that all campus stakeholders are involved in the policy review process.

Per a review of the CERC Policy Subcommittee minutes, interviews with CERC Policy Subcommittee members and the campus policy coordinator, stakeholders from the Academic Senate and the Vice Chancellor—Administration and Finance (VCAF) organizations are not currently represented on the CERC Policy subcommittee.

Lack of representation from the Academic Senate and VCAF organizations precludes the policy subcommittee from being able to thoroughly vet all policies with campus stakeholders who may be impacted. As a result, polices are being sent to CERC for approval without the benefit of input from key campus stakeholders. This practice increases the probability that policies will need additional input prior to CERC approval, contributing to potential delays in policy approval and dissemination.

Management Response and Action Plan

Management agrees that the Academic Senate and Vice Chancellor—Administration and Finance should have representatives on the subcommittee.

To date, the policy coordinator's repeated efforts to recruit CERC Policy Subcommittee members from the Vice Chancellor–Administration and Finance and the Academic Senate have failed.

Management will recruit members from those units by having the Chief Ethics, Risk and Compliance Officer (who chairs CERC) invite participation in the Policy Subcommittee. The unit representatives will be identified by February 1, 2015.

Definition of the Terms and Expectation for Adherence

Observation

The Policy on Policies states that policies should be easy for novices to understand and should provide comprehensive direction in plain language. This can only be realized if terms and language used in campus policies are consistent, standardized, and well defined.

Although not a unique challenge to our campus, the current Policy on Policies does not provide clear guidance on the difference between the concepts of policy, guidelines or guidance, and practices. In practice, we observed occasions where the term "policy" is used when in fact there is no approved campuswide policy, but rather guidelines or practices have evolved to the point of being considered as a *de facto* policy. This situation is complicated by the interchangeable use of terms such as "must", "shall", "may", and "should" with respect to expectations for compliance. Establishing a standard for the consistent use of these concepts across policy, guidelines, and other guidance or practice is another opportunity we identified.

Campus stakeholders may violate campus policy due to ambiguity in the terminology that currently exists. The campus may increase its risk for policy non-compliance if sufficient direction regarding expectations for compliance and adherence to policy requirements is not provided.

Management Response and Action Plan

Management agrees that the Policy on Policies can be clearer in its definitions and term use.

The Policy on Policies does define, briefly, the terms *policy* and *procedure:*

> "A policy is a statement of governing principle(s). Procedures are the actions taken to implement those principles." (Page 3)

The Policy on Policies also defines the term *guidelines,* but does so only in the Glossary and does not take into account the concept of "best practices" commonly used today. Moreover, there is no definition of *practice.*

For the last ten years, the policy coordinator has used the word *will* to denote actions that are required by a policy, and the word *should* to denote actions that are strongly recommended but not required. This, however, has never been formally explained.

Therefore management will define terms and expectations by:

- Expanding on the definitions of *policy* and *procedures*;
- Adding the definition for *guidelines* to the body of the Policy on Policies and creating a definition for *practice,* which will be added to the body of the policy and the policy glossary;
- Explaining the import of the verbs *will* and *should* to the Policy on Policies.

These changes will be made and posted to the policy web site by January 1, 2015. Due to limited resources, the Policy Office will not conduct a "search and find" to update the terms mentioned above in policies that currently exist in the policy database. The Policy Office will make changes as the inconsistencies come to their attention.

In addition, when responsible units are notified that they have policies requiring the five-year review (see management response to the "Policy Update Controls and Resources" observation), the units will be asked to conduct a "search and find" to update the terms mentioned above in those policies.

CERC Committee Policy Review and Approval

Observation

The Policy on Policies requires a collaborative effort between the policy coordinator, the responsible office, and the CERC Policy Subcommittee with the expectation that campuswide policy documents that receive CERC Policy Subcommittee approval will be almost ready for final approval by the CERC full committee after brief discussion. To achieve this outcome, CERC needs assurance that the policy has been sufficiently vetted by key stakeholders, identified issues have been resolved, the impact on the campus is understood, and alignment with existing policies and regulations exists.

We believe there is an opportunity to improve the turnaround time and the effectiveness of vetting draft policies by the CERC Policy Subcommittee so that, once policies have been reviewed and approved by the subcommittee, they can be approved expeditiously by CERC. Members of CERC indicated that they would be more likely to expeditiously approve a draft policy if they had greater visibility and comfort that the relevant campus subject-matter experts had been consulted and their input was fully reflected in the draft policies coming to CERC after vetting by the policy subcommittee. In addition, members of CERC indicated that allowing more time for consideration and deliberation at the CERC level would reduce the likelihood that a policy is not approved because they felt they were not fully prepared and informed to vote. Greater comfort could be obtained, for example, by introducing a draft policy, fully vetted by the subcommittee, at one CERC meeting but scheduling the approval vote for the subsequent meeting to allow CERC members to sufficient time to reflect, deliberate, consult, or independently research potential implications of the proposed policy before voting.

CERC Subcommittee minutes indicate that policies are being reviewed at the CERC Policy Subcommittee level. The policy coordinator asserts that subject matter experts who are often direct reports of CERC committee members provide insight and input to the policy development and review process. While these inputs are being factored into the final policy draft presented to CERC for discussion and approval, there is often a lack of awareness among CERC committee members about the vetting by subject matter experts incorporated into the final policy draft.

Formal documentation outlining who has contributed, reviewed, and signed off on the policies prior to the submission to CERC for approval does not currently exist. Also, formal documentation summarizing the intended and potential financial, administrative, and service impact of policies does not currently accompany final draft policies presented to CERC for approval.

Insufficient awareness among CERC members regarding the subject matter expertise included in the review of policies presented for approval, coupled with the practice of a brief discussion period for policies at the CERC meetings increases the risk of delayed approval of campuswide policies. Risks to the campus that could otherwise be mitigated by the timely dissemination of policies and procedures may go unchecked when campuswide policy approval and dissemination is delayed. Inadequately vetted policies may also result in unintended outcomes for the campus.

Management Response and Action Plan

Management agrees with the observation.

Starting immediately, Management will expedite CERC policy review and approval by:
- Sending the full CERC a copy of the proposed final version of a policy two weeks prior to the CERC meeting at which the policy will be considered for approval;
- Including a brief *Proposal to Add or Change Policy* form (currently only provided to the subcommittee), which will include a list of individuals and groups consulted in formulating the policy, the problem the policy is attempting to solve, and risks associated with the issue being addressed.
- Providing a list of the subcommittee's membership to the full CERC.

These changes will be completed by January 1, 2015.

Adequacy of Staff Resources for Policy Management

Observation

The policy coordinator is required to perform multiple tasks that form the core of the campuswide policy development, review, approval, and dissemination process. The scope and duties associated with the policy coordinator function require adequate resources to ensure operational effectiveness.

We observed that the policy coordinator is not performing some of the duties and responsibilities outlined in the Policy on Policies. Per further inquiry, we were made aware of workload constraints that govern the policy coordination function in that the policy coordinator is also the campus risk manager.

Current staff resources dedicated to campuswide policy coordination, equivalent to five percent of a full-time equivalent (FTE) position, appears insufficient given the scope and duties associated with the policy coordination function and the volume of polices that require review, approval, revision, and dissemination.

The lack of adequate resources to support the policy coordination function can impede efforts to improve operational effectiveness of the campuswide policy development, review, approval, and dissemination process. The outcome may be increased risk exposure due to delayed policy dissemination.

Management Response and Action Plan

Management agrees that the staffing resources are currently insufficient to support the function beyond ensuring new and revised policies initiated by the responsible units are handled efficiently and that the web site is current. However, no new policy has been delayed due to this staffing level. What is not happening is the notification and follow-up with responsible units when policies hit the five year review mark. That said, it is the responsibility of the responsible unit to ensure that their policies are up to date – even if the Policy Office were to notify the responsible unit when a policy hits the five year review mark, there is no assurance that the responsible unit will actually review and, if necessary, update the policy.

During FY 2015, the Risk Services unit of OERCS will be undertaking a comprehensive process assessment and efficiency review. Current staffing has not changed since 2006, but the responsibilities expected of that staff have grown immensely. Included in this review will be the staffing needed to properly support the policy function. Gaps between current staffing and optimal staffing levels may influence the unit's budget request for FY 2015/16. The review will be completed by April 1, 2015.

Campuswide Policy Information Accessibility and Notification

Observation

The Policy on Policies requires responsible offices to notify the campus of new or revised campuswide policies through methods such as a campus listserv or campus administrative memos. In recent practice, however, the communication of new and revised policies by responsible offices has been inconsistent, particularly since the listerv function was discontinued and responsible offices often do not issue administrative memos regarding policy updates and issuance.

A discontinued listserv, an inconsistent publication of administrative memos, and no current requirement to submit a communication and implementation plan with a draft policy submission likely delays the dissemination of policy updates and information to the campus. As a result, the campus may not be adequately informed regarding substantive campuswide policy changes and updates.

Management Response and Action Plan

Management agrees with the observation.

Management will increase policy notification by giving the responsible office two weeks from the date of policy approval to issue a Campus Administrative Memo announcing the new or revised policy. Thereafter, the policy coordinator, in coordination with the Associate Chancellor, will issue the Campus Administrative Memo.

Waiting the two weeks for the responsible office to act will begin right away and be fully operational by January 1, 2015