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March 28, 2012

SENATE COMMITTEE CHAIRS
SENATE DIVISION CHAIRS

Re: Proposed technical revisions to APM 035 and 190

I have enclosed proposed technical revisions to APM sections 035 and 190, Appendix A-1, which aim to ensure consistency with existing federal and state law. The proposals are online at: <http://www.ucop.edu/acadadv/acadpers/apm/review.html>.

- **APM - 035, Affirmative Action and Nondiscrimination in Employment**

Proposed revisions reflect updates in federal and state regulations which identify additional types of prohibited discrimination; revisions also ensure conformity with federal and state definitions as relates to “service in the uniformed services.” These revisions involve no substantive changes in policy.

- **APM – 190, Appendix A-1, Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy)**

The Whistleblower Policy quotes California Government Code Section 8547.2. Revisions reflect changes recently made to that Code Section by the California Legislature.

Please send comments to senatereview@ucop.edu by **June 11, 2012**. While we believe these revisions pose no substantive issues, committees on Faculty Welfare and Academic Personnel should confirm whether this analysis is correct. As always, if committees or divisions choose not to comment, it would be helpful if you would let us know of that decision.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martha Kendall Winnacker".

Martha Kendall Winnacker, J.D.
Executive Director, Academic Senate

035-0 **Policy**

a. **Nondiscrimination**

It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California on the basis of race, color, national origin, religion, sex, gender, gender expression, gender identity, pregnancy,¹ physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services ~~as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994.~~² This policy is intended to be consistent with the provisions of applicable State and Federal laws and University policies.

¹Pregnancy includes pregnancy, childbirth, and medical conditions related to pregnancy or childbirth.

²~~“Service in the uniformed services” includes membership, application for membership, performance of service, application for service, or obligation for as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service.~~

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**UNIVERSITY OF CALIFORNIA
POLICY ON REPORTING AND INVESTIGATING ALLEGATIONS OF
SUSPECTED IMPROPER GOVERNMENTAL ACTIVITIES
(WHISTLEBLOWER POLICY)**

I. Introduction

The University of California has a responsibility for the stewardship of University resources and the public and private support that enables it to pursue its mission. The University is committed to compliance with the laws and regulations to which it is subject and to promulgating University policies and procedures to interpret and apply these laws and regulations in the University setting. Laws, regulations, policies and procedures strengthen and promote ethical practices and ethical treatment of the members of the University community and those who conduct business with the University.

The University's internal controls and operating procedures are intended to detect, prevent or deter improper activities. However, even the best systems of control cannot provide absolute safeguards against irregularities. Intentional and unintentional violations of laws, regulations, policies and procedures may occur and may constitute improper governmental activities as defined by statute (see "Definitions"). The University has a responsibility to investigate and report to appropriate parties allegations of suspected improper governmental activities and the actions taken by the University.

This policy governs reporting and investigation of allegations of suspected improper governmental activities, and together with the *Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints*, represents the University's implementing policies for the *California Whistleblower Protection Act* (Government Code Section 8547 - 8547.12).

Employees and others are encouraged to use guidance provided by this policy for reporting all allegations of suspected improper governmental activities. While the scope of this policy is intended to be limited to the statutory definition of improper governmental activities, serious or substantial violations of University policy may constitute improper governmental activities determined upon review or investigation.

This policy does not fundamentally change the responsibility for conducting investigations but clarifies normal jurisdictional interests. Individual employee grievances and complaints regarding terms and conditions of employment will continue to be reviewed under the applicable academic and staff personnel policies or collective bargaining agreements. Any allegations of improper governmental

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activities that may result in subsequent actions bringing disciplinary charges against an academic or staff member shall be coordinated with the applicable academic or staff personnel conduct and disciplinary policies. In all instances, the University retains the prerogative to determine when circumstances warrant an investigation and, in conformity with this policy and applicable laws and regulations, the appropriate investigative process to be employed.

II. Definitions

A. *University Resources*

For purposes of this policy, the term *University resources* is defined to include, but not be limited to the following, whether owned by or under the management of the University:

- Cash and other assets, whether tangible or intangible; real or personal property;
- Receivables and other rights or claims against third parties;
- Intellectual property rights;
- Effort of University personnel and of any non-University entity billing the University for its effort;
- Facilities and the rights to use of University facilities;
- The University's name; and
- University records, including student and patient records.

B. *Improper Governmental Activities*

According to California Government Code Section 8547.2(c), ~~an~~ *improper governmental activity* is means:

any activity by a state agency or by an employee that is undertaken in the performance of the employee's ~~official~~ duties, undertaken inside a state office, or, if undertaken outside a state office by the employee, directly relates to state government,

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whether or not that ~~activity~~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 government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is in violation of an Executive order of the Governor, a California Rule of Court, or any policy or procedure mandated by the State Administrative Manual or State Contracting Manual, or (3) is economically wasteful, ~~or~~ involves gross misconduct, incompetency, or inefficiency.

C. *Protected Disclosure*

According to California Government Code Section 8547.2(e), a *protected disclosure* means:

~~any~~ a good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity or, (2) a ~~any~~ condition that may significantly threaten the health or safety of employees or the public if the disclosure

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or intention to disclose was made for the purpose of remedying that condition.

D. *Illegal Order*

According to California Government Code Section 8547.2(b), an illegal order means:

An illegal order is any a directive to violate or assist in violating ~~an~~ applicable a federal, state, or local law, rule, or regulation, or any an 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.

E. *Whistleblower*

A person or entity making a protected disclosure is commonly referred to as a whistleblower. Whistleblowers may be University employees (academic or staff), applicants for employment, students, patients, vendors, contractors or the general public. The whistleblower's role is as a reporting party. They are not investigators or finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.