October 23, 2014

To: Division Officers:
Mary Gauvain (Psychology), Assembly Representative
Piotr Gorecki (History), Secretary/Parliamentarian
Mariam Lam (Comparative Literature & Foreign Languages), Vice Chair
Ilhem Messaoudi Powers (School of Medicine), Assembly Representative

Standing Committee Chairs:
Mike Allen (Plant Pathology & Microbiology), Research (COR)
Ken Baerenklau (School of Public Policy), Educational Policy (CEP)
Ken Barish (Physics & Astronomy), Planning and Budget (P&B)
Bob Clare (Physics & Astronomy), Committees (COC)
Kathryn DeFea (Biomedical Sciences), Undergraduate Admissions (UAC)
Jennifer Doyle (English), CHASS Executive Committee
Sarjeet Gill (Cell Biology & Neuroscience), CNAS Executive Committee
Jennifer Hughes (History), Faculty Welfare (FW)
Rob Latham (English), Library, Information Tech & Scholarly Communication
John Levin (Graduate School of Education), GSOE Executive Committee
David Lo (Biomedical Sciences), Graduate Council (GC)
Richard Luben (Biomedical Sciences), Physical Resources Planning (PRP)
Coleen Macnamara (Philosophy), Preparatory Education (PRP)
Barry Mishra (School of Business Administration), SOBA Executive Committee
Akula Venkatram (Mechanical Engineering), BCOE Executive Committee
Ameae Walker (School of Medicine), SOM Executive Committee
Linda Walling (Botany & Plant Sciences), Academic Personnel (CAP)
Zhenbiao Yang (Botany & Plant Sciences), Diversity & Equal Opportunity (CODEO)

Fr: Jose Wudka, Chair
Riverside Division

RE: Executive Council Agenda ~ October 27, 2014

This is to confirm the meeting of the Executive Council on Monday, October 27, 2014 from 1:00 p.m. to 3:00 p.m. in the University Office Building, Room 220.
AGENDA

Consent Calendar

1. Approve Agenda for October 27, 2014 and Minutes of October 13, 2014

2. Receipt of Conflict of Interest Statements:
   - Charges: International Education
   - Committees: Library
   - Exec Committee – BCOE: Planning and Budget
   - Exec Committee - CHASS: Privilege and Tenure
   - Exec Committee – GSOE: Rules & Jurisdiction
   - Exec Council: Undergraduate Admissions

   Pending COI statements:
   - Academic Freedom: Exec Committee – SPP
   - Distinguished Service: Faculty Research Lecturer
   - Distinguished Teaching: Physical Resource Planning
   - Diversity: Research
   - Exec Committee – CNAS: Scholarship & Honors
   - Exec Committee - SOBA: University Extension

Action
1:00 – 1:05

2. Systemwide Final Review of Changes to APM 190. Appendix A
   Consulted Committees:
   - Academic Personnel: Exec Committee – CHASS
   - Charges: Exec Committee – CNAS
   - Diversity & Equal Opportunity: Exec Committee – GSOE
   - Faculty Welfare: Exec Committee – SOBA
   - Exec Committee – BCOE: Exec Committee - SOM

Discussion
1:15 – 2:00

3. Announcements by Chair Wudka

Discussion
2:00 – 2:30

4. Committee updates
Executive Council Meeting Minutes
October 13, 2014

Present:
Division Officers:
Mary Gauvain (Psychology), Assembly Rep
Piotr Gorecki (History), Sec/Parliamentarian
Mariam Lam (Comp Lit & Foreign Lang), Vice Chair
Ilhem Messaoudi Powers (SOM), Assembly Rep
Jose Wudka (Physics), Chair

Standing Committee Chairs:
Mike Allen (Plant Path), COR
Ken Baerenklau (SPP), CEP
Ken Barish (Physics), P&B
Bob Clare (Physics), COC
Kathryn DeFea (Biomed), UAC
Jennifer Doyle (English), CHASS Exec Comm
Jennifer Hughes (History), FW
John Levin (GSOE), GSOE Exec Comm
David Lo (Biomed), GC
Coleen Macnamara (Philosophy), PRP
Barry Mishra (SOBA), SOBA Exec Comm
Akula Venkatram (Mech Eng), BCOE Exec Comm
Ameae Walker (Biomed), SOM Exec Comm
Linda Walling (Botany), CAP
Zhenbiao Yang (Botany), CODEO

Absent:
Rob Latham (English), LITSC
Richard Luben (Biomed), PRP

APPROVAL OF EXECUTIVE COUNCIL AGENDA AND MINUTES
The agenda for October 13 was approved as written.

STANDING COMMITTEE CONFLICT OF INTEREST STATEMENTS:
Conflict of Interest Statements were noted as received from the Committees on Academic Personnel, Courses, Educational Policy, Graduate Council and School of Medicine Executive Committee.

EXECUTIVE COUNCIL CONFLICT OF INTEREST STATEMENT:
The Executive Council Conflict of Interest Statement was adopted for the 2014-2015 year with the inclusion of the word “potential”:

If a member of the Executive Council believes that a potential conflict of interest exists for him/herself or for another person on the committee, that member should call the possible conflict to the attention of the chair. The chair will convene the committee except for the individuals with the possible conflict, and those present will decide by majority vote if a conflict exists. If the decision is affirmative, the individual with the conflict will leave the room during discussion of the conflicted matter and will not vote on that matter.

REVIEW OF THE PROPOSED NAMING OF THE SCHOOL OF MEDICINE’S DEAN’S CONFERENCE ROOM
There was considerable discussion by Executive Council of both the Campus Procedures for Naming, and of the specific proposal under review. Discussion began with a conversation of the procedures for receipt of anonymous donations and the concern that review of a redacted document deprives the Senate of the ability to consider the appropriateness of a donor. In addition, there was no evidence that the department faculty were solicited for input on the proposal, nor does it appear the Naming Committee has been convened to review the submittal. Discussion then moved to the particular proposal under consideration. Ultimately Executive Council voted +18-2-0 in favor of the naming. The negative votes were a reflection of the number of procedural discrepancies and not of the proposed room name itself. Further, Executive
Council urged Chair Wudka to respond affirmatively to the request, but to additionally advise that care should be taken in the future to assure the campus naming procedures are followed in each and every proposal submitted. Council also advised that someone should be identified as having given due diligence in vetting the appropriateness of the donor, especially in cases of anonymous donations.

**REVIEW OF THE PROPOSAL TO CREATE TWO SUMMER SESSION OVERSIGHT COMMITTEES**

In March 2014, Executive Council reviewed a proposal by CEP to develop two Summer Session Oversight Committees. The intent was for these new committees to replace the existing Summer Session Steering committee with the responsibilities of the latter being divided between the new committees according to whether they represent academic or administrative (resource) issues. At that time Council suggests a number of changes to the proposal, which were forwarded to CEP. The suggestions included: 1) that the Vice Chancellor for Undergraduate Education be added as an ex-officio member of the Administrative Committee, 2) that there exists the potential for disconnect between the two committees and the recommendation that a senate body be used as a bridge. Suggestions included inclusion of the Vice-Chair of the Division sitting on both committees, and 3) that a mechanism be added to ensure regular meetings of both committees, perhaps even set a minimum number of meetings (e.g. once a quarter). In October 2014 Executive Council received a revised proposal indicating the reluctance of the committee to incorporate the changes suggested by Council. CEP Chair Baerenklau explained that there were in fact several aspects of “bridging” between the two committees, albeit the “bridges” were of administrative staff rather than Senate faculty. Chair Baerenklau further explained that the work of the administrative committee lacked the type of functions typically of concern to senate faculty. Council determined that it supports the creation of two committees i.e. “splitting” the existing Summer Session Steering Committee. There was however continued concern about the membership of the committees and the lack of a “senate bridge”.

After significant discussion it was determined that CEP would be asked to consider that the Vice-Chair of the Division be a member on both the Academic and the Administrative committees and the Vice-Chair (CEP representative) of the Academic Committee be included as a member of the Administrative Committee. There was also suggestion that as a matter of housekeeping, the title of “Associate Dean” be modified since not every college has Associate Deans. Chair Baerenklau will review the suggestions with the Committee on Educational Policy and will report back to Executive Council.

**REVIEW OF THE PROPOSAL TO ESTABLISH AN R’COURSES PROGRAM AT UCR**

In April 2014 Executive Council reviewed and discussed the proposal to establish the R’Course program at UCR. Although the objective of the proposal was supported CEP was nonetheless asked to submit a revised proposal to address a number of potential issues, such as a codification of the number of units each course can have and the total number of units of this type of course each student can accrue during their undergraduate term at UCR. Executive Council also suggested that there be a GPA requirement for the students who apply to teach a course, that duties of the instructor of record be clearly delineated, and that there be an annual report submitted to the Committee on Courses. The revised proposal was received for Executive Council review and although the revision addresses several of the earlier concerns there remain some lingering reservations. A main concern was the mechanism used to appoint the Senate and student committee members. As presented, the proposal indicates that the VPUE will appoint two members from the Academic Senate, the student representative, and additional non-voting faculty and staff if workload or expertise warrants it. Executive Council notes that appointments of Senate members to joint administrative/senate committees are made by the Committee on Committees. In addition, the Academic Senate has a process for appointing students to standing committees. There was also discussion of using former Educational Policy and/or Courses members to draw from for Governing Board membership so that current sitting members are not overburdened. Additional comments included discussion of limiting these course offerings to the Spring Quarter, which may prohibit participation by students who have might traditionally have a heavy spring quarter course load due to the nature of their major or program. Chair Wudka will advise CEP of the suggestions from Executive Council and ask that CEP again revise its document in advance of the proposal being submitted to the Division for a formal vote.
ANNOUNCEMENTS BY THE CHAIR
The remainder of the meeting was held in Executive Session.

The meeting was adjourned at 3:07 pm.

Respectfully submitted,
Cindy Palmer, Executive Director
Office of the Academic Senate
October 18, 2014

TO: Jose Wudka, Chair
    Riverside Division

FROM: Kambiz Vafai, Chair
      Committee on Charges

RE: 14-15 Conflict of Interest Statement

The Committee on Charges has adopted the following conflict of interest statement to be placed on file for the 2014-15 academic year:

No member of the Committee on Charges shall consider a charge that involves (as a complainant or accused person) of, (a) a member of his/her department or equivalent unit; (b) an individual with whom he/she has a relationship that might be interpreted as a source of bias; or (c) an individual with whom he/she has a relationship that is believed by a majority of the Committee to be a source of bias.
October 9, 2014

TO: Jose Wudka, Chair  
    Riverside Division

FR: Bob Clare, Chair  
    Committee on Committees

RE: 2014-2015 Conflict of Interest Statement

The Committee on Committees adopted the following Conflict of Interest statement:

If any member of the Committee on Committees (hereafter referred to as the Committee) has a concern about a potential conflict of interest in the discussion of possible appointments, they should refrain from participating in those Committee discussions.

The Committee does not regard as a conflict of interest departmental affiliation as the Committee considers departmental colleagues to be a useful and necessary source of information regarding suitability for committee appointment.

Members of the Committee on Committees are committed to avoiding conflicts of interest and the appearance of conflict involving the appointment of those with whom they have a familial relationship or intimate partnership. At the first meeting of each academic year, committee members are responsible for identifying the names of any university employee with whom they are so connected and who might be considered by the Committee for future appointment. The member shall recuse her/himself from any discussion involving the appointment of said person and leave the room when the relevant discussion begins to ensure that all other Committee members can engage in open and honest discussion.

The Committee will refrain from making appointments from its current membership, with the exception of appointing out-going members for service after their term on the Committee on Committees has expired and when a Committee member is clearly and uniquely the most qualified Senate member to fill the assignment.

Any conflict-of-interest situations not covered here that arise will be dealt with by
the Committee on an *ad hoc* basis, according to the following procedure:

Should any member of the Committee feel that a conflict of interest exists, that member should, in confidence, discuss the matter with the Chair of the Committee (or, if the alleged conflict of interest involves the Chair, with one of the “third-year” members of the Committee). The Chair (or other member as specified above) shall attempt to resolve the matter by discussing it with the individual alleged to have a conflict. Should informal efforts to resolve the issue fail, the Chair (or other member as specified above) shall call a meeting of the Committee to consider the matter. The member alleged to have a conflict of interest shall not participate in the meeting, though he/she may attend part of the meeting for the purpose of responding to the allegation. After considering the matter to the extent necessary to act in an informed manner, the Committee shall vote. If a majority of the Committee agrees that a conflict of interest exists, the member found to have such a conflict shall absent himself/herself from that portion of any Committee meeting when the subject matter creating the conflict is before the Committee.
October 10, 2014

TO: Jose Wudka, Chair
    Riverside Division

FR: Akula Venkatram, Chair
    Executive Committee, Bourns College of Engineering

RE: 2014-2015 Conflict of Interest Statement

This was read and unanimously approved at the October 9, 2014 BCOE Executive Committee meeting.

Bourns College of Engineering
Executive Committee
2014-15 Conflict of Interest Statement

If the personal affiliation of a committee member with an organization or individual bringing business before the committee might be interpreted as a source of bias in committee deliberations, that member should bring this fact to the attention of the committee, and the committee member may be asked to provide information, as appropriate, on the business under consideration, but will be excluded from participating in any motions or votes related to the business. The committee chair may ask the committee member to leave the room during the period of any substantive discussions, motions, or votes.
October 15, 2014

SUBJECT: 2014/15 Conflict of Interest Statement

JOSE WUDKA, CHAIR
Academic Senate

The Executive Committee of the College of Humanities, Arts, and Social Sciences met on October 15, 2014 and discussed the issue of Conflict of Interest. The Committee decided that if a member of the Executive Committee sees a conflict arise, he/she will bring it to the attention of the Committee, and the Committee will deal with it at that time.

Jennifer Doyle, Chair
Executive Committee, CHASS
October 10, 2014

Subject: 2014-2015 GSOE Executive Committee Conflict of Interest Statement

1. On October 7, 2014 the GSOE Executive Committee unanimously voted to adopt the following COI statement:

If a committee member’s personal affiliation with an organization or individual bringing business before the committee might be interpreted as a source of bias in committee deliberations, that member should bring this fact to the attention of the committee. The committee member may be asked to provide information, as appropriate, on the business under consideration, but will be excluded from participating in any motions or votes related to the business. The committee chair may ask the committee member to leave the room during the period of any substantive discussions, motions, or votes.

John S. Levin
GSOE Faculty Chair
October 13, 2014

The Executive Council at its meeting on October 13, 2014, adopted the following conflict-of-interest statement:

If a member of the Executive Council believes that a potential conflict of interest exists for him/herself or for another person on the committee, that member should call the possible conflict to the attention of the chair. The chair will convene the committee except for the individuals with the possible conflict, and those present will decide by majority vote if a conflict exists. If the decision is affirmative, the individual with the conflict will leave the room during discussion of the conflicted matter and will not vote on that matter.

Jose Wudka, Chair
October 14, 2014

To: Jose Wudka, Chair
   Riverside Division of the Academic Senate

From: Jennifer Hughes, Chair
       Committee on Faculty Welfare

Re: Conflict of Interest Statement – 2014-2015

In accordance with Division Bylaw 8.2.5, the Academic Senate Committee on Faculty Welfare has adopted the following conflict-of-interest statement for the 2014-2015 term:

The following policy has been adopted for situations where the personal affiliation of a committee member with departments, programs, or individuals bringing business before the Committee on Faculty Welfare might be interpreted as a source of bias in committee deliberations. Members of the Committee on Faculty Welfare are asked to identify when they may have a potential conflict of interest on any items before any discussion. This includes recusal of a member if the action specifically involves their current or former spouse, partner or family member. The Committee member may be asked to provide information, where appropriate, on the business under consideration, but will be excluded from participating in any motions or votes in regard to the business under consideration. The Committee on Faculty Welfare Chair may ask the committee member to leave the room during the period of any substantive discussions, motions, or votes. This exclusion will be noted in any report issued by the Committee on Faculty Welfare.
October 22, 2014

To: Jose Wudka  
   Chair, Riverside Division

From: Christina Schwenkel  
   Chair, Committee on International Education

Re: 2014-15 Conflict of Interest Statement

The Committee on International Education approved the adoption of the following conflict of interest statement for 2014-15:

The Committee on International Education has adopted the following policy for situations where the personal affiliation of a committee member with departments, programs, or individuals bringing business before the committee might be interpreted as a source of bias in committee deliberations. The committee member may be asked to provide information, where appropriate, on the business under consideration, but will be excluded from participating in any motions or votes in regard to the business under consideration. The committee chair may ask the committee member to leave the room during the period of any substantive discussions, motions, or votes. If a member’s spouse, partner, or family member (current, former, or future) brings business before the committee, the member will be automatically recused from all discussion and voting on the motion(s) related to the item of business brought before the Committee.
October 10, 2014

To: Jose Wudka, Chair
Riverside Division

From: Rob Latham, Acting Chair
Committee on Library, Information Technology and Scholarly Communications

Re: 2014-2015 Conflict of Interest Statement

The Library, Information Technology & Scholarly Communication Committee has adopted the following Conflict of Interest Statement covering the Committee’s business for 2014-15:

If personal affiliation of individual committee members with departments, programs, or with individuals bringing business before the Committee may be interpreted as a source of bias in committee deliberations, such member(s) shall not participate in the relevant discussion and shall be recorded “not voting” in the event a vote is taken on that issue. Determination of such possible conflict of interest shall be made by the affected member him/herself or by the majority vote of the Committee before any discussion concerning the affected issue(s).

In all instances where a past or current spouse, partner or other immediate family member of a Committee member submits an application for a grant over which the committee has purview, that Committee member will be automatically recused from all deliberation related to the allocation of funds.
October 14, 2014

To: Jose Wudka, Chair
    Riverside Division

From: Kenneth Barish, Chair
    Committee on Planning and Budget

RE: CONFLICT OF INTEREST 2014-15

The Committee on Planning and Budget has reviewed their conflict of interest statement and has adopted the following Conflict of Interest Statement for 2014-15 by a unanimous vote:

Potential conflicts of interest may occur as members of the committee formulate recommendations of concern to the campus. Accordingly, members of the Committee on Planning and Budget will be available to offer the Committee information and to participate in discussions, but will excuse themselves from the vote on matters pertaining to departments and programs of which they are members or through which they might materially benefit.
October 9, 2014

To: Jose Wudka, Chair
Riverside Division of the Academic Senate

From: Stefano Lonardi, Chair
Committee on Privilege and Tenure

Re: 14-15 Conflict of Interest Statement

In accordance with Bylaw 8.2.5 of the Riverside Division of the Academic Senate, the Committee on Privilege and Tenure places on file for 2014-15 the procedures it will follow in order to mitigate possible conflicts of interest:

1. Bylaws 335.D.1, 336.D.1, and 337.B.1 of the Academic Senate establish that, in formal hearings, no Committee member (either of Privilege and Tenure itself or of a Hearing Committee appointed by it) may participate in the hearing of a case brought by a member of his or her department or equivalent unit.

2. By standing practice, the Committee on Privilege and Tenure has always extended this principle to apply also to its "Prehearing Procedures," as defined in Bylaw 335.B, and will follow such practice during the current academic year.

3. Further, in accordance with the mandate of Divisional Bylaw 8.2.5, the Committee will expect each of its members to call to the attention of the Chair any "personal affiliation" with a party to any case brought before the Committee, if that Committee member has reason to believe that the relationship "might be interpreted as a source of bias in committee deliberations." Such a member may voluntarily abstain from participation in the case or may request that a decision as to participation or abstention be determined by a majority vote of the remaining members of the Committee.
October 21, 2014

To: Jose Wudka, Chair
    Riverside Division Academic Senate

From: Raymond Williams, Chair
    Committee on Rules and Jurisdiction

RE: CONFLICT OF INTEREST STATEMENT FOR 2014-2015

In accordance with Bylaw 8.2.5, the Committee on Rules and Jurisdiction adopted the following statement for handling potential conflicts of interest in the 2014-2015 academic year:

In cases where a committee member's affiliation with a department or program, or with an individual bringing business before the committee might be interpreted as a potential conflict of interest, that committee member will identify himself/herself and the potential nature of the conflict including any action or discussion involving their current or former spouse, partner or family member. The other members of the committee will decide if a potential conflict does indeed exist. If so, the committee member may subsequently be asked to provide information on the business under consideration but will be excluded from participating in any consideration of said business. The committee member may be excluded from participation in substantive discussions, communications and deliberations concerning the matter, the making of motions, and/or voting.
October 15, 2014

To: Jose Wudka, Chair
   Riverside Division

From: Katie Defea, Chair
       Undergraduate Admissions Committee

Re: 2014-2015 Conflict of Interest Statement

The Undergraduate Admissions Committee adopted the following conflict of interest statement for the 2014-2015 academic year at their meeting on October 15, 2014.

If a member of the Undergraduate Admissions Committee has personal affiliation with a department or a program bringing business before the committee, this should be brought to the attention of the committee. The Undergraduate Admissions Committee at that time will vote (1) to allow or disallow the member from participating in the discussion of the item of business in question or (2) to allow or disallow the member from voting on a motion(s) related to the item of business in question. If a member’s spouse, partner, or family member (current, former, or future) brings business before the committee, the member will be automatically recused from all discussion and voting on the motion(s) related to the item of business brought before the Committee.
From: Cindy Palmer
To: “Genie Elizabeth Mulari (genie.mulari@ucr.edu)”, "Akula Venkatram", Jennifer Doyle, Sarjeet S Gill, John S Levin, Barry Mishra, Ameae M Walker
Cc: "Eilene Montoya"; Gabrielle Brewer; "Ana Kafie"; Alice Zuyen Chavez; Alaxis B Timothy
Subject: FW: For Final Review: Proposed Revised APM - 190, Appendix A-2
Date: Wednesday, October 15, 2014 4:21:00 PM
Attachments: APM-190 Cover Letter Final Review WPP 09-29-14.pdf
Attachment A Letter from the Office of General Counsel.pdf
Attachment B - Proposed Revised Draft UC WPP (clean copy).pdf
Attachment C - Proposed Revised UC WPP (redline).pdf
Attachment D - Proposed Revised UC WPP (redline latest draft to systemwide draft).pdf
Attachment E - Proposed New Draft APM 190 Appendix A.pdf

To: Academic Personnel * Charges * Diversity & Equal Opportunity * Faculty Welfare * College & School Executive Committees

On behalf of Divisional Chair Jose Wudka, I am forwarding for final review the draft UC Whistleblower Protection Policy and related revisions proposed to APM-190, Appendix A. The attachments include Vice Provost Susan Carlson’s letter about the review, the text of the new draft APM 190 Appendix A, both clean and redline versions of the draft policy, and a letter from General Counsel. Policy changes were initially reviewed at the campus level last fall and again in May.

This Final Review is intended to advise the results of the Systemwide Review and comments, if submitted, are due by October 22, 2014. I recognize that this timeline is extremely short for which I apologize but the campus due date is in response to date set by OP. There is no obligation to provide comments in this final phase.

Sincerely,
Cindy

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Cindy Palmer
Executive Director
Academic Senate
University of California, Riverside
221 University Office Building
Riverside, CA 92521
Phone - (951) 827-6154
Fax - (951) 827-5545
From: Vice Provost Carlson <ADV-VPCARLSON-SA@ucop.edu>
Date: Monday, September 29, 2014 at 3:36 PM

To: Council of Vice Chancellors
From: Vice Provost Carlson
Academic Personnel and Programs


Final Review is intended to advise the results of the Systemwide Review and how language has been refined. We do not anticipate substantive matters to be raised during this review. This stage of consultation is intended to address a few remaining details.

The proposal, attached here, can also be found on the Final Review site at:
http://ucop.edu/academic-personnel-programs/academic-personnel-policy/policies-under-review/index.html

Please send comments on the proposed revisions to ADV-VPCARLSON-SA@ucop.edu no later than October 31, 2014. Questions may be directed to Janet Lockwood at Janet.Lockwood@ucop.edu or (510) 987-9499.
From Sarjeet Gill, Chair CNAS Executive Committee

On pg 11:
The current text reads “Absent extenuating circumstances, the Chancellor’s written decision will be issued and sent to the Complainant no later than 18 months after the complaint was initially filed.”

This was changed from “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.”

The committee found that these changes are unacceptable because the Chancellor could choose not to provide a written decision forever, by citing extenuating circumstances, which are not defined. The committee prefers the original text.
September 29, 2014

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

Re: Final Review of Proposed Revised University of California Policy on the
Protection of Whistleblowers from Retaliation and Procedures for Reviewing
Retaliation Complaints, (Whistleblower Protection Policy) and Academic
Personnel Manual (APM) Section 190, (APM - 190), Appendix A-2

Dear Colleagues:

Enclosed for Final Review is draft policy which has been reviewed during Systemwide Review
and includes amended language proposed in response to reviewers’ comments. The Office of
Ethics, Compliance and Audit Services 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 Whistleblower Protection Policy are addressed within 18 months and to provide a
more linear explanation of the whistleblower retaliation complaint process. The enclosed letter
from the Office of General Counsel (OGC) provides additional context and explains the review
process already undertaken on a systemwide basis.

Language and issues resolved based on comments received during Systemwide Review include
the following:

- Provisions were added to ensure that the complainant is kept informed during the process.
- Language was modified to clarify the deadline for filing a complaint under the policy.
- Provisions were added to ensure that the accused employee is provided with a meaningful
  opportunity to comment on the allegations of retaliation related to him/her and the
documents the investigator plans to use to reach findings.

No comments were received on the recommendation to revise two appendices in the APM 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. This recommendation will be implemented upon issuance of
the final policy. A draft of new APM -190, Appendix A is enclosed as Attachment E.
September 29, 2014
Page 2

I have enclosed both clean and redline versions of the Final Review draft policy based on feedback received during Systemwide Review plus a redline version comparing the latest draft with the draft distributed for Systemwide Review. Final Review is intended to advise the results of Systemwide Review and how language has been refined. We do not anticipate substantive matters to be raised during Final Review. Instead this stage of consultation is intended to address a few remaining details.

This letter and enclosures anticipate that you will submit comments no later than October 31, 2014. Please send comments on the proposed policy to ADV-VPCARLSON-SA@ucop.edu.

Sincerely,

[Signature]

Susan L. Carlson
Vice Provost
Academic Personnel and Programs

Enclosures:
Attachment A - Letter from the Office of General Counsel
Attachment B – Proposed Revised Draft UC Whistleblower Protection Policy (WPP) (clean copy)
Attachment C – Proposed Revised Draft UC Whistleblower Protection Policy (WPP) (redline)
Attachment D - Proposed Revised Draft UC Whistleblower Protection Policy (WPP) (redline comparing latest draft to the systemwide review draft)
Attachment E – Proposed New Draft APM -190, Appendix A

cc: President Napolitano
Chancellors
Provost and Executive Vice President for Academic Affairs Dorr
Senior Vice President Vacca
Vice President Duckett
Vice Provosts of Academic Personnel/Academic Affairs
Academic Personnel Directors
Executive Director Baxter
Executive Director Fox
Executive Director Rodrigues
Executive Director Tanaka
Chief Deputy General Counsel Petrunakis
Deputy General Counsel Drown
Senior Counsel Leider
Senior Counsel Van Houten
Chief of Staff Grossman
Deputy/UCOP Compliance Officer Lane
Director Chester
Director Jennings
Director Lohse
Manager Lockwood
Policy and Compensation Analyst Flinker
Policy Coordinator Trifonov
Human Resources Policy Analyst Bello
Senior Administrative Analyst Rupert
September 23, 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:

Thank you for forwarding the feedback that the Academic Senate and Academic Personnel provided during the Systemwide Review of the proposed draft of the University of California Policy for Protection of Whistlebearers from Retaliation and Guidelines for Reviewing Retaliation Complaints (Whistleblower Protection Policy or WPP) earlier this year. The comments provided were instrumental in the development of important revisions to the draft policy, which we are now submitting for final review.

In addition to this letter, which summarizes the substantive revisions that have been made since the last draft you circulated, we are providing the following:

1. A clean copy of the latest draft of the policy.
2. A redline that compares the latest draft of the policy with the current policy.
3. A redline that compares the latest draft of the policy with the one reviewed earlier this year by the Academic Senate and Academic Personnel.

The latest revisions were made as a result of the feedback provided by the Academic Senate and Academic Personnel, as well as feedback received from the Locally Designated Officials (LDOs) at the campuses and medical centers and further legal review by the Office of the General Counsel. Many of these revisions were made to further improve clarity and transparency, to
ensure that the Complainant is kept informed of the status of the WPP process, and to ensure that the accused employee has a meaningful opportunity to comment on the allegations against him/her and the documentary evidence on which the investigator plans to rely in reaching findings.

Ethics, Compliance and Audit Services will be soliciting further feedback regarding the latest draft of the policy from staff at the same time that the Academic Senate is conducting its final review. The goal is to have the policy finalized for issuance in January 2015.

Notable Revisions Made Since the Review by the Academic Senate and Academic Personnel

In addition to the revisions discussed below, minor language changes were made throughout the draft policy to improve clarity, as reflected in Attachment 3, the redline that compares the latest draft of the policy with the one previously reviewed by the Academic Senate and Academic Personnel.

A. Section I. — Policy Summary.
   1. The first paragraph was modified to indicate that a decision will be issued within 18 months of the filing of the complaint absent extenuating circumstances. This change was made in recognition of the fact that there may be instances when the resolution of the complaint may take longer than 18 months, although every effort will be made to resolve complaints within that time frame. The same change was made to Section III.F. (Decision by the Chancellor).
   2. The first paragraph was also modified to clarify that a complaint under the WPP may be filed with the LDO or with the Complainant’s supervisor to maintain consistency with the Whistleblower Protection Act.
   3. A sentence was added to the second paragraph to clarify that a complaint alleging interference as well as retaliation will be processed under the WPP.

B. Section II. — Definitions.
   1. A proposed addition to the definition of Protected Disclosure regarding the good faith requirement has been deleted because it would have expanded the definition of Protected Disclosure beyond the definition set forth in the Whistleblower Protection Act. A new sentence was added to the definition to explain that a Protected Disclosure may be made to the Complainant’s supervisor, to the LDO, or to any University official identified in the Whistleblower Policy for that purpose. This addition was made to improve coordination between the Whistleblower Policy and the WPP.

C. Section III.B. — Authority and Responsibilities.
   1. Subsection III.B.4. (Retaliation Complaint Officer (RCO)) now states that the LDO may decide to serve as the RCO. This was added at the request of the LDOs and reflects current practice at some locations.
2. The proposed subsection regarding the Investigations Workgroup was eliminated because the Investigation Workgroup plays a less prominent role under the WPP than the Whistleblower Policy. However, the fact that the LDO may choose to consult the location’s Investigations Workgroup when determining whether a complaint contains the required allegations is still reflected in Section III.D.1.c.

D. Section III.C. – Filing a Retaliation Complaint (Where, When and How to File).

1. The first paragraph of this section was revised to clarify that the deadline to file a complaint under the WPP is within 12 months of the Adverse Personnel Action that the Complainant believes was taken in retaliation for the Complainant having made a Protected Disclosure or having refused to obey an Illegal Order.

2. Revisions were made to Section III.C.1. (Required Allegations) to more clearly outline the essential information that needs to be included in a complaint filed under the WPP.

E. Section III.D. – Processing a Complaint.

1. Subsection III.D.1 (Preliminary Review by the LDO) was modified to add that the LDO will promptly send the Complainant written acknowledgment of the complaint’s receipt. This was added to ensure that the Complainant is kept informed during the WPP process and is particularly important when the complaint is filed with his/her supervisor rather than directly with the LDO.

2. Subsection III.D.1.a. (Sworn Statement) was modified to state that the LDO may dismiss a complaint that lacks a Sworn Statement if the Complainant fails to correct this deficiency within 15 days of LDO’s request.

3. The subsection that previously addressed Timeliness and Required Allegations has been split into the following three subsections to improve clarity: Timeliness, Required Allegations, and Accepting the Retaliation Complaint.

4. Subsection III.D.1.c. (Required Allegations) was modified to state that that the LDO may dismiss some or all of a complaint if the Complainant fails to correct deficiencies identified by the LDO within 15 days.

5. The following changes were made to Subsection III.D.2. (Notification of the Accused Employee(s)):
   i. As an alternative to providing the complaint to the accused employee, the LDO may provide the accused employee with a summary of the allegations related to him/her. This addition was requested by the LDOs as some complaints can be unwieldy in length and may contain considerable information that is not relevant to the allegations of retaliation. Providing a summary of the allegations in those situations will keep the focus on what is relevant to the investigation.

   ii. An addition was made to indicate that the LDO will notify the accused employee that s/he has the option to submit a written response to the allegations within 30 days. As indicated later, in Section III.D.4.b. (The Accused Employee’s Opportunity to Comment), that written statement will become part of the investigation report that is submitted to the Chancellor for decision. While the earlier draft of the policy also provided an opportunity for the accused to submit a written statement, no deadline for doing so was stated. Having this occur at the beginning of the investigation process
will enable the investigator to review the response prior to the interview of the accused employee, if the s/he elects to submit a response.

iii. An addition was made to indicate that the LDO will also advise the accused employee that s/he will be contacted to schedule an interview with the investigator and that an interview of the accused employee is an essential part of the investigatory process. This was added to make clear that the option to submit a written response to the allegations would not replace the interview, which is a critical opportunity for the investigator to hear the accused employee’s position firsthand.

6. Revisions were made to the Subsection III.D.4.b. (The Accused Employee’s Opportunity to Comment) to respond to the concerns that the earlier draft had eliminated the provision in current policy that stated that the investigator would provide the accused employee with copies of the documents on which the investigator planned to rely before findings were reached. The new language indicates that the investigator will provide the accused employee with the opportunity to comment on the documents on which the investigator plans to rely in reaching findings. It further explains that this ordinarily occurs in the course of interviewing the accused employee. The new reflects current practice while also ensuring that the accused employee has a meaningful opportunity to comment on the documents that the investigator considers material.

7. Subsection III.D.4.c.iii. was added to make clear that the Complainant, the accused employee(s), and other witnesses have a responsibility not to interfere with the investigation. This mirrors an existing provision in the Whistleblower Policy and is equally important in the WPP context.

8. Subsection III.D.4.e. was modified to add that the LDO will notify the Complainant if any extensions of time are granted for the investigation. This will ensure that the Complainant is kept informed of the status of the WPP process.

F. Section III.F. – Decision by the Chancellor.
   1. Subsection F.1. was modified to reflect that the Chancellor may ask the investigator to clarify information in the investigation report before rendering a decision. This change is consistent with current practice.
   2. As noted above, Subsection F.3. was modified to indicate that the Chancellor will issue a decision within 18 months of the filing of the complaint absent extenuating circumstances.

G. Section III.H. – Referral of Complaints to the Office of the President.
   1. Subsection H.1. was modified to add that complaints alleging that the location’s Audit Director or Chief Compliance Officer engaged in the retaliation will be referred to the Office of the President.

H. Section III.I. – Appeals.
   1. This section was modified to clarify that a remedy awarded under the policy cannot be appealed.
2. It was also modified to indicate that an appeal of a decision made by the Systemwide LDO will be considered by the Executive Vice President – Chief Operating Officer as that was not previously addressed.

3. A sentence was added to specify when an appeal would be considered “filed,” borrowing the language from PPSM-70.

If you have any questions regarding the foregoing or the proposed revisions, please let me know.

Very truly yours,

Stephanie Leider

Attachments

cc: Sheryl Vacca, Senior Vice President – Chief Compliance and Audit Officer
    Karen Petrulakis, Chief Deputy General Counsel
I. POLICY SUMMARY

This policy describes the complaint resolution process that is available to employees or applicants for employment who believe they have been subjected to retaliation as a result of having made a Protected Disclosure or refused to obey an Illegal Order. Absent extenuating circumstances, 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 or the Complainant’s supervisor.

Complaints alleging interference with an employee’s or applicant’s right to make a Protected Disclosure will be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University’s Whistleblower Policy rather than this policy. A complaint alleging interference as well as retaliation will be processed under 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 or 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. A Protected Disclosure may be made internally to the Complainant’s supervisor, to the LDO, or to any University official identified in the University’s Whistleblower Policy for that purpose.

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

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.

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, (2) retaliate against an employee who has refused to obey an Illegal Order, 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. 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 LDO may decide to serve as the RCO. 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.

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 Adverse Personnel Action that the Complainant believes was taken to retaliate against the Complainant for having
made a Protected Disclosure or refusing to obey an Illegal Order. If the Retaliation Complaint alleges a pattern of retaliation, it must be filed within 12 months of the most recent Adverse Personnel Action that the Complainant believes constituted an 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) describe what was disclosed, (b) identify the person(s) to whom each Protected Disclosure was made, (c) specify the date or approximate date of each Protected Disclosure, and (d) specify how each Protected Disclosure was communicated.

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must (a) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c) specify the date or 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 (a) describe the Illegal Order, (b) identify the University employee(s) who gave the Illegal Order, (c) specify the date or approximate date on which the Illegal Order was given, (d) describe what the Complainant did in response to the Illegal Order that constituted a refusal to obey, and (e) specify the date or 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 (a) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c)
specify the date or 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 promptly send the Complainant written acknowledgment of the complaint’s receipt and 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 15 days, the LDO will dismiss the complaint and notify the Complainant in writing of that decision. 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 the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University’s Whistleblower Policy.

   b. Timeliness

      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 the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University’s Whistleblower Policy.

   c. Required Allegations

      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 the location’s Investigations Workgroup, as defined under the University’s Whistleblower Policy, or an ad hoc workgroup, as needed. 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 15 days, the LDO may dismiss all or some of the complaint.

d. Accepting the Retaliation 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 or a summary of the allegations related to the accused employee 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 allegations related to him or her. The LDO’s notice will advise the accused employee of the option to submit a written response to the allegations within 30 days. The notice will also advise that the accused employee will be contacted to schedule an interview with the investigator and that an interview of the accused employee is an essential part of the investigatory process.

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
b. The Accused Employee’s Opportunity to Comment

If the accused employee chose to submit a response to the allegations, as set forth in section D.2. above, the investigator will include that statement in the investigation report. During the course of the investigation, the investigator will also provide the accused employee with an opportunity to comment on the documents on which the investigator plans to rely in reaching findings. Ordinarily, the investigator will do this in the course of interviewing the accused employee.

c. Witnesses

i. The Complainant, the accused employee(s), and other witnesses will be allowed 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. The Complainant, the accused employee(s), and other witnesses have a responsibility not to interfere with the investigation and to adhere to admonitions from the investigator in this regard. Evidence shall not be withheld, destroyed or tampered with, and witnesses shall not be influenced, coached, or intimidated.

iv. 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 retaliation in violation of the policy 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 accused
employee’s response to the allegations (if submitted), 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 and will also notify the Complainant in writing of any extensions that are granted. 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. The Chancellor may request that the investigator conduct further investigation or clarify information in the investigation report before the Chancellor renders a decision. 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. Absent extenuating circumstances, the Chancellor's written decision will 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 a member of 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, the location's Audit Director, the location's Chief Compliance Officer or the location's 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 or any remedy that may be awarded. However, the Complainant may appeal a 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 (or the Executive Vice President – Chief Operating Officer if the decision was made by the Systemwide LDO) within 30 calendar days of the date of the decision being appealed. The appeal must state why the decision should be overturned and must include copies of the complaint, the decision, and the documents and other evidence that support the appeal. An appeal is considered “filed” on the date it is postmarked, the date it is personally delivered, the date it is faxed, or the date it is emailed.

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 I., Section III.A., Section III.B.2., Section III.D.1.a., Section III.D.1.b. and Section III.D.1.c.)

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.
University of California Policy

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

October 4, 2002

UNIVERSITY OF CALIFORNIA
POLICY FOR PROTECTION OF WHISTLEBLOWERS FROM RETALIATION AND
GUIDELINES FOR REVIEWING RETALIATION COMPLAINTS
(WHISTLEBLOWER PROTECTION POLICY)

I. 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 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.

Local retaliation complaint resolution procedures shall incorporate the following definitions.

A. Responsible Officer: SVP - Chief Compliance & Audit Officer
I. POLICY SUMMARY

This policy describes the complaint resolution process that is available to employees or applicants for employment who believe they have been subjected to retaliation as a result of having made a Protected Disclosure or refused to obey an Illegal Order. Absent extenuating circumstances, 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 or the Complainant’s supervisor.

Complaints alleging interference with an employee’s or applicant’s right to make a Protected Disclosure will be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University’s Whistleblower Policy rather than this policy. A complaint alleging interference as well as retaliation will be processed under 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.
University of California Policy
Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

Complainant: An employee or 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.

B. Protected Disclosure

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 remediating that condition. A Protected Disclosure may be made internally to the Complainant’s supervisor, to the LDO, or to any University official identified in the University’s Whistleblower Policy for that purpose.

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.

D. Interference

Direct or indirect use of authority to obstruct an individual’s right to make a protected disclosure.

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

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.

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.

F. Retaliation Complaint

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.

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, (2) retaliate against an employee who has refused to obey an Illegal Order, 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. 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.

A.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.

*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 shall 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. **C. 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.

3.4. **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 under this policy. The LDO may decide to serve as the RCO. 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 and applicants for employment alleging interference 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.

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

A Retaliation Complaint must include a Sworn Statement and be filed with or retaliation for making a protected disclosure or for the LDO or with the Complainant’s supervisor within 12 months of the Adverse Personnel Action that the Complainant believes was taken to retaliate against the Complainant for having made a Protected Disclosure or refusing to obey an illegal order. The RCO may delegate conduct of the investigation, including any factfinding, to another Illegal Order. If the Retaliation Complaint alleges a pattern of retaliation, it must be filed within 12 months of the most recent Adverse Personnel Action that the Complainant believes constituted an 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) describe what was disclosed, (b) identify the person. The term “RCO” as used in this policy includes the person(s) to whom the investigation may be delegated, (c) specify the date or approximate date of each Protected Disclosure, and (d) specify how each Protected Disclosure was communicated.

D. Chancellor

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must (a) describe the Adverse Personnel Action(s), (b) identify the University
iii. The Chancellor renders a decision based on 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 (a) describe the Illegal Order, (b) identify the University employee(s) who gave the Illegal Order, (c) specify the date or approximate date on which the Illegal Order was given, (d) describe what the Complainant did in response to the Illegal Order that constituted a refusal to obey, and (e) specify the date or 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 (a) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c) specify the date or 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 promptly send the Complainant written acknowledgment of the complaint’s receipt and 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 15 days, the LDO will dismiss the complaint and notify...
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the Complainant in writing of that decision. 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 the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University’s Whistleblower Policy.

b. Timeliness

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 whether the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University's Whistleblower Policy.

c. Required Allegations

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 the location’s Investigations Workgroup, as defined under the University’s Whistleblower Policy, or an ad hoc workgroup, as needed. 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 15 days, the LDO may dismiss all or some of the complaint.

d. Accepting the Retaliation 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 and determines the appropriate corrective action, if any, as set forth in Section VII.C. below. The Chancellor may delegate his or her duties under this policy.
IV. Filing a Complaint

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.

A. Filing Pursuant to an Applicable Grievance or Complaint Resolution Procedure

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:

1. Academic Personnel: Academic personnel may file complaints alleging retaliation, if eligible, as follows:
   a. Members of the Academic Senate Senate Bylaw 335
   b. Non-Senate Academic Personnel APM – 140
   c. Exclusively Represented Academic Personnel The applicable collective bargaining agreement

2. Staff Personnel: Staff personnel may file complaints alleging retaliation, if eligible, as follows:
   a. Senior Managers PPSM II-70
   b. Managers and Senior Professionals, Salary Grades VIII and IX PPSM 71
University of California Policy
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c. Managers and Senior Professionals (except Salary Grades VIII and IX) and Professionals and Support Staff

B. Filing with

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 or a summary of the allegations related to the accused employee 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 allegations related to him or her. The LDO’s notice will advise the accused employee of the option to submit a written response to the allegations within 30 days. The notice will also advise that the accused employee will be contacted to schedule an interview with the investigator and that an interview of the accused employee is an essential part of the investigatory process.

3. Referral to the RCO for Investigation

After 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.

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.

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 Retaliation Complaint to the RCO for investigation under if the following conditions:

   a) The complaint is not within the scope of RCO delegates any part 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

   c) The complainant is an applicant for employment.

4. If a complaint that is normally eligible for the 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:

   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

   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

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, this policy.
D. Filing Requirements: 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

If the accused employee chose to submit a response to the allegations, as set forth in section D.2. above, the investigator will include that statement in the investigation report. During the course of the investigation, the investigator will also provide the accused employee with an opportunity to comment on the documents on which the investigator plans to rely in reaching findings. Ordinarily, the investigator will do this in the course of interviewing the accused employee.

c. Witnesses

i. The Complainant, the accused employee(s), and other witnesses will be allowed 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. The Complainant, the accused employee(s), and other witnesses have a responsibility not to interfere with the investigation and to adhere to admonitions from the investigator in this regard. Evidence shall not be withheld, destroyed or tampered with, and witnesses shall not be influenced, coached, or intimidated.

iv. 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 retaliation in violation of the policy occurred, using the applicable Evidentiary Standards set forth in Section E, below, and Thresholds.

The retaliation complaint filed. 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 accused employee’s response to the allegations (if submitted), 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 and will also notify the Complainant in writing of any extensions that are granted. 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

   1. Consistent 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 e), 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.

2. In order for a retaliation complaint to be accepted, the complainant must allege that:
   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

A. Evidentiary Standards

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 by 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 retaliation Adverse Personnel Action. If the Complainant has met that
standard, the burden of proof shall shift to the supervisor, manager, or University to demonstrate by clear and convincing evidence that the alleged retaliatory action Adverse Personnel Action would have occurred for legitimate, independent reasons even if the employee’s engagement in Complainant had not made a protected disclosure Protected Disclosure or refused to obey an illegal order Illegal Order. If the complaint is investigated by a factfinder, the factfinder shall find facts concerning that burden of proof so that the Chancellor is able to make this determination. If the University fails to meet this burden, the employee or applicant for employment is not met, the employee shall have a complete affirmative defense to the adverse action which Adverse Personnel Action was the subject of the complaint.

2. However, pursuant to 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 a personnel action 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 Protected Disclosure or refused to obey an Illegal Order.

1.2. B. Special Evidentiary Standards for Employees in the University’s Health Care Workers Facilities

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.

VI. Complaints Investigated by the RCO

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:

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.

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.

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.

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.

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.

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.

F. VII. Decision by the Chancellor

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/LDO will provide that information, present the investigation report 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.
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.E. above. The Chancellor may request that the findings to the RCO investigator conduct further investigation or clarify information in the investigation report before the Chancellor renders a decision. The Chancellor will issue a written decision. The Chancellor will communicate the decision in writing and send it to the complainant, Complainant, and to the person or persons accused of violating the University's Whistleblower Protection Policy, 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. The written decision will include any appropriate relief for the complainant, but provided to the Complainant. However, the written decision will not describe any corrective action that may need to be taken.

C. Corrective Action of a University Employee

2. 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 against any employee 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 violated this policy.

3. Absent extenuating circumstances, the Chancellor’s written decision will 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 a member of 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.
D. Complaint Against the Chancellor, the LDO, or the LDO’s Supervisor

H. With regard to complaints in which it is alleged to have interfered or taken retaliatory action, the 

Referral of Complaints to the Office of the President

1. When a complaint filed under this policy alleges that the Chancellor, the LDO, or the LDO’s supervisor, the location’s Audit Director, the location’s Chief Compliance Officer or the location’s 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.

4. 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. The RCO’s findings shall be presented to the Systemwide LDO 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.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.

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 or any remedy that may be awarded. However, the Complainant may appeal a 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 (or the Executive Vice President – Chief Operating Officer if the decision was made by the Systemwide LDO) within 30 calendar days of the date of the decision being appealed. The appeal must state why the decision should be overturned and must include copies of the complaint, the decision, and the documents and other evidence that support the appeal. An appeal is considered “filed” on the date it is postmarked, the date it is personally delivered, the date it is faxed, or the date it is emailed.

J. Reporting Requirements

Each location shall 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 shall submit to the Senior Vice President—Business and Finance a report summarizing the number of whistleblower retaliation complaints filed during the preceding fiscal year under this policy and their disposition. The Office of Human Resources and Benefits will provide a reporting format 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)
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 SUMMARY

This policy describes the complaint resolution process that is available to employees or applicants for employment who believe they have been subjected to retaliation as a result of having made a Protected Disclosure or refusing to obey an Illegal Order. Absent extenuating circumstances, 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 or the Complainant’s supervisor.

Complaints alleging interference with an employee’s or applicant’s right to make a Protected Disclosure will be considered as a report of suspected improper governmental activity that may warrant further inquiry processed under the University’s Whistleblower Policy rather than this policy. A complaint alleging interference as well as retaliation will be processed under 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 or applicant for employment 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. A Protected Disclosure may be made internally to the Complainant’s supervisor, to the LDO, or to any University official identified in the University’s Whistleblower Policy for that purpose.
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 retaliated by taking an Adverse Personnel Action against the Complainant because the Complainant (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.

**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.

### 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 LDO may decide to serve as the RCO. The RCO may personally conduct the investigation or may delegate the factfinding, in whole or in part, to another investigator.

5. Chancellor
University of California Policy

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 Adverse Personnel Action that the Complainant believes was taken to retaliate against the Complainant for having made a Protected Disclosure or refusing to obey an Illegal Order alleged retaliation. If the Retaliation Complaint alleges a pattern of retaliation, it must be filed within 12 months of the most recent Adverse Personnel Action that the Complainant believes constituted an 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) describe include a summary of what was
disclosed, (b) identify the person(s) to whom each Protected Disclosure was made, and (c) specify the date or approximate date of each Protected Disclosure, and (d) specify how each Protected Disclosure was communicated.

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must identify (a) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c) specify the date or 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) describe the Illegal Order, (b) identify the University employee(s) who gave the Illegal Order, (c) specify the date or the approximate date on which the Illegal Order was given, (d) describe what the Complainant did in response to the Illegal Order that constituted a refusal to obey, and (e) specify the date or 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) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c) specify the date or 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 promptly send the Complainant written acknowledgment of the complaint’s
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receipt and 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 15 days, 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 the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry 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 the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry they should be processed under the University’s Whistleblower Policy.

c. Required Allegations

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 the location’s an Investigations Workgroup, as defined under the University’s Whistleblower Policy, or an ad hoc workgroup, as needed. 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 15 days, a reasonable time frame, as established in local procedures, the LDO may dismiss all or some of the complaint.

d. Accepting the Retaliation 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 or a summary of the allegations related to the accused employee 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 related to against him or her. The LDO’s notice will advise the accused employee of the option to submit a written response to the allegations within 30 days. The notice will also advise that the accused employee will be contacted to schedule an interview with the investigator and that an interview of the accused employee is an essential part of the investigatory process.

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
If the accused employee chose to submit a response to the allegations, as set forth in section D.2. above, the investigator will include that statement in the investigation report. During the course of the investigation, the investigator will also provide the accused employee with an opportunity to comment on the documents on which the investigator plans to rely in reaching findings. Ordinarily, the investigator will do this in the course of interviewing the accused employee. 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 will be allowed 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. The Complainant, the accused employee(s), and other witnesses have a responsibility not to interfere with the investigation and to adhere to admonitions from the investigator in this regard. Evidence shall not be withheld, destroyed or tampered with, and witnesses shall not be influenced, coached, or intimidated.

   iv. 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 retaliation in violation of the policy 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
The RCO will include the Retaliation Complaint, a list of witnesses interviewed, any accused employee’s response to the allegations (if submitted) 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 and will also notify the Complainant in writing of any extensions that are granted. 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. The Chancellor may request that the investigator conduct further investigation or clarify information in the investigation report before the Chancellor renders a decision. 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. **Absent extenuating In all-circumstances, the Chancellor’s written decision must will** 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 a member of 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, the location’s Audit Director, the location’s Chief Compliance Officer or the location’s 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 or any remedy that may be awarded. 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 (or the Executive Vice President – Chief Operating Officer if the decision was made by the Systemwide LDO) within 30 calendar days of the date of the local decision being appealed. 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. An appeal is considered “filed” on the date it is postmarked, the date it is personally delivered, the date it is faxed, or the date it is emailed.

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 I., Section III.A., Section III.B.2., Section III.D.1.a., Section III.D.1.b., and Section III.D.1.cb.)

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.
UNIVERSITY OF CALIFORNIA WHISTLEBLOWER AND
WHISTLEBLOWER PROTECTION POLICIES

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.