

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

**I. Introduction**

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

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

This Policy governs both the reporting and investigation of known or suspected improper governmental activities and together with the *Policy and Implementing Guidelines for Protection Against Interference with or Retaliation for Having Made a Protected Disclosure or for Having Refused an Illegal Order* represent the University's implementing policy for the *California Whistleblower Protection Act* (Government Code Section 8547- 8547.12). Solely for purposes of applying this Policy, improper governmental activities shall include both matters falling within its statutory definition *and serious or substantial violations of University policies*.

Employees and others are encouraged to use this guidance for reporting all known or suspected improper governmental activities and serious or substantial violations of University policies. This policy does not fundamentally change the responsibility for the conduct of investigations but clarifies normal jurisdictional interests. Individual employee grievances and complaints regarding terms and conditions of employment will continue to be reviewed under the applicable academic and staff personnel policies or collective bargaining agreements. In all instances, the University retains the prerogative to determine when circumstances warrant an investigation and the appropriate investigative process to be employed.

**II. Definitions**

***University Resources***

For purposes of this Policy, the term *University resources* is defined to include, but not be limited to:

- Cash and other assets, whether tangible or intangible, real or personal property;
- Receivables and other rights or claims against third parties;
- Effort of University personnel and any outsider billing the University for their time;
- Facilities and the rights to use of University facilities;
- The University's name; and

- University records, including student and patient records.

### ***Improper Governmental Activities***

According to California Government Code Section 8547.2, *an improper governmental activity* is:

any activity by a state agency 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 government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency.

*And solely for purposes of applying this policy, improper governmental activities include:*

*Serious or substantial violations of University policies which due to their nature, extent, severity, frequency or consequence may rise to the level of an improper governmental activity.*

### ***Protected Disclosure***

According-to California Government Code Section 8547.2, *a protected disclosure* is:

any good faith communication that discloses or demonstrates an intention to disclose information that may evidence (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.

### ***Illegal Order***

Illegal order means 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.

## **III. Reporting Known or Suspected Improper Governmental Activities**

### ***A. Originating Reports***

1. Any person may report known or suspected improper governmental activities (and is commonly referred to as a *whistleblower*). Knowledge or suspicion of improper governmental activities may also surface from faculty, staff or administrators carrying out their assigned duties, internal or external audits, law enforcement, regulatory enforcement, and customers, patients, vendors, students or other third parties. Known or suspected improper governmental activities may also be reported anonymously.
2. Reports of known or suspected improper governmental activities are encouraged to be made in writing, but may be oral except where otherwise provided by law. Such reports should be factual rather than speculative or conclusory, and contain as much

specific information as possible to allow for proper assessment of the nature, extent and urgency of preliminary investigative procedures.

3. Reports by persons who are not University employees are encouraged to be made to the Locally Designated Official, but may be made to another University official whom the reporting person may reasonably expect to have either responsibility over the affected area or the authority to review the alleged improper governmental activity on behalf of the University.
4. A report by a University employee of a suspected improper governmental activity should normally be reported to the reporting employee's immediate supervisor or other appropriate administrator or supervisor within the operating unit. However, in the interest of confidentiality, when there is a potential conflict of interest or for other reasons, such reports may be made to another University official whom the reporting employee may reasonably expect to have either responsibility over the affected area or the authority to review the alleged improper governmental activity on behalf of the University.
5. When a University employee reports known or suspected improper governmental activities to an appropriate authority it is known as a *protected disclosure*. Employees' rights when making a protected disclosure are covered by the *Policy and Implementing Guidelines for Protection Against Interference with or Retaliation for Having Made a Protected Disclosure or for Having Refused an Illegal Order*.
6. All University employees, and especially any academic or staff employee in a supervisory role, should be aware of and alert to either oral or written, formal or informal communications that may constitute a report of a known or suspected improper governmental activity.

**B. *Reporting to Locally Designated Official***

1. Each campus, Laboratory, the Office of the President and the Division of Agriculture and Natural Resources shall designate an official to whom all reports of known or suspected improper governmental activities are to be referred. (the Locally Designated Official; see V.C.)
2. Any employee in a supervisory role receiving a report of known or suspected improper governmental activities shall ensure that the matter is promptly reported to his/her supervisor, an appropriate level of University management and/or the Locally Designated Official. Employees in a supervisory role are charged with exercising appropriate judgement in determining which matters can be reviewed and disposed of under their authority and which matters must be referred to a higher level of management or the Locally Designated Official. Internal communications of reported known or suspected improper governmental activities should normally be in writing.
3. At a minimum, employees in a supervisory role shall report to the Locally Designated Official any known or suspected improper governmental activity--whether whether reported to them as a protected disclosure, by their

subordinates, or `discovered in the course of performing their duties--when any of the following conditions are met:

- a) The matter is the result of a significant internal control or policy deficiency that is likely to exist at other units within the institution or across the University system;
- b) The matter is likely to receive media or other public attention;
- c) The matter involves the misuse of University resources or creates exposure to a liability in potentially significant amounts;
- d) The matter involves allegations or events that may have a significant possibility of being the result of a criminal act (e.g., disappearance of cash); or
- e) The matter is judged to be significant or sensitive for other reasons.

**C. *Reporting to the Office of the President and Others***

1. The Locally Designated Official, in consultation with the Investigations Workgroup (see IV.B.) shall have the principal responsibility for meeting the reporting requirements to the Office of the President and others. The Locally Designated Official (or a member of the Investigations Workgroup if the Locally Designated Official has or is perceived to have a potential conflict of interest) shall make a written report to the Senior Vice President--Business and Finance with a copy to the General Counsel of The Regents any reported known or suspected improper activity when any of the following conditions are met:

- a) The matter is the result of a significant internal control or policy deficiency that is likely to exist at other units within the institution or across the University system;
- b) The matter is likely to receive media or other public attention;
- c) The matter involves the misuse of University resources or creates exposure to a liability of at least \$25,000;
- d) The matter is judged to be significant or sensitive for other reasons;
- e) The matter alleges an improper activity by the Chancellor or Laboratory Director, the Locally
- f) Designated Official, or the local Internal Audit Director.

The above are minimum requirements, different investigative bodies may have more stringent thresholds for notification to their systemwide counterparts.

2. A copy of communications sent to the Senior Vice President--Business and Finance shall be sent to the campus police if on the basis of the allegations it appears that a crime may have been committed. The campus police shall be consulted to determine the appropriate action with regard to these investigations.

3. Communications with funding and regulatory agencies are the responsibility of the campus, Laboratory or the Office of the President. In some instances, the allegation

of improper governmental activities may themselves be reportable. More typically, at least preliminary investigation results are needed to assess reporting obligations to parties outside the University. The Locally Designated Official, in consultation with the leadership of the affected area, will determine the nature and timing of such communications. Pursuant to section III.C.1.b. above, the Senior Vice President--Business and Finance shall be notified of any matter being reported to external agencies.

4. Known or suspected losses of money, securities or other property shall be reported to the local risk management office as soon as discovered. Local risk management offices shall immediately notify the Director, Risk Management, Office of the President. The Director shall report such matters in accordance with the terms of any contracts with insurance or bonding companies.

D. In the event that any person with a reporting obligation under the aforementioned policies believes that there is conflict of interest on the part of the person to whom the known or suspected improper act is to be reported, the next higher level of authority shall be substituted.

E. Whistleblowers frequently make their reports in confidence. To the extent possible within the limitations of law, policy and the need to conduct a competent investigation, confidentiality of whistleblowers will be maintained. Whistleblowers should be cautioned that their identity could become known by reasons outside of the control of the investigators. Similarly, the identity of the subject(s) of the investigation will be maintained in confidence with the same limitations.

#### **IV. Investigating Alleged Improper Governmental Activities**

A. A number of functional units within the University have responsibility for routinely conducting investigations of certain types of improper governmental activities, and have dedicated resources and expertise for such purposes. These include Internal Audit and the UC Police and Human Resources departments. In addition, other University parties may become involved in investigations of matters based on their areas of oversight responsibility or topical expertise, for example, environmental health and safety, research administration, academic affairs, health sciences compliance officers and conflict of interest coordinators.

B. Each location (campus, Laboratory, the Office of the President, and the Division of Agriculture and Natural Resources) shall establish an Investigations Workgroup to ensure coordination and proper reporting of investigations. The Workgroup shall receive from the Locally Designated Official reports of all allegations of known or suspected improper governmental activities and will assess the location's planned course of action, including determining that an adequate basis exists for commencing an investigation.

C. The Locally Designated Official will chair the Investigations Workgroup. Workgroup membership should include representatives from each functional unit that has routine responsibility for certain types of investigations (e.g., Internal

Audit, UC Police and Human Resource departments).. Additional representation to be determined locally should include academic affairs, campus controllers, compliance officers, campus/laboratory counsel and representatives from any other area in which investigations routinely occur but are not conducted by a standing body (for example, parties responsible for investigating allegations of scientific misconduct). In addition, specialized expertise may be required on an ad hoc basis for investigation of certain matters.

D. The Workgroup's responsibilities shall include:

1. Assuring that the proper investigative channels are utilized according to appropriate expertise and jurisdiction and that the plan to address the reported improper governmental activities is appropriate to the circumstances (the "triage" process);
2. Assuring that all appropriate administrative and senior officials are apprised of the allegations as necessary;
3. Assuring that appropriate reporting occurs to the Office of the President, funding and regulatory agencies, whistleblowers and others as necessary or provided by this Policy;
4. Ensuring that appropriate resources and expertise are brought to bear to cause the timely and thorough review of reports of known or suspected improper governmental activities;
5. Ensuring that there are no conflicts of interest on the part of any party involved in specific investigations;
6. Coordinating and facilitating communications across investigative channels as necessary to ensure comprehensive attention to all facets of the matter;
7. Monitoring significant elements and progress of investigations to ensure that allegations are timely and thoroughly addressed; and
8. Coordinating and facilitating the corrective and remedial action that may be necessary in the circumstances.

E. Each unit with investigative authority shall carry out investigative activities in accordance with appropriate laws and established procedures within its discipline (e.g., UC Police, Human Resources and Internal Audit), and regulatory guidelines (e.g., scientific misconduct per NIH rules).

F. The purpose and powers of the Investigations Workgroup shall not be construed as to limit or halt investigations undertaken with proper authority granted by law or policy to any University investigative authority. Nor is the Workgroup empowered to initiate investigations without an adequate basis. Rather, the Workgroup's purpose is to provide oversight and coordination for investigative activities and to facilitate communications among appropriate parties.

G. All employees of the University have a duty to cooperate with investigations initiated under this Policy.

H. Pursuant to the applicable personnel policies or collective bargaining agreements, placing an employee on administrative or investigatory leave may be appropriate when an employee's continued presence in the workplace may unduly influence the investigation or expose the University to loss. It may also be in the best interests of the employee to be removed from the workplace to protect the employee from further suspicion. Placement on such a leave is not an accusation. The appropriate Academic Personnel or Human Resources Office shall be consulted regarding any plan to place an employee on such a leave.

## **V. Responsibilities**

### **A. Office of the President**

1. The Senior Vice President--Business and Finance (SVP) shall have overall responsibility for implementation of this Policy.

2. For the Office of the President, the SVP will have the same responsibilities assigned to Chancellors under this Policy.

3. The President, based on advice and consultation with the SVP, the Provost and Senior Vice President--Academic Affairs, the Vice President and General Counsel, and the University Auditor will communicate with The Regents regarding alleged improper governmental activities and investigative results on matters of significance

4. Through the publication of Administrative Guidelines, the SVP shall provide guidance to campuses and laboratories on the creation of local implementing procedures. The SVP shall review and approve each location's implementing procedures, including the appointment of the Locally Designated Official.

### **B. Chancellors**

1. The Chancellor shall be responsible for implementing this Policy at the local level. Authorities and responsibilities delegated to the Chancellor are also assumed by the Laboratory Directors, the Senior Vice President Business and Finance, and the Vice President-Agriculture and Natural Resources, for the Laboratories, the Office of the President and DANR, respectively.

2. The Chancellor shall appoint the Locally Designated Official (with the approval of the SVP) responsible for carrying out this Policy. This individual will chair the Investigations Workgroup established under IV. B. above. The Locally Designated Official should be at the level of Associate Vice Chancellor or higher.

3. The Chancellor shall appoint the standing members of the Investigations Workgroup. The Locally Designated Official may appoint additional regular members and ad hoc members as necessary to address particular issues.

**C. Locally Designated Official**

1. The Locally Designated Official shall be responsible for the establishment and maintenance of local implementing procedures that comply with this Policy and the associated Administrative Guidelines (*to be developed*). The local implementing procedures may, in certain regards such as reporting thresholds, be more stringent than this Policy, but they may not be any less stringent.

2. The Locally Designated Official shall oversee the establishment of mechanisms to ensure compliance with the reporting requirements of this Policy. Principal among these are the local channels for assuring that reports of known or suspected improper governmental activities--which may be orally and/or informally communicated to numerous administrators and faculty and staff employees in supervisory roles--rise to the attention of the Investigations Workgroup.

3. The Locally Designated Official shall convene the Workgroup on a scheduled and ad hoc basis as necessary to promptly address allegations and shall keep the Workgroup apprised of all investigations' progress and status.

**D. Investigative Responsibilities**

1. Internal Audit is responsible for investigations involving allegations of known or suspected misuse of University resources, including fraud, financial irregularities and the financial consequences of other matters under investigation.

2. Campus police are responsible for investigations of known or suspected criminal acts within their jurisdiction. In cases involving principally criminal concerns the campus police should be the lead investigators and others with an investigative interest should work in support of the police investigation.

3. Investigations of personnel matters, scientific misconduct, regulatory non-compliance, student misconduct and other matters are investigated by procedures established locally by each campus, Laboratory, the Office of the President or the Division of Agriculture and Natural Resources, which procedures will not conflict with this policy.

4. In cases involving overlapping interests among investigative bodies, assistance and cooperation will be provided between the investigators based on the relative expertise of the investigative bodies.

**VI. Additional Required Communications**

A. If the results of an investigation cause appropriate University officials to conclude that a crime has probably been committed the results of the investigation shall be reported to the District Attorney or other appropriate law enforcement agency. The UC Police should be the conduit for communications with law enforcement agencies unless the Investigations Workgroup in a particular situation determines a different communications strategy.

B. The Office of the General Counsel shall be consulted as soon as it appears that litigation by or against the University is likely and when issues of legal rights and responsibilities arise.

C. Consultation with the Office of the General Counsel is required before negotiating or-entering into any restitution agreement resulting from the findings of an investigation.