Conflicts and Abuse in the Outside Employment of the University of California and California State University Executives

Overview of Hearing

The University of California (UC) and California State University (CSU), public higher education institutions, are charged with a broad responsibility to the public interest (Education Code Section 66010.5). As such, it is important that UC and CSU safeguard against situations where their senior staffs' self-interest can conflict with the public interest. The ability of UC and CSU to exercise this responsibility has recently come into question.

Outside professional activities also raise questions of "conflicts of commitment" among UC and CSU leaders. Conflicts of commitment occur when the time devoted to outside activities compromises an individual's ability to meet his or her responsibilities to the university.

Outside professional activities by university leaders can be beneficial to the individual and even the university. Activities such as serving as the editor of an academic journal, reviewing other educational programs, or delivering keynote addresses at academic conferences are generally considered to benefit the individual's professional standing and the university's reputation. Other activities can bring discredit in the eyes of the public. There may not be a bright line standard, and for that reason it is essential that UC and CSU be vigilant.

The purpose of this hearing is to review conflicts and abuse in the outside employment of UC and CSU executives. This will include examination of processes for approving outside professional activities by senior staff, the extent to which actual or perceived conflicts with the public interest are prevented, and how the segments protect senior staffs' capacity to fully discharge their responsibilities to the public university systems. This hearing will also provide a forum to discuss ways in which current policies and practices at UC and CSU can be improved.

California Community Colleges

The California Community Colleges (CCC) shares the same responsibilities to the public as the other public higher education systems. The CCC Chancellor's Office (CCCCO) has two separate policies in place that address outside professional activities:

1) The CCCCO complies with the Political Reform Act. Senior officials must annually report their financial interests on a Statement of Economic Interests (Form 700); the CCCCO filing officer reviews a percentage of those filings; and all Form 700s are available for public review.

2) The CCCCO has an Incompatible Activities Statement in its administrative manual that includes a general prohibition against "accepting employment or work which adversely affects the performance of the employee or officer in his or her position in the [Chancellor's Office], or which brings discredit on the State of California, the Board of Governors of the California Community Colleges, or the [Chancellor's Office]."

On the local level, each community college district has the authority to adopt its own policies related to the outside professional activities of public officials. As a matter of law, each local district should have a conflict of interest code and Form 700 disclosure procedure in place.

This hearing does not focus on CCC because policy development and enforcement for the vast majority of community college leaders occurs at the local level.

UC Policies and Practices

"The University of California is a public institution and a public trust. Its foundation and future depend on the continuing support of the people of California. That support will only continue if the people—and their elected representatives—respect and trust those who lead the University system. That support will only continue if the people and their representatives are confident the University's executive leaders, senior managers, and Regents are doing all they should to ensure the institution is managed effectively and responsibly. […] To be effective—and accepted by the public whose trust and support are essential—accountability must include consequences, and the consequences must be consequential."

- UC Regents Task Force on UC Compensation, Accountability and Transparency, 2006

This is not the first time UC executive compensation—including from outside activities—has been under scrutiny. UC's current Regents Policy 7707 governing outside activities by senior management is the product of policy changes a decade ago following an intensive policy review. Media reports in November 2005 revealed the UC Office of the President (UCOP) had paid executives in its central office and at the campus level far more than publicly reported. Weeks later, then-UC Regents Chair Gerald Parsky appointed a Task Force on UC Compensation, Accountability and Transparency. This task force was comprised of representatives from government, education, business, and the media who conducted an independent review of UC's policies and practices on executive compensation. This task force included Monica Lozano, who is the current chair of the Board of Regents; Jay T. Harris, former publisher of the San Jose Mercury News; and Dede Alpert, a former California State Senator and Assemblymember.

The task force released a report on April 13, 2006. Two of its recommendations dealt directly with compensated outside activities. First, the task force found the UC lacked clear guidelines on participation in externally compensated activities such as consulting or board service, which made it impossible to ensure that outside activities do not interfere with the performance of UC duties. The task force recommended: "The University should adopt specific limits on externally compensated activities to preclude conflicts of commitment on the part of senior executives. Based on leading best practices in governance from the public and private sectors, UC senior executives should be limited to serving on no more than three externally compensated boards." Second, the task force found that there was confusion regarding what policies senior managers who also hold faculty appointments should follow. The task force recommended: "Policies governing outside professional activities and board service for senior managers who also hold faculty appointments should be revised so that the senior manager policy prevails."

The UC Regents adopted the two task force recommendations from 2006 dealing directly with policies on compensated outside activities. The current Regents Policy 7707 on Outside Professional Activities covers employees who are UC senior management group (SMG) members and includes the following elements:

- Approval Process: Employees must complete a pre-approval request providing the name of any organization for which service is proposed and for which approval is requested, whether the service is compensated or not, at the beginning of each calendar year. Their request must include description of the service and anticipated number of hours, the amount of cash compensation and deferred or other non-cash compensation (including equity shares) and the grant details for approximating the value of such shares. Employees certify that the information contained in the pre-approval request is complete and accurate; and they must seek approval from the person to whom they report. For instance, for chancellors, the approving authority is the President; and for the President, the approving authority is the Chair of the Board of Regents. Employees are *not* permitted to accept or move forward with their proposed outside service until approval is received.

- Review Criteria: Approving authorities are supposed to consider whether the proposed activity will create a *conflict of commitment* and compromise the ability to perform university duties, or create a *conflict of interest*, which, consistent with the California Political Reform Act, Regents Policy 7707 defines as participating in the making of, or influencing a governmental decision in which he or she has a financial interest. Any conflict of interest/commitment, or appearance of such conflict, would be an appropriate basis for denying approval of a request. In fact, Regents Policy 7707 requires approving authorities to “seek written guidance from the appropriate University office (e.g., Human Resources; Office of Ethics, Compliance and Audit Services; or legal counsel)” if there is even an appearance of a conflict.

- Limits: Employees “may serve simultaneously on up to three for-profit boards that are not entities of the University of California for which s/he receives compensation and for which s/he has governance responsibilities. Service as a member of the Board of Directors would constitute governance responsibility. Service on an advisory committee likely would not constitute governance responsibility.” There is no limit on the total compensation that may be earned from outside activities. There is no limit on uncompensated service as long as there is no conflict.

- Reporting: Employees must file a year-end report that records actual, as opposed to anticipated compensation received in connection with outside activities. Reports are filed and sent to the President, who forwards the report to the Regents and posts the report online: http://compensation.universityofcalifornia.edu/reports.html. The 2014 calendar year report is the most recent report available, and is attached to this agenda.

According to Regents Policy, the Vice President—Human Resources will review the policy annually for update purposes and will conduct a full review at least every three years.

Recent media reports of UC executive activities once again have brought into question whether UC is providing proper oversight and safeguarding the public interest, even after the policy changes from a decade ago. For instance, UC Davis Chancellor Linda Katehi served on the board of college textbook publisher John Wiley & Sons and reported to UC receiving $335,000 in compensation for this board service between 2012 and 2014. Chancellor Katehi earns $424,360 a year as chancellor of UC Davis. Textbooks published by John Wiley & Sons that are sold online at the UC Davis Bookstore include "Biochemistry & Molecular Biology of Plants" ($176.00 pre-tax), "Hyphenated Techniques in Grape and Wine Chemistry" ($160.00 pre-tax), and "Methods and Analysis of Musts and Wines" ($295.00 pre-tax).

UC Davis Chancellor Katehi is not alone among UC executives. UC Santa Barbara Chancellor Henry Yang reported earning $366,566 as board member for American Axle & Manufacturing Holdings, Inc. in 2013. Chancellor Yang earns $389,340 a year as chancellor of UC Santa Barbara. Both Chancellor Katehi and Chancellor Yang were approved by the UC President to sit on these corporate boards. Chancellor Yang received a 20% raise from the UC in September 2014. The justification given at the UC Regents meeting for the magnitude of this raise was that Yang -- along with three other chancellors -- was severely underpaid. No mention of his outside compensation was provided in advance of the UC Regents' vote.

Staff has conducted a non-exhaustive review of the past three UC Regents reports (for calendar year 2012, 2013, 2014) on outside professional activities by senior management group personnel. Staff's review shows seven of the 10 campus chancellors reporting outside professional activities for both 2012 and 2013. Only three chancellors (those from UC Berkeley, UC Davis and UC San Diego) reporting such activities for 2014, and of those three, only two chancellors (UC Berkeley and UC San Diego) serve on the boards of for-profit companies. The reports contain several other activities that raise questions regarding UC’s determination that there was no conflict.

- UCSF Medical Center CEO Mark Laret reported receiving over $1.25 million in compensation from Nuance Communications, a for-profit software company that produces, among other items, medical software, and Varian, a for-profit medical services company, between 2012 and 2014.

- UCSF Medical Center Chief Medical Officer Joshua Adler serves on the board of and receives compensation from Hills Physician Board, a for-profit company with which UCSF signed an affiliation agreement and has a key business relationship. Joshua Adler reports that his average annual compensation is $3200.

- Then-UCSF Executive Vice Chancellor and Provost Jeffrey Bluestone reported receiving $85,000 in compensation from Pfizer, a for-profit pharmaceutical company between 2013 and 2014.

- Then-UC Office of the President Vice President Glenn Lawrence Mara reported receiving $24,516 in compensation from Atomic Weapons Establishment UK, a for-profit company that provides and maintains warheads for United Kingdom Royal Navy submarines in 2013.

Lastly, there is the issue of policy compliance and enforcement at UC. A decade ago, the UC task force found "few, if any, consequences for violating policy" and recommended that revised policies "must include specific consequences for violations of compensation policy … and, where appropriate, sanctions should be issued." UC Davis Chancellor Linda Katehi violated Regents Policy 7707 when she accepted a paid position on the board of DeVry Education Group in February 2016 without prior approval. Chancellor Katehi has since stepped down from the DeVry board and issued an apology. No known sanctions have been issued by the university. UC President Napolitano reportedly told the Sacramento Bee that the Chancellor's apology is sufficient.

CSU Policies and Practices

In 2013, the CSU Board of Trustees voted to adopt its current *conflict of commitment policy* (Section 42740 of Title 5, California Code of Regulations), which requires the disclosure and approval of outside employment for all full-time management and executive employees in order to identify and avoid conflicts of commitment. This action was taken in response to a recommendation in a 2007 California Bureau of State Audits report on CSU Compensation Practices. The Board of Trustees deferred action for five years until requirements were first put in place for faculty through the collective bargaining process.

The regulation states simply: "Management Personnel Plan and executive employees shall be required to report outside employment for the identification of and to preclude any conflict of commitment. The Chancellor is responsible for implementing this section." Management Personnel Plan (MPP) covers employees designated as "management" or "supervisory" – a much broader/larger group than UC's SMG.

The administrative policy covers Management Personnel Plan and executive employees and any employment not compensated through the CSU payroll, including CSU foundation and CSU auxiliary employment. It includes the following provisions:

- Approval Process: The policy does not specify that approval is required prior to commencement of outside employment.

- Limits: The policy does not specify limits on the number of outside activities or on the anticipated time commitment, although the written disclosure statement form does ask for the approximate distribution of time to be devoted to the outside employment. The policy does state that "Outside employment of a Management Personnel Plan (MPP) or Executive employee shall not conflict with normal work assignments or satisfactory performance." However, it does not specify any standards by which the approving authority should evaluate whether such a conflict exists.

- Reporting: Employees must report any and all outside work for which the employees are receiving compensation. Employees are required to disclose their outside employment upon hire annually, within 30 days of commencement and within 10 days of a request by supervisor. Campuses are required to designate an employee responsible for document review and filing, and are also required to maintain these records in accordance with

CSU's Records Retention Policy. Currently, CSU does not compile these records into a report nor does it publicly post this information.

In addition, according to information provided by the CSU Chancellor's Office, all appointment letters issued by Chancellor White to CSU Presidents and Vice Chancellors contain the following statement: "You may serve on up to two corporate boards provided that you discuss such appointments with me in advance, and that they do not create a conflict of commitment or interest."

According to the information provided by the CSU Chancellor's Office, only two campus presidents currently receive compensation for serving on corporate boards. CSU East Bay President Leroy Morishita earned $16,000 as a board member of the JA Health Benefits Trust, and donated it all to his campus. CSU San Bernardino Tomás Morales earned $12,000 as a board member of the United Health Group of New York. CSU does not produce a report for MPP or executive employees. As a result, staff was unable to review compensated outside activities for any employees besides campus presidents.

Conflict of Interest Codes

The Political Reform Act requires all public officials, including public university officials, to refrain from participating in decisions in which they have a financial interest and requires designated public officials to file financial disclosure statements. As required by the Political Reform Act, the UC and CSU have each adopted their own Conflict of Interest (COI) Code that designates which employees must disclose their private financial interests by filing a Statement of Economic Interests (Form 700), and which interests must be disclosed. These codes are updated regularly and submitted to the Fair Political Practices Commission for approval. An approved COI Code has the force of law, and any violation of the Code by a designated employee is deemed a violation of the Political Reform Act.

UC has a total of seven disclosure categories. Category #1 is the broadest and covers all interests in real property, all investments, all income, including gifts, loans and travel payments, and business positions. Relatively few senior staff are subject to Category #1. For instance, UC Medical Center executives do not need to disclose all investments. Chancellors and Executive Vice Chancellors do, even though they typically earn less money and oversee smaller operations than Medical Center executives. This may be problematic as Medical Center executives arguably have greater opportunities for conflict of interest. UC reports that Medical Center executives must disclose specific information regarding investments and business positions in business entities, as specified.

CSU has a total of 17 disclosure categories, which range from investments, interests in real estate and sources of income or gifts among others. The specific disclosure categories that apply depend on the employee's specific position. Staff has conducted a non-exhaustive review of the disclosure categories that apply to each designated position within the CSU.

It is of note that the disclosure categories that apply to presidents vary by campus. For instance, some campus presidents must disclose interests related to contracts with entities in a campus foreseeably may invest funds, while others do not. Similarly, only some campus presidents must report interests related to contracts with a campus to purchase agricultural commodities

CSU reports its COI Code has not been approved by the FPPC since 2007. According to CSU, because CSUs COI Code requires approval of both FPPC and the Board of Trustees, the changes will not be reflected in the COI Code until it is approved by FPPC. Possibly due to the aforementioned negotiations with FPPC, information available to the public and the Legislature is, at the very least, confusing and convoluted. CSU reports that as part of the policy update currently underway with FPPC, one goal is to bring consistency for all presidents in their disclosure categories.

The Sacramento Bee recently reported that former Sacramento State President Alexander Gonzalez disclosed no outside income despite receiving a total of $123,750 to serve on the board of directors for Sutter Health between 2007 and 2011; nor did he disclose any real estate interests despite purchasing three Sacramento properties during his tenure with the campus. The Sacramento Bee also quoted CSU counsel as stating that employees are only required to disclose information “if they believe the income could pose a conflict of interest.” This discretionary element cannot be found in the latest administrative guidance sent to campus in February 2015.

According to CSU, the system is working with the FPPC to make its conflict of interest code more user-friendly and easier to understand. CSU states that it is close to completing the process and expects to have a revised code approved by the end of the year.