# COUNCIL ON FACULTY WELFARE, DIVERSITY, AND ACADEMIC FREEDOM (CFW)

**MEETING NOTICE**

Tuesday, May 13, 2014  
3:30 - 5:30 P.M.  
Aldrich Hall, Room 338

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<td><strong>V. UCI SENATE ISSUES UNDER REVIEW</strong></td>
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<td>B. UC Review of Policy on Supplement to Military Pay – Four Year Renewal</td>
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<td><strong>VII. STATUS REPORTS</strong></td>
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<td>A. University Committee on Faculty Welfare (UCFW)</td>
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<td>B. University Committee on Affirmative Action and Diversity</td>
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<td>C. University Committee on Academic Freedom</td>
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*Agendas, minutes, and enclosures are for your information only.*  
*Please do not share the document(s) with others.*
D. Academic Personnel
   Joan Tenma, Director, AP

E. Equal Opportunity & Diversity Status Report
   Gwen Kuhns Black, Associate Director, OEOD

F. Human Resources/Benefits Status Report
   Jeri Frederick, Director, Center for Emeriti & Retirees, Human Resources

VIII. INFORMATION ITEMS  (Includes correspondence generated from previous meeting)
A. Status Report for 2013-14  8A (pp. 81-83)
B. UC Copyright Policy Memo  8B (pp. 84)

IX. NEW BUSINESS

X. ADJOURNMENT

Distribution
   Jean-Daniel Saphores, Chair
   Gilberto Conchas
   Teresa Dalton
   Lucile Faurel (Leave FQ & WQ)
   Michelle Garfinkel
   Nasrin Rahimieh
   Vincent Olivieri
   Hugh Roberts
   Annette Schlichter
   John Turner (FQ & WQ)
   Craig Walsh
   Daniel Whiteson
   Kyoko Yokomori
   Yaming Yu
   TBA

   Emeriti Members: (3)
   Alan Elias
   William Parker
   TBA

   Cal McLaughlin (UCIEA President is Ex-Officio to Emeriti Subcom.)

   Representatives:
   Carole McEwan, LAUC-I Rep
   Joshua Yang, ASUCI Rep
   Nicole Pierski, AGS Rep

   Consultants:
   Gwen Kuhns Black, OEOD
   Jeri Frederick, Human Resources
   Joan Tenma, Academic Personnel

c: Peter Krapp, Senate Chair

A Reminder:
Members should be prepared to lead discussions on topics for which they are listed on the agenda. For more complex issues, the reviewers may want to engage in an email dialogue or meeting prior to the CFW meeting. Senate Councils are working to improve the level of advice and counsel that they offer, and this step will improve the quality of CFW’s discussions. Following the Council’s discussion, and if a written response is required, a reviewer a may be asked to prepare a draft memo for the Chair’s signature. To promote careful review, each agenda item will be distributed to the designated reviewers and/or subcommittee a week prior to the meeting.

Agendas, minutes, and enclosures are for your information only.
Please do not share the document(s) with others.

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MEMBERS ELIGIBLE TO CHAIR 2014-15

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Civil & Environmental Eng., Zot 3600
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Annette Schlichter, ’15
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Ext. 46406, aschlich@uci.edu

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Kyoko Yokomori, ‘15
Biological Chemistry, ZOT 1700
Ext. 48215, 42158, kyokomor@uci.edu

Yaming Yu, ‘16
Statistics, ZOT 1250
Ext. 47361, yamingy@uci.edu
I. CHAIR’S REPORT
Chair Saphores welcomed Annette Schlichter back and announced Craig Walsh as the new UCAAD representative.

II. CONSENT ITEMS
The minutes from March 11, 2014 were unanimously approved as amended.

III. SUBCOMMITTEE ON EMERITI AFFAIRS – Status Report

3rd Party Services
Processing for retirement services has moved to a third party company. Whenever a retiree requests verification of retirement benefits, they are charged a fee. Emeriti feel strongly the fees should be covered by the retirement system. Additional issues persist with 3rd party vendors handling out-of-state retirees who move to Medicare. Companies such as Fidelity, which handles both active employees and retirees, have large turnover creating inconsistencies in the information employees receive and what is input into the system. UCIEA is scheduled to meet with representatives from the UC Office the President at their semi-annual meeting to discuss these issues.

Retirement Housing
A proposal for the partnership between UC Irvine and Regents Point for retirement housing is under legal review. The proposal includes priority housing for faculty, staff, and their parents.

IV. FACULTY WELFARE ISSUES UNDER REVIEW

A. UC Care Medical Benefits Coverage

Issue
A review of issues with benefits coverage forwarded to the Council.

Discussion
Chair Saphores was contacted by a retiree having issues with medical coverage requesting assistance from the Council. However, the Council has received no information regarding the specifics. Members shared additional concerns about the need for further clarification with changes to medical benefits. Concern was also raised regarding the inability to screen doctors during emergency situations to ensure coverage under specific tiers offered by UC Care.

Action
The name of the retiree experiencing issues with medical coverage was shared with Jeri Frederick for follow-up. Chair Saphores will help facilitate further communication as more information is received from the retiree.

V. UCI SENATE ISSUES UNDER REVIEW
None

VI. UC SENATE ISSUES UNDER REVIEW

A. UC Review of APM-190 and Appendix 2

Issue
The Council was asked to review and comment on the policy revisions as well as a recommendation that two appendices in the APM be revised so that, in each case, a Presidential policy is accessed in a single place, on the Presidential policy Website, and not duplicated in the APM. The draft language is meant to implement policy requirements mandated by an amendment to the California
Whistleblower Protection Act that became effective January 1, 2011, with the intention to ensure that complaints filed under the Whistleblower Protection Policy are addressed within 18 months and to provide a more linear explanation of the whistleblower retaliation complaint process.

Discussion
Members were in favor of APM-190 as it described the general whistleblower process and protections for those reporting. However, members raised concerns about the last sentence in the first paragraph of section I. Policy Summary referencing an 18 month deadline. Members strongly felt additional information should be included regarding the decision process for complaints not dismissed or withdrawn during this period. Members also felt it would be helpful to discuss the whistleblower process with a local administrator.

Action
The Council will forward comments to the Senate Cabinet for review. Associate Executive Vice Chancellor Michael Arias has been invited to the May CFW meeting to discuss the UC Irvine Whistleblower process.

B. UC Review of Proposed Revisions to Presidential Policy on Copyright and Fair Use

Issue
The Council was asked to review and comment on the proposed revisions to the University of California Policy on Copyright and Fair Use. The policy was formally called the Policy on Reproduction of Copyrighted Materials for Teaching and Research. The proposed revisions were made to bring the policy up to date with current changes in law, technology, and academic practices as well as UC’s current policy template.

Discussion
Members agreed with the proposed changes and had no suggestions for improvement.

Action
The Council will forward comments to the Senate Cabinet for review.

C. UC Request for Salary Equity Study

The issue has been put on hold until the Subcommittee can meet. Updates will be given at future Council meetings.

VII. STATUS REPORTS

Faculty Welfare Subcommittee – Jean-Daniel Saphores, Rep to UCFW
No Report

Affirmative Action Subcommittee – Craig Walsh, Rep to UCAAD
No Report

Academic Freedom Subcommittee – Hugh Roberts, Rep to UCAF
Changes to Western Association of Schools and Colleges (WASC) Accreditation
Concerns were raised at the last UCAF meeting by UC Merced about the changes WASC has made to its accreditation requirements regarding learning assessment and learning outcomes. Each program is required to create learning outcome rubrics which could become an issue with infringement upon a faculty member’s academic freedom. The UCAF conversation has continued via e-mail. Future updates will be provided as additional information becomes available.

Academic Personnel – Joan Tenma
Global Equity Games
An announcement for UCI’s first Global Equity Games was sent out via e-mail to the campus. Handouts were also distributed to the Council. The program is headed by Judith Stepan-Norris and
Doug Haynes, co-chairs of the Chancellor’s Advisory Council on Campus Climate, Culture and Inclusion. The games will be held in Aldrich Park. Teams consisting of faculty, staff, and students will compete in various activities. Additionally, tables with information about different organizations on campus will be available.

**Equal Opportunity and Diversity Status Report – Gwen Kuhns Black**
No Report

**Human Resources Status Report on Benefits – Jeri Frederick**

*Workshops*
A *Ready, Set, Retire* workshop specifically for faculty is scheduled for April 22, 6:00 – 8:00 p.m. in University Hills. Members interested were encouraged to attend.

VIII. INFORMATION ITEMS

IX. NEW BUSINESS
None

X. ADJOURNMENT: 4:38 P.M.

Submitted by: Charlene Mandau

Attested by: Jean-Daniel Saphores
May 16, 2014

PETER KRAPP, CHAIR
ACADEMIC SENATE – IRVINE DIVISION

RE: SYSTEMWIDE REVIEW OF PROPOSED REVISED UC POLICY ON PROTECTION OF WHISTELBLOWERS FROM RETALATION AND PROCEDURES FOR REVIEWING RETALIATION COMPLAINTS, AND APM SECTION 190, APPENDIX A-2

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) reviewed the policy revisions to APM 190 and Appendix 2 at its April 8, 2014 meeting. The revisions were created so that the Presidential policy would be available in one place (on the Presidential policy Website) and to avoid duplications within the APM. The draft language is meant to implement policy requirements mandated by an amendment to the California Whistleblower Protection Act that became effective January 1, 2011, with the intention to ensure that complaints filed under the Whistleblower Protection Policy are addressed within 18 months and to provide a clearer explanation of the whistleblower retaliation complaint process.

The Council agreed with the general purpose of the policy. However, members raised concerns about the last sentence in the first paragraph of section I. Policy Summary, referencing an 18 month deadline. Members strongly felt that additional information should be included regarding the decision process for complaints not dismissed or withdrawn during this period.

CFW appreciates the opportunity to comment.

Sincerely,

Jean-Daniel Saphores, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom

c: William Molzon, Senate Chair-Elect
   Luisa Crespo, Executive Director
   Shira Long, Senate Analyst
March 5, 2014

JEAN DANIEL SAPHORES, CHAIR
COUNCIL ON FACULTY WELFARE, DIVERSITY AND ACADEMIC FREEDOM

RODRIGO LAZO, CHAIR
COMMITTEE ON PRIVILEGE & TENURE

EXPECTED CABINET AGENDA DATE: May 6, 2014
EXPECTED COUNCIL DATE: May 23, 2014

RE: SYSTEMWIDE REVIEW OF APM 190, APPENDIX A-2

The Academic Council has submitted a proposed revision to the APM now being circulated for systemwide review. This request came from Vice Provost Susan Carlson. Please note that Vice Provost Carlson has offered an explanation of the purpose of the proposed revisions as well as both clean and redline versions of the draft policy. Accordingly, the divisions have been asked to review the proposal.

I would ask that your Council’s review the proposal and be prepared to discuss at the May 6, 2014 Cabinet meeting. The entire proposal is enclosed with this memo.

Peter Krapp, Chair
Academic Senate

C: Charlene Mandau
Luisa Crespo
March 3, 2014

COUNCIL OF VICE CHANCELLORS
LABORATORY DIRECTOR ALIVISATOS
ACADEMIC COUNCIL CHAIR JACOB
ANR VICE PRESIDENT ALLEN-DIAZ


Dear Colleagues:

Enclosed for Systemwide Review are policy revisions as well as a recommendation that two appendices in the APM be revised so that—in each case—a Presidential policy is accessed in a single place, on the Presidential policy web site and not also in the APM. Details of these two categories of proposed revisions follow.

Policy Revisions

Enclosed for Systemwide Review are proposed revisions to the University of California Policy on the Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints, Whistleblower Protection Policy (WPP), which is reprinted in the Academic Personnel Manual as Section 190, (APM - 190), Appendix A-2. The UC Office of General Counsel proposes draft language to implement policy requirements mandated by an amendment to the California Whistleblower Protection Act that became effective January 1, 2011. The proposed revisions are intended to ensure that complaints filed under the WPP are addressed within 18 months and to provide a more linear explanation of the whistleblower retaliation complaint process.

The enclosed Rationale, also prepared by the UC Office of General Counsel, provides additional context and explains the review process already undertaken with the campus and medical center “Locally Designated Officials.” I hope you will find this helpful during the review.

The UC Whistleblower Protection Policy is a systemwide, Presidential policy that applies to all University employees and employment applicants, which includes all faculty, other academic appointees, student employees, and staff. Therefore, the enclosed draft Policy is formatted using the Presidential policy template instead of the standard APM format.

Proposed Changes to Placement of Presidential Policies in the APM

Also being circulated for review is a proposed change in the placement of Presidential policies, both this policy under review (APM - 190, Appendix A-2) and a companion policy, APM - 190, Appendix A-1. The UC Whistleblower Policy.
March 3, 2014
Page 2

APM - 190, Appendix A-1, Presidential policy applying to all University employees, is proposed to be removed from the APM, along with APM - 190, Appendix A-2. Current APM - 190, Appendices A-1 and A-2 will be replaced with the following text directing faculty and other academic appointees to the Presidential policy:

“Academic personnel are covered by the University of California Whistleblower and Whistleblower Protection Policies, which are Presidential Policies covering all faculty, other academic appointees, student employees, and staff. Former APM - 190, Appendices A-1 and A-2 are replaced with Appendix A. These Presidential Policies are available at: http://www.policy.ucop.edu/specific-link-to-be-advised and http://www.policy.ucop.edu/specific-link-to-be-advised. Future revisions to these Policies will be circulated under standard procedures for Presidential Policies; the review will also include circulation under the standard APM review process, with final authority resting with the President.”

Systemwide Review

Systemwide Review is a public review distributed to the Executive Vice Chancellors, the Director, Lawrence Berkeley National Laboratory, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, affected employees and union membership about policy proposals. Systemwide Review also includes a mandatory, three-month full Senate review.

Employees should be afforded the opportunity to review and comment on the draft new policy, available online at: http://www.ucop.edu/academic-personnel/academic-personnel-policy/policies-under-review/index.html. Enclosed is a Model Communication which may be used to inform non-exclusively-represented employees affected by these proposals.

This letter and enclosures anticipate that you will begin Systemwide Review of the proposed draft and submit comments no later than June 2, 2014. Please send comments on the proposed policy to ADV-VPCARLSON-SA@ucop.edu. Questions may be directed to Janet Lockwood at Janet.Lockwood@ucop.edu or (510) 987-9499.

Sincerely,

Susan Carlson
Vice Provost
Academic Personnel

Enclosures: Rationale for Proposed Revisions to APM - 190, Appendix A-2
Proposed Revised Draft UC Whistleblower Protection Policy (WPP) (clean copy)
Proposed Revised Draft UC Whistleblower Protection Policy (WPP) (red line)
Proposed Draft APM - 190, Appendix A
Model Communication

cc: President Napolitano
Chancellors
Provost and Executive Vice President Dorr
Senior Vice President Vacca
Vice President Duckett
Vice Provosts – Academic Personnel
Academic Personnel Directors
February 19, 2014

Susan Carlson
Vice Provost
Department of Academic Personnel
Office of the President
University of California
1111 Franklin, 11th Floor
Oakland, CA 94607

Re: Proposed Revisions to the Whistleblower Protection Policy

Dear Susan:

Enclosed is a draft of the University of California Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints (Whistleblower Protection Policy or WPP) that reflects the proposed revisions to this policy.

The Office of the General Counsel drafted the proposed revisions, working in consultation with the Senior Vice President and Chief Compliance and Audit Officer, the Systemwide Locally Designated Official, and the Director of Investigations. An earlier draft was circulated to the Locally Designated Officials (LDOs) at the campuses and medical centers and was the centerpiece of a day-long meeting with the LDOs at the Office of the President in March 2012. Input regarding the proposed revisions was also solicited from the University attorneys who are based at the campuses and medical centers.

Overview of the Changes

Revision of the Whistleblower Protection Policy (WPP) was undertaken with two primary objectives in mind:

- Ensure that complaints filed under the WPP will be processed within 18 months, given an amendment to the California Whistleblower Protection Act (the “Act”) that became
effective January 1, 2011. The Act requires that, before a plaintiff who is a University employee or applicant for University employment may file a lawsuit for damages as a result of whistleblower retaliation, he or she must first file an administrative complaint internally at the University. The Act already permitted the plaintiff to proceed with a lawsuit for damages if the University failed to reach a decision on the administrative complaint within the time frame established for that purpose by the Regents. With the amendment to the Act, a plaintiff now may also proceed with a lawsuit for damages if the University has not “satisfactorily addressed” the administrative complaint within 18 months. Accordingly, the proposed revisions to the WPP are intended to ensure that complaints filed under the WPP are addressed within 18 months.

- Address difficulties in the administration of the WPP and better explain how the process operates, thereby making it easier to administer and improving the experience for complainants.

The primary source of delay and administrative difficulties has been the current WPP’s abeyance/joinder process. Specifically, if a complainant wishes to file a whistleblower retaliation complaint under the WPP and also under another University grievance process,¹ the current policy requires that the complaint filed under the WPP be placed in abeyance until the other process reaches the fact-finding or hearing stage, at which time the two processes are joined. While the abeyance/joinder process was implemented to avoid having separate University processes duplicate effort, the experience of the last decade indicates that whatever benefits have been achieved in that regard have been outweighed by the negatives. In particular, the WPP provisions setting forth the abeyance/joinder process are complex and therefore difficult to understand, and they have proved cumbersome to administer. Moreover, the fact that the WPP process is initially “on hold” in these dual-filing situations has frustrated complainants, causing them to feel that justice delayed is justice denied.

In light of the foregoing, the proposed revisions of the WPP will “uncouple” the WPP from the other grievance processes available to a complainant for filing a complaint regarding whistleblower retaliation. As a result, the WPP complaint process will be able to proceed expeditiously even when a complainant has exercised his/her right to also file a complaint regarding whistleblower retaliation under another University process. Because of the uncoupling, the revised policy can present a more linear explanation of the whistleblower retaliation complaint process, which will be more user-friendly for both complainants and administrators.

Notable Revisions:

A. Section II. — Definitions (Section II. in current policy). Definitions have been alphabetized, a few definitions have been added (Adverse Personnel Action, Complainant, Employee, Sworn

¹ For Academic Personnel, this would be the processes available under Senate Bylaw 335, APM-140, or an applicable collective bargaining agreement.
Statement), and a few definitions have been modified (Improper Governmental Activity, Interference, Protected Disclosure, Retaliation Complaint, Use of Official Authority or Influence). These changes enable the streamlining of policy language and increase transparency.

B. Section III.B. – Authority and Responsibilities (Section III. in the current policy). Subsections were added and text was revised to better reflect how the WPP process is administered. Noteworthy changes include:

1. The Chancellor subsection, rather than the Local Proceedings subsection, explains who stands in the shoes of the Chancellor for the Laboratory, the Office of the President, and the Division of Agriculture and Natural Resources.

2. The Locally Designated Official (LDO) subsection no longer describes the preliminary review conducted by the LDO as that information is set forth in Section III.D.1., entitled “Preliminary Review by the LDO.” This subsection expressly designates the LDO as the official responsible for ensuring that complaints are processed in a timely manner.

3. A subsection regarding the Systemwide LDO was added and provides that the President will appoint the Systemwide LDO. The current policy states that the Senior Vice President – Business and Finance serves in this role, but a Presidential delegation of authority changed that several years ago. Therefore, this change corresponds with current practice. Consistent with the current policy, this subsection also explains that, when the Complainant is a current or former academic employee (or an applicant for an academic position) or the accused is an academic employee, the duties of the Systemwide LDO will be the responsibility of the Provost and Executive Vice President – Academic Affairs.

4. A subsection regarding the Investigations Workgroup was added to explain who may be part of this group and to clarify the role it may play.

C. Section III.C. – Filing a Retaliation Complaint (Where, When and How to File). This new section articulates what must be included in a complaint. The required allegations are presented more clearly than is the case in Section IV.D. of the current policy. This will make it easier for complainants to draft complete complaints at the outset, thereby decreasing the amount of time spent seeking additional information and clarification from complainants before a complaint can be accepted for processing under the WPP.

D. Section III.D. – Processing a Complaint. This new section provides a roadmap of the WPP process.

1. Subsection III.D.1 explains the preliminary review of the complaint that the LDO conducts and includes these important features:

   i. The LDO will notify a complainant of deficiencies in the complaint, such as the absence of a Sworn Statement or the failure to include any of the required allegations, and give the complainant an opportunity to cure those deficiencies.

   ii. Complaints that do not meet the criteria for processing under the WPP (e.g., when they lack the required Sworn Statement or are untimely) will nevertheless be reviewed by the LDO to determine whether they should be processed under the
Whistleblower Policy, thereby ensuring violations of University policy are addressed even if the stricter filing requirements of the WPP are not met.

iii. The complainant will be advised in writing when the complaint is accepted for processing under the WPP and, if only parts of the complaint are accepted, that will be indicated, as well as the reason for the dismissal of any parts of the complaint.

2. Subsection III.D.2 of the draft provides that the accused employee will be notified of the Retaliation Complaint and investigation when the investigation is initiated and will also be provided with a copy of the Retaliation Complaint at that time. While current policy (Section VI.C.) requires that the accused employee be provided with a copy of the complaint before findings are reached, providing the complaint earlier in the process will give the accused employee more notice and increase the transparency of the process.

3. Subsection III.D.4 explains key elements of the Investigation, which will be conducted by the Retaliation Complaint Officer (RCO) or other investigator. Notable provisions are discussed below.

i. The investigator will, whenever possible, interview both the Complainant and the accused employee.

ii. As in current policy (Section VI.3.C.), the accused employee will have an opportunity to submit a written response to the Retaliation Complaint to be included in the record submitted to the Chancellor. However, the requirement that the investigator provide the accused employee with a copy of all documents on which s/he intends to rely in reaching findings has been eliminated.

iii. Rights and obligations of witnesses are addressed:
   (1) The Complainant, the accused employee, and other witnesses must be allowed a reasonable amount of paid time off to participate in interviews.
   (2) The Complainant, the accused employee(s), and other witnesses have a duty to cooperate with the investigator.
   (3) The investigator is authorized to conclude the investigation based on the information available if the Complainant or an accused employee fails or refuses to be interviewed.

iv. The essential elements of an investigation report are identified.

v. The time frame for the investigation is established. The clock will start from the time that the LDO notifies the complainant that the complaint has been accepted for processing. Under current policy, the clock starts when the complaint is referred to the investigator, which is not always known to the complainant. It is contemplated that an investigation will be completed within 6 months of acceptance of the complaint, although the LDO may grant extensions upon request. Importantly, Section I and Section III.F. of the draft require that the complaint be resolved within 18 months of filing. There is no analogous deadline in the current policy.

E. Section III.E. – Evidentiary Standards (Section V.A. in the current policy). The evidentiary standards remain the same, but the explanation is a more straightforward.

F. Section III.F. – Decision by the Chancellor. This would replace Section VII in the current policy and is simplified because the WPP will be uncoupled from the other grievance
processes. This Section requires that the Chancellor’s decision be issued no later than the 18 months after the complaint was initially filed.

G. **Section III.G. – Consequences for a University Employee Who Violated the Policy.** This would replace Section VII.C. of the current policy, which is entitled “Corrective Action of a University Employee.” The new language contemplates that actions other than or in addition to disciplinary consequences could be warranted for an employee found to have violated the WPP. As in current policy, any disciplinary action would be taken in accordance with the existing staff or academic personnel procedures applicable to the employee.

H. **Section III.H. – Referral of Complaints to the Office of the President.** While the current policy does identify situations when a complaint should be referred to the Office of the President for handling (Sections IV.B.4., VI.F., and VII.D.), the draft consolidates this information in one section to improve clarity. Because the WPP is being uncoupled from the other grievance processes, this information can also be simplified. The current policy states that, when a complaint is against the Chancellor, LDO, or the LDO’s supervisor, the LDO shall request that it be handled at the Office of the President. The draft adds complaints against a Chief Campus Counsel to this list. A new provision authorizes an LDO to request that other complaints be processed at the Office of the President, when appropriate. A new provision clarifies that, when a complaint is processed at the Office of the President and a policy violation is found, the matter is referred back to the location to initiate appropriate action, except in cases where an adverse finding involves the Chancellor, in which case the matter will be referred to the President.

I. **Section III.I. – Appeals (Section VIII of the current policy).** The permissible grounds for appeal and the fact that appeals on the merits are not allowed are stated in a more straightforward and user-friendly way than in current policy. A deadline for appeals (within 30 days of the local decision) has been added. This Section expressly states what must be part of the appeal (a statement regarding why the local decision should be overturned and copies of the complaint, the local decision, and the documents and other evidence that support the appeal). This specificity gives the Complainant guidance to prepare a viable appeal and ensures that the Office of the President will have the necessary information to resolve the appeal.

J. **Section III.J. – Reporting Requirements.** This would replace Section IX of the current policy, which is entitled “Reports.” Instead of requiring that each location provide a report on July 31 of each year summarizing the number of whistleblower retaliation complaints filed and their disposition, the draft gives the Senior Vice President/Chief Compliance and Audit Officer the flexibility to request that locations provide information regarding complaints filed under the WPP and their status in the method s/he establishes for this purpose.

K. Complaints alleging interference in violation of the WPP will be processed under the Whistleblower Policy, rather than the WPP, as stated in Section I of the draft.
If you have any questions regarding the foregoing or the proposed revisions, please let me know.

Very truly yours,

Stephanie Leider

Enclosure

cc: Sheryl Vacca, Senior Vice President and Chief Compliance and Audit Officer
    Karen Petrulakis, Chief Deputy General Counsel
Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

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**I. POLICY SUMMARY**

This policy describes the complaint resolution process that is available to employees or applicants for employment who have been subjected to retaliation as a result of making a Protected Disclosure or refusing to obey an Illegal Order. A decision on all complaints that are not dismissed or withdrawn will be issued within 18 months of the filing of the complaint with the Locally Designated Official.

Complaints alleging interference with an employee’s or applicant’s right to make a Protected Disclosure will be processed under the University’s Whistleblower Policy rather than this policy.

**II. DEFINITIONS**

The following definitions apply to this policy and procedures, as well as any local implementing procedures.
**Adverse Personnel Action:** A management action that affects the Complainant’s existing terms and conditions of employment in a material and negative way, including, but not limited to, failure to hire, corrective action (including written warning, corrective salary decrease, demotion, suspension), and termination.

**Complainant:** An employee who files a complaint under this policy or an applicant for employment who files a complaint under this policy.

**Employee:** A current University employee or a former University employee who was employed at the time the relevant events occurred. The term “employee” includes academic appointees.

**Illegal Order:** Any directive to violate or assist in violating an applicable federal, state, or local law, rule, or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

**Improper Governmental Activity:** Any activity undertaken by the University or by an employee that is undertaken in the performance of the employee’s official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of University property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property (including University property and facilities), or willful omission to perform duty, or (2) is economically wasteful or involves gross misconduct, gross incompetence, or gross inefficiency.

**Interference:** Direct or indirect use or attempted use of official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command an individual for the purpose of obstructing an individual’s right to make a Protected Disclosure.

**Protected Disclosure:** Any good faith communication that discloses or demonstrates an intention to disclose information that may evidence either (1) an improper governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

The good faith requirement is satisfied if the employee had (1) a reasonable belief that the facts the employee disclosed or demonstrated an intention to disclose are true and (2) a reasonable belief that such facts, if true, would be an improper governmental activity or a condition that may significantly threaten the health or safety of employees or the public.

**Retaliation Complaint:** A written complaint filed under this policy that includes a Sworn Statement and alleges that a University employee (1) retaliated against the Complainant for having made a Protected Disclosure by taking an Adverse Personnel
III. POLICY TEXT

A. Purpose of Policy

The University of California is committed to providing a work environment where employees are free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution and where employees can be candid and honest without reservation in conducting the University’s business. This policy is a companion to the University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (the University’s Whistleblower Policy). Consistent with the California Whistleblower Protection Act (Government Code Sections 8547-8547.12), a University employee may not: (1) retaliate against an employee or applicant for employment who has made a Protected Disclosure, as defined below, (2) retaliate against an employee who has refused to obey an Illegal Order, as defined below, or (3) directly or indirectly use or attempt to use the official authority or influence of his or her position or office to interfere with an employee’s or applicant’s right to make a Protected Disclosure, as defined below. It is the intention of the University to investigate thoroughly any complaints filed, to provide relief to any employees harmed by violations of this policy, and to take appropriate action against employees who violate this policy.

B. Authority and Responsibilities

1. Local Procedures

   The Chancellor will establish local complaint resolution procedures in accordance with this policy.

2. Locally Designated Official (LDO)
The Chancellor will appoint a Locally Designated Official (LDO) to receive Retaliation Complaints and to administer local implementing procedures. The LDO may be the same official designated to administer local procedures for investigating whistleblower complaints under the University’s Whistleblower Policy. The LDO (or designee) will determine whether a complaint is eligible for processing under this policy. The LDO is also responsible for ensuring that complaints are processed in a timely manner.

3. Systemwide LDO

The President will appoint an individual to serve as the Systemwide LDO. The Systemwide LDO (or designee) will receive complaints referred to the Office of the President under Section H. and determine whether such complaints will be processed at the Office of the President. The Systemwide LDO will also resolve appeals filed under Section I. In addition, the Systemwide LDO will serve as the LDO for the Office of the President. Whenever the Complainant is a current or former academic employee or an applicant for an academic position or where an accused employee is an academic employee, the duties of the Systemwide LDO under this policy will be the responsibility of the Provost and Executive Vice President—Academic Affairs.

4. Retaliation Complaint Officer (RCO)

The LDO may appoint one or more individuals to serve as Retaliation Complaint Officer(s) to oversee the investigation of complaints under this policy. The RCO may personally conduct the investigation or may delegate the factfinding, in whole or in part, to another investigator.

5. Chancellor

The Chancellor renders a decision after reviewing the investigation report. When there is a finding of retaliation, the Chancellor determines the appropriate action(s) to be taken against the employee who violated this policy, as set forth in Section G. below. The Chancellor may delegate any of his or her duties under this policy, including decision-making authority.

For purposes of this policy, authorities and responsibilities delegated to the Chancellor are assumed by the Laboratory Director for employees at Lawrence Berkeley National Laboratory, by the Systemwide LDO for employees at the Office of the President, and by the Vice President—Agriculture and Natural Resources for employees within the Division of Agriculture and Natural Resources.

6. Investigations Workgroup
An Investigations Workgroup typically includes representatives from various functional units at a location and assists the LDO, as needed, in determining whether a complaint is eligible for processing under this policy. It may be a standing workgroup or, alternatively, the LDO may assemble an ad hoc workgroup with relevant expertise to assist with one or more complaints.

C. Filing a Retaliation Complaint (Where, When and How to File)

A Retaliation Complaint must include a Sworn Statement and be filed with the LDO or with the Complainant’s supervisor within 12 months of the alleged retaliation. If the Retaliation Complaint alleges a pattern of retaliation, it must be filed within 12 months of the most recent alleged act of retaliation. Complaints filed with the Complainant’s supervisor will be forwarded to the LDO.

1. Required Allegations

A Retaliation Complaint must include the allegations set forth below for the type of complaint being filed. The allegations should be as specific as possible.

a. Required Allegations for a Retaliation Complaint alleging retaliation for having made a Protected Disclosure:

i. Complainant made a Protected Disclosure. For purposes of this element, the Complainant must (a) include a summary of what was disclosed, (b) identify the person(s) to whom each Protected Disclosure was made, and (c) identify the approximate date of each Protected Disclosure.

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must identify (a) the Adverse Personnel Action(s), (b) the University employee(s) responsible for each Adverse Personnel Action, and (c) the approximate date on which each Adverse Personnel Action occurred.

iii. The basis for Complainant’s belief that the Protected Disclosure was a contributing factor in the Adverse Personnel Action(s).

b. Required Allegations for a Retaliation Complaint alleging retaliation for having refused to obey an Illegal Order:

i. Complainant refused to obey an Illegal Order. For purposes of this element, the Complainant must identify (a) the Illegal Order, (b) the University employee(s) who gave the Illegal Order, (c) the approximate date on which the Illegal Order was given, (d) what the Complainant did in response to the Illegal Order that constituted a refusal to obey, and (e) the approximate date when the refusal occurred.
ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must identify (a) the Adverse Personnel Action(s), (b) the University employee(s) responsible for each Adverse Personnel Action, and (c) the approximate date on which each Adverse Personnel Action occurred.

iii. The basis for Complainant’s belief that refusing to obey the Illegal Order was a contributing factor in the Adverse Personnel Action(s).

D. Processing a Complaint

1. Preliminary Review by the LDO

After a complaint has been filed with or referred to the LDO, the LDO will determine whether the complaint is eligible for processing as a Retaliation Complaint.

a. Sworn Statement

When a complaint is filed without a Sworn Statement, the LDO will request that the Complainant correct this deficiency. If the Complainant fails to correct this deficiency within a reasonable time frame, as established in local procedures, the LDO will dismiss the complaint and notify the Complainant in writing of the decision to dismiss. If the complaint is dismissed because a sworn statement is not provided within a reasonable time frame, the LDO will review the retaliation allegations to determine whether they should be processed under the University’s Whistleblower Policy.

b. Timeliness and Required Allegations

The LDO will determine whether the complaint is timely. If it is not timely, the LDO will dismiss the complaint. If the complaint is dismissed as untimely, the LDO will review the allegations to determine whether they should be processed under the University’s Whistleblower Policy.

The LDO will also determine whether the complaint contains the required allegations, as set forth above in Section C.1. When determining whether a complaint contains the required allegations, the LDO may consult with an Investigations Workgroup. If the complaint is not specific or otherwise fails to provide sufficient information, the LDO may require that the Complainant amend the complaint to address the deficiencies. If the Complainant does not amend the complaint or otherwise correct the deficiencies within a reasonable time frame, as established in local procedures, the LDO may dismiss all or some of the complaint.
The LDO will notify the Complainant in writing when the complaint is accepted for processing as a Retaliation Complaint and is being assigned to the RCO for investigation. If only parts of the complaint are accepted, the LDO’s written notice will advise the Complainant as to which parts of the complaint have been accepted, which have been dismissed, and the reason for the dismissal(s). Under Section I. below, a Complainant may appeal a decision dismissing a complaint, in whole or part, on the grounds that it is untimely or otherwise ineligible for processing.

2. Notification of the Accused Employee(s)

When the LDO accepts a Retaliation Complaint for processing, the LDO will provide the employee(s) accused of retaliation with a copy of the Retaliation Complaint and advise him or her that an investigation is being initiated. If the Retaliation Complaint contains allegations against more than one employee, the LDO will provide each of them with those portions that contain allegations against him or her.

3. Referral to the RCO for Investigation

After the LDO accepts a Retaliation Complaint for processing, the LDO will refer the Retaliation Complaint to the RCO for investigation. If the RCO delegates any part of the investigation, the RCO retains responsibility for ensuring that the investigation is conducted in accordance with this policy.

4. Investigation

a. Investigation Process

The investigator will review the Retaliation Complaint and other relevant materials submitted by the Complainant. In addition, the investigator may request and review other documents and materials relevant to the allegations. The investigator will, whenever possible, interview the Complainant and the accused employee(s). In addition, the investigator will interview any other witnesses who the investigator believes are necessary in order to conduct a thorough investigation.

b. The Accused Employee’s Opportunity to Comment

Before findings are reached, the investigator will provide the accused employee(s) with an opportunity to respond to the Retaliation Complaint in a written statement. The investigator will advise the accused employee(s) when the statement needs to be submitted, making sure that a reasonable amount
of time is provided for this purpose. The investigator will include any such statement in the record submitted to the Chancellor.

c. Witnesses

i. Local procedures must allow the Complainant, the accused employee(s), and other witnesses a reasonable amount of paid time off to participate in interviews conducted by the investigator.

ii. The Complainant, the accused employee(s), and the other witnesses have a duty to cooperate with the investigator. This includes a duty to participate in interviews requested by the investigator, to answer the investigator’s questions honestly, and to provide documents and other materials requested by the investigator.

iii. If the Complainant or any accused employee fails or refuses to be interviewed, the investigator will complete the investigation based upon the information available.

d. Investigation Report

The investigator will prepare a written report containing findings of fact based on the evidence and the investigator’s conclusion as to whether a policy violation occurred, using the applicable Evidentiary Standards set forth in Section E. below. The investigation report will provide sufficient detail to enable the Chancellor to make an independent determination as to whether a policy violation occurred. The investigation report will include the Retaliation Complaint, a list of witnesses interviewed, any written statement submitted by the accused employee(s), and any other documents on which the investigator has relied in reaching findings.

When the investigation report is completed, the RCO will deliver it to the LDO. If the RCO did not personally conduct the investigation, the RCO should first review the investigation report to confirm that it is complete; if the investigation report is incomplete, the RCO should ask the investigator to address the deficiencies before proceeding.

e. Time Frame for Investigation

The RCO is responsible for delivering the investigation report to the LDO within 6 months from the date on which the LDO notifies the Complainant that the Retaliation Complaint has been accepted for processing.

The LDO may extend the 6-month deadline upon receipt of a written request from the RCO that explains why the extension is needed. Additional
extensions may be sought when appropriate. The LDO will respond in writing to such requests. The LDO generally will not provide an extension or extensions that increase the 6-month time frame beyond 12 months total.

E. Evidentiary Standards

1. Evidentiary Standards for Retaliation Complaints

Consistent with California Government Code Section 8547.10(e), a Complainant who brings a Retaliation Complaint must demonstrate by a preponderance of the evidence that he or she either made a Protected Disclosure or refused to obey an Illegal Order and that such activity was a contributing factor in the alleged Adverse Personnel Action. If the Complainant has met that standard, the burden of proof shifts to the supervisor, manager, or University to demonstrate by clear and convincing evidence that the alleged Adverse Personnel Action would have occurred for legitimate, independent reasons even if the Complainant had not made a Protected Disclosure or refused to obey an Illegal Order. If that burden is not met, the employee shall have a complete affirmative defense to the Adverse Personnel Action that was the subject of the complaint.

Consistent with California Government Code Section 8547.10(d), nothing in this policy is intended to prevent a manager or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take an Adverse Personnel Action with respect to any employee or applicant for employment if the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a Protected Disclosure or refused to obey an Illegal Order.

2. Special Evidentiary Standard for Employees in the University’s Health Facilities

When the Complainant is an employee of one of the University’s inpatient health facilities (i.e., facilities to which persons are admitted for a 24-hour stay or longer) and brings a Retaliation Complaint, the LDO (or designee) will determine whether the special evidentiary standard set forth in Section 1278.5 of the California Health and Safety Code applies.

F. Decision by the Chancellor

1. The LDO will present the investigation report to the Chancellor, who will render a decision in the matter consistent with the Evidentiary Standards set forth in Section E. above. If the Chancellor needs more information in order to make a decision, the Chancellor may request further investigation. The Chancellor will
issue a written decision and send it to the Complainant and to the accused employee(s).

2. If the Chancellor determines that an employee or employees violated this policy and that the Complainant was harmed as a result of such violation, the Chancellor will award any appropriate relief, which will be identified in the Chancellor’s written decision provided to the Complainant. However, the written decision will not describe any action that may need to be taken against any employee found to have violated this policy.

3. In all circumstances, the Chancellor's written decision must be issued and sent to the Complainant no later than 18 months after the complaint was initially filed.

G. Consequences for a University Employee Who Violated the Policy

In those cases where the Chancellor has decided that an employee has violated this policy, the Chancellor, through the appropriate channels, will determine the appropriate action(s) to be initiated, which may include disciplinary action against that employee. If the employee is not in the Academic Senate, any disciplinary action will be in accordance with the applicable personnel policy or collective bargaining agreement. If the employee is a member of the Academic Senate, any disciplinary proceedings will be undertaken in accordance with the academic personnel policies and the procedures established by the Academic Senate.

H. Referral of Complaints to the Office of the President

1. When a complaint filed under this policy alleges that the Chancellor, the LDO, the LDO's supervisor, or the Chief Campus Counsel engaged in the retaliation that is the subject of the complaint, the LDO (or designee) will request that the Systemwide LDO accept the complaint for processing by the Office of the President.

2. In other special circumstances, the LDO may request that the Systemwide LDO accept a complaint for processing at the Office of the President. The request must state the reason(s) why it would be more appropriate to have the complaint processed at the Office of the President.

3. If the Systemwide LDO decides to accept a complaint for processing at the Office of the President, the Systemwide LDO will conduct the preliminary review in accordance with D.1. and will refer complaints accepted for processing to an RCO for investigation in accordance with Section D.4. above. In such circumstances, the RCO will present the findings of the investigation to the Systemwide LDO for a decision in accordance with Section F. above. If the Systemwide LDO concludes that an employee has violated this policy, the
Systemwide LDO will refer the matter back to the appropriate official at the employee’s location to initiate appropriate action in accordance with Section G. above, except in cases where an adverse finding involves the Chancellor, in which case the Systemwide LDO will refer the matter to the President.

I. Appeals

The Complainant has no right to appeal a decision on the merits of a complaint. However, the Complainant may appeal a local decision dismissing a complaint in whole or in part because it was untimely or lacked required allegations. Such appeals must be made in writing and received by the Systemwide LDO within 30 calendar days of the local decision. The appeal must state why the local decision should be overturned and must include copies of the complaint, the local decision, and the documents and other evidence that support the appeal.

J. Reporting Requirements

Each location will submit a copy of the local procedures implementing this policy to the Senior Vice President/Chief Compliance and Audit Officer. Additionally, each location will provide information regarding complaints filed under this policy and their status to the Senior Vice President/Chief Compliance and Audit Officer using the method established by him or her for this purpose.

IV. COMPLIANCE / RESPONSIBILITIES

See Section III.J.

V. PROCEDURES

Applicable procedures are outlined throughout the policy text in Section III.

VI. RELATED INFORMATION

- University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) (referenced in Section III.A., Section III.B.2., Section III.D.1.a. and Section III.D.1.b.)

VII. FREQUENTLY ASKED QUESTIONS

Not applicable.
VIII. REVISION HISTORY

This policy was last revised on October 4, 2002.

Future revisions to this policy will be circulated under standard procedures for Presidential Policies; in the case of this policy, the review will include circulation under the standard Academic Personnel Manual (APM) process, with final authority resting with the President.
I. POLICY

FOR PROTECTION OF WHISTLEBLOWERS FROM RETALIATION AND

SUMMARY

II. GUIDELINES FOR REVIEWING RETALIATION COMPLAINTS

III. (WHISTLEBLOWER PROTECTION POLICY)

I. Policy
Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

The University of California is committed to protecting employees and applicants for employment from interference with making a protected disclosure or retaliation for having made a protected disclosure or for having refused an illegal order as defined in this policy. This policy is derived from the California Whistleblower Protection Act (Government Code Sections 8547-8547.12). Pursuant to this code section, a University employee may not: (1) retaliate against an employee or applicant for employment who has made a protected disclosure or who has refused to obey an illegal order, nor (2) directly or indirectly use or attempt to use the official authority or influence of his or her position or office for the purpose of interfering with the right of an applicant or an employee to make a protected disclosure to the University Auditor, the employee’s immediate supervisor or other appropriate administrator or supervisor within the operating unit, the locally designated University official as defined in the University’s Whistleblower Policy, or the State of California Bureau of State Audits about matters within the scope of this policy. It is the intention of the University to take whatever action may be needed to prevent and correct activities that violate this policy.

II. Scope of Policy and Definitions

This policy describes the complaint resolution process that is available to employees or applicants for employment who have been subjected to retaliation as a result of making a Protected Disclosure or refusing to obey an Illegal Order. A decision on all complaints that are not dismissed or withdrawn will be issued within 18 months of the filing of the complaint with the Locally Designated Official.

This policy applies to complaints of retaliation or interference filed by employees or applicants for employment who have made or attempted to make a protected disclosure (“whistleblowers”) or refused to obey an illegal order, as defined below.

Complaints alleging interference with an employee’s or applicant’s right to make a Protected Disclosure will be processed under the University’s Whistleblower Policy rather than this policy.

IV. DEFINITIONS

Local retaliation complaint resolution procedures shall incorporate the following definitions. These definitions apply to this policy and procedures, as well as any local implementing procedures.

**Adverse Personnel Action:** A management action that affects the Complainant’s existing terms and conditions of employment in a material and negative way, including, but not limited to, failure to hire, corrective action (including written warning, corrective salary decrease, demotion, suspension), and termination.

**Complainant:** An employee who files a complaint under this policy or an applicant for employment who files a complaint under this policy.
Employee: A current University employee or a former University employee who was employed at the time the relevant events occurred. The term “employee” includes academic appointees.

Illegal Order: Any directive to violate or assist in violating an applicable federal, state, or local law, rule, or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

A. Improper Governmental Activity: Any activity undertaken by the University or by an employee that is undertaken in the performance of the employee’s official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of University property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property (including University property and facilities), or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, gross incompetence, or gross inefficiency.
Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

**Interference:** Direct or indirect use or attempted use of official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command an individual for the purpose of obstructing an individual’s right to make a Protected Disclosure.

**Protected Disclosure:** Any good faith communication that discloses or demonstrates an intention to disclose information that may evidence either (1) an improper governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

**C. Illegal Order**

Any directive to violate or assist in violating an applicable federal, state, or local law, rule, or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

The good faith requirement is satisfied if the employee had (1) a reasonable belief that the facts the employee disclosed or demonstrated an intention to disclose are true and (2) a reasonable belief that such facts, if true, would be an improper governmental activity or a condition that may significantly threaten the health or safety of employees or the public.

**D. Interference**

**Retaliation Complaint:** A written complaint filed under this policy that includes a Sworn Statement and alleges that a University employee (1) retaliated against the Complainant for having made a Protected Disclosure by taking an Adverse Personnel Action against the Complainant or (2) retaliated against the Complainant for having refused to obey an Illegal Order by taking an Adverse Personnel Action against the Complainant.

**Sworn Statement:** A statement made under penalty of perjury that the contents of the complaint are true or are believed by the Complainant to be true. A complaint filed without a Sworn Statement will not be processed under this policy.

**E. Use of Official Authority or Influence:** Promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, termination, suspension, or other disciplinary action.
Retaliation Complaint

A. Purpose of Policy

Any written complaint by an employee or an applicant for employment which alleges retaliation for having made a protected disclosure or for having refused an illegal order or interference with an attempt to make a protected disclosure, together with a sworn statement, made under penalty of perjury, that the contents of the complaint are true or are believed by the complainant to be true.

The University of California is committed to providing a work environment where employees are free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution and where employees can be candid and honest without reservation in conducting the University’s business. This policy is a companion to the University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (the University’s Whistleblower Policy). Consistent with the California Whistleblower Protection Act (Government Code Sections 8547-8547.12), a University employee may not: (1) retaliate against an employee or applicant for employment who has made a Protected Disclosure, as defined below, (2) retaliate against an employee who has refused to obey an Illegal Order, as defined below, or (3) directly or indirectly use or attempt to use the official authority or influence of his or her position or office to interfere with an employee’s or applicant’s right to make a Protected Disclosure, as defined below. It is the intention of the University to investigate thoroughly any complaints filed, to provide relief to any employees harmed by violations of this policy, and to take appropriate action against employees who violate this policy.

B. Authority and Responsibilities

1. A. Local Procedures

The Chancellor shall establish local retaliation complaint resolution procedures in accordance with this policy. Authorities and responsibilities delegated to the Chancellor are assumed by the Laboratory Directors, the Senior Vice President—Business and Finance, and the Vice President—Agriculture and Natural Resources for employees within their respective jurisdictions.

4 For the purpose of this policy, the Chancellor also means the Laboratory Directors for the Lawrence Berkeley National Laboratory, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory; the Senior Vice President—Business and Finance; and the Vice President—Agriculture and Natural Resources.
2. **B. Locally Designated Official (LDO)**

   The Chancellor will appoint a Locally Designated Official (the LDO) to receive Retaliation Complaints and to administer local implementing procedures. The LDO (or designee) shall determine (1) whether a complaint is timely; (2) whether it sets forth the necessary facts to support a claim of retaliation for having made a protected disclosure, having disobeyed an illegal order, or interference with the right to make a protected disclosure; and (3) whether a complaint is eligible for processing under University grievance or complaint resolution procedures available to the complainant (as noted in Section IV.A. below). The LDO may be the same official designated to administer local procedures for investigating whistleblower complaints under the University’s Whistleblower Policy. The LDO (or designee) will determine whether a complaint is eligible for processing under this policy. The LDO is also responsible for ensuring that complaints are processed in a timely manner.

3. **Systemwide LDO**

   The President will appoint an individual to serve as the Systemwide LDO. The Systemwide LDO (or designee) will receive complaints referred to the Office of the President under Section H. and determine whether such complaints will be processed at the Office of the President. The Systemwide LDO will also resolve appeals filed under Section I. In addition, the Systemwide LDO will serve as the LDO for the Office of the President. Whenever the Complainant is a current or former academic employee or an applicant for an academic position or where an accused employee is an academic employee, the duties of the Systemwide LDO under this policy will be the responsibility of the Provost and Executive Vice President—Academic Affairs.

4. **C. Retaliation Complaint Officer (RCO)**

   The LDO may appoint one or more individuals or a standing body to serve as Retaliation Complaint Officer(s) to oversee the investigation of complaints filed by employees and applicants for employment alleging interference with or retaliation for making a protected disclosure or for refusing to obey an illegal order, under this policy. The RCO may delegate personally conduct of the investigation, including any or may delegate the factfinding, in whole or in part, to another person. The term “RCO” as used in this policy includes the person to whom the investigation may be delegated, investigator.

5. **D. Chancellor**

   The Chancellor renders a decision when after reviewing the investigation and report. When there is a finding of retaliation, the Chancellor determines the appropriate corrective action, if any, as set forth in action(s) to be taken
against the employee who violated this policy, as set forth in Section G. below. The Chancellor may delegate any of his or her duties under this policy, including decision-making authority, Section VII.C. below. The Chancellor may delegate his or her duties under this policy.

IV. Filing a Complaint

For purposes of this policy, authorities and responsibilities delegated to the Chancellor are assumed by the Laboratory Director for employees at Lawrence Berkeley National Laboratory, by the Systemwide LDO for employees at the Office of the President, and by the Vice President—Agriculture and Natural Resources for employees within the Division of Agriculture and Natural Resources.

A retaliation complaint (grievance plus sworn statement) may be filed (A) under an applicable grievance or complaint resolution procedure, (B) with the LDO, or (C) with the employee’s supervisor. Threshold requirements for filing a retaliation complaint are described in Section IV.D. below. Employees who elect to file a grievance unaccompanied by a sworn statement made under penalty of perjury that its contents are true or are believed to be true are not covered by the retaliation provisions of the California Whistleblower Protection Act.

6. Investigations Workgroup

A Filing Pursuant to an Applicable Grievance or Complaint Resolution Procedure

An Investigations Workgroup typically includes representatives from various functional units at a location and assists the LDO, as needed, in determining whether a complaint is eligible for processing under this policy. It may be a standing workgroup or, alternatively, the LDO may assemble an ad hoc workgroup with relevant expertise to assist with one or more complaints.

A retaliation complaint (grievance plus sworn statement) may be filed pursuant to the applicable personnel policy or collective bargaining agreement grievance or complaint resolution procedure. The individual designated locally to receive grievances (i.e., grievance liaison) pursuant to academic or staff personnel policies, or collective bargaining agreements, shall provide the LDO with a copy of the retaliation complaint. If the grievance is not accompanied by a sworn statement, but raises issues of retaliation covered by this policy, then the grievance liaison shall provide the LDO with a copy of the grievance. Campus procedures shall specify the individual responsible for advising the complainant of his or her rights to file a whistleblower retaliation complaint and the timeframe for filing. Local procedures shall refer to the following grievance and complaint resolution policies and/or their respective implementing procedures:

C. Filing a Retaliation Complaint (Where, When and How to File)

1. Academic Personnel: Academic personnel may file complaints alleging retaliation, if eligible, as follows:

A Retaliation Complaint must include a Sworn Statement and be filed with the LDO or with the Complainant’s supervisor within 12 months of the alleged retaliation. If the Retaliation Complaint alleges a pattern of retaliation, it must be filed within 12 months of the most
Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

recent alleged act of retaliation. Complaints filed with the Complainant’s supervisor will be forwarded to the LDO.

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<thead>
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<th>Procedure Reference</th>
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<td>Senate Bylaw 335</td>
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<tr>
<td>Non-Senate Academic Personnel</td>
<td>APM – 140</td>
</tr>
<tr>
<td>Exclusively Represented Academic Personnel</td>
<td>The applicable collective bargaining agreement</td>
</tr>
</tbody>
</table>

2. **Staff Personnel**: Staff personnel may file complaints alleging retaliation, if eligible, as follows:

## 1. Required Allegations

<table>
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<th>Type of Staff Personnel</th>
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<td>Managers and Senior Professionals, Salary Grades VIII and IX</td>
<td>PPSM 71</td>
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<tr>
<td>Managers and Senior Professionals (except Salary Grades VIII and IX) and Professionals and Support Staff</td>
<td>PPSM 70</td>
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<tr>
<td>Exclusively Represented Staff Personnel</td>
<td>The applicable collective bargaining agreement</td>
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</tbody>
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### B. Filing with the LDO

A written retaliation complaint may be filed directly with the LDO. A retaliation complaint filed with the LDO must be filed within 12 months of the alleged act or threat of interference or retaliation. If the complaint alleges a pattern of retaliation, the complaint must be filed within 12 months of the most recent alleged act or threat of interference or retaliation.

A Retaliation Complaint must include the allegations set forth below for the type of complaint being filed. The allegations should be as specific as possible.

1. If the complaint received by the LDO is eligible for review under an existing grievance or complaint resolution procedure and the complainant also elects to file under the applicable grievance or complaint resolution procedure, the LDO will hold the retaliation complaint in abeyance until all of the steps preceding hearing, arbitration, or factfinding have been completed. (For example, under a collective bargaining agreement, the whistleblower retaliation complaint is joined with the grievance when the grievance advances to arbitration under the applicable procedure.) At that point in the review process, the retaliation complaint will be joined with the applicable procedure and referred to the RCO for handling as described in Section VI.A.3. below.
a. Required Allegations for a Retaliation Complaint alleging retaliation for having made a Protected Disclosure:

2. If a complaint received by the LDO is eligible for review under an existing grievance or complaint resolution procedure but the complainant elects not to file, the complaint will be referred to the RCO for investigation at the end of the grievance filing period.

3. The LDO shall refer a complaint to the RCO for investigation under the following conditions:
   i. Complainant made a Protected Disclosure. For purposes of this element, the Complainant must (a) include a summary of what was disclosed, (b) identify the person(s) to whom each Protected Disclosure was made, and (c) identify the approximate date of each Protected Disclosure.

      a) The complaint is not within the scope of or filed within the time limits of the complaint resolution procedure available to the complainant under applicable University personnel policies, collective bargaining agreements, or procedures established by the Academic Senate; or

      b) The employee does not have a complaint resolution procedure available for some other reason (for example, the alleged retaliatory act cannot be grieved under the respective collective bargaining agreement); or

   ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must identify (a) the Adverse Personnel Action(s), (b) the University employee(s) responsible for each Adverse Personnel Action, and (c) the approximate date on which each Adverse Personnel Action occurred.

      b) The employee does not have a complaint resolution procedure available for some other reason (for example, the alleged retaliatory act cannot be grieved under the respective collective bargaining agreement); or

   iii. The basis for Complainant’s belief that the Protected Disclosure was a contributing factor in the Adverse Personnel Action(s).

4. If a complaint that is normally eligible for investigation by the RCO alleges that the Chancellor, the LDO, or the LDO’s supervisor interfered or took the retaliatory action, the LDO or designee shall request:

b. Required Allegations for a Retaliation Complaint alleging retaliation for having refused to obey an Illegal Order:

   a) that the Senior Vice President—Business and Finance appoint a RCO when the complainant is a current employee in or applicant for a staff or management position; or

   i. Complainant refused to obey an Illegal Order. For purposes of this element, the Complainant must identify (a) the Illegal Order, (b) the University employee(s) who gave the Illegal Order, (c) the approximate date on which the Illegal Order was given, (d) what the Complainant did in
response to the Illegal Order that constituted a refusal to obey, and (e) the approximate date when the refusal occurred.

b) ____ that the Provost and Senior Vice President—Academic Affairs appoint a RCO when the complainant is a current appointee in or applicant for an academic position.

C. Filing with a Supervisor

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must identify (a) the Adverse Personnel Action(s), (b) the University employee(s) responsible for each Adverse Personnel Action, and (c) the approximate date on which each Adverse Personnel Action occurred.

A written complaint filed with a supervisor shall be referred by the supervisor to the LDO and processed in accordance with Section IV.B. above.

iii. The basis for Complainant's belief that refusing to obey the Illegal Order was a contributing factor in the Adverse Personnel Action(s).

D. Filing Requirements and Thresholds

D. Processing a Complaint

1. The retaliation complaint filed with the LDO or the supervisor must set forth in sufficient detail the necessary facts including dates and names of relevant persons. The complaint must contain facts supporting the filing thresholds as set forth below in Sections IV. D. 2. a) through c), the alleged retaliatory act(s), and the effects on the complainant of the alleged retaliatory acts. The LDO may require the complainant to amend the complaint to provide sufficient detail. If the complainant does not amend the complaint to correct the insufficiencies identified by the LDO within a reasonable timeframe, as established in local procedures, the complaint may be dismissed by the LDO. Preliminary Review by the LDO

After a complaint has been filed with or referred to the LDO, the LDO will determine whether the complaint is eligible for processing as a Retaliation Complaint.

a. Sworn Statement

When a complaint is filed without a Sworn Statement, the LDO will request that the Complainant correct this deficiency. If the Complainant fails to correct this deficiency within a reasonable time frame, as established in local procedures, the LDO will dismiss the complaint and notify the Complainant in writing of the decision to dismiss. If the complaint is dismissed because a sworn statement is not provided within a reasonable time frame, the LDO will review the retaliation allegations to determine whether they should be processed under the University's Whistleblower Policy.
b. **Timeliness and Required Allegations**

The LDO will determine whether the complaint is timely. If it is not timely, the LDO will dismiss the complaint. If the complaint is dismissed as untimely, the LDO will review the allegations to determine whether they should be processed under the University’s Whistleblower Policy.

The LDO will also determine whether the complaint contains the required allegations, as set forth above in Section C.1. When determining whether a complaint contains the required allegations, the LDO may consult with an Investigations Workgroup. If the complaint is not specific or otherwise fails to provide sufficient information, the LDO may require that the Complainant amend the complaint to address the deficiencies. If the Complainant does not amend the complaint or otherwise correct the deficiencies within a reasonable time frame, as established in local procedures, the LDO may dismiss all or some of the complaint.

The LDO will notify the Complainant in writing when the complaint is accepted for processing as a Retaliation Complaint and is being assigned to the RCO for investigation. If only parts of the complaint are accepted, the LDO’s written notice will advise the Complainant as to which parts of the complaint have been accepted, which have been dismissed, and the reason for the dismissal(s). Under Section I. below, a Complainant may appeal a decision dismissing a complaint, in whole or part, on the grounds that it is untimely or otherwise ineligible for processing.

2. **In order for a retaliation complaint to be accepted, the complainant must allege that Notification of the Accused Employee(s)**

   a) he or she filed a report or made a protected disclosure alleging improper governmental activities pursuant to current University policy; or

   b) he or she was threatened, coerced, commanded, or prevented by intimidation from filing a report of improper governmental activities; or

   c) he or she refused to obey an illegal order.

3. The LDO may consult with the local Investigations Workgroup in determining whether the alleged disclosure is a protected disclosure, and in determining whether an alleged order was an illegal order if the complaint is otherwise eligible for review.
V. Administrative Proceedings

When the LDO accepts a Retaliation Complaint for processing, the LDO will provide the employee(s) accused of retaliation with a copy of the Retaliation Complaint and advise him or her that an investigation is being initiated. If the Retaliation Complaint contains allegations against more than one employee, the LDO will provide each of them with those portions that contain allegations against him or her.

3. Referral to the RCO for Investigation

After the LDO accepts a Retaliation Complaint for processing, the LDO will refer the Retaliation Complaint to the RCO for investigation. If the RCO delegates any part of the investigation, the RCO retains responsibility for ensuring that the investigation is conducted in accordance with this policy.

4. Investigation

a. Investigation Process

The investigator will review the Retaliation Complaint and other relevant materials submitted by the Complainant. In addition, the investigator may request and review other documents and materials relevant to the allegations. The investigator will, whenever possible, interview the Complainant and the accused employee(s). In addition, the investigator will interview any other witnesses who the investigator believes are necessary in order to conduct a thorough investigation.

b. The Accused Employee’s Opportunity to Comment

Before findings are reached, the investigator will provide the accused employee(s) with an opportunity to respond to the Retaliation Complaint in a written statement. The investigator will advise the accused employee(s) when the statement needs to be submitted, making sure that a reasonable amount of time is provided for this purpose. The investigator will include any such statement in the record submitted to the Chancellor.

c. Witnesses

i. Local procedures must allow the Complainant, the accused employee(s), and other witnesses a reasonable amount of paid time off to participate in interviews conducted by the investigator.
ii. The Complainant, the accused employee(s), and the other witnesses have a duty to cooperate with the investigator. This includes a duty to participate in interviews requested by the investigator, to answer the investigator’s questions honestly, and to provide documents and other materials requested by the investigator.

iii. If the Complainant or any accused employee fails or refuses to be interviewed, the investigator will complete the investigation based upon the information available.

d. Investigation Report

The investigator will prepare a written report containing findings of fact based on the evidence and the investigator’s conclusion as to whether a policy violation occurred, using the applicable Evidentiary Standards set forth in Section E, below. The investigation report will provide sufficient detail to enable the Chancellor to make an independent determination as to whether a policy violation occurred. The investigation report will include the Retaliation Complaint, a list of witnesses interviewed, any written statement submitted by the accused employee(s), and any other documents on which the investigator has relied in reaching findings.

When the investigation report is completed, the RCO will deliver it to the LDO. If the RCO did not personally conduct the investigation, the RCO should first review the investigation report to confirm that it is complete; if the investigation report is incomplete, the RCO should ask the investigator to address the deficiencies before proceeding.

e. Time Frame for Investigation

The RCO is responsible for delivering the investigation report to the LDO within 6 months from the date on which the LDO notifies the Complainant that the Retaliation Complaint has been accepted for processing.

The LDO may extend the 6-month deadline upon receipt of a written request from the RCO that explains why the extension is needed. Additional extensions may be sought when appropriate. The LDO will respond in writing to such requests. The LDO generally will not provide an extension or extensions that increase the 6-month time frame beyond 12 months total.

E. A. Evidentiary Standards
Selected Presidential Policies
Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

1. **Evidentiary Standards for Retaliation Complaints**

   1. Pursuant to California Government Code Section 8547.10(e), an arbitrator, University or non-University hearing officer, or University committee that hears a retaliation complaint shall be instructed that once the complainant demonstrates, a Complainant who brings a Retaliation Complaint must demonstrate by a preponderance of the evidence that he or she engaged in activity protected by the University’s Whistleblower Policy, either made a Protected Disclosure or refused to obey an Illegal Order and that such activity was a contributing factor in the alleged Retaliatory Action. If the Complainant has met that standard, the burden of proof shall be on the supervisor, manager, or University to demonstrate by clear and convincing evidence that the alleged Adverse Personnel Action would have occurred for legitimate, independent reasons even if the Complainant had not made a Protected Disclosure or refused to obey an Illegal Order. If that burden is not met, the employee or applicant for employment shall have a complete affirmative defense to the adverse action which was the subject of the complaint.

   2. However, pursuant to California Government Code Section 8547.10(d), nothing in this policy is intended to prevent a manager or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any employee or applicant for employment if the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure. A Complainant who brings a Retaliation Complaint must demonstrate by a preponderance of the evidence that he or she engaged in activity protected by the University’s Whistleblower Policy, either made a Protected Disclosure or refused to obey an Illegal Order and that such activity was a contributing factor in the alleged Retaliatory Action. If the Complainant has met that standard, the burden of proof shall be on the supervisor, manager, or University to demonstrate by clear and convincing evidence that the alleged Adverse Personnel Action would have occurred for legitimate, independent reasons even if the Complainant had not made a Protected Disclosure or refused to obey an Illegal Order. If that burden is not met, the employee or applicant for employment shall have a complete affirmative defense to the adverse action which was the subject of the complaint.

2. **Special Evidentiary Standard for Employees in the University’s Health Facilities**

When the Complainant is an employee of one of the University’s inpatient health facilities (i.e., facilities to which persons are admitted for a 24-hour stay or longer) and brings a Retaliation Complaint, the LDO (or designee) will determine whether the special evidentiary standard set forth in Section 1278.5 of the California Health and Safety Code applies.

**F. Decision by the Chancellor**

1. The LDO will present the investigation report to the Chancellor, who will render a decision in the matter consistent with the Evidentiary Standards set forth in Section...
E. above. If the Chancellor needs more information in order to make a decision, the Chancellor may request further investigation. The Chancellor will issue a written decision and send it to the Complainant and to the accused employee(s).

2. If the Chancellor determines that an employee or employees violated this policy and that the Complainant was harmed as a result of such violation, the Chancellor will award any appropriate relief, which will be identified in the Chancellor’s written decision provided to the Complainant. However, the written decision will not describe any action that may need to be taken against any employee found to have violated this policy.

3. In all circumstances, the Chancellor’s written decision must be issued and sent to the Complainant no later than 18 months after the complaint was initially filed.

B.—Special Evidentiary Standards for Health Care Workers

Pursuant to Section 1278.5 of the California Health and Safety Code, discriminatory treatment (as defined in the Section) of a health care worker for having presented a grievance or complaint, or having initiated, participated, or cooperated in any investigation or proceeding against the health facility on issues relating to care, services or condition of the health facility, if the health facility had knowledge of such action, shall raise a rebuttable presumption that discriminatory action was taken in retaliation, if the discriminatory action occurs within 120 days of the filing of the grievance or complaint.

G. Consequences for a University Employee Who Violated the Policy

VI. Complaints Investigated by the RCO

In those cases where the Chancellor has decided that an employee has violated this policy, the Chancellor, through the appropriate channels, will determine the appropriate action(s) to be initiated, which may include disciplinary action against that employee. If the employee is not in the Academic Senate, any disciplinary action will be in accordance with the applicable personnel policy or collective bargaining agreement. If the employee is a member of the Academic Senate, any disciplinary proceedings will be undertaken in accordance with the academic personnel policies and the procedures established by the Academic Senate.

A.—When an employee files a complaint which contains an eligible allegation of retaliation under an existing University grievance or complaint resolution procedure, the RCO shall investigate the allegation of retaliation or interference as provided below:

H. Referral of Complaints to the Office of the President

1. If the complaint is filed under a complaint resolution procedure containing factfinding as specified in University policies as part of the final available step (e.g., Staff Policies 70, 71, and II-70 for some issues), the RCO will serve as the factfinder. When a complaint filed under this policy alleges that the Chancellor, the LDO, the LDO’s supervisor, or the Chief Campus
Counsel engaged in the retaliation that is the subject of the complaint, the LDO (or designee) will request that the Systemwide LDO accept the complaint for processing by the Office of the President.

2. If the complaint is filed under a grievance procedure in personnel policy, a collective bargaining agreement, or under procedures established by the Academic Senate, but is not eligible under that policy, collective bargaining agreement, or procedure for arbitration, hearing, or factfinding, the RCO will investigate the complaint after exhaustion of the available steps of the policy, collective bargaining agreement, or Academic Senate procedure. The investigation and findings will be limited to the interference or retaliation aspect of the complaint only. In other special circumstances, the LDO may request that the Systemwide LDO accept a complaint for processing at the Office of the President. The request must state the reason(s) why it would be more appropriate to have the complaint processed at the Office of the President.

3. If the complaint is heard before an arbitrator, University or non-University hearing officer, or University committee, the RCO will receive a copy of that decision. If the decision does not include findings regarding the alleged interference or retaliation, the RCO shall request that the arbitrator, University or non-University hearing officer, or University committee revise the report to include findings regarding the alleged interference or retaliation. If the arbitrator, University or non-University hearing officer, or University committee subsequently fails to include such findings in the report, the RCO will conduct a separate investigation on that issue only. Systemwide LDO decides to accept a complaint for processing at the Office of the President, the Systemwide LDO will conduct the preliminary review in accordance with D.1. and will refer complaints accepted for processing to an RCO for investigation in accordance with Section D.4. above. In such circumstances, the RCO will present the findings of the investigation to the Systemwide LDO for a decision in accordance with Section F. above. If the Systemwide LDO concludes that an employee has violated this policy, the Systemwide LDO will refer the matter back to the appropriate official at the employee’s location to initiate appropriate action in accordance with Section G. above, except in cases where an adverse finding involves the Chancellor, in which case the Systemwide LDO will refer the matter to the President.

B. When no University grievance or complaint resolution procedure is available to the complainant, the RCO will conduct the investigation.

C. Before findings are reached, the RCO (or factfinder, if the RCO has delegated conduct of the investigation) shall provide a copy of the complaint and any documents on which the RCO (or factfinder) intends to rely in reaching findings to the person accused of interference or retaliation. That person shall be provided the opportunity, within locally established time limits, to respond to the complaint and to file a written statement which the RCO (or factfinder) will make part of the record submitted to the Chancellor.
D. The RCO shall present findings of fact based on the evidence and factual conclusions to the Chancellor within 120 days from the date on which the complaint was assigned to the RCO unless an extension is granted by the LDO.

E. When an employee has filed a complaint under an applicable personnel policy or collective bargaining agreement grievance or complaint resolution procedure (1) which alleges retaliation for an action protected by this policy, and (2) a final University decision within the meaning of the applicable complaint resolution policy or collective bargaining agreement has been rendered, and (3) the employee later files a timely whistleblower retaliation complaint, the RCO shall review the decision. If there is a finding of retaliation, the RCO shall review it to ensure that the remedy is consistent with the policy, and if not, the RCO shall make a recommendation to the Chancellor. If there is no finding of retaliation, the LDO shall request that the hearing officer, committee, or arbitrator reopen the case and apply the standard of proof specified in Section V. above, and if necessary, find additional facts for application of the standard. If the foregoing does not occur, the RCO shall find additional facts, if necessary, for application of the standard of proof specified in Section V. above. The case shall then be forwarded to the Chancellor for a decision.

F. When it is alleged that the Chancellor, the LDO, or the LDO’s supervisor interfered or took the retaliatory action, the Senior Vice President—Business and Finance or the Provost and Senior Vice President—Academic Affairs, whichever applies, shall appoint an RCO to undertake the investigation consistent with the provisions of Section VI.A. through E., above. The RCO shall present findings of fact based on the evidence and factual conclusions to the Senior Vice President—Business and Finance or the Provost and Senior Vice President—Academic Affairs, as appropriate, for a decision. The RCO’s findings shall be presented within 120 days from the date on which the complaint was assigned to the RCO unless an extension is granted by the Senior Vice President—Business and Finance or Provost and Senior Vice President—Academic Affairs.

VII. Decision

A. Decision Based on Findings of an Arbitrator, University or Non-University Hearing Officer, or University Committee

1. The RCO shall be provided with a copy of the decision in those cases in which the complaint was heard before an arbitrator, University or non-University hearing officer, or University committee.

2. When there are findings that interference or retaliation has occurred, the RCO will provide that information to the Chancellor. If the decision is final and binding, the Chancellor may not alter the decision in any way, but may through the appropriate channels initiate corrective action against the University employee who interfered or retaliated based on the findings in the decision.
B. Decision Based on Findings of an Investigation Conducted by the RCO

1. The RCO is to present findings of fact based on the evidence and factual conclusions to the Chancellor who shall render a decision in the matter consistent with the standard of proof specified in Section V. above. The Chancellor may remand the findings to the RCO if further investigation is needed before making a decision. The Chancellor will communicate the decision in writing to the complainant and to the person or persons accused of violating the University’s Whistleblower Protection Policy.

2. The Chancellor’s written decision will include any appropriate relief for the complainant, but will not describe any corrective action which may need to be taken.

C. Corrective Action of a University Employee

The Chancellor through the appropriate channel, or in the case of Academic Senate members the appropriate Senate Committee, determines the appropriate corrective action, if any, which will be initiated against a University employee who is found to have retaliated against or interfered with an employee’s or applicant’s right to make a protected disclosure or to refuse an illegal order. Such action shall be in accordance with the applicable personnel policy or collective bargaining agreement. For a member of the Academic Senate, disciplinary proceedings are in accordance with academic personnel policies and procedures established by the Academic Senate.

D. Complaint Against the Chancellor, the LDO, or the LDO’s Supervisor

With regard to complaints in which it is alleged that the Chancellor, the LDO, or the LDO’s supervisor interfered or took retaliatory action, the findings of the investigation shall be presented for a decision to the Senior Vice President—Business and Finance or the Provost and Senior Vice President—Academic Affairs, in accordance with Section VI.E. above.

VIII. Appeal

An employee may appeal the local decision only on the basis that the complaint was ineligible for processing because it was untimely filed and/or the complaint did not qualify for review under the scope of this policy to:

A. the Senior Vice President—Business and Finance if the complainant is a current employee in or applicant for a staff or management position; or

B. the Provost and Senior Vice President—Academic Affairs if the complainant is a current appointee in or applicant for an academic position.

IX. Reports

I. Appeals
The Complainant has no right to appeal a decision on the merits of a complaint. However, the Complainant may appeal a local decision dismissing a complaint in whole or in part because it was untimely or lacked required allegations. Such appeals must be made in writing and received by the Systemwide LDO within 30 calendar days of the local decision. The appeal must state why the local decision should be overturned and must include copies of the complaint, the local decision, and the documents and other evidence that support the appeal.

J. Reporting Requirements

Each location will submit a copy of the local procedures implementing this policy to the Office of the Senior Vice President—Business/Chief Compliance and Finance, Audit Officer. Additionally, on July 31 of each year, each location will provide information regarding complaints filed under this policy and their status to the Senior Vice President—Business and Finance. A report summarizing the number of whistleblower retaliation complaints filed during the preceding fiscal year and their disposition. The Office of Human Resources and Benefits will provide a reporting format/Chief Compliance and Audit Officer using the method established by him or her for this purpose.

VI. COMPLIANCE / RESPONSIBILITIES

See Section III.J.

VII. PROCEDURES

Applicable procedures are outlined throughout the policy text in Section III.

VIII. RELATED INFORMATION

- University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) (referenced in Section III.A., Section III.B.2., Section III.D.1.a. and Section III.D.1.b.)

IX. FREQUENTLY ASKED QUESTIONS

Not applicable.
X. REVISION HISTORY

This policy was last revised on October 4, 2002.

Future revisions to this policy will be circulated under standard procedures for Presidential Policies; in the case of this policy, the review will include circulation under the standard Academic Personnel Manual (APM) process, with final authority resting with the President.
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Academic personnel are covered by the University of California Whistleblower and Whistleblower Protections Policies, which are Presidential Policies covering all faculty and other academic appointees, student employees, and staff. Former APM - 190, Appendices A-1 and A-2 are replaced with Appendix A. These Presidential Policies are available at:

http://www.policy.ucop.edu/specific-link-to-be-advised and

http://www.policy.ucop.edu/specific-link-to-be-advised. Future revisions to these Policies will be circulated under standard procedures for Presidential Policies; the review will also include circulation under the standard APM review process, with final authority resting with the President.
MODEL COMMUNICATION

The University invites comments on Proposed Revised University of California Policy on the Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints, Whistleblower Protection Policy (WPP), which is reprinted in the Academic Personnel Manual Section 190, (APM - 190), Appendix A-2, as described below:

The proposal implements policy requirements mandated by an amendment to the California Whistleblower Protection Act that became effective January 1, 2011. The UC Whistleblower Protection Policy is a systemwide, Presidential Policy that applies to all University employees, which includes all faculty and other academic appointees, students, and staff.

The proposal is located on the UCOP Academic Personnel website, “Policies under review”, under the “Systemwide Review” tab at http://www.ucop.edu/academic-personnel/academic-personnel-policy/policies-under-review/index.html. It also may be viewed at (e.g., the campus Academic Personnel Office).

If you have any questions or if you wish to comment, please contact _______________ at ________________, no later than ________________ 2014.
April 8, 2014

JEAN DANIEL SAPHORES, CHAIR*
COUNCIL ON FACULTY WELFARE, DIVERSITY AND ACADEMIC FREEDOM

ABEL KLEIN, CHAIR
COUNCIL ON PLANNING AND BUDGET

EXPECTED CABINET AGENDA DATE:  May 20, 2014
EXPECTED COUNCIL DUE DATE:  May 23, 2014

RE:  SYSTEMWIDE REVIEW OF THE UNIVERSITY OF CALIFORNIA POLICY ON SUPPLEMENT TO MILITARY PAY

The Academic Council has requested Systemwide Review of proposed revisions to renew the University of California Policy on Supplement to Military Pay, covering all academic and staff employees. The proposed revision to the University’s personnel policies would extend the current policy of supplementing military pay for University employees on military service if the military pay is less than the employee’s University salary. The current policy will sunset on July 1, 2014, and this proposed revision will extend it until July 1, 2018. Other changes appear on a first reading to be technical rather than substantive. However, Committees on Faculty Welfare should review these revisions to confirm that this is an accurate assessment. It has been noted that the number of individuals directly affected by this policy is very small.

I would ask that the Councils be prepared to present their comments at the May 20, 2014 Senate Cabinet meeting. I have included the Council on Planning and Budget, but please let me know if your council does not wish to opine.

Peter Krapp, Chair
Academic Senate

C:  Charlene Mandau
    Thao Nguyen
    Luisa Crespo
April 7, 2014

COUNCIL OF VICE CHANCELLORS
LABORATORY DIRECTOR ALIVISATOS
ACADEMIC COUNCIL CHAIR JACOB
ANR VICE PRESIDENT ALLEN-DIAZ

Re: Systemwide Review of Proposed Revised University of California Policy on Supplement to Military Pay - Four-Year Renewal

Dear Colleagues:

Enclosed for Systemwide Review are proposed revisions to renew the University of California Policy on Supplement to Military Pay, covering all academic and staff employees. The Policy is scheduled to end on June 30, 2014. Under the current Policy, the University provides eligible employees with supplemental payments equal to the difference between the employees’ University base pay and their military pay and allowances until the end of an employee’s active military duty, or until June 30, 2014, while on active military duty in the Overseas Operations Contingency campaign.

In addition, under current Policy, while employees receive the military pay supplement, the University continues to pay the UC contribution to their health plan premiums and other UC sponsored health and welfare benefits. For employees who are not eligible for the supplement to military pay because their military pay exceeds their University wages, and who elect to continue their University plan coverage, the University pays the UC contribution to health plan premiums and other UC sponsored health and welfare benefits. Benefits under the Policy are subject to a two-year lifetime limit.

It is the University’s desire to continue to provide reasonable assistance to academic and staff personnel who are called to active military duty. Therefore, the University has proposed that the Policy be renewed for a four-year period, effective July 1, 2014 through June 30, 2018.

For employees called to active military duty as of July 1, 2014, benefits would be provided until the end of the employee’s active military commitment or until the June 30, 2018 end date of the policy, whichever comes first, subject to the two-year lifetime limit.

Systemwide Review

Systemwide Review is a public review distributed to the Executive Vice Chancellors, the Director, Lawrence Berkeley National Laboratory, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, affected employees and union membership about policy proposals. Systemwide Review also includes a mandatory, three-month full Senate review. In the case of this policy distribution, the Senate has agreed to a two-month review.

Employees should be afforded the opportunity to review and comment on the draft policy reflecting the proposed four-year renewal, available online at: http://www.ucop.edu/academic-personnel/academic-
April 7, 2014
Page 2

personnel-policy/policies-under-review/index.html. Enclosed is a Model Communication which may be used to inform non-exclusively-represented employees affected by these proposals.

This letter and enclosures anticipate that you will begin Systemwide Review of the proposed draft and submit comments no later than June 9, 2014. Please send comments on the proposed policy to ADV-VPCARLSON-SA@ucop.edu. Questions may be directed to Janet Lockwood at Janet.Lockwood@ucop.edu or (510) 987-9499.

Sincerely,

[Signature]
Susan Carlson
Vice Provost
Academic Personnel

Enclosures: Proposed Revised UC Policy on Supplement to Military Pay (clean copy)
Proposed Revised UC Policy on Supplement to Military Pay (red line)
Model Communication

cc: President Napolitano
Chancellors
Provost and Executive Vice President Dorr
Executive Vice President Brostrom
Senior Vice President Vacca
Vice President Mara
Vice President Duckett
Vice Provosts – Academic Personnel
Academic Personnel Directors
Executive Director Fox
Executive Director Rodrigues
Executive Director Tanaka
Executive Director Winnacker
Director Skarakis
Deputy General Counsel Drown
Deputy/UCOP Compliance Officer Lane
Director Chester
Manager Lockwood
Human Resources Policy Analyst Bello
Human Resources Policy Analyst Kwan
Senior Administrative Analyst Rupert
Policy Coordinator Trifonov
I. POLICY SUMMARY
This policy describes the salary supplement that is provided to those University academic and staff personnel serving on active military duty in the Overseas Contingency Operations campaign.

II. DEFINITIONS

Exception to Policy: An action that exceeds what is allowable under current policy or that is not expressly provided for under policy. Any such action must be treated as an exception.

Executive Officer: The University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources.

Top Business Officer: Executive Vice President-Business Operations for the Office of the President, Vice Chancellor for Administration, or the position responsible for the location’s financial reporting and payroll as designated by the Executive Officer.
III. POLICY TEXT

A. Eligibility
All employees who, as members of the National Guard, the Armed Forces, the commissioned corps of the Public Health Service, or any other category designated by the President, have enlisted or have been called to active military duty in the Overseas Contingency Operations campaign are eligible for supplements to their military pay.

As used here, "employee" is meant to include individuals who hold academic, career, limited, floater, casual-restricted, contract, or per diem appointments, regardless of the percent time worked.

B. Commencement
Compensation for the difference between an employee’s University pay and military pay will begin on the first day of unpaid military leave.

C. Duration
The supplement to military pay will extend for a period not to exceed the employee’s tour of active duty, until June 30, 2018, or until the separation date of an employee’s University appointment, whichever comes first. Benefits provided under the policy are subject to a two-year lifetime limit, retroactive to December 14, 2001 (the policy’s starting date).

University employees with termination dates due to budgetary restrictions may be reappointed according to University procedures and practices. If such reappointments occur during the employee’s active duty, supplements to military pay will continue into the subsequent appointment until the end of the active duty, or until June 30, 2018, whichever comes first. Benefits provided under the policy are subject to a two-year lifetime limit, retroactive to December 14, 2001.

D. Benefits
Employees receiving supplements to their military pay will be considered on pay status.

Medical, dental, vision, and life insurance coverage, and University contributions for these coverages, may continue through the employee’s tour of active duty, until June 30, 2018, or until the separation date of an employee’s University appointment, whichever comes first. Benefits provided under the policy are subject to a two-year limit, retroactive to December 14, 2001. Thereafter, the employee (and eligible family members, if any) may continue medical, dental, and vision coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) continuation provisions. In addition, participation in Legal Plan Insurance and Supplemental Life Insurance may continue through the sixth calendar month of military pay. Homeowner/Rental/Auto Insurance can be maintained throughout the leave.

Dependent Care Flexible Spending Account (DepCare FSA) contributions stop when supplemental payments end and the employee is no longer on pay status. Subject to plan deadlines, eligible expenses incurred through the end of the calendar year may be
reimbursed unless participation in DepCare FSA is cancelled. However some policies (e.g., Accidental Death and Dismemberment), have exclusions that apply to individuals on active military duty.

Short-term disability and supplemental disability coverage will terminate on the last day an employee is actively at work.

Employee retirement contributions to the 457(b) Deferred Compensation Plan and the Tax-Deferred 403(b) Plan will continue while a paycheck is received and will stop with the employee’s last paycheck. When the employee returns to University employment, the employee may be eligible to make up contributions to the 457(b) Deferred Compensation Plan and/or the Tax-Deferred 403(b) Plan that were missed due to the period of military leave, in accordance with Uniformed Services Employment and Reemployment Rights Act (USERRA) and University of California Retirement System (UCRS) provisions.

An employee on military leave may suspend Tax-Deferred 403(b) Plan loan repayments for the period of military leave as provided under USERRA and Tax-Deferred 403(b) Plan provisions.

Retirement service credit will be earned in accordance with the University of California Retirement Plan (UCRP) provisions for the period of military service and for a period following military service, provided that the employee returns to University employment following the leave or notifies the University in writing of his or her intent to return to work in accordance with any applicable reemployment rights and UCRS provisions.

For those employees who elect to continue their University coverage but are ineligible for the supplement to military pay because their military pay exceeds their University pay, the University will continue to pay the UC contribution to their health plan premiums through the employee’s tour of active duty, until June 30, 2018, or until the separation date of an employee’s University appointment, whichever comes first. Benefits provided under the policy are subject to a two-year limit, retroactive to December 14, 2001.

E. Special Situations

1. Leaves With and Without Pay: Employees who received orders to report for active duty while on an approved leave, with or without pay (e.g., sabbatical, personal, or research leave), will for the purpose of calculating supplemental pay, be returned to their regular status.

2. Temporary Reductions in Time: Employees who received orders to report for active duty while on a temporary reduction in time will, for the purpose of calculating supplemental payments, be returned to their regular status at the expiration date of such temporary reduction in time. The employee’s department will be responsible for adjusting supplemental payments at such expiration date.
3. Temporary Layoffs: Employees who received orders to report to active duty while on a temporary layoff will, for the purpose of calculating supplemental payments, be returned to their regular status at the expiration date of the temporary layoff. The employee's department will be responsible for submitting the documentation required to initiate supplemental payments at such expiration date.

Supplemental payments should begin at the expiration date of the temporary layoff.

4. Indefinite Layoffs: Employees who received orders to report to active duty while on an indefinite layoff are not eligible for supplemental payments.

5. Partial Year Career Employees: Military pay will not be supplemented during the months when employees are on furlough unless such employees have elected to spread their paychecks over 12 months. Periods of time spent on unpaid furlough will not be included in the calculation of the supplemental payments.

The employee's department will be responsible for terminating supplemental payments when such employee would normally go on unpaid furlough and for reinstating supplemental payments when such employee would normally return to pay status.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy
Responsible Officers have the authority to develop procedures or other supplementary information to support the implementation of this policy. Responsible Officers may apply appropriate and consistent interpretations to clarify the policy provided that the interpretations do not result in substantive changes to the underlying policy.

The Executive Officer are each location is authorized to establish and is responsible for local procedures to implement the policy. Local procedures must be consistent with the policy. Exceptions to procedures required by this policy must be approved by the Executive Officer.

B. Revisions to the Policy
The President is the Policy Approver and has the authority to approve policy revisions upon recommendation by the Responsible Officers.

The Responsible Officers have the authority to initiate revisions to the policy, consistent with approval authorities and applicable Bylaws and Standing Orders, and Policies of the Regents.

The UC Provost and Executive Vice President–Business Operations have the authority to ensure that policies are regularly reviewed, updated in a manner that is consistent with other University policies.
C. Approval of Actions
Actions within this policy must be approved in accordance with local procedures. Executive Officers and Responsible Officers are authorized to determine responsibilities and authorities at secondary administrative levels in order to establish local procedures necessary to implement this policy.

All actions that exceed this policy, or that are not expressly provided for under any policy, must be approved by the Responsible Officers.

D. Compliance with the Policy
Noncompliance with the Policy is managed in accordance with Personnel Policies for Staff Members 61, 62, 63, 64, 65, and 67 pertaining to disciplinary and separation matters, and in accordance with other University policies, including but not limited to, The Faculty Code of Conduct (APM - 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM - 016), Non-Senate Academic Appointees/Corrective Action and Dismissal (APM - 150) or, as applicable, collective bargaining agreements. Reference Section VI and Appendices I and II.

The Executive Officer at each location will designate the local management office responsible for monitoring, enforcing, and reporting compliance mechanisms.

The Senior Vice President – Chief Compliance and Audit Officer will periodically audit and monitor compliance with the Policy.

V. PROCEDURES
A. Documentation Required to Initiate Supplemental Payments
1. Supplement to Military Pay Worksheet: The employee’s department and the employee, or the person who holds the power of attorney on behalf of the employee, are responsible for completing the Supplement to Military Pay Worksheet. The purpose of the worksheet is to calculate the gross supplemental pay and to obtain acknowledgement from the employee that any overpayments will be returned to the University.

2. Personnel Action Form or Equivalent Document & Sabbatical Leave/Special Leave of Absence: The employee's department is responsible for completing a Personnel Action Form, Personnel Transaction Request Form or equivalent document and Sabbatical Leave/Special Leave of Absence Form (UPAY 573) to place the employee on military leave. The department should establish as the end date on the current pay Distribution(s) the last date that the employee will receive University pay.

The department should establish a new Distribution for the period of the military leave, using the calculated gross supplemental pay (line 13, 14, or 15) determined on the Supplement to Military Pay Worksheet. The department should associate the
Gross Supplemental Pay amount with the Description of Service Code "SMP." The department should establish a new Distribution with a Begin Date as of the last day of the employee’s Military Leave Date and with the same End Date on the original Distribution. If the employee remains on military duty, the department should complete a Leave of Absence action.

3. **Leave and Earnings Statement:** The employee, or the person who holds the power of attorney on behalf of the employee, will be responsible for documenting/estimating the military pay. If available, a Leave and Earnings Statement (LES) will be used to determine the gross monthly military pay. If a LES is not available, the gross military pay may be estimated.

4. **Power of Attorney:** If an employee has designated a power of attorney, documentation of such power of attorney will be submitted along with the completed worksheet.

5. **Short-Term and Supplemental Disability:** An Enrollment, Change, Cancellation, or Opt-Out Form (UPAY 850) will be given to the employee, or the person who holds the power of attorney on behalf of the employee. Employees are not eligible for disability benefits if the disability occurred while on extended military leave. Supplemental disability and short-term disability plans must be cancelled by the employee as failure to do so will result in automatic deductions for disability insurance from supplemental pay even though coverage does not continue.

6. **Payroll Earnings Distribution Authorization:** A Pay Disposition Authorization Form will be given to the employee. This form must be completed and returned to the department if the employee wishes to change his or her disposition of pay.

**B. Initiating Supplemental Pay**

1. **If the Employee Has Not Yet Reported To Active Military Duty:** The employee’s department and the employee (or the person who holds the power of attorney on behalf of the employee) are responsible for providing and/or completing the forms outlined within these procedures.

2. **If the Employee Has Reported To Active Military Duty and Not Returned:** The department will attempt to contact and inform the employee on military leave (or the person who hold powers of attorney on behalf of the employee) of the supplement to military pay and the procedures required to initiate the supplemental payments.

Supplemental payments will not be issued without the signature of the employee, or the person who holds a power of attorney on behalf of the employee, on the Supplement to Military Pay Worksheet. If a department is unable to obtain a completed worksheet and LES from an employee, or the person who holds the power of attorney on behalf of the employee, the supplemental payment will be calculated and issued upon the employee’s return to work.
3. **If the Employee Has Returned From Active Military Duty:** The employee will submit copies of all LES covering the period of time in which the employee was eligible for supplemental payments. The employee's department will be responsible for calculating the total gross supplemental payment and submitting the required paperwork in accordance with established location procedures.

**C. Issuing Payments**

1. **Retroactive Payments:** The employee's department will be responsible for submitting all retroactive paperwork, including the PAF or equivalent document, *Sabbatical Leave/Special Leave of Absence Form (UPAY 573)*, and late pay transactions. If an employee is eligible for future supplemental payments, the department will complete a PAF or equivalent document based upon the most recent worksheet and LES obtained from the employee, or the person who holds the power of attorney on behalf of the employee.

2. **Pro-Rated Payments:** The employee's department will be responsible for pro-rating supplemental payments that do not cover a full pay period for employees covered by positive time reporting.

3. **Extensions and Multiple Military Leaves:** The employee's department will be responsible for ensuring that supplemental payments for employees with extensions of their original orders or with multiple military leaves are consistent with these guidelines.

4. **Deductions:**

   a) **Mandatory Deductions:** Supplemental payments will be subject to Federal income tax, State income tax, OASDI, and Medicare. Garnishments/Earnings Withholding Orders for Support, if applicable, will be withheld.

   b) **Voluntary Deductions:** Voluntary deductions will continue to be withheld unless cancelled by submittal of the appropriate cancellation forms.

   c) **Employer Contributions:** Departments are responsible for University contributions.

5. **Issuance:** Supplemental payments will be issued as part of the normal payroll cycle for each affected employee, except for retroactive payments. The supplemental pay will be distributed to the disposition selected by the employee.

6. **Terminating Supplemental Payments:** The employee's department will be responsible for ensuring that upon expiration of the supplemental payments, the employee's status is correctly reflected on the PAF or equivalent document.

**D. Reconciliation**
1. **Reinstatement:** When an employee returns to work from active military duty, the employee will submit a LES for each month for which supplemental military pay was earned or received. The employee's department will be responsible for reconciling actual supplemental military payments with all LES. Any overpayments or underpayments will be adjusted in accordance with established location payroll procedures.

2. **Benefits:** Employees returning from military leave have a 31-day period of initial eligibility to reenroll in coverages which lapsed or were cancelled during the extended military leave. The period begins with the date of return to normal pay status.

3. **Retirement Service Credit:** Covered compensation and retirement service credit earned during an extended military leave will be manually adjusted when the employee returns to pay status by submitting a copy of the PAF or equivalent document documenting the extended military leave and verification of the employee's military orders to the retirement membership unit.

4. **Employees Who Do Not Return to University Service:** Employees who elect to terminate their University appointment will be responsible for contacting their former departments to initiate reconciliation between their estimated and actual military earnings. Employees who have been underpaid will receive the balance due. Overpayments will be repaid to the University.

   Overpayments will be forgiven if an employee is killed or is disabled to the extent that such employee cannot return to University employment.

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**VI. RELATED INFORMATION**

- *Overseas Contingency Operations*
- *Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)*
- *Legal Plan insurance*
- *Supplemental Life Insurance*
- *Homeowner/Rental/Auto Insurance*
- *Dependent Care Flexible Spending Account (DepCare FSA)*
- *Accidental Death & Dismemberment (AD&D)*
- *457(b) Deferred Compensation Plan*
- *Tax-Deferred 403(b) Plan*
- *The Uniformed Services Employment and Reemployment Rights Act (USERRA)*
- *University of California Retirement System (UCRS)*
VII. FREQUENTLY ASKED QUESTIONS

General

1. What is the definition of University pay for purposes of this policy?

   1) Health Sciences Compensation Plan: The University pay of employees compensated under the Health Sciences Compensation Plan shall be defined as both the base salary and the negotiated compensation (exclusive of incentive payments) in effect and paid through the University payroll when military leave commences, plus faculty recruitment allowance, if applicable.

   2) Staff Physicians and Dentists Compensation Plan: The University pay of employees compensated under the Staff Physicians and Dentists Compensation Plan shall be defined as both the base salary and non-base salary (exclusive of incentive payments) in effect and paid through the University payroll when military leave commences.

   3) All Other Employees:
      
      a. Eligible Earnings: The University pay of all other employees shall be defined as the employee's regular base pay rate plus any of the following eligible earnings:
         - shift differentials;
         - clinical nurse differentials;
         - non-base building pay for nurses;
         - police specialty pay;
         - stipends (department chair, etc.); and
         - faculty recruitment allowance.

      b. Ineligible Earnings: Ineligible earnings shall include the following:
• overtime;
• uniform allowances;
• UNEX BYA;
• summer session salaries;
• on-call pay;
• honoraria;
• incentive and performance awards;
• additional academic compensation, including summer and UNEX compensation; and
• terminal vacation pay.

c. Range Adjustments, Merit Increases, and Promotion Increases: The base pay rate shall be adjusted for range adjustments, merit increases, and promotion increases that would have been granted had the employee not been ordered to active military duty.

d. Variable-Time Appointments: The base pay rate of an employee with a variable-time appointment shall be adjusted for the average hours on pay status during the three months prior to commencement of military leave, exclusive of hours attributed to overtime.

e. Irregular-Shift Assignments: The shift differential component of the gross University pay of employees who are not assigned to the same shift on a regular basis shall be calculated by taking an average of the shift differentials paid over the three months prior to commencement of military leave.

2. What is the definition of military pay for purposes of this policy?
Military pay shall be defined as all compensation, including allowances, received by an individual eligible for supplements to his or her military pay.

3. How is military pay funded for purposes of this policy?
Each location shall determine the source of funds for supplemental military pay. University general funds, unrestricted gift funds, medical school compensation plan funds, and other funds identified by the campus may be used. Extramural contract and grant funds may be used to the extent such funds were used to pay the employee immediately prior to his or her call to active military duty.

VIII. REVISION HISTORY
As a result of the issuance of this policy, the following document is rescinded as of the effective date of this policy and is no longer applicable:

• Supplement to Military Pay Policy, dated July 1, 2012

This policy was reformatted into the standard University of California policy template effective July 1, 2012.
I. POLICY SUMMARY

This policy provides describes the salary supplement that is provided reasonable assistance to those University academic and staff personnel serving on active military duty in the War on Terror Overseas Contingency Operations campaign.

II. DEFINITIONS

Exception to Policy: An action that exceeds what is allowable under current policy or that is not expressly provided for under policy. Any such action must be treated as an exception.

Executive Officer: The University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources.
**Top Business Officer:** Executive Vice President-Business Operations for the Office of the President, Vice Chancellor for Administration, or the position responsible for the location’s financial reporting and payroll as designated by the Executive Officer.

### III. POLICY TEXT

#### A. Eligibility

All employees who, as members of the National Guard, the Armed Forces, the commissioned corps of the Public Health Service, or any other category designated by the President, have enlisted or have been called to active military duty in the War on Terror Overseas Contingency Operations campaign are eligible for supplements to their military pay salaries.

As used here, "employee" is meant to include individuals who hold academic, career, limited, floater, casual-restricted, contract, or per diem appointments, regardless of the percent time worked.

#### B. Commencement

Compensation for the difference between an employee’s University pay and military pay will begin on the first day of unpaid military leave.

#### C. Duration

The supplement to military pay will extend for a period not to exceed the employee’s tour of active duty, until June 30, 2018, or until the separation date of an employee’s University appointment, whichever comes first. Benefits provided under the policy are subject to a two-year lifetime limit, retroactive to December 14, 2001 (the policy’s original starting date). University appointees-employees with termination dates due to budgetary restrictions may be reappointed according to University procedures and practices. If such reappointments occur during the employee’s active duty, supplements to military pay will continue into the subsequent appointment until the end of the active duty, or until June 30, 2018, whichever comes first. Benefits provided under the policy are subject to a two-year lifetime limit, retroactive to December 14, 2001, (the policy’s original starting date).

#### D. Benefits

Employees receiving supplements to their military pay will be considered on pay status.

Medical, dental, vision, and life insurance coverage, and University contributions for these coverages, may continue through the employee’s tour of active duty, until June 30, 2018, or until the separation date of an employee’s University appointment, whichever comes first. Benefits provided under the policy are subject to a two-year limit, retroactive to December 14, 2001 (the policy’s original starting date). Thereafter, the employee (and eligible family members, if any) may continue medical, dental, and vision coverage through the Consolidated Omnibus Budget Reconciliation Act.
of 1985 (COBRA) continuation provisions. In addition, participation in Legal Plan Insurance and Supplemental Life Insurance may continue through the sixth calendar month of military pay. Auto/homeowner’s Homeowner/Rental/Auto Insurance can be maintained throughout the leave.

Dependent Care Flexible Spending Account (DepCare FSA) contributions stop when supplemental payments end and the employee is no longer on pay status. Subject to plan deadlines, eligible expenses incurred through the end of the calendar year may be reimbursed unless participation in DepCare FSA is cancelled. However, some policies (e.g., Accidental Death and Dismemberment), however, have exclusions that apply to individuals on active military duty.

Short-term disability and supplemental disability coverage will terminate on the last day an employee is actively at work.

Employee retirement contributions to the 457(b) Deferred Compensation Plan and the Tax-Deferred 403(b) Plan will continue while a paycheck is received and will stop with the employee’s last paycheck. When the employee returns to University employment, the employee may be eligible to make up contributions to the Defined Contribution 457(b) Deferred Compensation Plan and/or the Tax-Deferred 403(b) Plan that were missed due to the period of military leave, in accordance with Uniformed Services Employment and Reemployment Rights Act (USERRA) and provisions University of California Retirement System (UCRS) provisions.

An employee on military leave may suspend Tax-Deferred 403(b) Plan loan repayments for the period of military leave as provided under USERRA and Tax-Deferred 403(b) Plan provisions.

Retirement service credit will be earned in accordance with the University of California Retirement Plan (UCRP) provisions for the period of military service and for a period following military service, provided that the employee returns to University employment following the leave or notifies the University in writing of his or her intent to return to work in accordance with any applicable reemployment rights and UCRS provisions.

For those employees who elect to continue their University coverage but are ineligible for the supplement to military pay because their military pay exceeds their University wages, the University will continue to pay the UC contribution to their health plan premiums through the employee’s tour of active duty, until June 30, 2018, or until the separation date of an employee’s University appointment, whichever comes first. Benefits provided under the policy are subject to a two-year limit, retroactive to December 14, 2001 (the policy’s original starting date).

E. Special Situations

1. Leaves With and Without Pay: Employees who received orders to report for active duty while on an approved leave, with or without pay (e.g., sabbatical, personal, or
2. Temporary Reductions in Time: Employees who received orders to report for active duty while on a temporary reduction in time will, for the purpose of calculating supplemental payments, be returned to their regular status at the expiration date of such temporary reduction in time. The employee's department will be responsible for adjusting supplemental payments at such expiration date.

3. Temporary Layoffs: Employees who received orders to report to active duty while on a temporary layoff will, for the purpose of calculating supplemental payments, be returned to their regular status at the expiration date of the temporary layoff. The employee's department will be responsible for submitting the documentation required to initiate supplemental payments at such expiration date.

**NOTE:** Supplemental payments should begin at the expiration date of the temporary layoff.

4. Indefinite Layoffs: Employees who received orders to report to active duty while on an indefinite layoff are not eligible for supplemental payments.

5. Partial Year Career Employees Positions: The military pay of employees who hold partial year career appointments will not be supplemented during the months when such employees are on furlough unless such employees have elected to spread their paychecks over 12 months. Periods of time spent on unpaid furlough will not be included in the calculation of the supplemental payments.

   The employee's department will be responsible for terminating supplemental payments when such employee would normally go on unpaid furlough and for reinstating supplemental payments when such employee would normally return to pay status.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy

The Vice President – Human Resources is the Responsible Officers for this policy and have the authority to implement the policy. The Responsible Officer may develop procedures or other supplementary information to support the implementation of this policy. Such supporting documentation does not require the approval of the President. The Responsible Officers and the Vice Provost – Academic Personnel may apply appropriate and consistent interpretations to clarify the policy provided that the interpretations do not result in substantive changes to the underlying policy.

The Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources Executive Officer are each location is authorized to establish and is responsible for local procedures necessary to implement the policy.
Local procedures must be consistent with the policy. Exceptions to procedures required by this policy must be approved by the Executive Officer.

B. Revisions to the Policy
The President is the Policy Approver and has the authority to approve policy revisions upon recommendation by the Responsible Officers, Vice-President–Human Resources and the Vice Provost–Academic Personnel.

The Vice-President–Human Resources and the Vice Provost–Academic Personnel Responsible Officers have the authority to initiate revisions to the policy, consistent with approval authorities and applicable Bylaws and Standing Orders, and Policies of the Regents.

The UC Provost and Executive Vice President–Business Operations have the authority to ensure that policies are regularly reviewed, updated, and in a manner that is consistent with other governance University policies.

C. Approval of Actions
Actions within this policy must be approved in accordance with local procedures. Chancellors–Executive Officers and the Responsible Officers–Vice-President–Human Resources are authorized to determine responsibilities and authorities at secondary administrative levels in order to establish local procedures necessary to implement this policy.

All actions that exceed this policy, or that are not expressly provided for under any policy, must be approved by the Responsible Officers–Vice-President–Human Resources or the Vice Provost–Academic Personnel.

D. Compliance with the Policy
Noncompliance with the Policy is managed in accordance with Personnel Policies for Staff Members 61, 62, 63, 64, 65, and 67 pertaining to disciplinary and separation matters, and in accordance with other University policies, including but not limited to, The Faculty Code of Conduct (APM - 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM - 016), Non-Senate Academic Appointees/Corrective Action and Dismissal (APM - 150) or, as applicable, collective bargaining agreements. Reference Section VI and Appendices I and II.

The following roles are designated at each location to implement compliance monitoring responsibility for this policy:

The Top Business Officer and/or the Executive Officer at each location will designate the local management office to be responsible for the ongoing reporting of policy compliance.

The Executive Officer at each location will designate the local management office responsible for is accountable for monitoring, enforcing, and reporting compliance
mechanisms, and ensuring that monitoring procedures and reporting capabilities are established.

The Senior Vice President – Chief Compliance and Audit Officer will periodically audit and monitor compliance with the Policy.

The Vice President – Human Resources is accountable for reviewing the administration of this policy. The Director – HR Compliance may periodically monitor compliance to this policy.

V. PROCEDURES

A. Documentation Required to Initiate Supplemental Payments

1. Supplement to Military Pay Worksheet: The employee’s department and the employee, or the person who holds the power of attorney on behalf of the employee, are responsible for completing the Supplement to Military Pay Worksheet. The purpose of the worksheet is to calculate the gross supplemental pay and to obtain acknowledgement from the employee that any overpayments will be returned to the University.

2. Personnel Action Form or Equivalent Document & Sabbatical Leave/Special Leave of Absence: The employee’s department is responsible for completing a Personnel Action Form, Personnel Transaction Request Form or equivalent document and Sabbatical Leave/Special Leave of Absence Form (UPAY 573) to place the employee on military leave. The department should establish as the end date on the current pay Distribution(s) the last date that the employee will receive University pay.

The department should establish a new Distribution for the period of the military leave, using the calculated gross supplemental pay (line 13, 14, or 15) determined on the Supplement to Military Pay Worksheet. The department should associate the Gross Supplemental Pay amount with the Description of Service Code "SMP." The department should establish a new Distribution with a Begin Date as of the last day of the employee’s Military Leave Date and with the same End Date on the original Distribution. If the employee remains on military duty, the department should complete a Leave of Absence action.

3. Leave and Earnings Statement: The employee, or the person who holds the power of attorney on behalf of the employee, will be responsible for documenting/estimating the military pay. If available, a Leave and Earnings Statement (LES) will be used to determine the gross monthly military pay. If a LES is not available, the gross military pay may be estimated.

4. Power of Attorney: If an employee has designated a power of attorney, documentation of such power of attorney will be submitted along with the completed worksheet.
5. Short-Term and Supplemental Disability: An Enrollment, Change, Cancellation, or Opt-Out Form (UPAY 850) will be given to the employee, or the person who holds the power of attorney on behalf of the employee. Because employees are not eligible for disability benefits if the disability was incurred while on extended military leave, Supplemental disability and Short-term disability plans must be cancelled by the employee. Failure to do so will result in automatic deductions for disability insurance from supplemental pay even though coverage does not continue.

6. Payroll Earnings Distribution Authorization: A Pay Disposition Authorization Form will be given to the employee. This form must be completed and returned to the department if the employee wishes to change his or her disposition of pay.

B. Initiating Supplemental Pay

1. If the Employee Has Not Yet Reported To Active Military Duty: Both the employee’s department and the employee (or the person who holds the power of attorney on behalf of the employee) are responsible for providing and/or completing the forms outlined within these procedures. Implementation Guidelines.

2. If the Employee Has Reported To Active Military Duty and Not Returned: The department will attempt to contact and inform all employees the employee on military leave (or the persons who hold powers of attorney on behalf of the employees) of the supplement to military pay and the procedures required to initiate the supplemental payments.

Supplemental payments will not be issued without the signature of the employee, or the person who holds a power of attorney on behalf of the employee, on the Supplement to Military Pay Worksheet. If a department is unable to obtain a completed worksheet and LES from an employee, or the person who holds the power of attorney on behalf of the employee, the supplemental payment will be calculated and issued upon the employee's return to work.

3. If the Employee Has Returned From Active Military Duty: The employee will submit copies of all Leave and Earning Statements LES covering the period of time in which the employee was eligible for supplemental payments. The employee's department will be responsible for calculating the total gross supplemental payment and submitting the required paperwork in accordance with established location procedures.

C. Issuing Payments

1. Retroactive Payments: The employee's department will be responsible for submitting all retroactive paperwork, including the PAF or equivalent document, Sabbatical Leave/Special Leave of Absence Form (UPAY 573), and late pay transactions. If an employee is eligible for future supplemental payments, the department will complete a PAF or equivalent document based upon the most recent
worksheet and LES obtained from the employee, or the person who holds the power of attorney on behalf of the employee.

2. **Pro-Rated Payments:** The employee's department will be responsible for pro-rating supplemental payments that do not cover a full pay period for employees covered by positive time reporting.

3. **Extensions and Multiple Military Leaves:** The employee's department will be responsible for ensuring that supplemental payments for employees with extensions of their original orders or with multiple military leaves are consistent with these guidelines.

4. **Deductions:**

   a) **Mandatory Deductions:** Supplemental payments will be subject to Federal income tax, State income tax, OASDI, and Medicare. Garnishments/Earnings Withholding Orders for Support, if applicable, will be withheld.

   b) **Voluntary Deductions:** Voluntary deductions will continue to be withheld unless cancelled by submittal of the appropriate cancellation forms.

   c) **Employer Contributions:** Departments are responsible for University contributions.

5. **Issuance:** *Except for retroactive payments,* supplemental payments will be issued as part of the normal payroll cycle for each affected employee. The supplemental pay will be distributed to the disposition selected by the employee.

6. **Terminating Supplemental Payments:** The employee's department will be responsible for ensuring that upon expiration of the supplemental payments, the employee's status is correctly reflected on the PAF or equivalent document.

**D. Reconciliation**

1. **Reinstatement:** When an employee returns to work from active military duty, the employee will submit a LES for each month for which supplemental military pay was earned or received. The employee's department will be responsible for reconciling actual supplemental military payments with all Leave and Earnings Statements (LES). Any overpayments or underpayments will be adjusted in accordance with established location payroll procedures.

2. **Benefits:** Employees returning from military leave have a 31-day period of initial eligibility to reenroll in coverages which lapsed or were cancelled during the extended military leave. The period begins with the date of return to normal pay status.
3. **Retirement Service Credit**: Covered compensation and retirement service credit earned during an extended military leave will be manually adjusted when the employee returns to pay status by submitting a copy of the PAF or equivalent document documenting the extended military leave and verification of the employee's military orders to the retirement membership unit.

4. **Employees Who Do Not Return to University Service**: Employees who elect to terminate their University appointment will be responsible for contacting their former departments to initiate reconciliation between their estimated and actual military earnings. Employees who have been underpaid will receive the balance due. Overpayments will be repaid to the University.

Overpayments will be forgiven if an employee is killed or is disabled to the extent that such employee cannot return to University employment.

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### VI. RELATED INFORMATION

- Not applicable.
- Overseas Contingency Operations
- Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
- Legal Plan insurance
- Supplemental Life Insurance
- Homeowner/Rental/Auto Insurance
- Dependent Care Flexible Spending Account (DepCare FSA)
- Accidental Death & Dismemberment (AD&D)
- 457(b) Deferred Compensation Plan
- Tax-Deferred 403(b) Plan
- The Uniformed Services Employment and Reemployment Rights Act (USERRA)
- University of California Retirement System (UCRS)
- University of California Retirement Plan (UCRP)
- Sabbatical Leave/Special Leave of Absence (UPAY 573)
- Supplement to Military Pay Worksheet
- Enrollment, Change, Cancellation, or Opt-Out Form (UPAY 850)
- Health Sciences Compensation Plan
- Personnel Policies for Staff Members 61, 62, 63, 64, 65, and 67
- The Faculty Code of Conduct (APM - 015)
VII. FREQUENTLY ASKED QUESTIONS

General

1. What is the definition of University pay for purposes of this policy?

1) Health Sciences Compensation Plan: The University pay of employees compensated under the Health Sciences Compensation Plan shall be defined as both the base salary and the negotiated compensation (exclusive of incentive payments) in effect and paid through the University payroll when military leave commences, plus housing allowances/faculty recruitment allowance, if applicable.

2) Staff Physicians and Dentists Compensation Plan: The University pay of employees compensated under the Staff Physicians and Dentists Compensation Plan shall be defined as both the base salary and non-base salary (exclusive of incentive payments) in effect and paid through the University payroll when military leave commences.

3) All Other Employees:

   a. Eligible Earnings: The University pay of all other employees shall be defined as the employee's regular base pay rate plus any of the following eligible earnings:
      • shift differentials;
      • clinical nurse differentials;
      • non-base building pay for nurses;
      • police specialty pay;
      • stipends (department chair, etc.); and
      • academic housing allowances/faculty recruitment allowance.

   b. Ineligible Earnings: Ineligible earnings shall include the following:
      • overtime;
      • uniform allowances;
      • UNEX BYA;
      • summer session salaries;
      • on-call pay;
      • honoraria;
      • incentive and performance awards;
      • additional academic compensation, including summer and UNEX compensation; and
      • terminal vacation pay.
c. **Range Adjustments, Merit Increases, and Promotion Increases:** The base pay rate shall be adjusted for range adjustments, merit increases, and promotion increases that would have been granted had the employee not been ordered to active military duty.

d. **Variable-Time Appointments:** The base pay rate of an employee with a variable-time appointment shall be adjusted for the average hours on pay status during the three months prior to commencement of military leave, exclusive of hours attributed to overtime.

e. **Irregular-Shift Assignments:** The shift differential component of the gross University pay of employees who are not assigned to the same shift on a regular basis shall be calculated by taking an average of the shift differentials paid over the three months prior to commencement of military leave.

2. **What is the definition of military pay for purposes of this policy?**
   Military pay shall be defined as all compensation, including allowances, received by an individual eligible for supplements to his or her military pay salary.

3. **How is military pay funded for purposes of this policy?**
   Each location shall determine the source of funds for supplemental military pay. University general funds, unrestricted gift funds, medical school compensation plan funds, and other funds identified by the campus may be used. Extramural contract and grant funds may be used to the extent such funds were used to pay the employee immediately prior to his or her call to active military duty.

**VIII. REVISION HISTORY**

As a result of the issuance of this policy, the following document is rescinded as of the effective date of this policy and is no longer applicable:

- Supplement to Military Pay Policy, dated July 1, 2012

This policy was reformatted into the standard University of California policy template effective July 1, 2012.

The renewal of this policy supercedes the version the policy issued on July 1, 2012.
UNIVERSITY OF CALIFORNIA

UNIVERSITY COMMITTEE ON FACULTY WELFARE

Notice of Meeting
Friday, April 11, 2014
9:30a.m. – 3:30p.m.
UC Office of the President – Room 5320
1111 Franklin Street, Oakland
Phone (Academic Senate): 510-987-9143
Fax: 510-763-0309
http://www.universityofcalifornia.edu/senate

SharePoint url:
https://sp2010.ucop.edu/sites/senate/ucfw/default.aspx

AGENDA*

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<tr>
<td><strong>Action</strong></td>
<td><strong>I.</strong> Chair’s Announcements</td>
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<td><strong>Enclosures</strong></td>
<td><strong>II.</strong> Consent Calendar</td>
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<td><strong>Enclosures</strong></td>
<td>1. DRAFT Minutes of Meeting, March 14, 2014</td>
<td>1 (pp 1-7)</td>
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<td><strong>Enclosures</strong></td>
<td><strong>III.</strong> Report: UCFW Health Care Task Force (HCTF)</td>
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<td><strong>Enclosures</strong></td>
<td>1. UC Care Evaluation Metrics</td>
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<td><strong>Enclosures</strong></td>
<td>2. UC Care Tier 1 Additions</td>
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<td><strong>Enclosures</strong></td>
<td><strong>IV.</strong> Consultation with UCOP – Human Resources</td>
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<td><strong>Enclosures</strong></td>
<td>1. Benefits Satisfaction Survey</td>
<td>2 (pp 8-11)</td>
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<td><strong>Enclosures</strong></td>
<td>2. Kris Lange, Director, Vendor Relations</td>
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<td><strong>Enclosures</strong></td>
<td><strong>V.</strong> Total Remuneration</td>
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<td><strong>Enclosures</strong></td>
<td>1. Susan Carlson, Vice Provost, Academic Personnel</td>
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<td><strong>Enclosures</strong></td>
<td>2. Dennis Larsen, Executive Director, Compensation Programs and Strategy, Human Resources</td>
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<td><strong>Enclosures</strong></td>
<td>3. Stephen Pollack, Mercer</td>
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<td><strong>Enclosures</strong></td>
<td>4. Gerry Murphy, Mercer</td>
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<td><strong>Enclosures</strong></td>
<td>5. John Bruning, Mercer</td>
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<td><strong>Enclosures</strong></td>
<td>6. April Tofanelli, Mercer</td>
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<td><strong>Enclosures</strong></td>
<td>7. Bob Anderson, TR Advisory Committee Member</td>
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<td><strong>Enclosures</strong></td>
<td><strong>VI.</strong> Report: UCFW Task Force on Investment and Retirement (TFIR)</td>
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<tr>
<td><strong>Enclosures</strong></td>
<td>1. Jim Chalfant, TFIR Chair</td>
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<tr>
<td><strong>Enclosures</strong></td>
<td>2. Meeting Minutes, April 11, 2014</td>
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<tr>
<td><strong>Enclosures</strong></td>
<td>3. HCTF Report</td>
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<td><strong>Enclosures</strong></td>
<td>4. UCOP Report</td>
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<td><strong>Enclosures</strong></td>
<td>5. Senate Leadership Report</td>
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<tr>
<td><strong>Enclosures</strong></td>
<td>6. Total Remuneration Report</td>
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*This Agenda may contain confidential and privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited.*
Mary Gilly, Academic Council Vice Chair

VIII. Systemwide Review Items
1. Proposal to Amend Senate Bylaw 55 - Round 2 (Comments due April 25, 2014)
2. University of California Policy on Copyright and Fair Use (Comments due May 21, 2014)

IX. Divisional Reports and Concerns

X. Further Discussion and New Business

Agenda Enclosures:
1. DRAFT Minutes of March 14, 2014 (pp. 1-7)
2. DRAFT Benefits Survey (pp. 8-11)
3. DRAFT Response re SBL 55 (2) (p. 12)

Information Items:
A. Systemwide Guidelines for Academic Senate Committees
B. Approved minutes can be found at: http://www.universityofcalifornia.edu/senate/committees/ucfw/

Important Meeting Information
Location: The meeting will convene in Room 5320, University of California, Office of the President, 1111 Franklin Street, 5th Floor, Oakland. Directions and a map are located online at: http://www.ucop.edu/services/directions-franklin.html

Parking: Visitor parking is available at UCOP on the 12th Street side of the building. The rate is $11 per day if you enter the parking structure before 9:00a.m. Daily parking is also available at a number of lots in the vicinity of the building.

Expenses: Request for reimbursement of meeting expenses should be submitted with a local campus travel expense voucher or the Systemwide Academic Senate travel expense voucher at: Reimbursement Form (PDF file; fill-out on-line & print)

Please submit completed and signed travel voucher with original receipts to:
Business Resource Center – Travel and Entertainment
University of California Office of the President
1111 Franklin Street 9th floor
Oakland, CA 94607-5200

The Academic Senate’s Travel Policies and Procedures are located online at:
• Arranging Senate Travel
• Getting Reimbursed for Senate Travel

This Agenda may contain confidential and privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited.
Notice of Meeting  
Friday, March 14, 2014  
9:30a.m. – 12:30p.m.

iLinc video:  
http://www.ilinc.com/  
Session ID: wzthmrv

ReadyTalk audio: 1-866-740-1260  
Code: 9870155 (#)

http://www.universityofcalifornia.edu/senate

SharePoint url:  
https://sp2010.ucop.edu/sites/senate/ucfw/default.aspx

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</table>
| Information/Discussion 9:30-9:45 | I. Chair’s Announcements  
  • Dan Hare, UCFW Chair | |
| Information/Discussion 9:45-10 | II. Report: UCFW Health Care Task Force (HCTF)  
  • Bill Parker, HCTF Chair  
    1. 2013 Out of Pocket Costs for Anthem PPO  
    2. UC Care Select Tier Recommendations for 2015 | 1 (p. 1) |
| Information/Discussion 10-11 | III. Report: UCFW Task Force on Investment and Retirement (TFIR)  
  • Jim Chalfant, TFIR Chair  
    1. Academic Council discussion of TFIR/UCFW/UCPB statements  
    2. Update on campus-level discussion of STIP/TRIP  
    3. Report on TFIR meeting with Chief Investment Officer  
    4. Further briefing concerning UCRP Valuation in Total Remuneration  
      • the extra value in a DB plan  
      • new illustrative results from Mercer  
    5. Food insecurity and retirees  
    6. May Revise and UCRP Funding  
    7. Divestment | |
| Discussion 11:11:30 | IV. Consultation with UCOP – Budget  
  • Patrick Lenz, Vice President | |
| Discussion/Action 11:30-12:30 | V. Systemwide Review Items  
  1. University of California Policy on Copyright and Fair Use  
     (Comments due May 21, 2014)  
  2. Proposed Revised Whistleblower Protection Policy and | |

⚠️ This Agenda may contain confidential and privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited.
Discussion
As available

VI. New Issues for Discussion

Agenda Enclosures:
1. 2013 Out of pocket costs for the PPO Plan (p. 1)

Information Items:
A. Systemwide Guidelines for Academic Senate Committees
B. Approved minutes can be found at: http://www.universityofcalifornia.edu/senate/committees/uefw/

Important Meeting Information

Audio: 1-866-740-1260 Code: 9870155 (#)

Alternates: If you are unable to attend this meeting, please ask your Divisional Senate office to find an alternate, and notify the committee analyst, Kenneth Feer: kenneth.feer@ucop.edu
Divisional Senate contact information can be found at:
http://www.universityofcalifornia.edu/senate/links.html
<table>
<thead>
<tr>
<th>Issue</th>
<th>Date Received</th>
<th>Date of CFW Mtg.</th>
<th>Designated Reviewers</th>
<th>Action Required w/Response Deadline</th>
<th>Review Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. UC Retirement Plan - Ongoing Issue</td>
<td>Status reports will be provided when available</td>
<td>CFW Chair reports at all meetings if information is available from UCFW or Senate Cabinet meetings.</td>
<td>Ongoing issue</td>
<td></td>
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<tr>
<td>2. Emeriti Issues from Subcommittee on Emeriti Affairs</td>
<td>Status reports at all meetings.</td>
<td>Emeriti Subcom.</td>
<td>Status Reports may be provided at all meeting. Issues to consider: - Are there new issues with increase in retirements? - Office space and staff support issues for retired faculty - Recalls: Are there new issues and policy implications?</td>
<td>Ongoing issues</td>
<td></td>
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<tr>
<td>3. Faculty Housing (University Hills and ICHA Management)</td>
<td>Issues to consider: - Future development plans for faculty housing off &amp; on campus. - When University Hills reaches build-out, will ICHA’s role as developer change. If yes, how? - defer 2012-13 - Plans are underway to partner with Regents Point for retirement housing for faculty, staff, and their parents (update as of April 2014 mtg)</td>
<td>Ongoing issue</td>
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<td>4. Campus Child Care</td>
<td>Status reports will be provided when available</td>
<td>Gopi Meenakshisundaram will be CFW’s rep. for the Chancellor’s Advisory Com. on Child Care.</td>
<td>Meetings: February 3, 2012, (Agenda and minutes are in CFW Status Report notebook.) June 8 meeting</td>
<td>Ongoing issue</td>
<td></td>
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<tr>
<td>5. OEOD’s Data</td>
<td>Ongoing Issue</td>
<td>AA&amp;D Subcom.</td>
<td>Gwen Kuhns Black provides CFW with data and reports when available.</td>
<td>Ongoing issue</td>
<td></td>
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<tr>
<td>6. Elect a Vice Chair for CFW</td>
<td>Vice Chair would attend Cabinet mtgs. when Chair is not available.</td>
<td>Ongoing issue</td>
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<td>7. Parking and Transportation Services – Annual Report from Director Ron Fleming</td>
<td>Usually a Spring Quarter Meeting</td>
<td>-</td>
<td>Information Item – No action</td>
<td>Annual Report</td>
<td></td>
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<td>8. UCI Librarian – invite new UCI Librarian, Lorelei Tanji</td>
<td>Invite new UCI Librarian to report.</td>
<td>Ongoing issue</td>
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<td>9. Senate Membership for Clinical Professor</td>
<td>College of Medicine will be asked about its plans to improve morale for Clinical Professors. Meno sent to Dean Clayman, School of Medicine (11/15/11)</td>
<td>Dean Clayman’s memo of response (12/27/11) - Will request additional information on the number of clinical faculty at SOM, w/ a breakdown by years of service. - Will consider eligibility criteria for Univ. Hills housing, as a possible new benefit for clinical faculty.</td>
<td>Ongoing issue</td>
<td></td>
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COUNCIL ON FACULTY WELFARE ISSUES UNDER REVIEW

1. UC Retirement Plan - Ongoing Issue
2. Emeriti Issues from Subcommittee on Emeriti Affairs
3. Faculty Housing (University Hills and ICHA Management)
4. Campus Child Care
5. OEOD’s Data
6. Elect a Vice Chair for CFW
7. Parking and Transportation Services – Annual Report from Director Ron Fleming
8. UCI Librarian – invite new UCI Librarian, Lorelei Tanji
9. Senate Membership for Clinical Professor
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<th>Date</th>
<th>Mtg. Date</th>
<th>Reviewers</th>
<th>Action Required w/ Response Deadline</th>
<th>Completed</th>
</tr>
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<tbody>
<tr>
<td>- Ted Quilligan’s report to UCI Emeriti Assoc. provided data on retention.</td>
<td></td>
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<td>- CFW Mem to Chair (3/1712) – memo on hold</td>
<td>On Hold</td>
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<tr>
<td>- Luisa reviewing COHS/SOM Faculty Bylaws and will be checking with Dan/CRJ. COHS’s Senate not equal to campus Senate.</td>
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<td>On Hold</td>
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<td>- As of 3/20/12 - Issue is on hold. UCSF has an action for clinical faculty membership on the table. CFW will wait to see the outcome before moving forward with its proposal.</td>
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<td>On Hold</td>
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<td>10. ICHA Priority Sales List</td>
<td>?</td>
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<td>Shall we invite Chuck Hayward or Sales person? Moving Clinical Faculty from Tier 3 to Tier 2 – is that a feasible request?</td>
<td>On Hold</td>
</tr>
<tr>
<td>11. Memorial Resolutions</td>
<td>Ongoing</td>
<td></td>
<td>CFW duty – see Irvine Bylaw 99</td>
<td></td>
<td>Annual Responsibility</td>
</tr>
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<td>12. UCI Mental Health Initiative</td>
<td>Brought forward from last year</td>
<td>Monthly updates when available</td>
<td></td>
<td>Mental Health Initiative formed 2012-13 and first chair training program was successful, Chair is Bob Mueller. Goal for 2013-14 is to continue training program for faculty chairs and get dedicated counseling person for faculty. Bob Moeller will attend December meeting with update</td>
<td></td>
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<tr>
<td>13. UC Healthcare Plans</td>
<td>Sept. 2013</td>
<td>10/08/13</td>
<td>All Members</td>
<td>UC Care rolled out for 2014. UC employees given no notice or information. Council will discuss the implications for the Irvine campus and register issues and complaints to be forwarded to Senate Chair.</td>
<td></td>
</tr>
<tr>
<td>14. Academic Freedom Guidelines</td>
<td>Sept. 2013</td>
<td>10/08/13 &amp; 11/12/13</td>
<td>AF Subcom</td>
<td>UCAF distributed draft guidelines for handling Academic Freedom issues. Council will review and vote on whether or not to implement for the Irvine campus. If approved, the guidelines will be forwarded with memo to Senate Cabinet for review and approval</td>
<td></td>
</tr>
<tr>
<td>15. Discrimination Complaint Resolution Options at UCI</td>
<td>10/28/13</td>
<td>11/12/13</td>
<td>All Members</td>
<td>Gwen Kuhns Black with give an overview of the discrimination complaint resolutions options at UCI – Information Item</td>
<td></td>
</tr>
<tr>
<td>16. Federal regulations for Affirmative Action</td>
<td>10/28/13</td>
<td>03/11/14</td>
<td>All Members</td>
<td>Gwen Kuhns Black will give an overview of the changes to the federal regulations for Affirmative Action, specifically related to protected veterans and individuals with disabilities, and the impact of these changes on UCI faculty.</td>
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<tr>
<td>17. Retirement Counseling</td>
<td>02/19/14</td>
<td>03/11/14</td>
<td>All Members</td>
<td>Investigation on the need for on-site retirement counseling and request to develop a recommendation for campus administration on how to meet local needs. Susan Pihl invited to provide information on retirement data.</td>
<td></td>
</tr>
</tbody>
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**UCI SENATE ISSUES UNDER REVIEW**
<table>
<thead>
<tr>
<th>Issue</th>
<th>Date</th>
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<th>Reviewers</th>
<th>Action Required w/ Response Deadline</th>
<th>Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>18. Chancellor’s advisory Committee on the Status of Staff (CACSS – Diversity Subcommittee)</td>
<td>Brought forward from last year</td>
<td>Monthly updates when available</td>
<td>New Chancellor’s Advisory Committee. Gwen Kuhns Black, a CFW Consultant, is a member and will provide CFW w/ information.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19. Campus Diversity Roundtable</td>
<td>Brought forward from last year</td>
<td>Monthly updates when available</td>
<td>Grace Tonner will represent CFW and will have the opportunity to report at CFW’s monthly meetings. Gwen Kuhns Black may also report.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20. Salary Equity Study</td>
<td>11/07/13</td>
<td>11/12/13, 01/14/14, Salary Equity Subcom</td>
<td>Provost has requested a salary equity study for the campus. CFW will provide quarterly status reports thru completion</td>
<td>Updates when available</td>
<td></td>
</tr>
</tbody>
</table>

**UNIVERSITYWIDE SENATE ISSUES UNDER REVIEW**

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<tr>
<td>22. UC Review of Proposed Amendments to Senate Bylaw 55</td>
<td>10/18/13</td>
<td>12/10/13</td>
<td>FW Subcom</td>
<td>Review and comment to Cabinet by December 17, 2013.</td>
<td>Memo sent 12/17/13</td>
</tr>
<tr>
<td>23. UC Review of Proposed Revisions to APM-025,670,671</td>
<td>10/29/13</td>
<td>01/14/14</td>
<td>FW Subcom</td>
<td>Review and comment to Cabinet by February 4, 2014.</td>
<td>Memo sent 01/17/14</td>
</tr>
<tr>
<td>25. UC Review of APM 35, Appendices A-1, &amp; A-2</td>
<td>11/06/13</td>
<td>12/10/13</td>
<td>AAD Subcom</td>
<td>Review and comment to Cabinet by January 19, 2014. Kirsten Quanbeck will attend December meeting to provide context and background.</td>
<td>Memo sent 01/17/14</td>
</tr>
<tr>
<td>26. UC Final Review of Senate Bylaw 55</td>
<td>03/05/14</td>
<td>03/11/14</td>
<td>FW Subcom</td>
<td>Review and comment to Cabinet by April 1, 2014.</td>
<td>Memo sent 04/01/14</td>
</tr>
<tr>
<td>27. UC Review of APM 190 &amp; Appendix A-2</td>
<td>03/05/14</td>
<td>04/8/14, 05/13/14</td>
<td>FW Subcom</td>
<td>Review and comment to Cabinet by May 6, 2014. Pushed back to Cabinet by May 23, 2014.</td>
<td></td>
</tr>
<tr>
<td>29. UC Review of Policy on Supplement to Military Pay</td>
<td>04/08/14</td>
<td>05/13/14</td>
<td>FW Subcom</td>
<td>Review and comment to Cabinet by May 23, 2014.</td>
<td></td>
</tr>
</tbody>
</table>

**OTHER BUSINESS THAT REQUIRES ACTION**

None
May 9, 2014

PETER KRAPP, CHAIR
ACADEMIC SENATE – IRVINE DIVISION

RE: SYSTEMWIDE REVIEW OF PROPOSED REVISIONS TO PRESIDENTIAL POLICY ON COPYRIGHT AND FAIR USE

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) reviewed the proposed revisions to the University of California Policy on Copyright and Fair Use at its April 8, 2014 meeting. The policy was formally called the Policy on Reproduction of Copyrighted Materials for Teaching and Research. The goal of the proposed revisions is to bring this policy up to date with current changes in law, technology, and academic practices as well as UC’s current policy template.

The Council agreed with the proposed changes and had no suggestions for improvement.

CFW appreciates the opportunity to comment.

Sincerely,

Jean-Daniel Saphores, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom

c: William Molzon, Senate Chair-Elect
   Luisa Crespo, Executive Director
   Shira Long, Senate Analyst