Reporting and Investigating Improper Governmental Activities

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Agenda/Topics to Be Covered

• Who Investigates What?
• UC Whistleblower Policies
• Do’s and Don’ts
• Exercising Judgment
• Signs of Fraud
ASSOCIATION OF FRAUD EXAMINERS’ CONCLUSION ON DETECTING FRAUD

“Relatively few fraud and abuse offenses are discovered through routine audits. Most fraud is uncovered as a result of tips and complaints from other employees.”

Source: Association of Certified Fraud Examiners, 1996

The charts below display the sources and complaint methods of the 188 investigations opened in FY05.

We opened 188 investigations in FY05 from a variety of sources (Chart 10). The UC hotline received 112 calls during the year (excluding follow-up calls) but only 30 (16%) internal audit investigations were triggered by these calls. The majority of calls contain minor allegations referred to management or referred into another process, (e.g. human resources grievance process), or contain insufficient information to proceed on.

The majority of allegations continue to be received from UC employees (28%) and managers (27%), and nearly two thirds (62%) were reported internally by parties who identified themselves. Reporting parties through the hotline service or other sources remain anonymous in 34% of the complaints received.
The charts below display the types of allegations related to the 188 FY05 investigations, and the outcome of the 129 investigations closed in FY05 since the inception of the IN database.

**Chart 12**

The types of FY05 Investigation Cases are distributed as follows:
- Misfeasance and waste: 18%
- Improper use of UC Resources: 29%
- Fraud or Embezzlement: 6%
- Inconclusive: 10%
- Conflict of Interest: 10%
- Missing/Unaccountable assets: 2%
- Payroll/Time Charge abuse: 3%
- Theft or embezzlement: 8%
- Vendor/Third Party fraud: 9%
- Abuse of Authority, bribery, kickbacks: 3%
- Falsification of University records: 2%

**Chart 13**

The outcomes of the completed FY05 Investigations are as follows:
- Inconclusive: 24%
- Not Substantiated: 18%
- Substantiated: 20%

Chart 13 demonstrates that information received from anonymous sources cannot be substantiated or is inconclusive in 76% of the matters reported. The level of substantiated cases for identified sources is approximately 50% greater than substantiated cases for anonymous sources. Overall, slightly less than half of the allegations received are substantiated.

Investigations reported to UAO increased from 127 in FY04 to 188 in FY05 as a consequence of more inclusive reporting in the IN Database. While the number of cases opened has increased, the distribution of these cases by allegation category is similar to those of FY04.

Who Performs Investigations at UC?

- Academic Personnel
- Animal Research Office
- Disability Coordinator
- Environmental Health & Safety
- Health Sciences Compliance Officer
- Human Resources-
  - EEOC
  - Labor Relations
  - HR
- Risk Management
- Student Judicial Affairs
- Institutional Review Board
- Internal Audit
- Management Overseeing Ad Hoc external process
- Medical Staff
- NCAA Compliance Officer
- Office of the General Counsel
- Privilege & Tenure Committee
- Research Administration
- Retaliation Complaint Officer
- Title IX Officer
- University Police
Investigations

Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities

See Accompanying Overview of Policies
Policy Objective:

To adhere to the spirit of the state whistleblower statutes by creating 1) an environment in which suspected improprieties are brought forward without fear of retaliation and 2) a mechanism that ensures an appropriate institutional response to all suspected improprieties (not just whistleblower reports).

Investigations Policy Overview

- Reporting Process=Funnel to LDO
  - Triage Process by LDO and I-Group
    - Investigation by appropriate jurisdictions
      OR
    - Referral to Management*
  - Communications, Coordination & Monitoring by LDO
- Report to management, IGA source and others as appropriate
Definitions:

Protected disclosure* – any good faith communication that discloses or demonstrates an intention to disclose information that may evidence (1) an improper act 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.

* Not just whistleblowers

Key Concepts & Guidance

- Can be oral
- Can be made to line management OR University official with implied authority to act
- If not recognized as such when made, danger of re-characterization as such when retaliation complaint is made
- “for the purpose of remedying that condition” should normally be assumed
- Malicious intent does not nullify potential validity of allegations.
- Frivolous complaints may themselves be IGA’s
WHAT TO DO WHEN CONFRONTED WITH WHISTLEBLOWER ALLEGATIONS?

DO’s

• Learn UC Policy and reporting channels
• Recognize and be alert to informal communications of allegations (protected disclosures)
• Notify as appropriate:
  ð Locally Designated Official
  ð Internal Audit
  ð Human Resources
  ð Campus police in cases of theft or breach of physical security
• Notify senior management as appropriate
• Contact Internal Audit and Human Resources before taking any personnel action
• **Think about** but don’t act on first steps
• Act with speed
• Hold the matter confidential
**WHAT TO DO WHEN CONFRONTED WITH WHISTLEBLOWER ALLEGATIONS?**

**DON'Ts**

- Dismiss the matter out of hand
- Launch your own investigation
- Confront the accused or otherwise tip them off
- Disclose the matter to any unnecessary parties
- Try to settle or resolve the matter yourself

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**What is “appropriate judgment”?**

- Managers have to be allowed to manage—to do their jobs
- Guidance can’t be absolute—there is no way to remove judgment from the equation
- However, caution is urged to error on the side of disclosure— the manager needs to be held accountable for failing to report matters that later surface as surprises.
- A decision not to report is not a decision not to act, but a decision that the matter can be resolved under the person’s own authority.
- If “dealing with the matter” requires activities outside the scope of normal supervision this is probably something for investigators to do.
**Whistleblower Policy Training**

**IV. Roles, Rights and Responsibilities—**

*Selected key elements*

- Whistleblowers—The intentional filing of a false report is itself an IGA
- Whistleblowers shall refrain from obtaining evidence for which they do not have a right of access.
- Whistleblowers are not investigators and should not act on their own to conduct any investigation activities
- Protection of a whistleblower’s identity will be maintained to the extent possible and within the needs of the law and the investigation.
- Whistleblowers should be told that confidentiality may be breached and penalties imposed.

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**Whistleblower Policy Training**

**IV. Roles, Rights and Responsibilities—**

*Selected key elements*

- Participants have a duty to cooperate with University-authorized investigators
- Confidentiality for participants is on the same terms as for whistleblowers
- Participants are protected from retaliation for having cooperated with an investigation
Whistleblower Policy Training

IV. Roles, Rights and Responsibilities—

Selected key elements

Investigation Subjects:

- May be consulted on reporting “null” findings consistent with the University’s best interests
- Disciplinary or corrective action initiated as a result of an investigation shall adhere to the applicable academic or staff policies and procedures

- should normally be informed of the allegations at the outset of a formal investigation (consider impact on evidence)
- have a right to consult with persons of their choice including University counsel
- should normally be given the opportunity to respond to evidence and findings
- preponderance of the evidence is an adequate standard for administrative proceedings
- have a right to be informed of the outcome of investigation
Avoiding Becoming the Subject of a Financial Investigation

- Document, Document, Document
- Disclose, Disclose, Disclose (fiat lux)
- Manage the Business Not Just the Program
- Don’t Falsify the Books and Records
Personal Tests
Wall Street Journal Test

Personal Tests
Mom Test
Personal Tests
Can you do it with someone watching?

Personal Tests
Make It Policy Test
Signs of Fraud

- Usually work their crimes alone.
- Tend to be compulsive (gambling, abusing alcohol/drugs).
- Spend money freely (their own and/or the University’s).
CHARACTERISTICS OF CLASSIC EMBEZZLERS

• Work themselves into favor by utilizing their compulsiveness on-the-job.
• Rationalize their thefts by thinking they are merely “borrowing.”

• Tend to repeat and escalate their crime.
• Exploit weaknesses in internal controls to cover up their crimes.
• Have ready access on-the-job to cash or its equivalent.
“There is a direct correlation between the employee’s age, education, position and the median loss due to fraud and abuse.”

These factors often reflect the perpetrator’s position in the organization.

Source: Association of Certified Fraud Examiners, 2004
2004 CFE FRAUD STUDY
GENDER DEMOGRAPHICS

Who Steals?
Men - 53%  Women - 47%

How Much?

Source: Association of Certified Fraud Examiners, 2004

DEMOGRAPHICS POSITION IN THE ORGANIZATION

Who Steals?
Executives - 12%  Managers - 34%  Employee - 67%

How Much?

Source: Association of Certified Fraud Examiners, 2004
DETECTING FRAUD RED FLAGS

- Lifestyle and Personality
- Organizational
- Financial Documents
- Accountability and Control

LIFESTYLE AND PERSONALITY RED FLAGS

- Wheeler/Dealer
- Dominating Personality
- Living Beyond Means
- Poor Money Management
- Dissatisfied Worker
- Unable to Relax
- No Vacations or Sick Time
- Close Customer/Vendor Relationships
- Unusual or Change in Personality (alcohol, drugs, sleep, irritable, defensive, argumentative)
- Too Good to Be True Performance
- Excessive Overtime
ORGANIZATIONAL RED FLAGS

- No Communication of Expectations
- Too Much Trust in Key Employees
- Lack of Proper Authorization Procedures
- Lack of Attention to Detail
- Changes in Organizational Structure
- Tendency Toward Crisis Management

From Harvard Internal Audit Home Page

FINANCIAL DOCUMENT RED FLAGS

- Missing Documents
- Alteration of Documents
- Excessive Number of Voided Documents
- Documents Not Numerically Controlled
- Questionable Handwriting or Authorization
- Duplicate Payments
- Inordinate Use of Form 5’s
- Unusual Billing Addresses or Arrangements
- Address of Employee Same as Vendor
- Duplicate or “Home Made” Photocopied Invoices

From Harvard Internal Audit Home Page
ACCOUNTABILITY AND CONTROL
RED FLAGS

• Lack of Separation of Duties
• Lack of Physical Security and/or Key Control
• Weak Links in Chain of Controls and Accountability

From Harvard Internal Audit Home Page

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