

**Special Complaint Resolution Policy for Complaints Regarding Certain Decisions Affecting Bonus and Incentive Payments (Exception to Staff Policy 70 and Staff Policy II-70)**

Effective October 1, 2009

**A. Purpose**

This Policy is being implemented as an exception to Staff Policy 70, Complaint Resolution, and Staff Policy II-70, Complaint Resolution, to provide a complaint resolution process for complaints regarding decisions affecting certain bonus and incentive payments that stem from the Proposal to Freeze Senior Management Group Salaries and Suspend Bonus and Certain Other Variable Pay Plans (Item C1) approved by the Regents at the January 2009 Special Meeting and any amendments thereto, including, but not limited to, the amendments approved by the Regents on March 19, 2009 (Section 6 of the C Report), hereinafter collectively referenced as “the Regents’ Actions.”

This Policy will be reviewed after complaints regarding bonus and/or incentive payment(s) for performance during the 2007-08 fiscal year have been processed and may be amended before complaints regarding bonus and/or incentive payment(s) for performance during subsequent fiscal years are processed.

**B. Scope**

This Policy applies only to complaints by individual employees regarding decisions affecting their bonus and/or incentive payment(s) that stem directly from the Regents’ Actions. For example, if the amount of a bonus or incentive payment was not directly affected by the Regents’ Actions, a complaint regarding the amount of that bonus or incentive payment is outside the scope of this Policy. Complaints within the scope of this Policy are not eligible for review under Staff Policy 70, Complaint Resolution, or Staff Policy II-70, Complaint Resolution, or any other University-wide or local complaint resolution process.

**C. Eligibility**

All staff members who are not covered by a Memorandum of Understanding with an exclusive bargaining agent are eligible to have a complaint reviewed under this Policy.

**D. General Provisions**

**1. Policy Administration**

The Office of the Vice President for Human Resources is the office designated to administer this Policy, receive complaints and appeals filed under this Policy, and maintain documentation related to such complaints and appeals.

## **2. Right to Representation**

A complainant is entitled to be represented by the person of his/her choice throughout this complaint resolution process. However, a supervisory University employee may not serve as the representative for a non-supervisory complainant, and a non-supervisory University employee may not serve as the representative for a supervisory complainant. A representative may be an attorney.

## **3. Pay Status**

If covered by PPSM policies, complainants and their representatives shall be allowed a reasonable amount of paid time off to participate in hearings and meetings convened by the University to consider complaints. UC employees covered by PPSM who are asked to give testimony at hearings under this Policy shall also be allowed a reasonable amount of paid time off for such participation. Employees are required to obtain prior approval for their absences during normal work hours for attendance at such hearings or meetings.

## **4. Methods for Filing**

Complaints and other documents to be submitted to the Vice President for Human Resources under this Policy shall be delivered using one of the following methods:

- a. By U.S. mail or personal delivery to  
Human Resources – 5th Floor  
Attn: Bonus/Incentive Complaint  
1111 Franklin Street  
Oakland, CA 94607
- b. By facsimile transmission to (510) 587-6476 prominently indicating  
“Attn: Bonus/Incentive Complaint”
- c. By email (as an attachment) to [SLRG@ucop.edu](mailto:SLRG@ucop.edu) with “Attn: Bonus/Incentive Complaint” in the subject line of the email

## **5. Time Limits**

If any deadline under this Policy falls on a Saturday, Sunday, or University holiday, that deadline shall be extended to the next business day.

The Vice President for Human Resources may extend the timeframes identified in this Policy for good cause upon timely written request. The Vice President for Human Resources shall promptly notify the complainant and the Executive Director of Executive Compensation and Performance Management of any such extensions.

## **E. Complaint Filing Requirements**

### **1. Complaints**

Complaints under this Policy must be submitted to the Vice President for Human Resources on the official complaint form prior to the applicable deadline and must:

- a. identify the decision(s) regarding bonus and/or incentive payment(s) to be reviewed, including the name of any bonus or incentive plans involved and the relevant performance period;
- b. specify any legal and/or contractual obligations that support a reversal or modification of the decision(s);
- c. specify the remedy requested;
- d. identify and provide the contact information for the complainant's representative, if any; and
- e. be signed and dated.

Any and all documentation that supports the complainant's position should be submitted with the complaint.

### **2. Deadline for Filing**

Complaints requesting review of decisions involving bonus and/or incentive payment(s) for performance during the 2007-08 fiscal year must be received by the Vice President for Human Resources within 30 calendar days of the effective date of this policy. Notwithstanding the foregoing, if a complainant's incentive payment for the 2007-08 fiscal year has been deferred pursuant to the Regents' Actions, a complainant may wait to file a complaint relating to that payment, provided that the complaint is filed within 30 calendar days after the applicable deferral period has ended.

The deadline for filing complaints requesting review of decisions involving bonus and/or incentive payment(s) for performance during the 2008-09 and subsequent fiscal years will be announced.

A complainant may request an extension of time in which to file a complaint under this Policy by submitting such request in writing to the Vice President for Human Resources. A request for extension must be signed and indicate the length of time being requested (up to 30 additional calendar days). The complainant must submit such a request before the complainant's original deadline to file the complaint.

**F. Initial Determinations**

**1. Timeliness, Scope, and Completeness**

The Vice President for Human Resources (or designee) will review the submitted complaints to determine whether they are timely, within the scope of this Policy, and complete. Untimely complaints will be dismissed. Complaints that are, in whole or part, outside the scope of this Policy will be provided with a notice identifying what parts of the complaint are being dismissed because they are outside the scope of this Policy. Incomplete complaints will be returned to the complainant with a notice identifying how the complaint is deficient. Within 15 calendar days of receiving a notice identifying how the complaint is incomplete, the complainant must submit a revised complaint in order to proceed. Resubmitted complaints that are not timely, within the scope of this Policy, or complete will be dismissed.

Complaints determined to be timely and complete will be referred to the hearing officer for fact finding if they are not resolved at the preliminary review stage.

**2. Preliminary Review**

The Vice President for Human Resources (or designee) will conduct a preliminary review of all complaints filed under this Policy and will consult the Chief Human Resources Officer at the complainant's campus, as necessary, to process the complaint. If the complaint and documentation submitted with the complaint demonstrate that the complainant is entitled to the remedy sought, the complaint will be resolved at this stage in favor of the complainant. If the complaint is resolved at the preliminary review stage, the Vice President for Human Resources (or designee) will notify the complainant. Otherwise, the complainant will be contacted regarding referral of the complaint to the hearing officer for fact finding.

**3. Consolidation of Complaints**

The Vice President for Human Resources (or designee) may consolidate complaints filed by different complainants that raise the same or similar issues before they are referred to the hearing officer or in consultation with the hearing officer after such referral.

**G. Fact Finding Process**

**1. Hearing Officer(s)**

One or more non-University hearing officers will serve as the independent fact finder(s) for all complaints reviewed under this Policy. Costs of the hearing officer(s) will be covered by the University.

Hearing officers shall not issue subpoenas or order stenographic records.

## **2. Failure to cooperate**

If the hearing officer determines that a complainant has failed to cooperate in good faith in the scheduling of the hearing, the conduct of the hearing, or any other aspect of the complaint resolution process, the hearing officer may, at his/her discretion, either (a) continue the proceedings without the participation of the complainant and issue a report based on the written materials submitted to date, or (b) suspend the proceedings and recommend to the Vice President for Human Resources that the complaint be dismissed. If the Vice President for Human Resources (or designee) decides that dismissal is warranted, that decision will be promptly communicated to the complainant and the Executive Director of Executive Compensation and Performance Management. A complainant may appeal such a dismissal as set forth below in Paragraph I. If the Vice President for Human Resources (or designee) decides that dismissal is not warranted, he shall notify the hearing officer to continue the proceedings.

## **3. The Hearing**

Subject to the availability of the hearing officer, the Office of the Vice President for Human Resources will attempt to schedule the hearing within 180 calendar days of the filing of the complaint. When feasible, hearings will be conducted via telephone or video conference in order to minimize cost.

At the hearing, the University's position will be presented by the Executive Director of Executive Compensation and Performance Management (the Executive Director) or designee.

At least 7 calendar days prior to the hearing, the complainant shall provide the Executive Director with the evidence the complainant intends to introduce at the hearing (other than documentation previously submitted with the complaint) in his/her case in chief and the names of all witnesses the complainant intends to give testimony at the hearing in the complainant's case in chief. Likewise, the Executive Director (or designee) shall provide the complainant with the evidence the Executive Director intends to introduce at the hearing in the Executive Director's case in chief and the names of all witnesses the Executive Director intends to have testify at the hearing in the Executive Director's case in chief. At the same time, the complainant and the Executive Director shall notify each other and the hearing officer of the time they anticipate will be needed to present their respective cases in chief, with the understanding that the entire hearing should be conducted within 2-4 hours, absent exceptional circumstances. The complainant's communications with the Executive Director should be sent to the Office of the Vice President for Human Resources using one of the methods identified in Paragraph D.4.

The complainant and the Executive Director (or designee) may each have one representative at the hearing. Other than the complainant, the Executive Director (or designee), their respective representatives, the hearing officer, the person recording the hearing, and witnesses (when they are giving testimony), no other persons shall be admitted to the hearing absent mutual agreement of the complainant and the Executive Director.

At the hearing, the complainant and the Executive Director (or designee) shall have the opportunity to:

- a. appear personally before the hearing officer;
- b. present evidence;
- c. be present when witnesses testify and examine and cross-examine witnesses;
- d. be represented by counsel or any other person of his/her own choosing; and
- e. make oral or submit written arguments in support of his/her position.

The Executive Director (or designee) shall begin the hearing by explaining the rationale behind the bonus and/or incentive payment decision(s) under review and shall introduce any supporting evidence or witness testimony. The complainant shall then present his/her argument that legal and/or contractual obligation(s) require the reversal or modification of the decision(s) under review and shall introduce any supporting evidence or witness testimony. Both the Executive Director and the complainant shall have the opportunity to present rebuttal evidence and/or testimony.

The hearing officer shall determine the admissibility of evidence. Formal rules of evidence need not be followed, but the hearing officer shall give appropriate weight to any objections made. The hearing officer shall have the discretion to limit witness testimony that is cumulative or not relevant to the proceedings.

The complainant shall have the burden to prove, by a preponderance of the evidence, that he or she is entitled to the remedy sought.

### **3. Hearing Record**

Hearings shall be recorded either by tape or other method as determined by the University.

### **4. Hearing Officer's Report**

Subsequent to the hearing, the hearing officer shall prepare a written report that contains the following:

- a. a clear statement of the issues under review;
- b. the positions of the complainant and the Executive Director;
- c. a brief summary of the information received;
- d. findings of fact; and
- e. a recommendation regarding how the complaint should be resolved.

Copies of all documentation relied upon by the hearing officer shall be attached to the report.

The hearing officer shall submit the report to the Vice President for Human Resources within 60 calendar days of the conclusion of the hearing. The Vice President for Human Resources shall promptly provide a copy of the hearing officer's report to the complainant and the Executive Director.

The complainant and the Executive Director shall have the opportunity to submit a written response to the hearing officer's report. That response may include any evidence presented at the hearing. Any such response must be submitted to the Vice President for Human Resources within 30 calendar days of the complainant or Executive Director's receipt of the hearing officer's report, as applicable. Thereafter, the Vice President for Human Resources will transmit the hearing officer's report and the responses submitted by the complainant and the Executive Director, if any, to the Complaint Resolution Committee.

## **H. Decision by the Complaint Resolution Committee**

The Complaint Resolution Committee (the Committee) shall consist of:

1. the Executive Vice President for Business Operations (or designee);
2. the Provost and Executive Vice President for Academic Affairs (or designee); and
3. the Senior Vice President for Health Sciences and Services (or designee).

After reviewing the hearing officer's report and any responses to the hearing officer's report submitted by the complainant and/or the Executive Director, the Committee shall (a) determine whether to uphold, modify, or reverse the bonus and/or incentive payment decision(s) under review, and (b) if modifying or reversing the decision(s), determine what remedy, if any, to award the complainant. The Committee shall render a written decision within 60 calendar days of receiving the hearing officer's report. The Committee's decision shall be final and binding. The Vice President for Human Resources (or designee) shall promptly provide a copy of the Committee's decision to the complainant and the Executive Director.

## **I. Appeals**

Decisions made by the Vice President for Human Resources (or designee) to dismiss a complaint as untimely, outside the scope of this Policy, or incomplete at the initial

determination stage or due to the complainant's failure to cooperate may be appealed to the Committee. To appeal such a dismissal, the complainant must submit a written request for appeal to the Vice President for Human Resources within 10 calendar days of receipt of the dismissal decision. The written request for appeal should be signed and dated and specify the reason(s) why the dismissal should be reversed. It should be submitted to the Vice President for Human Resources by personal delivery, mail, facsimile, or as an attachment to an email, as set forth in Paragraph D.4. The Vice President for Human Resources shall refer all timely requests for appeal to the Committee for resolution. The Committee shall render a written decision regarding the appeal within 60 calendar days of receipt. The Committee's decision shall be final and binding. The Vice President for Human Resources (or designee) shall promptly provide a copy of the Committee's decision to the complainant.

**J. Reprisal**

No employee shall be subject to reprisal for using or participating in the complaint resolution process set forth in this Policy.