

The logo for UC Irvine, featuring the letters 'UC' in a large, bold, serif font, followed by 'IRVINE' in a smaller, all-caps, serif font. A vertical line separates the 'UC' from 'IRVINE'.The text 'INTERNAL AUDIT SERVICES' in a bold, all-caps, serif font, positioned to the right of the UC Irvine logo.

Conflict of Commitment and Outside Activities

Internal Audit Report No. I2016-110

October 28, 2016

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INTERNAL AUDIT SERVICES
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**JOAN TENMA
ASSISTANT VICE CHANCELLOR
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**RE: Conflict of Commitment and Outside Activities Audit
No. I2016-110**

Internal Audit Services has completed the Conflict of Commitment and Outside Activities review and the final report is attached.

We extend our gratitude and appreciation to all personnel with whom we had contact while conducting our review. If you have any questions or require additional assistance, please do not hesitate to contact me.

Mike Bathke

Mike Bathke
Director
UC Irvine Internal Audit Services

Attachment

C: Audit Committee
Diane K. O'Dowd, Vice Provost, Office of Academic Personnel

I. MANAGEMENT SUMMARY

In accordance with the fiscal year 2015-2016 audit plan, Internal Audit Services (IAS) conducted a compliance review of Academic Personnel Manual - 025 & 671 (APM-025) and (APM 671) on Conflict of Commitment and Outside Activities of Faculty Members at the University of California, Irvine (UCI). In general, the review disclosed internal control/compliance weaknesses that should be improved to minimize risks and ensure compliance with University policies and procedures and/or best business practices. The following concerns were noted.

Annual Reporting – The annual COC reporting forms in four schools for the fiscal year ending June 30, 2014 were reviewed and several compliance issues were noted. Some faculty did not submit annual reports or submitted the reports well after the due date. Some faculty reported they engaged in Category I activities but had not submitted a request for Category I prior approval. In one school, the Dean had not reviewed or signed any of the annual reports as required by policy. In another school, the department chairs reviewed and signed their own annual reports, and did not submit them for the Dean’s review and signature. These observations are discussed in section V.1.

Oversight – Adequate processes are not in place to track, monitor, and maintain the Dean’s Office Surveys submitted by each school or requests for Category I prior approvals submitted by faculty. Further details related to these issues are provided in section V.2.

Policy Implementation – There is inconsistency and confusion in the reporting requirements for faculty that have appointments in different schools. Also, although the COC-OA policy was revised, issued effective July 1, 2014, and implemented immediately, the policy changes were not communicated to the schools for implementation. As a result, faculty continued to use the outdated form and did not report uncompensated outside activities as required by policy for FY 2014-2015. These observations are discussed in section V.3.

Training – A formal training on policy requirements is not provided to the faculty, department chairs, or staff. Only three schools discussed the general policy requirements with faculty as part of the new employee orientation training. This observation is discussed in section V.4.

II. BACKGROUND

Outside activities, whether professional or non-professional, compensated or uncompensated, may raise the appearance, or the reality, of a COC to the faculty member's University obligations.

The University of California has established specific guidelines for identifying or categorizing, reporting, and managing such activity in a policy on COC and outside activities of faculty members, Academic Personnel Manual - 025 (APM-025) and APM 671. This policy provides guidance of outside activities in order to avoid conflicts of commitment, ensuring that the activities performed outside the University do not interfere in the successful performance of their duties and responsibilities to the University.

According to the guidelines presented in APM - 025-10 and APM 671-10, faculty are responsible for complying with this policy, including but not limited to:

1. Obtaining prior written approval for engagement in Category I activities by completing the prior approval request form (APM-025/APM 671 APPENDIX B).
2. Disclosing all Category I and Category II activities (or the lack thereof) by submitting a report (APM-025/APM 671 APPENDICES C & D) to the Department Chair annually.

The mechanisms for managing a faculty member's outside activities are presented in APM - 025-26/APM 671-26. It states that each campus is charged with implementing the procedures necessary to properly manage outside activities. Department chairs are to monitor compliance with this policy by collecting and reviewing annual reports and address any concerns if in doubt as to whether there is a COC associated with any current or prospective outside activity. Also, deans are responsible for reviewing department chairs annual reports of outside activities each year.

Lastly, the Office of Academic Personnel (AP) at UCI interacts with the Office of the President, the Chancellor, Executive Vice Chancellor, Associate Vice Chancellor, faculty as well as the school/department academic employees to analyze, interpret, and train in order to properly implement AP policies and procedures.

III. PURPOSE, SCOPE, AND OBJECTIVES

The objective of the audit was to evaluate whether or not UCI faculty and management were generally in compliance with APM-025/671. The scope of the review focused on the annual reporting for fiscal year (FY) 2013-2014.

Based on the assessed risks, the following audit objectives were established for the schools/departments selected for further review.

1. Verify if the entire population of academic appointees subject to APM-025/671 were captured for FY 2014-2015 annual reporting.
2. Determine if annual reports were submitted in a timely manner by the due date.
3. Determine if activities were properly categorized and reported.
4. Verify if prior written approval for engagement in Category I activity was obtained as required by policy.
5. Verify if exceptional approval for exceeding time limits was obtained as required by policy.
6. Determine if income exceeding threshold for School of Medicine (SOM) faculty was properly reported.
7. Determine if faculty members, department chairs, and deans signed the annual reports as required.
8. Determine if there is a process to review positive disclosures or disclosures that appear to be missing based on academic appointee's known outside activities at the departmental level.
9. Determine if there is a secondary review or oversight by AP to ensure that departments are in compliance with policy.
10. Determine if academic appointees and/or staff received appropriate orientation or training on COC and outside activities.

11. Assess and review selected information technology (IT) general controls.

IV. CONCLUSION

Based on our review, the UCI AP Office has established processes in place to ensure timely reporting by faculty and review by department chairs/deans. However, IAS identified compliance issues and concerns in the areas of annual reporting, annual report reviews, policy oversight, and training.

Observation details and recommendations were discussed with management, who formulated action plans to address the issues. These details are presented below.

V. OBSERVATIONS AND MANAGEMENT ACTION PLANS

1. Annual Reporting

Background

The UC Regents' Standing Order 103.1(b) states that faculty members shall not allow outside employment to interfere with primary University duties. University policy applicable to Academic Senate members is found in APM-025 (general campus faculty) and APM-671 (Health Sciences Compensation Plan faculty); each policy includes specific time limits for certain types of outside activities. Whether professional or non-professional, compensated or uncompensated, an outside activity that interferes with successful performance of a faculty member's University obligations represents a COC.

Faculty are responsible for complying with this policy, including:

1. Obtaining prior written approval for engagement in Category I activities; and
2. Submitting annual reports of all Category I and Category II activities to the Department Chair.

UC policy mandates that faculty submit an annual report, whether or not they are engaged in these activities (a response of yes or no is required).

Observation

IAS reviewed the annual COC reporting forms (312 total reports) for the School of Business, School of Law, School of Engineering, and five departments in the SOM (Surgery, Urology, Psychiatry & Human Behavior, Ophthalmology, and Orthopaedic Surgery) for the fiscal year ending June 30, 2014 and noted the following compliance issues.

- Twenty-two faculty (7 percent) did not submit annual reports.
- Four faculty reported they were engaging in Category I activities but did not receive prior approval.
- None of the School of Law reports had been reviewed or signed by the Dean (after IAS requested the reports, the Dean reviewed and signed the reports on February 22, 2016 – 15 months after the due date).
- Eighty faculty (26 percent) either submitted reports after the due date or did not date the report (so it's uncertain if they were timely).
- For all five SOM department chairs who submitted the annual reports, the deans did not review and sign the forms. Four department chairs signed their own forms and one department chair had a subordinate sign the form.
- None of the School of Business reports had been dated by the Dean or Associate Dean so it's uncertain if they were timely.

Management Action Plan

Failure to submit report in 2013-14

- School of Law in 2014-15 continues to have faculty who are not complying with this policy. We will follow up with the Law School Dean to ensure compliance to this policy in 2014-15 and 2015-16.
- School of Engineering has dramatically improved faculty reporting in 2014-15, to a 98% submission rate, with only two faculty members, who failed to submit their reports. We believe this was a direct result of the implementation of the Dean's survey and AP's consistent follow up during Fall 2015.
- In SOM, individuals listed in this observation (as not having submitted the annual report in 2013-14) all turned in their APM 671 report for 2014-

15. We attribute this high compliance rate to the recently launched SOM COC electronic reporting system.

- Reporting has improved for 2014-15 for the entire campus, with regard to timeliness (87% of schools submitted reports within 2 weeks of the deadline, with 60% submitted on time) and completeness (only 3.6% of all faculty failed to submit reports). The Vice Provost for AP has followed up with each dean to require that these missing reports be submitted by December 2, 2016.

Failure to seek prior approval in 2013-14:

- School of Law: Three faculty members reported having engaged in teaching in other educational institutions without seeking prior approval. We will provide feedback to the School's dean to inform faculty members and administrators of the APM 025 prior approval for Category I requirement for outside activities, such as teaching.
- School of Engineering: The fourth professor in question did request prior approval for other outside activities during 2013-14 and noted in the annual report that he sought prior approval in a leave request. The dean's office did not receive a prior approval form for the teaching activity and reported that this faculty did not seek prior approval. AP will ask the dean's office to follow up with this faculty member with a reminder regarding prior approval for Category I activities.
- While the observations identify areas that would benefit from the school reaching out to get additional information, we do want to note that it is critical to receive clarification from the faculty before making an assumption that policy has been violated. When IAS met with AP to discuss specific observations, IAS made an observation that schools should have questioned some of the activities on the annual reports. AP shared that department chairs and deans are oftentimes already familiar with the outside professional work of their faculty or they may have received verbal clarification when speaking to a faculty member about a specific activity. Documentation of this follow-up is not currently captured in our manual system.

Failure to Review by Deans 2013-14:

- As this is a dean's delegated action, the Vice Provost for AP will send a memo to the deans reminding them of the policy requirement with respect to the following:

- Faculty in the appointment titles of set out in APM 025/671 must submit a report annually.
- Report submission must be timely, and forms must be properly dated and signed by the faculty member, chairs and deans. We will clarify that while a dean may have reviewed the annual reports, a failure to sign the reports implies otherwise.
- Department chairs and deans should review the report for compliance with respect to the category of the reported activity, whether time limit was exceeded, and if prior approval was sought (if required) and follow up with faculty member if any of these were not in compliance.

Chairs Signing Their Own OPA Forms:

- Chairs should submit their OPA forms to the dean for approval. We recently learned that SOM launched an electronic system to manage the collection of their annual reports, so this oversight may be rectified now within their system. It should be noted that the SOM system was developed without consultation with AP and does not permit workflow approval, does not categorize activities to identify them for pre-approval or reporting compliance, and does not have reporting capabilities. This system also does not track requests for approval involving students in OPA, nor does it provide policy training or resources within the system.

Dean's review of OPA reports:

- The Vice Provost for AP will discuss with the Provost a possible new requirement for deans to report their oversight of faculty compliance of COC annual report during the annual dean's annual performance management process to ensure proper review and enforcement by deans of COC compliance. In this way, compliance management will affect the dean's annual assessment.

2. Oversight

Background

In regard to the UCOP policy on COC and outside activities, AP has been reviewing requests submitted by faculty for Category I activities in addition to addressing inquiries from faculty and staff as well as sending out reminders

about the due date to ensure timely reporting by the faculty. To further ensure compliance to this policy, in its oversight role, AP had required additional reporting from each school. Approximately a month after the reporting due date for faculty (within the first week of December), each school was required to complete the Dean's Office Survey which summarizes the reporting statistics for each fiscal year and submit the survey to AP for review.

As part of the AP's written COC procedures for the Dean's Office Survey, AP is to:

- Acknowledge receipt immediately;
- Print one copy for paper file and ensure there is one electronic copy;
- Review for:
 - Dean Signature
 - Completeness
 - Compliance Issues
 - Have any faculty not submitted?
 - Have any faculty exceeded limits or failed to request prior approval?
- Follow up with Chief Personnel Officers (CPOs) to correct any issues that may be corrected; and
- Send reminder emails to CPOs who have not yet submitted a Survey.

Observation

Manual paper-based processes for the completion of annual reports and Dean's Office Surveys are not efficient or entirely effective for ensuring compliance with policy. The responsibility for monitoring COC and outside activities is delegated across the campus, and consequently, processes for monitoring activities varies.

For fiscal years (FY) 2011-2012, 2012-2013, and 2013-2014, IAS reviewed AP's processes and practices in place for reviewing, maintaining, and monitoring the Dean's Office Survey from each school. In addition, IAS reviewed AP's processes for reviewing, maintaining, and monitoring Category I requests. IAS noted the following issues.

- AP does not have an adequate process in place to track, monitor, and maintain the Dean's Office Surveys submitted by each school. None of SOM Dean's Office Surveys had been received for the last three years. In

addition, AP did not properly maintain and file the Dean's Office Surveys submitted by the other schools. For FY 2011-2012, AP had maintained only one Dean's Office Survey on file. For FYs 2012-2013 and 2013-2014, AP had not maintained the Dean's Office Survey from two schools.

Since many of the surveys for the three year period reviewed were either not received or not maintained it is uncertain how many COC reports were completed and whether compliance issues existed (failed to request prior approval for Category I, exceeded limits, completeness, chair and dean review/approval/signature, etc.). IAS noted that seven SOM departments did not have any COC reports on file for FY 2013-2014. In addition, since AP only requests the Dean's Office Surveys, not the actual COC forms submitted by faculty, compliance issues go undetected.

- AP does not have an adequate process in place to track, monitor, and maintain Category I activities. AP maintains Category I approval requests in an Excel spreadsheet but the listing was incomplete. IAS bounced the Category I activities listed on Dean's Office Surveys to the Excel spreadsheet and noted some did not appear on the report. In addition, some entries were incomplete so it's uncertain if they were approved.

IAS recommends an electronic system for the collection of annual reports, which would help to resolve many of the challenges with compliance and provide AP with better oversight capabilities and reporting mechanisms.

Management Action Plan

Collection of annual reports has been a delegated responsibility of the dean in each school at UCI. In response to areas of improvement identified in the 2007 internal audit, AP implemented a process by which deans must report on faculty compliance with the requirements of APM 025/671. The implementation of these Dean's Surveys provided central office oversight for school review of outside professional activities ("OPAs") reported by its faculty. In AP's review of the Dean's Surveys, should AP require additional information, such as individual faculty annual reports, the reports would be requested and provided.

Due to several staff turnovers in AP since 2012, we acknowledge that the Dean's Surveys collected for 2011-2012 were misplaced. In addition, the

subsequent loss of critical staff in the SOM dean's office contributed to why AP was not able to collect SOM Dean's surveys for several years.

Since Fall 2015 and currently, management of the COC for OPA in APM 025/671 resides with the position of Academic Employee Relations (AER) Analyst under the direction of the Director of Academic Employee Relations and Faculty Development. For the annual reporting related to 2014-15, the AER Analyst has prepared a Policy Compliance Summary that reflects analysis of policy compliance at the school, department, and faculty levels. The analysis includes timeliness of reporting, completion rates, faculty reporting rates, instances when faculty exceeded the maximum number of days, and approval of category I activities. The Vice Provost for AP will use this report to follow up with each dean to do the following:

- Require faculty who are delinquent in submitting their annual reports to submit a 2014-15 report. Inform those not in compliance that further non-compliance may result in a loss of privileges, including the ability to go on a sabbatical, submit an academic personnel review file, or participate in a salary program such as the Health Sciences Compensation Plan or the Negotiated Salary Trial Program; and
- Notify faculty who failed to submit prior approval requests for reported Category I activities and/or exceeding time limits that a record of their non-compliance will be maintained in their file, in lieu of the activity approval documentation. Additionally, a warning that future infractions may result in a loss of privileges, as described above, will be provided to non-compliant faculty, Chair, Dean, Provost and Chancellor.

Creation of Electronic System to Manage Faculty COC OPA Compliance

We recognize that a manual, paper-based process for completing the annual reports has many drawbacks and makes managing compliance of this policy challenging. We agree that a single electronic system will provide the Vice Provost for AP the ability to improve oversight of school policy compliance, including meaningful timely follow-up with faculty who fail to comply with policy.

In 2010, the Associate Chancellor led a campus-wide task force to identify a common system for conflict of interest (COI) and COC compliance needs for the medical center, general campus and SOM. The goal of this task force was to meet

the compliance requirements for research compliance, academic personnel policy compliance, senior management group reporting compliance, physician reporting compliance under the Sunshine Act, etc. Unfortunately, campus funding constraints and a lack of support from the system-wide compliance leaders (who required a majority of UC campuses to sign on before committing any funding assistance) stalled this comprehensive compliance initiative. Since then, UCI's Research office has moved forward with a Kuali COI system to meet its specific COI needs; the Kuali system does not provide COC management and efforts to add this functionality have not been successful.

AP is in the initial stage of exploring the creation of a COC-only system, possibly with UC system-wide partners. We envision a "smart" system that can issue an annual call to faculty and allow for direct submission and real-time entries of activities as well as customized reporting functions to track compliance. A COC system will prompt faculty users and initiate a process to electronically request a Category I approval or to request exception to exceeding their OPA time limit in real time. A "smart" system will inform faculty, at time of submission, whether their outside professional activity falls under a category that requires prior approval, and the system will capture the activity when entered, thus allowing the faculty to meet their reporting obligations. In addition, training and educational material regarding COC requirements can also be built into this system so users can obtain clarification about the policy requirement when they are most receptive to it – at the time they need it.

At the time of this response, funding and personnel resources needed to build such a system are under discussion but have not been secured. While we recognize that this COC-only system does not provide the ideal solution for faculty members – that is, it is not a comprehensive "one stop-shop reporting" solution for faculty to input their outside activities as had initially been discussed in 2010 – the COC-only system will nevertheless facilitate reporting and compliance efforts for faculty and administrators alike. Additionally, as it is envisioned, the COC-only system will be able to share information with other systems, such as UCI Research's Kuali COI system. We are hopeful that we can generate interest amongst other UC AP offices with the same need to help share the cost of developing this system. A draft business plan for this multi-campus COC application has been developed. A formal plan will be presented to the Council of Vice Chancellors (COVC) for discussion this fall.

3. Policy Implementation

Observation

IAS reviewed policies relating to COC-OA and noted the following.

- IAS found instances where faculty had joint appointments (50 percent appointments) in different schools and there is confusion as to how reporting should be handled. IAS noted that some schools obtained reports from faculty with 50 percent appointments, while other departments assumed that the home department was responsible for obtaining reports from faculty. Policy is not clear on how these appointments should be handled for reporting purposes.
- The COC-OA policy was revised, issued effective July 1, 2014, and implemented immediately. The revised policy included several changes to the reporting form; the most significant change required that faculty report compensated as well as uncompensated outside activities. As of March 2016, the new form was not posted on the AP website. As a result, faculty continued to use the outdated form and did not report uncompensated outside activities as required by policy for FY 2014-2015.

Proper implementation of policy not only ensures compliance with policy and procedures but minimizes the likelihood of errors or violations.

Management Action Plan

Faculty with Split Appointments (50/50)

It should be noted that while Academic Personnel Manual (APM) 025/671 requires faculty in titles subject to APM 025/671 at 50 percent or more to report the OPA annually, it does not have specific policy language regarding treatment of faculty with split appointments. As faculty with split appointments between the SOM and the general campus are considered to have reporting responsibility only in the SOM, due to their Health Sciences Compensation Plan obligations, it is reasonable to require faculty with non-SOM split appointments to only report their OPAs in their home department as duplication of records is not only time consuming but will lead to confusion.

This will be clarified in the annual reporting call and campus procedures in APP-1-15.

APM 025/671 Revision as of July 1, 2014

AP typically creates parallel campus resources for system-wide policies, customized for campus-specific implementation. We acknowledge the oversight that our campus form for OPA was not updated to include uncompensated Category I and II activity reporting in a timely manner. An updated version that is consistent with the current version of APM 025/671 has been posted to the AP website.

Due to several unanticipated staff transitions, COC had not received consistent oversight. As of Fall 2015, this functional oversight has been assigned to the Director of Academic Employee Relations and Faculty Development, whose staff had been in the process of updating the UCI campus procedures, APP 1-15, when this audit was initiated. The Director, in consultation with Assistant Vice Chancellor, made a decision to hold off on updating this campus procedure until the conclusion of the audit, so as to incorporate any suggested improvements to the current COC process in the revised Academic Policies & Procedures (APP) 1-15.

4. Training

Observation

IAS conducted a survey to determine if training is provided to faculty. In addition, school/departmental staff who assist the department chairs with obtaining, reviewing, and filing the reports were interviewed to determine if they received training on the policy.

The survey results and interviews disclosed that although staff in each department has a liaison in the AP office to discuss specific issues, a formal training on policy requirements is not provided to the faculty, department chairs, or staff. Also, the survey disclosed that only three schools discussed the general policy requirements with faculty as part of the new employee orientation training.

Management Action Plan

AP was interested to learn that an IAS survey was conducted with schools during this audit on COC-OPA practices. If IAS is willing to share the results of this survey with AP, it would assist AP in addressing any training deficiencies or needs identified by our schools.

In December 2012, AP partnered with the Office of Technology Alliances (now called Applied Innovation) and Campus Counsel to provide training to address Intellectual Property Issues in Faculty Consulting & Employment Agreements to our business partners, the administrative officers, in the schools. This training not only provided the basis of how, what, and when to report outside professional activities, but also why it is important to manage these activities. The presentation is posted on AP's website and linked within our campus procedures on OPA, viewable by faculty and staff.

In determining what critical training areas related to this policy should be provided regularly to deans, faculty, chairs, and staff, we asked ourselves the following questions:

- How can we improve the reporting process for faculty to submit their Annual report for OPA?; and
- How can we make it clear to faculty that prior requests for approval are required in the following areas related to OPA: Category I activities, exceeding maximum time limits, exceeding income limits, and involvement of students?

We recognize that inclusion of this critical compliance responsibility in training is important; however, annual workshops covering the policy and reporting procedure will likely not be as effective as "just in time" training. We believe that an electronic system would allow not only systematic monitoring of reporting compliance, but would also provide more effective education/training than could be provided by in-person workshops or online training. For example, training and educational material regarding COC requirements can be built into this system so users may obtain clarification about the policy requirements in "real time" while they are using this system to log their activities – when they are most receptive to it, at multiple times throughout the year, at their own pace, and closest to the time when they must apply the knowledge. These benefits would all serve the broader purpose of

reducing errors in reporting. The system will accurately categorize the submitted activity, based on the activity type (e.g., teaching at another institution, serving as a board member) at the time of submission. If the activities require prior approval, the system will prompt the approval workflow for faculty to submit a prior approval request. Finally, any activity logged throughout the year will be automatically loaded into the faculty member's annual report, so that the faculty member does not need to wait until the end of an academic year to report an entire year's worth of activities.

The system has an added training benefit of tracking compliance discussions in a more useful format than individual administrators' and faculty members' email inboxes. Should a faculty member, chair or dean have more detailed questions about a particular activity, this consultation can be conducted within the system using a messaging function. For example, the faculty member would send an inquiry to Academic Personnel through the system and receive a response. Each message would be associated with the activity under the faculty member's profile in the system. This kind of oversight discussion will be invaluable to the Vice Provost for AP when reviewing for policy compliance, and provide additional assurance to faculty that the advice they receive regarding a complex or specific policy compliance issue is recorded within the system. Should complex situations arise in this process of vetting the activity, there are resources on campus, such as campus counsel, AP, and Applied Innovation to assist. These complex discussions seldom arise in the context of general training, but are nevertheless equally important in developing faculty understanding regarding their compliance obligations.

Collaboration with Office of Research on COI requirements

Since Fall 2015, Academic Personnel Office has partnered with the Office of Research to collaborate on the review of Conflict of Interest disclosures when these disclosures touch on COC requirements, such as prior approval for co-founding a company or serving in executive/managerial roles. In addition, Academic Personnel contributed to the contents related to COC compliance in a handbook called, "Start-up Guide for Employee Inventors," that is a joint creation of the Office of Research, Applied Innovation, SOM, and AP. The purpose of this handbook is to serve as a high-level guide and overview of some key questions and issues, including involvement in outside professional activities and policy requirements for prior approval for certain outside professional activities, that faculty may face as they begin to consider starting

a new company around innovations emanating from their research. This guide includes a table that identifies COI and COC approval and reporting requirements for common roles faculty members may serve when pursuing inventions.