



AUDIT AND ADVISORY SERVICES  
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November 2, 2020

Marc Fisher  
Vice Chancellor  
Administration

Vice Chancellor Fisher:

We have completed our audit of Fair Wage/Fair Work as 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 Supply Chain Management and Real Estate 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,

Jaime Jue  
Director

cc: Associate Vice Chancellor John Arvin  
Chief Procurement Officer Russell Chung  
Assistant Vice Chancellor and Chief of Staff Ann Jeffrey  
Associate Chancellor Khira Griscavage  
Assistant Vice Chancellor and Controller Michael Riley  
Senior Vice President and Chief Compliance and Audit Officer Alexander Bustamante



# AUDIT AND ADVISORY SERVICES

## Fair Wage/Fair Work Audit

Project No. 20 -746

November 2, 2020

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**University of California, Berkeley  
Audit and Advisory Services  
Fair Wage/Fair Work**

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# OVERVIEW

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## Executive Summary

The purpose of this annual systemwide audit was to assess whether adequate controls are in place to provide reasonable assurance that the campus is in compliance with the UC Fair Wage/Fair Work policy, as defined in Business and Finance Bulletin (BFB) BUS-43 *Purchases of Goods and Services; Supply Chain Management* and the UC Terms and Conditions of Purchase. The audit scope was established by the University of California Office of the President Office (UCOP) of Ethics, Compliance, and Audit Services and covered Real Estate Services and Supply Chain Management and included a review of current practices associated with the fair wage/fair work guidelines and requirements.

Systemwide fair wage/fair work requirements have been in effect since October 1, 2015 and stipulate that certain suppliers pay a minimum wage of \$15 per hour to workers who perform services at a UC location. Fair wage/fair work provisions also extend to lessees and licensees of UC real property, and to lessors and licensors to UC, under certain circumstances.

Supplier agreements managed by Supply Chain Management have been reviewed as part of previous audits. In the current year audit, we noted progress in management's ongoing adoption of practices that support compliance with fair wage/fair work requirements. Areas for continued process improvement include strengthening its follow-up procedures with suppliers to ensure that verifications are received in the timeframe required by policy and that the verifications themselves meet specified requirements.

Real estate lease and license agreements have not previously been included in prior year fair wage/fair work audits. We noted that although campus Real Estate Services routinely includes the fair wage/fair work standard language in covered leases and licenses, management had not yet implemented internal procedures to ensure annual certifications were routinely requested and received. During the initial stage of this audit, we note that Real Estate Services increased efforts to request verification forms from the lessees. To ensure ongoing compliance with all aspects of fair wage/fair work requirements, we recommend that management develop and implement standard processes and document related procedures that support compliance with fair wage/fair work requirements.

## **Source and Purpose of the Audit**

The purpose of this systemwide audit is to assess whether adequate controls are in place to provide reasonable assurance that the campus is in compliance with the UC Fair Wage/Fair Work policy, as defined in Business and Financial Bulletin (BFB) BUS-43 *Purchases of Goods and Services; Supply Chain Management* and the UC Terms and Conditions of Purchase.

## **Scope of the Audit**

The audit scope covered Real Estate Services and Supply Chain Management and included a review of current practices associated with the fair wage/fair work guidelines and requirements. In addition, a sample of contracts for services as well as real estate leases and licenses in effect during fiscal year 2019 was selected for review. The review included inspection of (i) fair wage/fair work provision language contained in contracting documents, (ii) verification forms received, and (iii) for one sampled procurement contract, the external CPA or internal audit report and supporting workpapers related to vendor certification. The scope was established by the systemwide audit program developed by the UCOP Office of Ethics, Compliance, and Audit Services. The audit fieldwork was performed during May through July 2020.

Management represented that no exceptions to the policy had been granted to a supplier or lessee for 2019 except for four procurement professional services exemptions granted by Supply Chain Management as is permitted by policy.

## **Background Information**

### *Fair Wage/Fair Work Related to Procurement*

Systemwide fair wage/fair work requirements were enacted by UCOP and apply to the UC campuses. The requirements became effective October 1, 2015 and pertain to workers of certain suppliers that perform services at a UC location. The requirement provides that these workers are paid a minimum wage of \$15 per hour. It does not apply to the provision of goods nor does it apply to services delivered as part of an extramural award containing sponsor-mandated terms and conditions. It complements, but does not supersede where applicable, State of California prevailing wage requirements for public works.

Suppliers who provide services that exceed \$100,000 annually and are not subject to prevailing wage requirements are required to obtain an annual independent audit of compliance that complies with the university's required audit standards and procedures. The audit must be performed by an independent auditor or independent internal audit department. Access to the audit workpapers must be provided to the university upon request. A verification form attesting to compliance is required of the independent auditor annually and is due within 90 days after the annual anniversary of the agreement's effective date.

### *Fair Wage/Fair Work Related to Leased or Licensed Real Estate*

Systemwide fair wage/fair work requirements related to real property were also enacted by UCOP and also apply to the UC campuses. The applicability of the fair wage/fair work requirements to real estate agreements was clarified May 1, 2016. Relevant guidelines and criteria are contained in the *Fair Wage/Fair Work Plan Applicability To Real Property Leased or*

*Licensed To or By The Regents of the University of California (UC)*<sup>1</sup>. Guidelines stipulate that all workers in those leased or licensed locations meeting established criteria must be paid a minimum of \$15 per hour. In addition, real estate lessee (and lessor) and licensee (and licensor) agreements subject to fair wage/fair work requirements are required to contain specific fair wage/fair work language that include the following sections: (a) Compliance with the Plan, (b) Audit Rights, and (c) Remedies. Lessees and licensees must provide an annual verification form attesting to their compliance with the fair wage/fair work provisions. The verification is due 90 days after the annual anniversary of the contract's effective date.

To assess compliance, suppliers, lessees, and licensees are subject to compliance audits by the university at its sole discretion.

### **Summary Conclusion**

#### *Real Estate Services*

Real Estate Services has included the fair wage/fair work standard language in covered leases and licenses since May 2016, when the applicability of the fair wage/fair work requirements to real estate agreements was clarified. However, we observed that management did not implement internal procedures to ensure annual certifications were routinely requested and received. During the initial stage of this audit, we note that Real Estate Services did increase efforts to request verification forms from the lessees and, as of the close of fieldwork, had received nine of the ten requested certifications. We also noted a small number of leases/licenses that had not been identified by management as being under fair wage/fair work requirements that we believe should potentially be included. To ensure full compliance with all aspects of fair wage/fair work requirements, we recommend that management develop, implement, and document standard related procedures as well as follow-up to confirm and obtain all required certifications.

#### *Supply Chain Management*

During the past year, Supply Chain Management has made progress in adopting practices that support compliance with fair wage/fair work requirements. However, we noted issues with the timeliness of receipt of supplier verifications. In addition, for the one sampled procurement contract for which the audit report and supporting workpapers related to vendor certification was requested for review, the vendor had not completed an audit to support the verification as required. We recommend that management continue strengthening its follow-up procedures with suppliers to ensure that verifications are received in the timeframe required by policy, they meet specified policy requirements, and administer remedies as appropriate to the situation.

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<sup>1</sup> [https://www.ucop.edu/real-estate-services/\\_files/documents/fair-wage-fair-work-plan-applicability-to-re.pdf](https://www.ucop.edu/real-estate-services/_files/documents/fair-wage-fair-work-plan-applicability-to-re.pdf)

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## SUMMARY OF OBSERVATIONS & MANAGEMENT RESPONSE AND ACTION PLAN

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### Real Estate Services

#### Observation

As required under systemwide fair wage/fair work policies, campus Real Estate Services has included the fair wage/fair work standard language in covered leases and licenses since May 2016, when the applicability of the fair wage/fair work requirements to real estate agreements was clarified. However, we observe management did not implement internal procedures to ensure annual certifications were routinely requested and received. During the initial stage of this audit, we note that Real Estate Services did increase efforts to request verification forms from the lessees.

During our audit, we identified the following testing exceptions and related areas for improvement:

*Fair Wage/Fair Work Process and Procedures* - We observed standard processes or related documented procedures for Real Estate Services fair wage/fair work were not in place. To help promote ongoing compliance with fair wage/fair work policy requirements, processes related to the campus implementation of the policy should be documented and, at a minimum, should address the determination of fair wage/fair work applicability to each contract, the required contract language, verification and follow-up of lessee compliance, regular monitoring of fair wage/fair work processes and results, and reporting of fair wage/fair work information to UCOP and others. Creation of additional automated reports from the FileMaker system or additional excel worksheets may be useful and efficient to provide and display information needed to perform the above functions. In addition, Real Estate Services should monitor changes to fair wage/fair work requirements that may apply to the campus.

*Fair Wage/Fair Work Verifications* - We observed compliance verifications were not received from lessees within 90-days of the close of the calendar verification period as required by policy. However, management did promptly request these verifications when notified by Audit and Advisory Services of this observation and had received nine of ten responses as of the close of fieldwork. Real Estate Services should continue follow-up to obtain the missing verification until it has been received.

*Leases and Licenses not Included as Fair Wage/Fair Work* - We identified one license and three leases that had not been identified by management as being under fair wage/fair work requirements that we believe should potentially be included. These include Rogers Rowing Center (licensor), two leases at the Berkeley Way West educational building at 1919 Shattuck Avenue, and the Berkeley Student Food Collective located on Bancroft Avenue. Except for the Rowing Center, all buildings are located near but not within the usual campus boundaries. These locations have employees that may be covered by the fair wage/fair work requirement. Management has assessed that these contracts are excluded under the guidance document issued by UCOP, *Fair Wage/Fair Work Plan Applicability To Real Property Leased or Licensed To or By The Regents of the University of California (UC)*. However, the relevant criteria set forth in

this document are subject to interpretation and we suggest that Real Estate Services pursue confirmation with UCOP for a final determination regarding whether these businesses are subject to fair wage/fair work requirements.

### **Management Response and Action Plan**

The City of Berkeley has a Citywide Minimum Wage Ordinance which provides for a higher minimum wage and, based upon a lower threshold for hours worked needed for eligibility, applies to a larger number of workers. In order to reduce ambiguity of enforcement, Real Estate staff sought and received approval from UCOP Real Estate to modify the certification form to state that compliance with the UC Fair Work/Fair Wage plan does not supersede compliance with other applicable local, state, or Federal wage rates which may be more advantageous to the employee.

*Formally document processes/procedures related to the campus' fair wage/fair work requirements.*

In order to track and monitor compliance with the Plan, all current and future contracts which are impacted by the Plan will be identified in the department's database no later than December 15, 2020. On a fiscal year basis, within ninety (90) days of each upcoming verification period, Real Estate will conduct an annual compliance exercise to obtain written certification from each tenant or licensee for confirmation of compliance with the Fair Wage/Fair Work Plan, with the next report covering from January 1, 2020 through June 30, 2021.

*Follow-up on the outstanding verification from the audit.*

Of the leases and licenses where fair wage/fair work is applicable, Real Estate received certifications from all but one lessee. Although there were multiple attempts to request the certification from this tenant, the certificate was not received. The tenant is not meeting other obligations under its lease agreement, and Real Estate is working with the tenant and its sponsoring academic department to come to resolution on these matters.

*Pursue confirmation with UCOP for a final determination.*

Real Estate's management will consult with the Office of the President for further clarification regarding applicable leases and licenses that may be subject to the UC Fair Wage/Fair Work Plan.

## **Supply Chain Management**

### **Observation**

Over the past year, Supply Chain Management has made progress in adopting practices that support compliance with fair wage/fair work requirements, particularly the monitoring of vendors with over \$100,000 in purchase orders, increased reinforcement with buyers (within Procurement and throughout campus) regarding fair wage/fair work requirements, and initiation of professional services exemptions where appropriate. This was evidenced by the receipt of all required verifications and general improvement in the application and monitoring of fair wage/fair work practices. We note Supply Chain Management's efforts to continue proactively improving compliance with fair wage/fair work provisions.

During the audit, we identified the following testing exceptions and areas for improvement:

*Timeliness of Verifications* - We found that all required verifications of vendors with over \$100,000 in spend were received by Supply Chain Management. However, five of eleven verifications were received later than 90 days after the contract renewal anniversary, and two verifications were received between five and seven months later. We recommend that Supply Chain Management continue to improve its monitoring of vendors to ensure that all verifications are received within 90 days after the contract renewal anniversary. We also encourage Supply Chain Management to increase communications with vendors anticipated reaching \$100,000 or more in spend to ensure they remain clear as to fair wage/fair work requirements.

*Verification Signatories* - One of the verifications received was signed by the vendor's HR director. The auditor contacted the vendor to assess whether the signer was appropriate to sign the verification form and to confirm that she was attesting that an internal verification audit had been completed as noted on the verification form, in compliance with fair wage/fair work requirements. The vendor subsequently confirmed that no audit had been completed by an internal audit function (or external CPA) to support the verification. We recommend that Supply Chain Management contact the vendor to review fair wage/fair work requirements and that it administer remedies as appropriate to the situation.

### **Management Response and Action Plan**

UC Berkeley incorporates UC's Fair Wage/Fair Work policy into all of its contracts and purchase orders, when applicable. With new tools developed by the Office of the President in 2019, such as the professional services exemption and the fair wage/fair work audit notification letters to be sent to its suppliers, UCB saw improvements in its fair wage/fair work compliance for contracts more than \$100,000 in a 12-month period. Given that on July 1, 2020, the City of Berkeley's minimum wage ordinance requires employers to pay \$16.07/hour and the UC fair wage/fair work policy is \$15.00/hour, Supply Chain Management foresees fair wage/fair work becoming increasingly moot for its suppliers to comply with the policy.

Supply Chain Management's Procurement Manager, will work with the campus' procurement professionals and suppliers to ensure UCB continues to collect the required audit verification document within 90 days of the contract anniversary date, when required, and/or Professional Services Exemptions are collected in a timely manner – preferably at the time of contract execution. Supply Chain Management's Procurement Manager will also contact the vendor cited to reinforce fair wage/fair work requirements, further assess the situation, and apply appropriate remedies.