



OFFICE OF THE VICE PROVOST --
ACADEMIC PERSONNEL

OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

March 3, 2014

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

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

Policy Revisions

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

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

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

Proposed Changes to Placement of Presidential Policies in the APM

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

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

“Academic personnel are covered by the University of California Whistleblower and Whistleblower Protection Policies, which are Presidential Policies covering all faculty, other academic appointees, student employees, and staff. Former APM - 190, Appendices A-1 and A-2 are replaced with Appendix A. These Presidential Policies are available at:

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

Systemwide Review

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

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

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

Sincerely,



Susan Carlson
Vice Provost
Academic Personnel

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

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

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Executive Director Fox
Executive Director Rodrigues
Executive Director Tanaka
Executive Director Winnacker
Deputy General Counsel Drown
Senior Counsel Leider
Deputy/UCOP Compliance Officer Lane
Director Chester
Director Jennings
Manager Lockwood
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February 19, 2014

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

Re: Proposed Revisions to the Whistleblower Protection Policy

Dear Susan:

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

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

Overview of the Changes

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

- Ensure that complaints filed under the WPP will be processed within 18 months, given an amendment to the California Whistleblower Protection Act (the "Act") that became

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

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

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

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

Notable Revisions:

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

¹ For Academic Personnel, this would be the processes available under Senate Bylaw 335, APM-140, or an applicable collective bargaining agreement.

Statement), and a few definitions have been modified (Improper Governmental Activity, Interference, Protected Disclosure, Retaliation Complaint, Use of Official Authority or Influence). These changes enable the streamlining of policy language and increase transparency.

B. Section III.B. – Authority and Responsibilities (Section III. in the current policy).

Subsections were added and text was revised to better reflect how the WPP process is administered. Noteworthy changes include:

1. The Chancellor subsection, rather than the Local Procedures subsection, explains who stands in the shoes of the Chancellor for the Laboratory, the Office of the President, and the Division of Agriculture and Natural Resources.
2. The Locally Designated Official (LDO) subsection no longer describes the preliminary review conducted by the LDO as that information is set forth in Section III.D.1., entitled “Preliminary Review by the LDO.” This subsection expressly designates the LDO as the official responsible for ensuring that complaints are processed in a timely manner.
3. A subsection regarding the Systemwide LDO was added and provides that the President will appoint the Systemwide LDO. The current policy states that the Senior Vice President – Business and Finance serves in this role, but a Presidential delegation of authority changed that several years ago. Therefore, this change corresponds with current practice. Consistent with the current policy, this subsection also explains that, when the Complainant is a current or former academic employee (or an applicant for an academic position) or the accused is an academic employee, the duties of the Systemwide LDO will be the responsibility of the Provost and Executive Vice President – Academic Affairs.
4. A subsection regarding the Investigations Workgroup was added to explain who may be part of this group and to clarify the role it may play.

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

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

1. Subsection III.D.1 explains the preliminary review of the complaint that the LDO conducts and includes these important features:
 - i. The LDO will notify a complainant of deficiencies in the complaint, such as the absence of a Sworn Statement or the failure to include any of the required allegations, and give the complainant an opportunity to cure those deficiencies.
 - ii. Complaints that do not meet the criteria for processing under the WPP (e.g., when they lack the required Sworn Statement or are untimely) will nevertheless be reviewed by the LDO to determine whether they should be processed under the

Whistleblower Policy, thereby ensuring violations of University policy are addressed even if the stricter filing requirements of the WPP are not met.

- iii. The complainant will be advised in writing when the complaint is accepted for processing under the WPP and, if only parts of the complaint are accepted, that will be indicated, as well as the reason for the dismissal of any parts of the complaint.
 2. Subsection III.D.2 of the draft provides that the accused employee will be notified of the Retaliation Complaint and investigation when the investigation is initiated and will also be provided with a copy of the Retaliation Complaint at that time. While current policy (Section VI.C.) requires that the accused employee be provided with a copy of the complaint before findings are reached, providing the complaint earlier in the process will give the accused employee more notice and increase the transparency of the process.
 3. Subsection III.D.4 explains key elements of the Investigation, which will be conducted by the Retaliation Complaint Officer (RCO) or other investigator. Notable provisions are discussed below.
 - i. The investigator will, whenever possible, interview both the Complainant and the accused employee.
 - ii. As in current policy (Section VI.3.C.), the accused employee will have an opportunity to submit a written response to the Retaliation Complaint to be included in the record submitted to the Chancellor. However, the requirement that the investigator provide the accused employee with a copy of all documents on which s/he intends to rely in reaching findings has been eliminated.
 - iii. Rights and obligations of witnesses are addressed:
 - (1) The Complainant, the accused employee, and other witnesses must be allowed a reasonable amount of paid time off to participate in interviews.
 - (2) The Complainant, the accused employee(s), and other witnesses have a duty to cooperate with the investigator.
 - (3) The investigator is authorized to conclude the investigation based on the information available if the Complainant or an accused employee fails or refuses to be interviewed.
 - iv. The essential elements of an investigation report are identified.
 - v. The time frame for the investigation is established. The clock will start from the time that the LDO notifies the complainant that the complaint has been accepted for processing. Under current policy, the clock starts when the complaint is referred to the investigator, which is not always known to the complainant. It is contemplated that an investigation will be completed within 6 months of acceptance of the complaint, although the LDO may grant extensions upon request. Importantly, Section I and Section III.F. of the draft require that the complaint be resolved within 18 months of filing. There is no analogous deadline in the current policy.
- E. Section III.E. – Evidentiary Standards (Section V.A. in the current policy). The evidentiary standards remain the same, but the explanation is a more straightforward.
- F. Section III.F. – Decision by the Chancellor. This would replace Section VII in the current policy and is simplified because the WPP will be uncoupled from the other grievance

processes. This Section requires that the Chancellor's decision be issued no later than the 18 months after the complaint was initially filed.

- G. Section III.G. – Consequences for a University Employee Who Violated the Policy. This would replace Section VII.C. of the current policy, which is entitled “Corrective Action of a University Employee.” The new language contemplates that actions other than or in addition to disciplinary consequences could be warranted for an employee found to have violated the WPP. As in current policy, any disciplinary action would be taken in accordance with the existing staff or academic personnel procedures applicable to the employee.
- H. Section III.H. – Referral of Complaints to the Office of the President. While the current policy does identify situations when a complaint should be referred to the Office of the President for handling (Sections IV.B.4., VI.F., and VII.D.), the draft consolidates this information in one section to improve clarity. Because the WPP is being uncoupled from the other grievance processes, this information can also be simplified. The current policy states that, when a complaint is against the Chancellor, LDO, or the LDO's supervisor, the LDO shall request that it be handled at the Office of the President. The draft adds complaints against a Chief Campus Counsel to this list. A new provision authorizes an LDO to request that other complaints be processed at the Office of the President, when appropriate. A new provision clarifies that, when a complaint is processed at the Office of the President and a policy violation is found, the matter is referred back to the location to initiate appropriate action, except in cases where an adverse finding involves the Chancellor, in which case the matter will be referred to the President.
- I. Section III.I. – Appeals (Section VIII of the current policy). The permissible grounds for appeal and the fact that appeals on the merits are not allowed are stated in a more straightforward and user-friendly way than in current policy. A deadline for appeals (within 30 days of the local decision) has been added. This Section expressly states what must be part of the appeal (a statement regarding why the local decision should be overturned and copies of the complaint, the local decision, and the documents and other evidence that support the appeal). This specificity gives the Complainant guidance to prepare a viable appeal and ensures that the Office of the President will have the necessary information to resolve the appeal.
- J. Section III.J. – Reporting Requirements. This would replace Section IX of the current policy, which is entitled “Reports.” Instead of requiring that each location provide a report on July 31 of each year summarizing the number of whistleblower retaliation complaints filed and their disposition, the draft gives the Senior Vice President/Chief Compliance and Audit Officer the flexibility to request that locations provide information regarding complaints filed under the WPP and their status in the method s/he establishes for this purpose.
- K. Complaints alleging interference in violation of the WPP will be processed under the Whistleblower Policy, rather than the WPP, as stated in Section I of the draft.

Susan Carlson
February 19, 2014
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If you have any questions regarding the foregoing or the proposed revisions, please let me know.

Very truly yours,


Stephanie Leider

Enclosure

cc: Sheryl Vacca, Senior Vice President and Chief Compliance and Audit Officer
Karen Petrulakis, Chief Deputy General Counsel

**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.



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

October 4, 2002

UNIVERSITY OF CALIFORNIA

<u>Responsible Officer:</u>	<u>SVP - Chief Compliance & Audit Officer</u>
<u>Responsible Office:</u>	<u>EC - Ethics, Compliance & Audit Services</u>
<u>Issuance Date:</u>	<u>[Issuance Date]</u>
<u>Effective Date:</u>	<u>[Effective Date]</u>
<u>Scope:</u>	<u>This policy applies to all University employees, as well as applicants for University employment.</u>

<u>Contact:</u>	<u>John Lohse</u>
<u>Email:</u>	<u>john.lohse@ucop.edu</u>
<u>Phone #:</u>	<u>510-987-0480</u>

I. POLICY FOR PROTECTION OF WHISTLEBLOWERS FROM RETALIATION AND SUMMARY

II. GUIDELINES FOR REVIEWING RETALIATION COMPLAINTS

III. (WHISTLEBLOWER PROTECTION POLICY)

I. Policy

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

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

II. Scope of Policy and Definitions

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

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

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

IV. DEFINITIONS

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

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

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

[Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints \(Whistleblower Protection Policy\)](#)

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

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

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

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

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

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

C. Illegal Order

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

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

D. Interference

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

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

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

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

V. POLICY TEXT

Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)~~F. Retaliation Complaint~~A. Purpose of Policy

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

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

B. ~~III.~~ Authority and Responsibilities1. A. Local Procedures

The Chancellor⁺ ~~shall~~ will 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.

Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)**2. B.—Locally Designated Official (LDO)**

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

3. Systemwide LDO

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

4. C.—Retaliation Complaint Officer (RCO)

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

5. D.—Chancellor

The Chancellor renders a decision ~~when~~after reviewing the ~~RCO conducts an~~ investigation ~~and~~report. When there is a finding of retaliation, the Chancellor determines the appropriate ~~corrective action, if any, as set forth in~~ action(s) to be taken

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

against the employee who violated this policy, as set forth in Section G. below. The Chancellor may delegate any of his or her duties under this policy, including decision-making authority.

~~Section VII.C. below. The Chancellor may delegate his or her duties under this policy.~~

~~IV. Filing a Complaint~~

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

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

6. Investigations Workgroup~~A. Filing Pursuant to an Applicable Grievance or Complaint Resolution Procedure~~

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

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

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

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

A Retaliation Complaint must include a Sworn Statement and be filed with the LDO or with the Complainant's supervisor within 12 months of the alleged retaliation. If the Retaliation Complaint alleges a pattern of retaliation, it must be filed within 12 months of the most

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

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

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:

1. Required Allegations

a.	Senior Managers	PPSM II-70
b.	Managers and Senior Professionals, Salary Grades VIII and IX	PPSM 71
c.	Managers and Senior Professionals (except Salary Grades VIII and IX) and Professionals and Support Staff	PPSM 70
d.	Exclusively Represented Staff Personnel	The applicable collective bargaining agreement

B. Filing with the LDO

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

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

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

Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)**a. Required Allegations for a Retaliation Complaint alleging retaliation for having made a Protected Disclosure:**

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

~~3. The LDO shall refer a complaint to the RCO for investigation under the following conditions:~~

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

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

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

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

~~e) The complainant is an applicant for employment.~~

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

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

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

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

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

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response to the Illegal Order that constituted a refusal to obey, and (e) the approximate date when the refusal occurred.

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

~~C. Filing with a Supervisor~~

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

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

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

~~D. Filing Requirements and Thresholds~~

D. Processing a Complaint

- ~~1. The retaliation complaint filed with the LDO or the supervisor must set forth in sufficient detail the necessary facts including dates and names of relevant persons. The complaint must contain facts supporting the filing thresholds as set forth below in Sections IV. D. 2. a) through 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. Preliminary Review by the LDO~~

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

a. Sworn Statement

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

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b. Timeliness and Required Allegations

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

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

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

2. ~~In order for a retaliation complaint to be accepted, the complainant must allege that:~~ **Notification of the Accused Employee(s)**
 - a) ~~he or she filed a report or made a protected disclosure alleging improper governmental activities pursuant to current University policy; or~~
 - b) ~~he or she was threatened, coerced, commanded, or prevented by intimidation from filing a report of improper governmental activities; or~~
 - c) ~~he or she refused to obey an illegal order.~~
3. ~~The LDO may consult with the local Investigations Workgroup in determining whether the alleged disclosure is a protected disclosure, and in determining whether an alleged order was an illegal order if the complaint is otherwise eligible for review.~~

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~~V. Administrative Proceedings~~

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

3. Referral to the RCO for Investigation

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

4. Investigation

a. Investigation Process

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

b. The Accused Employee's Opportunity to Comment

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

c. Witnesses

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

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

- ii. The Complainant, the accused employee(s), and the other witnesses have a duty to cooperate with the investigator. This includes a duty to participate in interviews requested by the investigator, to answer the investigator's questions honestly, and to provide documents and other materials requested by the investigator.
- iii. If the Complainant or any accused employee fails or refuses to be interviewed, the investigator will complete the investigation based upon the information available.

d. Investigation Report

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

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

e. Time Frame for Investigation

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

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

E. A. Evidentiary Standards

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

1. Evidentiary Standards for Retaliation Complaints

1. Pursuant to [Consistent with](#) California Government Code Section 8547.10(e) ~~an arbitrator, University or non-University hearing officer, or University committee that hears a retaliation complaint shall be instructed that once the complainant demonstrates,~~ [a Complainant who brings a Retaliation Complaint must demonstrate](#) by a preponderance of the evidence that he or she ~~engaged in activity protected by the University's Whistleblower Policy~~ [either made a Protected Disclosure or refused to obey an Illegal Order](#) and that such activity was a contributing factor in the alleged ~~retaliation~~ [Adverse Personnel Action](#). [If the Complainant has met that standard](#), the burden of proof ~~shall be on~~ [shifts 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 ~~of the employee's engagement in a protected disclosure or refusal of an illegal order~~. ~~If the complaint is investigated by a factfinder, the factfinder shall find facts concerning the burden of proof so that the Chancellor is able to make this determination. If the University fails to meet this~~ [reasons even if the Complainant had not made a Protected Disclosure or refused to obey an Illegal Order](#). ~~If that~~ [burden is not met](#), the employee ~~or applicant for employment~~ shall have a complete affirmative defense to the ~~adverse action which~~ [Adverse Personnel Action that](#) 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 ~~is not prevented~~ from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take ~~a personnel action~~ [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~~ [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 \[Section\]\(#\)](#)

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E. above. If the Chancellor needs more information in order to make a decision, the Chancellor may request further investigation. The Chancellor will issue a written decision and send it to the Complainant and to the accused employee(s).

2. If the Chancellor determines that an employee or employees violated this policy and that the Complainant was harmed as a result of such violation, the Chancellor will award any appropriate relief, which will be identified in the Chancellor's written decision provided to the Complainant. However, the written decision will not describe any action that may need to be taken against any employee found to have violated this policy.
3. In all circumstances, the Chancellor's written decision must be issued and sent to the Complainant no later than 18 months after the complaint was initially filed.

~~**B. Special Evidentiary Standards for Health Care Workers**~~

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

G. Consequences for a University Employee Who Violated the Policy

~~**VI. Complaints Investigated by the RCO**~~

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

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

H. Referral of Complaints to the Office of the President

1. If the complaint is filed under a complaint resolution procedure containing factfinding as specified in University policies as part of the final available step (e.g., Staff Policies 70, 71, and II-70 for some issues), the RCO will serve as the factfinder. When a complaint filed under this policy alleges that the Chancellor, the LDO, the LDO's supervisor, or the Chief Campus

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Counsel engaged in the retaliation that is the subject of the complaint, the LDO (or designee) will request that the Systemwide LDO accept the complaint for processing by the Office of the President.

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

3. ~~If the complaint is heard before an arbitrator, University or non-University hearing officer, or University committee, the RCO will receive a copy of that decision. If the decision does not include findings regarding the alleged interference or retaliation, the RCO shall request that the arbitrator, University or non-University hearing officer, or University committee revise the report to include findings regarding the alleged interference or retaliation. If the arbitrator, University or non-University hearing officer, or University committee subsequently fails to include such findings in the report, the RCO will conduct a separate investigation on that issue only.~~ Systemwide LDO decides to accept a complaint for processing at the Office of the President, the Systemwide LDO will conduct the preliminary review in accordance with D.1. and will refer complaints accepted for processing to an RCO for investigation in accordance with Section D.4. above. In such circumstances, the RCO will present the findings of the investigation to the Systemwide LDO for a decision in accordance with Section F. above. If the Systemwide LDO concludes that an employee has violated this policy, the Systemwide LDO will refer the matter back to the appropriate official at the employee's location to initiate appropriate action in accordance with Section G. above, except in cases where an adverse finding involves the Chancellor, in which case the Systemwide LDO will refer the matter to the President.
 - B. ~~When no University grievance or complaint resolution procedure is available to the complainant, the RCO will conduct the investigation.~~

 - C. ~~Before findings are reached, the RCO (or factfinder, if the RCO has delegated conduct of the investigation) shall provide a copy of the complaint and any documents on which the RCO (or factfinder) intends to rely in reaching findings to the person accused of interference or retaliation. That person shall be provided the opportunity, within locally established time limits, to respond to the complaint and to file a written statement which the RCO (or factfinder) will make part of the record submitted to the Chancellor.~~

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

- ~~D. The RCO shall present findings of fact based on the evidence and factual conclusions to the Chancellor within 120 days from the date on which the complaint was assigned to the RCO unless an extension is granted by the LDO.~~
- ~~E. When an employee has filed a complaint under an applicable personnel policy or collective bargaining agreement grievance or complaint resolution procedure (1) which alleges retaliation for an action protected by this policy, and (2) a final University decision within the meaning of the applicable complaint resolution policy or collective bargaining agreement has been rendered, and (3) the employee later files a timely whistleblower retaliation complaint, the RCO shall review the decision. If there is a finding of retaliation, the RCO shall review it to ensure that the remedy is consistent with the policy, and if not, the RCO shall make a recommendation to the Chancellor. If there is no finding of retaliation, the LDO shall request that the hearing officer, committee, or arbitrator reopen the case and apply the standard of proof specified in Section V. above, and if necessary, find additional facts for application of the standard. If the foregoing does not occur, the RCO shall find additional facts, if necessary, for application of the standard of proof specified in Section V. above. The case shall then be forwarded to the Chancellor for a decision.~~
- ~~F. When it is alleged that the Chancellor, the LDO, or the LDO's supervisor interfered or took the retaliatory action, the Senior Vice President—Business and Finance or the Provost and Senior Vice President—Academic Affairs, whichever applies, shall appoint an RCO to undertake the investigation consistent with the provisions of Section VI.A. through E., above. The RCO shall present findings of fact based on the evidence and factual conclusions to the Senior Vice President—Business and Finance or the Provost and Senior Vice President—Academic Affairs, as appropriate, for a decision. The RCO's findings shall be presented within 120 days from the date on which the complaint was assigned to the RCO unless an extension is granted by the Senior Vice President—Business and Finance or Provost and Senior Vice President—Academic Affairs.~~

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

- ~~1. The RCO shall be provided with a copy of the decision in those cases in which the complaint was heard before an arbitrator, University or non-University hearing officer, or University committee.~~
- ~~2. When there are findings that interference or retaliation has occurred, the RCO will provide that information to the Chancellor. If the decision is final and binding, the Chancellor may not alter the decision in any way, but may through the appropriate channels initiate corrective action against the University employee who interfered or retaliated based on the findings in the decision.~~

Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)**B. ~~Decision Based on Findings of an Investigation Conducted by the RCO~~**

1. ~~The RCO is to present findings of fact based on the evidence and factual conclusions to the Chancellor who shall render a decision in the matter consistent with the standard of proof specified in Section V. above. The Chancellor may remand the findings to the RCO if further investigation is needed before making a decision. The Chancellor will communicate the decision in writing to the complainant and to the person or persons accused of violating the University's Whistleblower Protection Policy.~~
2. ~~The Chancellor's written decision will include any appropriate relief for the complainant, but will not describe any corrective action which may need to be taken.~~

C. ~~Corrective Action of a University Employee~~

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

D. ~~Complaint Against the Chancellor, the LDO, or the LDO's Supervisor~~

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

VIII. ~~Appeal~~

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

- A. ~~the Senior Vice President—Business and Finance if the complainant is a current employee in or applicant for a staff or management position; or~~
- B. ~~the Provost and Senior Vice President—Academic Affairs if the complainant is a current appointee in or applicant for an academic position.~~

IX. ~~Reports~~**I. Appeals**

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

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

J. Reporting Requirements

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

VI. COMPLIANCE / RESPONSIBILITIES

See Section III.J.

VII. PROCEDURES

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

VIII. RELATED INFORMATION

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

IX. FREQUENTLY ASKED QUESTIONS

Not applicable.

[Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints \(Whistleblower Protection Policy\)](#)

X. REVISION HISTORY

[This policy was last revised on October 4, 2002.](#)

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

Document comparison by Workshare Compare on Wednesday, February 05, 2014 10:36:35 AM

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Document 2 ID	file://P:\APM-190-A\WPP draft - version sent to Janet Lockwood on 3-15-13 (4825-6052-3795 1) (3).docx
Description	WPP draft - version sent to Janet Lockwood on 3-15-13 (4825-6052-3795 1) (3)
Rendering set	Standard

Legend:	
Insertion	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	213
Deletions	166
Moved from	18
Moved to	18
Style change	0
Format changed	0
Total changes	415