



# AUDIT AND ADVISORY SERVICES

## Conflict of Interest and Conflict of Commitment Audit Project No. 11-575

April 22, 2011

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April 22, 2011

Angelica Stacy  
Acting Vice Provost  
Academic Affairs and Faculty Welfare

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Assistant Vice Chancellor  
Research Administration and Compliance

Vice Provost Stacy and Assistant Vice Chancellor Schlesinger:

We have completed our audit of Conflict of Interest and Conflict of Commitment disclosures as per our annual audit 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.

Due to increased public and governmental scrutiny on areas of potential conflict of interest and commitment, this audit was conducted to assess compliance with selected UC and Berkeley campus policies, procedures, and guidelines regarding conflict of interest (COI), conflict of commitment (COC), and income reporting for faculty. This audit has been conducted as part of a UC systemwide audit carried out at each campus and the Office of the President.

Our audit procedures focused on COI and COC policies, COI disclosures related to research, and COC disclosures related to all faculty. The period of the audit was July 1, 2009 through June 30, 2010. COI disclosures related to research are required on an ongoing basis as project proposals are submitted or research gifts are received. COC forms for the audit period were due from faculty on November 1, 2010 to department chairs and deans.

Audit techniques included a review of COI and COC policies, in-depth discussions with departmental personnel, review of processes and controls related to COI and COC disclosures, and review of a sample of completed COI and COC forms.

With respect to the research COI process, our audit did not have any findings.

With respect to the COC process, our audit found instances in which the COC forms requesting pre-approval for Category I activity were incomplete or had inconsistent information. In addition, our audit also found instances of annual forms disclosing Category I & II activity that were not submitted timely and/or lacked required approval signatures by designated individuals.

As part of our audit, we obtained management responses to our observations. We assessed these responses and believe that they will remediate the exceptions noted and promote compliance going

forward. Specifically, the Academic Personnel Office (APO) has agreed to implement a tracking system for missing or incomplete compliance certifications as of the October 31<sup>st</sup> process deadline as well as to distribute an exceptions report to the Executive Vice Chancellor and Provost for the purpose of further follow up with academic deans. APO has also agreed to work with the current systemwide effort to revise APM 025 (Conflict of Commitment and Outside Activities of Faculty Members) to provide greater clarity with respect to compliance and reporting responsibilities.

The aforementioned and other observations with management action plans are expounded upon in the accompanying report. Please destroy all copies of draft reports and related documents. Thank you for your 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: Executive Vice Chancellor and Provost George Breslauer  
Vice Chancellor Graham Fleming  
Director Heather Archer  
Associate Director Jyl Baldwin  
Director Barbara VanCleave Smith  
Senior Vice President Sheryl Vacca  
Associate Chancellor Linda Morris Williams  
Interim Associate Vice Chancellor and Controller Delphine Regalia

**University of California, Berkeley  
Audit and Advisory Services  
Conflict of Interest and Conflict of Commitment Audit**

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# OVERVIEW

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## Executive Summary

Due to increased public and governmental scrutiny on areas of potential conflict of interest and commitment, this audit was conducted to assess compliance with selected UC and Berkeley campus policies, procedures, and guidelines regarding conflict of interest (COI), conflict of commitment (COC), and income reporting for faculty.

With respect to the COI process, our audit did not have any findings.

With respect to the COC process, our audit found instances in which the COC forms requesting pre-approval for Category I activity were incomplete or had inconsistent information. In addition, our audit also found instances of annual forms disclosing Category I and II activity that were not submitted timely and/or lacked required approval signatures by designated individuals.

As part of our audit, we obtained management responses to our observations. We assessed these responses and believe that they will remediate the exceptions noted and promote compliance going forward. Specifically, the Academic Personnel Office (APO) has agreed to implement a tracking system for missing or incomplete compliance certifications as of the October 31<sup>st</sup> process deadline as well as to distribute an exceptions report to the Executive Vice Chancellor and Provost for the purpose of further follow up with academic deans. APO has also agreed to work with the current systemwide effort to revise APM 025 (Conflict of Commitment and Outside Activities of Faculty Members) to provide greater clarity with respect to compliance and reporting responsibilities.

## Source and Purpose of the Audit

The appearance of conflicts of interest or commitment has the potential to undermine public trust in the University, even in situations where mitigating factors are made known to the public. Due to increased public and governmental scrutiny on areas of potential conflict of interest and commitment, this audit was conducted to assess compliance with selected UC and Berkeley campus policies, procedures, and guidelines regarding conflict of interest (COI), conflict of commitment (COC), and income reporting for faculty.

This audit has been conducted as part of a UC systemwide audit carried out at each campus and the Office of the President.

## Scope of the Audit

By direction of the Chief Compliance & Audit Officer, this audit focused on policies and disclosure procedures related to potential conflicts of interest and conflicts of commitment related to faculty members and research. Disclosures of potential conflicts of interest involving or related to (1) UC designated officials, (2) employee/vendor relationships, (3) hiring of near relatives, (4) patent and technology transfer and use of University resources, (5) Health Sciences Compensation Plan outside income, and (6) any COI/COC policy related to the Senior Management group were excluded from this audit.

As a result, our audit procedures focused on COI and COC policies, COI disclosures related to research, and COC disclosures related to all faculty. The period of the audit was July 1, 2009 through June 30, 2010. COI disclosures related to research are required on an ongoing basis as project proposals are submitted or research gifts are received. COC forms for the audit period were due from faculty on November 1, 2010 to department chairs and deans.

Additionally, we reviewed applicable state and federal conflict of interest disclosure requirements and relevant sections of the Academic Personnel Manual (APM). We also interviewed a number of academic administration personnel responsible for implementing and monitoring COC and COI policies on campus. Lastly, we selected a sample of disclosure forms to review and assessed practices to monitor reports and disclosures submitted by faculty members.

## **Background Information**

### *Conflict of Interest Process*

Principal Investigators (PI's) at UC Berkeley are subject to the University of California systemwide Conflict of Interest Code and implementing policies for State of California and federal laws and regulations pertaining to conflict of interest in research. UC employees and faculty members must comply with the provisions of state and federal law governing the acceptance of gifts and grants. All UC employees must also disqualify themselves from participating in decisions in which they have personal economic interest. The primary California legislative document governing conflict of interest is the Political Reform Act of 1974 (the Act). The Act places responsibility upon the individual to be familiar with the requirements of the Act and UC COI Code (adopted in compliance with the Act). A Statement of Economic Interest (Form 700U) is to be completed and filed with the Conflict of Interest office in the Office of Research Administration and Compliance at UC Berkeley for every research proposal submitted or research gift received. The primary regulatory document governing conflict of interest in the federal arena is 42 CFR Part 50 Subpart F. A Federal Financial Disclosure Form is to be completed and filed with proposals to those federal agencies for which it applies and any other funding organizations which have adopted the federal disclosure standards.

A faculty Conflict of Interest Committee has been set up on campus and is responsible for the review and assessment of all financial disclosures related to research projects at UC Berkeley and for determining any actions required to ensure that actual or perceived financial conflicts of interest are managed appropriately. The Committee reports to the Vice Chancellor for Research.

### *Conflict of Commitment Process*

The University of California policy on conflicts of commitments and outside activities of faculty members is outlined in the Academic Personnel Manual, Section 25 (APM 025) . APM 025 delineates limits on the amount of outside professional activities faculty members are permitted to undertake, including both compensated and uncompensated activities. APM 025 also includes guidance for involving students in such activities. In addition, the policy sets reporting guidelines for compensated and uncompensated outside professional and non-professional activities.

APM 025 outlines three categories of compensated outside professional activities, which are differentiated in terms of the extent to which they may raise potential conflict of commitment concerns:

- **Category I** – Activities that are likely on their face to raise concerns of conflict of commitment; for example, activities such as assuming a managerial position in a for-profit or non-profit organization, administering a grant outside the University that would ordinarily be conducted under the auspices of the University or involving a student in an outside compensated activity. These activities would require prior approval and additional documentation.
- **Category II** – Activities that are unlikely on their face to raise concerns of conflict of commitment and are ordinarily allowable without prior approval. Examples of such activities include providing expert testimony in a legislative proceeding, consulting services or serving on a board of directors.
- **Category III** – Activities which are integral to all disciplines and ordinarily do not present concerns of conflict of commitment and do not require prior approval. Examples of such activities include serving as an editor of a journal or presenting a keynote address.

The policy outlined in APM 025 applies to full-time and part-time members of the Academic Senate (faculty).

#### *Inherent and Campus-specific Risk Factors*

Adherence to APM 025, the Conflict of Interest policy and provisions of state and federal law governing the acceptance of gifts and grants is important from both a policy and regulatory compliance perspective. We have identified the following inherent risks below which may result in potential non-compliance:

- lack of accountability for compliance with policy;
- weak management philosophy toward and oversight of compliance; and
- poor communication of expectations and timelines for completing disclosures.

There are potential operational consequences to the University, such as inappropriate and inconsistent behavior as well as concerns from the public regarding perceived conflicts of interest.

In addition, there are certain factors specific to the UC Berkeley campus that may create additional challenges for management in ensuring compliance with COC and COI policies insofar as most units on campus have undergone reorganizations, changes in leadership or staff reductions. Because of these changes, staff may have been assigned new responsibilities, and there is a risk that staff and faculty are not adequately trained on the implementation of the COC and COI process. The authority and responsibility to monitor and enforce policies may have shifted and placement of authority may not currently be adequate to ensure compliance.

#### **Summary Conclusion**

Existing campus academic personnel processes provide reasonable assurance that the campus is in compliance with requirements contained in APM 025 and the Conflict of Interest Policy. In

addition to requirements outlined in APM 025 and the Conflict of Interest Policy, the campus implemented additional procedures to facilitate compliance as follows:

- The campus has implemented a requirement that the annual COC reports be submitted by faculty to deans or chairs by September 30, instead of November 1 as required by APM 025. This protocol provides additional time to ensure all certifications of completion are submitted to the Academic Personnel Office timely and for follow up on any outstanding issues.
- The campus requires responsible deans and/or chairs to annually certify to the Academic Personnel Office that all annual COC reports have been received.
- The campus has an independent faculty Conflict of Interest Committee and has assigned experienced and dedicated staff to support the Committee's activities. The conflict of interest process is managed centrally by the Research Administration and Compliance Office.
- Completion of required COC and COI forms is also considered as a factor during faculty's advancement/merit reviews.

With respect to the COI process, our audit did not have any findings.

With respect to the COC process, our audit found instances in which the COC forms requesting pre-approval for Category I activity were incomplete or had inconsistent information. In addition, our audit also found instances of annual forms disclosing Category I and II activity that were not submitted timely and/or lacked required approval signatures by designated individuals.

Our specific observations, along with management's response, follow.



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# **SUMMARY OF OBSERVATIONS & MANAGEMENT RESPONSE AND ACTION PLAN**

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## **Conflict of Commitment Process**

### **Completeness of Forms – Prior Approval Requests for Category I Activities**

#### **Observation**

We selected a sample of eight prior approval forms and noted that in four cases forms were incomplete and missing specific activity dates, hours listed were inconsistent throughout the form, and/or activities listed were inconsistent with types of activities that may fall into Category I.

The COC campus policy affirms faculty responsibilities as members of the University of California and provides mechanisms to ensure that activities outside the University do not interfere with fulfillment of these responsibilities. Authority to approve or deny certain requests for Category I activities has been delegated by the Vice Provost for Academic Affairs & Faculty Welfare to the deans. In a letter to Deans, Chairs and Academic Senate dated September 13, 2010, the Vice Provost stressed that prior approvals are required for Category I activities and should be submitted timely. Category I activities may potentially present concerns of conflict of commitment and it is therefore important that prior approval forms are complete, accurate, and submitted and approved timely (e.g., prior to start of outside professional activities). In the absence of a review and approval process, there is a risk that inappropriate and inconsistent behavior in activities outside the University may be overlooked.

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

We share the concerns raised by these observations and feel corrective action will be especially important as the campus undergoes extensive reorganization as part of the Operational Excellence (OE) effort given the anticipated changes in reporting lines and staff reductions.

As a corrective action, we feel increased awareness to both deans and their staff on the importance of accurate, timely forms and the risk involved with approving incomplete or untimely forms would be beneficial. Therefore, we will be using the audit findings as a training tool. We will also emphasize to deans that they should bring any questions they may have about approving such requests to the Vice Provost for Academic Affairs & Faculty Welfare (VPAAFW). The deans' offices would then be charged with sharing this information with their units.

Management expects to complete its action plan by November 30, 2011.

## **Conflict of Commitment Process**

### **Timing and Completeness of Faculty Annual Disclosures of Category I and II Activities and Timing of Certifications of Process Completion by Schools and Colleges**

#### **Observation**

We selected a sample across all schools and colleges of 58 annual faculty disclosure forms for Category I and II activity and noted the following:

- 24 forms (about 41% of the audit sample) were submitted after the September 30 faculty submission deadline, which we understand is prescribed by the campus to allow ample time for dean or chair approval.
- 25 forms (about 43% of the audit sample) were signed by the chair or dean after the November 1 deadline as prescribed by APM 025.
- 5 forms (about 9% of the audit sample) were neither signed nor dated by the dean or chair. In each of these cases, forms were dated by the faculty member after September 30 or November 1<sup>st</sup>.

We also requested to inspect the completed annual certifications completed by individual schools and colleges indicating that all annual disclosure forms have been received by the dean or chair. By October 31 of each year, an annual certification from the dean or chair is required to be submitted by each school and/or college to the VPAAFW stating that all required annual forms have been received by the dean or chair. We note that only 5 out of 14 required certifications (about 35%) had been completed and submitted as of the closing date of fieldwork for our audit.

University administration is charged with implementing procedures necessary to properly manage compensated outside professional activities. Timely reporting, review and approval of annual activities and submission to the Chancellor's Office are integral to these procedures.

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

We share the concerns raised by these observations and feel corrective action will be especially important as the campus undergoes extensive reorganization as part of the OE effort given the anticipated changes in reporting lines and staff reductions. Therefore, we propose the following corrective actions:

- Continue to work with the Academic Personnel Directors (APDs) and the Office of the President (OP) to revise APM 025. The revision currently under discussion would help clarify to both faculty and staff what needs to be reported and why.
- Use the audit findings as a training tool to reinforce the importance of accurate and timely 025 reports and certifications of completion.
- Remind deans' offices that the time period between the September 30 deadline for the departments to submit reports and the October 31 deadline to certify to APO

that all reports are submitted and complete should be spent following up with units regarding questions on reports, trying to collect missing reports, or revising incomplete reports.

- Implement a tracking system at APO to tag all missing and/or incomplete certifications as of the October 31 deadline. APO will then inform the EVCP of the schools/colleges with missing and/or incomplete reports. He will then be able to discuss the issue with the deans at their standing meetings.

Management expects to complete its action plan by November 30, 2011.