

AGENDA

COMMITTEE OF THE WHOLE

Meeting: 3:15 p.m. Tuesday, September 22, 2009
Glenn S. Dumke Auditorium

Jeffrey L. Bleich, Chair
Herbert L. Carter, Vice Chair
Roberta Achtenberg
Carol R. Chandler
Debra S. Farar
Kenneth Fong
Margaret Fortune
George G. Gowgani
Melinda Guzman
William Hauck
Raymond W. Holdsworth
Linda A. Lang
A. Robert Linscheid
Peter G. Mehas
Henry Mendoza
Lou Monville
Charles B. Reed, Chancellor
Russel Statham
Glen O. Toney

Consent Items

Approval of Minutes of Meeting of July 7, 2009

Discussion Items

1. Approve the California State University Identity Theft Prevention Implementation Plan, *Action*
2. General Counsel's Report, *Information*

**MINUTES OF THE MEETING OF
COMMITTEE OF THE WHOLE**

**Trustees of The California State University
Office of the Chancellor
Glenn S. Dumke Conference Center
401 Golden Shore
Long Beach, California**

July 7, 2009

Members Present

Jeffrey L. Bleich, Chair
Herbert L. Carter, Vice Chair
Roberta Achtenberg
Carol R. Chandler
Debra S. Farar
Margaret Fortune
George G. Gowgani
Melinda Guzman
William Hauck
Raymond W. Holdsworth
Linda A. Lang
A. Robert Linscheid
Peter G. Mehas
Henry Mendoza
Lou Monville
Charles B. Reed, Chancellor
Russel Statham
Glen O. Toney

Chair Bleich called the meeting to order.

Public Comment

Chair Bleich called for public comment. Steve Teixeira, Secretary APC, stated that APC wants to cooperate with the administration and requested transparency and that APC will go forward in good faith.; Larry Grijalva, APC, Unit 4, stated that members are having second thoughts about having voted in favor of the furloughs because of the impact that it will have on individuals and asked the Board to look at other sources of revenue; Pat Gantt, President CSUEU, stated that the union had reached agreement with the CSU to furloughs to prevent massive layoffs. He also introduced the members of his newly elected bargaining team and fellow officers; Annel Martin, Chair, Bargaining Unit 7 Council, CSUEU, stated that the union was progressive in their approach to reaching the agreement and expressed concern about workload; Ronnie Grant, CSUEU, VP Organizing, stated that communication is key and requested that audio of the

meetings be on-line live and recorded so that all can access the meetings; Alisandra Brewer, CSUEU, Bargaining Unit 9 Vice Chair, stated that they are worried about their membership and said that many people would be lost because of the cut in pay that the furloughs represent; Tessy Reese, CSUEU, Chair, Bargaining Unit 7, stated that she is an LVN at SDSU and expressed her concern over how furloughs will affect the union membership. She asked that the administration ensure that health center monies not be put rumors to rest to take health care reserve monies and self supported, not part of general fund and ask that they take a moment to think about all the employees who are all in this; Henry Lo, Senior Field Deputy, Office of State Senator Gloria Romero, spoke about tuition hikes, layoffs and spending on lobbyists; Russel Kilday Hicks, VP Representation, CSUEU, stated that there are many other issues that must be resolved including lack of increased compensation and unrepresented students doing the work of represented employees. Lillian Taiz, president, CFA, called for bold and collaborative leadership within the CSU and about alternative funding such as AB 656 and SB 218; Susan Green, CFA, CSU Chico asked that campus presidents find alternative ways of funding such as a 0% interest loan from the foundation for the campus share of CMS; Jill Fields, CFA, CSU Fresno, addressed the crumbling of the Master Plan and urged support of the oil severance tax; Tracy Gardner, CFA, CSU Northridge, stated that cuts being implemented will affect so many lecturers; Eric Gallegos, CFA Student, CSU Northridge, encouraged the trustees to look to alternative sources of funding to alleviate the negative effect on students; Jarret Lovell, CFA Fullerton, expressed concern over executive compensation and invited the board to be students for a week to see what students are going through; Karen Kolehmainen, CFA, CSU San Bernardino, spoke about the CFA's requests for assurances that furloughs would mean that jobs are not lost and that workloads would be reduced; Scott Saarheim, CFA California Maritime Academy, spoke about the problems in the legislature and indicated that unprecedented action is needed in these times of unprecedented budget woes; Paivi Hoikkala, CFA, Pomona, spoke about the problem that budget cuts have created such as the summer session at Pomona and asked the board to protect the system and the future of higher education in the state of California; John Kramer, CFA, Sonoma State, spoke about an existing problem with the campus foundation loan which he believes will not be paid and will create a larger budget problem due to loss of interest. He also asked the board to review the leadership at the CSU; Jennifer Colby, CFA CSU Monterey Bay, expressed her concerned about access for students, lack of leadership at the CSU; Bill Mohr, CFA, CSU Long Beach, asked the board to endorse AB 656; Liz Kara, CFA, San José State, requested that the board and the administration provide information to the faculty about what they are being asked to do if they take furloughs.

Chair Bleich thanked all the speakers for their time. He stated that there was not one person on the board who does not understand the value of the faculty and dedication and hard work and service they provide. He further noted that in order to work together it was important that everyone in the system assume the best of one another. He noted that attacks on the commitment, empathy, intelligence, integrity and diligence of members of the board or of the university administration is not conducive to working together to achieve solutions to the huge problems facing the university at this time. There is tremendous budget shortfall in this state, a

\$26 billion deficit that it does not know how to pay for and there is a lack of will on the part of legislators and the people of this state to do their part to fill the shortfall. The deficit is affecting the entire state including the CSU which is looking at \$600 million cut in funds. This is a terrible situation for the CSU and name calling and finger pointing will not help the CSU advance at all. He hoped that everyone does not lose sight of the CSU's ultimate mission and work together to address the challenges that face the CSU.

Chancellor Reed stated that the board would hear a report on the budget, which continues to change on a daily basis, and will also hear a report of where the CSU stands with its labor organizations and contracts.

Chancellor Reed stated that in his forty years in public service, he has never seen such a devastating cut as the one that is facing the CSU at this time. The CSU has been cut by \$700 million dollars in one year and further cuts should be anticipated. The state controller asked the CSU to keep the books open in the event the State needs to borrow money from CSU funds. The state is out of cash and asked the UC and CSU to meet its own payroll. He indicated that the CSU has a cash flow plan that will take the CSU to December so the employees will get paid.

The CSU has a great reputation in the country for about access, quality and diversity and does not want to see that harmed. The chancellor said he wants to ensure that the CSU continues to be a leader in these areas. The chancellor stated concern the legislature and the governor had made the situation worse by not dealing with the problem in a meaningful manner. In their budget, \$716 million was taken from the CSU, that will be replaced by federal stimulus money. Hopefully, the CSU will receive \$640 in federal stimulus funds but these will be one time funds. In the year 2010, the budget problem will still be there. The legislature's inability to pass a budget on time hurts the CSU and causes the CSU to have less reaction time to the proposals and the cuts become larger the longer they take.

Chancellor Reed reported that the CSU had been negotiating about furloughs with the labor organizations for four weeks. As Pat Gantt reported, the CSU reached to a tentative agreement with the CSEU. The chancellor stated that furloughs save jobs and protect benefits such as health insurance and retirement. If everyone took a furlough, we could avoid an expense of \$275 million dollars. However, there is no such thing as a savings. \$534 million is gone. Furloughs defer a major expense, that's all they do. Several of the unions indicated that they were not interested in furloughs. The chancellor said he had directed the presidents to move forward in following the contract provisions to reduce the workforce. He indicated that there are several changes that will be made to Title 5 to allow a two-day per month furlough. No one is exempt from the furlough except for the police. He stated that everything will be done to ensure that students get their classes and that campuses operate as smoothly and as efficiently as possible. Everything is on the table and we must be open to raising revenues further. At the campus level, an additional \$200 million will be cut and this will be done in different ways depending on campus priorities. The presidents will be responsible for cutting their share of that amount from

each of their budgets. In addition, there will be a reduction in the number of students served. There cannot be a \$600 million reduction in funding and expect to continue to serve increasing numbers of students and keep the same level of quality and access. During the next several months there will be a reduction in enrollment for the 2010-2011 year.

Chancellor Reed requested that Ben Quillian, executive vice chancellor and chief financial officer, along with Robert Turnage, assistant vice chancellor for budget, provide a status report on the 2008-2009 and 2009-2010 Support Budgets and Possible Measures to Implement the Support Budget

Dr. Quillian stated that California's current fiscal condition is unprecedented. Based on the Governor's proposal, Dr. Quillian noted the impact on the CSU will exceed a half billion dollars – with additional cuts possible. The risk to the CSU remains substantial and with so much uncertainty it is exceedingly difficult to develop plans of action. Dr. Quillian noted that Mr. Turnage, assistant vice chancellor for budget, has been monitoring conditions of the legislature in Sacramento and together Dr. Quillian and Mr. Turnage are communicating with their counterparts at the University of California. In addition, Dr. Quillian has been in consultation with several CFOs from universities around the country. However, the CSU's situation poses some unique challenges. He explained how significant components of CSU planning depend on agreements with organized labor. Labor discussions have begun with unions regarding furloughs. In addition to furloughs, the CSU is considering student enrollment management strategies, a student fee increase, a salary and hiring freeze, and travel and purchasing restrictions. Dr. Quillian noted that the development of two year campus-specific plans to address overall budget reduction strategies are underway. Then, after a brief review of the February budget package, which provides current legal spending authority, Robert Turnage presented a media presentation highlighting the enormity of the budget gap. He emphasized goals set forth by the chancellor including: serving as many students as possible with quality instruction and related services, protecting as many jobs as possible, and protecting the university's financial integrity. Mr. Turnage made clear that not only is the state in a budget crisis but a cash crisis as well. He explained that the state controller is issuing IOUs not because of the lack of budget or spending authority, but because of a cash shortage—more aptly described by the California Legislative Analyst's Office (LAO) as a “cash abyss.” Without a credible, rebalanced budget to reassure international credit markets, Mr. Turnage noted that the state treasurer will be unable to issue revenue-anticipation notes. Balancing or rebalancing the budget is critical for the state's cash situation. He pointed out that over 85 percent of the CSU's day-to-day operating budget is comprised of employee salaries and benefits. Although there is uncertainty as to the amount of federal stimulus money expected, the CSU's estimate is \$640 million total (across all years). Going forward, CSU planning involves placing all options on the table.

Human Resources/Labor Update

Chancellor Reed then asked Ms. Gail Brooks, vice chancellor of human resources, and Mr.

Richard Barnes, labor consultant, provide a status report on meetings with labor organizations.

Ms. Brooks commented that with a budget that because 85% of the budget is salary and benefits, it is imperative that these expenses be reduced. Recognizing the chancellor's priorities to preserve jobs and to serve students without sacrificing quality, she indicated that several steps had already been implemented; such as, restricting hiring to all but essential positions, freezing general salary increases for vice presidents and executives, and reducing travel. She pointed out that these actions were not enough and not immediate enough to provide the kind of reductions needed.

She explained that reductions in pay were looked at; however, it was not a direction being considered at this time because of the long term impact on employees. Ms. Brooks then discussed the advantages of furlough – they are typically temporary, there are immediate savings, they help preserve jobs, they help preserve pension and health care for most that are affected, and they have less of an impact on instruction.

Ms. Brooks stated that while each collective bargaining agreement has a provision for layoff, there are no provisions for furlough. She added that Title 5 of the California Code of Regulations, which governs non-represented employees, also does not consider furlough. She further stated that proposed revisions to Title 5 will be brought to the Trustees for action at its July 21st meeting which will provide the chancellor with authority to implement furloughs for non-represented employees and to make the determination, if necessary, to have unpaid holidays or reductions in pay.

Ms. Brooks reported that the unions have been approached to consider furloughs and asked Mr. Richard Barnes, labor consultant, to provide an update on negotiations with the various labor organizations.

Mr. Barnes reported on negotiations with CSUEU (Units 2/5/7/9). After polling its members, CSUEU agreed to look at furloughs as an option. A tentative agreement was reached pending ratification by their membership.

He explained that CFA (Unit 3) has advised that they cannot move forward with a membership vote because they have not received information necessary to proceed. After several meetings, there are currently no further plans to meet. Mr. Barnes stated that they are prepared to meet with CFA at any time.

Moving on to APC (Unit 4), Mr. Barnes stated that members had been polled and voted to engage in furlough negotiations. He indicated there have been several meetings and another is scheduled as they continue to work with APC to reach an agreement.

Mr. Barnes reported that the physicians and dentists (UAPD, Unit 1) have informed CSU that they have no interest in furlough. In addition, the International Union of Operating Engineers (Unit 10) indicated they have no interest in pursuing the furlough option.

He noted that SUPA (Unit 8) has been excluded from furlough due to the public safety aspects of those jobs as previously reported by Chancellor Reed.

In closing, Mr. Barnes stated that CSU is currently in fact finding with SETC (Unit 6) and due to the confidentiality of that process, he can only report that the issue has been addressed with SETC as they await the fact finding report.

Chair Bleich thanked everyone for their presentations and said that it was important for everyone to understand what the CSU is facing along with what needs to be done.

Chancellor Reed said that there are not many options to deal with the problem other than to reduce the number of people are served. However, he stated that this option would not be available until 2010. Campuses are working on a plan to cut enrollment for 2010 in order to save expenditures in the amount of \$275 million. Particular attention will be paid so that there is not a huge hole in the freshman class. The other thing that must be done is to reduce expenditures in the amount of \$584. It is hoped that everyone working at the CSU will take a two-day per month furlough, which garners a savings of \$275 million, not quite half of the savings needed. The third area is to look at and adjust fees. Graduate Education fees, out of state student and undergraduate fees have all been looked at. He then spoke about the federal stimulus package, noting that Pell awards for the neediest students have increased. The CSU is the largest recipient of Pell awards in the nation receiving about \$81 million dollars. After a review of this stimulus package, the CSU believes that 187,000 students will not feel the fee increase with the Pell grants and other incentives provided by the Obama administration such as tax credits, work study and increase in Cal Grants. Federal increases in financial aid to CSU students total \$2 billion dollars. He further noted that the stimulus package is tied into a maintenance of effort on all of the budget and not one partner, UC, Community Colleges and CSU cannot act alone. In 2010, the budget must be managed downward with less student and the potential for further reductions in the general fund in February.

Chancellor stated that there are no good choices. He said that the CSU will immediately go to work on a 5 to 8 year view of CSU's needs. The way things are funded now, is not sustainable and the CSU must look to see what it can do for itself.

Chair Bleich stated that no one in this room is responsible for the current problem. However, everyone in this room is responsible for facing the problem which is to make hard choices to address a \$600 million shortfall.

Chancellor Reed indicated that Mr. Hauck reminded him that the CSU is out of time, meaning that presidents will be asked to move forward on contracts for those unions that have not wanted to negotiate a furlough plan for their members. He reminded everyone that when those contracts were written furloughs were not anticipated. The presidents will be asked to begin the lay-off process now in order to follow the letter of the law in those contracts.

Trustee Carter asked how much time it would take to get the layoffs in place. The chancellor responded that it must be done within two weeks. The unions would have 10 days to negotiate a furlough plan if they wished to avoid lay-offs.

Trustee Mehas inquired if things could change. The chancellor responded that things could get worse in because in just one week the deficit went from \$23 to \$24 billion dollars. So, the plan outlined is based upon what is known now.

Chair Bleich stated that nothing could be taken for granted given the action of the legislature to date. He noted that furloughs are the least destructive of the three options to reduce staff expenditures. Salary reductions affect health benefits and pensions and lay-offs mean students don't get classes.

Chair Bleich stated that the CSU has some of the best leadership. He noted that after having served some time in Washington, DC, that Chancellor Reed is one of the most respected educational leaders in the country and the CSU is lucky to have him.

Trustee Carter thanked the chancellor and the staff for the fairness of the presented plans. It is something that the board does not like to hear, but it is something that we need to hear prior to making the decision. This has been an excellent demonstration of leadership.

Chancellor Reed stated that he would prepare an agenda to be released on July 10 for the July 21 one day board meeting.

Chair Bleich adjourned the committee meeting.

COMMITTEE OF THE WHOLE

Approve the California State University Identity Theft Prevention Implementation Plan

Presented by

Benjamin F. Quillian
Executive Vice Chancellor and
Chief Financial Officer

Amir Dabirian
Assistant Vice Chancellor and CIO
Information Technology Services

Summary

This agenda item proposes:

- Adoption of the proposed California State University Identity Theft Prevention Implementation Plan to address the Federal Trade Commission's Red Flags Rule, and
- Delegation of authority to the Executive Vice Chancellor and CFO, or his/her designee, to oversee and administer the CSU Identity Theft Prevention Implementation Plan, including authority to modify or amend the implementation plan.

Attachment "A" is the proposed CSU Identity Theft Prevention Implementation Plan.

Based on the provisions described in the Federal Trade Commission's Red Flags Rule, Board of Trustees approval of the CSU Identity Theft Prevention Implementation Plan is required.

Background

In 2003, Congress enacted the Fair and Accurate Credit Transactions Act of 2003 (FACTA), which required "creditors" to adopt policies and procedures to prevent identity theft. These requirements are described in section 114 of FACTA and are known as the "Red Flags Rule". In November 2007, final rules implementing section 114 of FACTA were issued by the Federal Trade Commission (FTC), but because certain aspects of the rules needed clarification, the FTC has delayed enforcement of the new rules until November 1, 2009.

The Red Flags Rule applies to financial institutions and "creditors" that offer or maintain accounts that provide for multiple transactions primarily for personal, family, or household

COW

Agenda Item 1

September 22-23, 2009

Page 2 of 3

purposes. The definition of “creditor” is broad, and includes any entity that regularly extends credit. Institutions are considered creditors if they provide goods or services that are not fully paid for in advance or allow individuals to defer payment for goods or services. The rule does not apply if the institution is merely accepting a credit card for payment.

There are many instances where CSU campuses meet the definition of a “creditor” under the Red Flags Rule. Executive Order 632 provides express permission for campuses to institute installment payment plans for the State University Fee and nonresident tuition. Many, if not all campus housing programs also accept installment payments. There also are a number of activities in the financial aid area, such as Perkins Loan transactions, that bring campuses within the Act’s definition of a creditor.

An institution that meets the definition of a “creditor” must then determine if any of the accounts it handles are “covered accounts” as defined by the Act. Under the Act, a covered account is an account used mostly for personal, family, or household purposes, and that involves multiple payments or transactions. Covered accounts include credit card accounts; mortgage loans; automobile loans; margin accounts; cell phone accounts; utility accounts; checking accounts; and, savings accounts. A covered account is also any account for which there is a foreseeable risk of identity theft. The Red Flags Rule and the FTC’s guidance on it indicate that covered accounts include certain types of arrangements in which an individual establishes a "continuing relationship" with the enterprise, including billing for previous services rendered. Although the definition of a covered account is neither very clear nor specific, it appears that any type of account or payment plan that involves multiple transactions or multiple payments in arrears is likely a "covered account." Thus, it seems that the EO 632 installment payment plan accounts, housing program installment payment accounts, and various accounts in the financial aid area are among the type of accounts that qualify as covered accounts.

Red Flags are defined as those events which should alert an organization to potential risk of identity theft. Under the Red Flags Rule, the CSU is required to establish a documented Identity Theft Prevention program that provides for the identification, detection, and response to patterns, practices, or specific activities that could indicate identity theft.

California State University Compliance with the FTC’s Red Flags Rule

In order to achieve systemwide compliance with the Red Flags Rule, Information Technology Services (ITS) at the Office of the Chancellor has developed a CSU Identity Theft Prevention Implementation Plan (see Attachment “A”) for campuses to use, as applicable. The Assistant Vice Chancellor/CIO of ITS will work with appropriate stakeholders (e.g., campus management, financial services, security, and business officers and Office of the University Auditor) to ensure campus compliance with the CSU Identity Theft Prevention Implementation Plan.

The CSU Identity Theft Prevention Implementation Plan requires campuses to develop and implement a written campus-specific Identity Theft Prevention program. As outlined in the systemwide Implementation Plan, the campus program should detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. The campus program must include reasonable policies and procedures to:

- Identify covered accounts;
- Identify relevant Red Flags for each type of covered accounts;
- Detect Red Flags;
- Respond to Red Flags; and
- Ensure the campus program is updated periodically to identify additional Red Flags and to reflect changes in risk to individuals from identity theft.

In designing its program, a campus may incorporate, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers from identity theft.

The following resolution is presented for approval:

RESOLVED, by the Board of Trustees of the California State University, that in compliance with Part 681 of the Code of Federal Regulations implementing Section 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003 and pursuant to the Federal Trade Commission's Red Flags Rule, the Board of Trustees has adopted the Identity Theft Prevention Implementation Plan as set forth fully in Attachment A of Agenda Item 1 for the Committee of the Whole at its September 22-23, 2009 meeting, and be it further

RESOLVED, that authority to oversee and administer the CSU Identity Theft Prevention Implementation Plan, including authority to modify or amend the Implementation Plan, is hereby delegated to the Executive Vice Chancellor and Chief Financial Officer, or the Executive Vice Chancellor's designee.

California State University Identity Theft Prevention (“Red Flags Rule”) Implementation Plan

VERSION CONTROL

Document Title: California State University Identity Theft Prevention (“Red Flags Rule”) Implementation Plan
Author: C. Washington

Date	By	Action	Pages

Review/Approval History

Date	By	Action	Pages

Acknowledgements:

The Information Technology Services Office greatly appreciates the support of the following individuals who assisted in the development of this implementation plan:

- Laura Carrizales, CSUSB
- Andrew Jones, OGC
- Sheryl Okuno, CSULA
- Maryann S. Rozanski, CSULB

TABLE OF CONTENTS

Review/Approval History	2
Acknowledgements:.....	2
1.0 INTRODUCTION.....	4
2.0 PURPOSE.....	5
3.0 DEFINITIONS	5
4.0 THE PROGRAM.....	5
4.1. Program Requirements	6
4.2. Identify Covered Accounts.....	6
4.3. Identify Relevant Red Flags.....	6
4.3.1. Categories of Red Flags	6
4.3.1.1. Alerts, Notifications or Warnings from Consumer Reporting Agency	7
4.3.1.2. Suspicious Documents	7
4.3.1.3. Suspicious Personal Identifying Information.....	7
4.3.1.4. Unusual Use of, or Suspicious Activity Related to, the Covered Account	8
4.3.1.5. Notice from Persons Regarding Possible Identity Theft in Connection with Covered Accounts Held by the Campus	9
4.4. Detect Red Flags.....	9
4.5. Respond to Red Flags	9
5.0 PROGRAM ADMINISTRATION.....	10
5.1. Reporting Requirements	10
5.2. Program Review.....	10
5.3. Staff Training	11
5.4. Oversight of Service Provider Arrangements	11
APPENDIX A: Potential Covered Accounts.....	12
APPENDIX B: California State University, Long Beach - Red Flags Program.....	13

1.0 INTRODUCTION

In 2003, Congress enacted the Fair and Accurate Credit Transactions Act of 2003 (FACTA), which required “creditors” to adopt policies and procedures to prevent identity theft. These requirements are described in section 114 of FACTA and are known as the “Red Flags Rule”. In November 2007, final rules implementing section 114 of FACTA were issued by the Federal Trade Commission, but because certain aspects of the rules needed clarification, the FTC has delayed enforcement of the new rules until November 1, 2009.

The Red Flags Rule applies to financial institutions and “creditors” that offer or maintain accounts that provide for multiple transactions primarily for personal, family, or household purposes. The definition of “creditor” is broad, and includes any entity that regularly extends credit. Institutions are considered creditors if they provide goods or services that are not fully paid for in advance or allow individuals to defer payment for goods or services. The rule does not apply if the institution is merely accepting a credit card for payment.

There are many instances where CSU campuses meet the definition of a “creditor” under the Red Flags Rule. Executive Order 632 provides express permission for campuses to institute installment payment plans for the state university fee and nonresident tuition. Many, if not all, campus housing programs also accept installment payments. There also are a number of activities in the financial aid area, such as Perkins Loan transactions, that bring campuses within the Act’s definition of a creditor.

An institution that meets the definition of a “creditor” must then determine if any of the accounts it handles are “covered accounts” as defined by the Act. Under the Act, a covered account is one used mostly for personal, family, or household purposes, and that involves multiple payments or transactions. Covered accounts include credit card accounts; mortgage loans; automobile loans; margin accounts; cell phone accounts; utility accounts; checking accounts; and ,savings accounts. A covered account is also any account for which there is a foreseeable risk of identity theft. The Red Flags Rule and the FTC’s guidance on it indicate that covered accounts include certain types of arrangements in which an individual establishes a "continuing relationship" with the enterprise, including billing for previous services rendered. Although the definition of a covered account is neither very clear nor specific, it appears that any type of account or payment plan that involves multiple transactions or multiple payments in arrears is likely a "covered account." Thus, it seems that EO 632 installment payment plan accounts, housing program installment payment accounts, and various accounts in the financial aid area are among the type of accounts that qualify as covered accounts.

Red Flags are defined as those events which should alert an organization to potential risk of identity theft. Under the Red Flags Rule, the CSU is required to establish a documented Identity Theft Prevention program that provides for the identification, detection, and response to patterns, practices, or specific activities that could indicate identity theft.

2.0 PURPOSE

The CSU Identity Theft Prevention Implementation Plan is designed to help campuses develop an identity theft prevention program that complies with the Red Flags Rule. In designing its program, a campus may incorporate, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers or to the institution from identity theft.

3.0 DEFINITIONS

Account means a continuing relationship established by a person with a campus to obtain a product or service for personal, family, household or business purposes. Account includes:

- An extension of credit, such as the purchase of property or services involving a deferred payment; and
- A deposit account

A **campus** includes any campus or satellite campus of the California State University and the Chancellor's Office of the California State University.

A **creditor** is a person or entity that regularly extends, renews, or continues credit and any person or entity that regularly arranges for the extension, renewal, or continuation of credit. Examples of activities that indicate a college or university is a "creditor" are:

- Participation in the Federal Perkins Loan program;
- Participation as a school lender in the Federal Family Education Loan Program;
- Offering institutional loans to students, faculty or staff; or
- Offering a plan for payment of tuition or fees throughout the academic term, rather than requiring full payment at the beginning of the term.

A **covered account** is a consumer account designed to permit multiple payments or transactions. These are accounts where payments are deferred and made by a borrower periodically over time such as a tuition or fee installment payment plan.

Identity Theft is the act of fraud committed using the personal identifying information of another person.

A **red flag** is a pattern, practice or specific activity that indicates the possible existence of identity theft.

Service provider means a person that provides a service directly to the campus.

4.0 THE PROGRAM

4.1. Program Requirements

Each campus that offers or maintains one or more covered accounts must develop and implement a written Identity Theft Prevention Program (“**Program**”) that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or the management of any existing covered account.

The **Program** must include reasonable policies and procedures to:

- Identify covered accounts;
- Identify relevant Red Flags for each type of covered accounts;
- Detect Red Flags;
- Respond to Red Flags; and,
- Ensure the campus program is updated periodically to identify additional Red Flags and to reflect changes in risk to individuals from identity theft.

In designing its program, a campus may incorporate, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers or to the institution from identity theft.

4.2. Identify Covered Accounts

Each campus must periodically determine whether it offers or maintains covered accounts. Covered accounts may include:

- Student loans.
- Installment payments and short term loans.
- Accounts that are created for ongoing services and allow students to reimburse the University when billed over a period of time.
- Any type of collection account.

Examples of potential covered accounts are provided in Appendix A.

4.3. Identify Relevant Red Flags

As stated in the definition, a “Red Flag” is a pattern, practice, or specific activity that indicates the possible existence of identity theft. In order to identify relevant red flags, University departments that offer and manage covered accounts must review and evaluate the methods used to open covered accounts, to allow access to covered accounts, and any previous known occurrences of identity theft.

4.3.1. Categories of Red Flags

The **Program** should include relevant Red Flags from the following categories, as appropriate. Examples of Red Flags from each of these categories are provided below.

4.3.1.1. Alerts, Notifications or Warnings from Consumer Reporting Agency

Examples of Red Flags include:

- A fraud or active duty alert is included with a consumer report.
- A consumer reporting agency provides a notice of credit freeze in response to a request for a consumer report.
- A consumer reporting agency provides a notice of address discrepancy.
- A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or consumer, such as:
 - A recent and significant increase in the volume of inquiries;
 - An unusual number of recently established credit relationships;
 - A material change in the use of credit, especially with respect to recently established credit relationships; or
- An account that was closed for cause or identified for abuse of account privileges by a campus.

4.3.1.2. Suspicious Documents

Examples of Red Flags include:

- Documents provided for identification appear to have been altered or forged.
- The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.
- Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.
- Other information on the identification is not consistent with readily accessible information that is on file with the campus, such as a signature card or a recent check.
- An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.

4.3.1.3. Suspicious Personal Identifying Information

Examples of Red Flags include:

- Personal identifying information provided is inconsistent when compared against external information sources used by the campus. For example:
 - The address does not match any address in the consumer report; or
 - The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.
- Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.
- Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the campus. For example:

- The address on an application is the same as the address provided on a fraudulent application; or
- The phone number on an application is the same as the number provided on a fraudulent application.
- Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the campus. For example:
 - The address on an application is fictitious, a mail drop, or a prison; or
 - The phone number is invalid, or is associated with a pager or answering service.
- The SSN provided is the same as that submitted by other persons opening an account or other customers.
- The address or telephone number provided is the same as or similar to the address number or telephone number submitted by an unusually large number of other persons opening accounts or other customers.
- The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.
- Personal identifying information provided is not consistent with personal identifying information that is on file with the campus.
- For campuses that use challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

4.3.1.4. Unusual Use of, or Suspicious Activity Related to, the Covered Account

Examples of Red Flags include:

- Shortly following the notice of a change of address for a covered account, the campus receives a request for a new, additional, or replacement card or a cell phone, or for the addition of authorized users on the account.
- A new revolving credit account is used in a manner commonly associated with known patterns of fraud patterns. For example:
 - The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (e.g., electronics equipment or jewelry); or
 - The customer fails to make the first payment or makes an initial payment but no subsequent payments.
- A covered account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example:
 - Nonpayment when there is no history of late or missed payments;
 - A material increase in the use of available credit;
 - A material change in purchasing or spending patterns;
 - A material change in electronic fund transfer patterns in connection with a deposit account; or
 - A material change in telephone call patterns in connection with a cellular phone account.
- A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

- Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account.
- The campus is notified that the customer is not receiving paper account statements.
- The campus is notified of unauthorized charges or transactions in connection with a customer's covered account.

4.3.1.5. Notice from Persons Regarding Possible Identity Theft in Connection with Covered Accounts Held by the Campus

Examples of Red Flags include:

- The campus is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

4.4. Detect Red Flags

The **Program's** policies and procedures should address the detection of Red Flags in connection with the opening of covered accounts and existing covered accounts, such as by:

- Obtaining identifying information about, and verifying the identity of, a person opening a covered account;
- Authenticating individuals;
- Monitoring transactions; and
- Verifying the validity of change of address requests, in the case of existing covered accounts.

4.5. Respond to Red Flags

The **Program's** policies and procedures should provide for appropriate responses to Red Flags the campus has detected that are commensurate with the degree of risk posed. In determining an appropriate response, a campus should consider aggravating factors that may heighten the risk of identity theft, such as a data security incident that results in unauthorized access to an individual's account records held by the campus or third party, or notice that an individual has provided information related to a covered account held by the campus to someone fraudulently claiming to represent the campus or to a fraudulent website.

Appropriate responses may include the following:

- Monitoring a covered account for evidence of identity theft;
- Contacting the individual;
- Changing any passwords, security codes, or other security devices that permit access to a covered account;
- Reopening a covered account with a new account number;
- Not opening a new covered account;

- Closing an existing covered account;
- Not attempting to collect on a covered account or not selling a covered account to a debt collector;
- Notifying law enforcement; or
- Determining that no response is warranted under the particular circumstances.

5.0 PROGRAM ADMINISTRATION

Each campus must provide for the continued administration of the **Program**. The campus President (or his/her designee) must approve the initial campus program and assign program oversight responsibilities to a campus program administrator. The program administrator must be a campus senior manager (e.g., CIO, VP of Administration or Enrollment Management, etc.).

Program administration responsibilities include:

- Developing and implementing the campus program;
- Reviewing reports prepared by staff regarding compliance with the campus **Program**;
- Approving material changes to the **Program** as necessary to address changing identity theft risks;
- Training staff, as necessary, to implement the **Program** effectively; and
- Exercising appropriate and effective oversight of service provider arrangements.

Campuses are encouraged to share their Identity Theft Prevention Programs. CSULB has agreed to share its program with the CSU community. See Appendix B for a copy of the Long Beach program.

5.1. Reporting Requirements

Staff responsible for implementing the **Program** must submit a compliance report to the program administrator *at least annually*. The report should address material matters related to the **Program** and evaluate issues such as:

- The effectiveness of the policies and procedures in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts;
- Service provider arrangements;
- Significant incidents involving identity theft and management's response; and,
- Recommendations for material changes to the **Program**.

5.2. Program Review

The program administrator should review the **Program** (including the Red Flags determined to be relevant) annually to reflect changes in risks to individuals from identity theft, based on factors such as:

- The experience of the campus with identity theft;
- Changes in methods of identity theft;

- Changes in methods to detect, prevent and mitigate identity theft;
- Changes in the types of accounts that the campus offers or maintains; and,
- Changes in service provider agreements.

The Systemwide Office of Information Security Management will periodically validate with the campus program administrator the progress and efforts made related to compliance with this implementation plan.

5.3. Staff Training

The program administrator should work with campus departments to ensure staffs are trained as necessary to carry out the requirements of the program effectively.

5.4. Oversight of Service Provider Arrangements

The University remains responsible for compliance with the Red Flags Rule even if it outsources operations to a third party service provider. Whenever a campus engages a service provider to perform an activity in connection with one or more covered accounts, the campus should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft. For example, a campus could require the service provider by contract to have policies and procedures to detect relevant Red Flags that may arise in the performance of the service provider's activities, and either report the Red Flags to the campus, or to take appropriate steps to prevent or mitigate identity theft.

The Red Flags Rule also applies to "financial institutions," generally defined as banks, thrifts, credit unions, and other institutions that offer transaction accounts¹. Colleges and universities that offer students the option of having their student ID also operate as a Visa or MasterCard debit card should coordinate with the bank through which such services are offered to ensure that the bank has an adequate identity theft prevention program in place.

¹ A transaction account is a deposit or other account from which the account holder may make payments or transfers. Transaction accounts including checking accounts, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts. See 12 U.S.C. §461(b)(1)(C).

APPENDIX A: Potential Covered Accounts

I. General Financial Services

- a. Campus Tuition and Fee Deferred Payment Plans
- b. Campus Billing and Accounts Receivable
- c. Visiting Scholar Payments
- d. International Student Plans
- e. Internal Student Plans
- f. Payroll
- g. University Corporate Credit Card
- h. Campus Student ID Debit Card

II. Financial Aid

- a. Scholarships
- b. Tuition Remission
- c. Fellowships

III. Student and Parent Loans

- a. Stafford Loans
- b. Perkins Loans
- c. Plus Loans
- d. Institutional Loans
- e. Campus Emergency Loans for Students
- f. Parent Loans
- g. Faculty Loans
- h. Employee and Staff Loans
- i. Mortgage Origination Program (MOP) Loans

IV. Housing

- a. Student and/or Student Family
- b. Faculty Rental and For Sale

V. Health Services

- a. Student Health Insurance Plans
- b. Faculty Health Insurance Plans
- c. Employee and Staff Insurance Plans
- d. Student Health Centers

VI. Miscellaneous

- a. Dining Services
- b. Athletic Services
- c. Counseling Services
- d. Continuing Education
- e. Human Resources

APPENDIX B: California State University, Long Beach - Red Flags Program



CALIFORNIA STATE UNIVERSITY, LONG BEACH

Subject:	Identity Theft Red Flag and Security Incident Reporting Procedure		
Department:	Information Security Management and Compliance	Reference No.:	
Division:	Administration and Finance	Issue Date:	January 2009
References:	<ul style="list-style-type: none">• Fair and Accurate Credit Transactions Act of 2003 (FACTA)• California Information Practices Act (IPA) of 1977	Revision Date:	
Web Links:	<ul style="list-style-type: none">• http://daf.csulb.edu/offices/vp/information_security	Expiration Date:	N/A

I. PURPOSE

The purpose of the *Identify Theft Red Flag and Security Incident Reporting Procedure* is to provide information to assist individuals in 1) detecting, preventing, and mitigating identity theft in connection with the opening of a “covered account” or any existing “covered account” or who believe that a security incident has occurred and 2) reporting a security incident.

II. BACKGROUND

Security Incident

Existing California law requires that any organization that owns computerized data that includes personal information shall disclose any breach of security of the system following discovery or notification of the breach in the security of the system to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

Red Flag Rules

In 2003, the U.S. Congress enacted the Fair and Accurate Credit Transaction Act of 2003 (FACT Act) which required the Federal Trade Commission (FTC) to issue regulations requiring “creditors” to adopt policies and procedures to prevent identify theft.

In 2007, the Federal Trade Commission (FTC) issued a regulation known as the Red Flag Rule. The rule requires “financial institutions” and “creditors” holding “covered accounts” to develop and

implement a written identity theft prevention program designed to identify, detect and respond to “Red Flags.”

III. DEFINITIONS

Covered Account – A covered account is a consumer account designed to permit multiple payments or transactions. These are accounts where payments are deferred and made by a borrower periodically over time such as a tuition or fee installment payment plan.

Creditor – A creditor is a person or entity that regularly extends, renews, or continues credit and any person or entity that regularly arranges for the extension, renewal, or continuation of credit. Examples of activities that indicate a college or university is a “creditor” are:

- Participation in the Federal Perkins Loan program;
- Participation as a school lender in the Federal Family Education Loan Program;
- Offering institutional loans to students, faculty or staff;
- Offering a plan for payment of tuition or fees throughout the semester, rather than requiring full payment at the beginning of the semester.

Personal Information – Specific items of personal information identified in CA Civil Code Sections 1798.29 and 1798.3. This information includes an individual’s first name or first initial and his or her last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted: Social Security Number, driver’s license/California identification card number, health insurance information, medical information, or financial account number such as credit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account.

Red Flag – A red flag is a pattern, practice or specific activity that indicates the possible existence of identity theft.

Security Incident – A collection of related activities or events which provide evidence that personal information could have been acquired by an unauthorized person.

IV. IDENTIFICATION OF RED FLAGS

Broad categories of “Red Flags” include the following:

- **Alerts** – alerts, notifications, or warnings from a consumer reporting agency including fraud alerts, credit freezes, or official notice of address discrepancies.
- **Suspicious Documents** – such as those appearing to be forged or altered, or where the photo ID does not resemble its owner, or an application which appears to have been cut up, re-assembled and photocopied.
- **Suspicious Personal Identifying Information** – such as discrepancies in address, Social Security Number, or other information on file; an address that is a mail-drop, a prison, or is

invalid; a phone number that is likely to be a pager or answering service; personal information of others already on file; and/or failure to provide all required information.

- **Unusual Use or Suspicious Account Activity** –such as material changes in payment patterns, notification that the account holder is not receiving mailed statement, or that the account has unauthorized charges;
- **Notice from Others Indicating Possible Identify Theft** –such as the institution receiving notice from a victim of identity theft, law enforcement, or another account holder reports that a fraudulent account was opened.

V. DETECTION OF RED FLAGS

Detection of Red Flags in connection with the opening of covered accounts as well as existing covered accounts can be made through such methods as:

- Obtaining and verifying identity;
- Authenticating customers;
- Monitoring transactions

A data security incident that results in unauthorized access to a customer's account record or a notice that a customer has provided information related to a covered account to someone fraudulently claiming to represent the University or to a fraudulent web site may heighten the risk of identity theft and should be considered Red Flags.

VI. RESPONSE TO RED FLAGS

The detection of a Red Flag by an employee shall be reported to the Director, Information Security Management and Compliance and their appropriate administrator. Based on the type of red flag, the appropriate administrator and the Director, Information Security Management and Compliance together with the employee will determine the appropriate response.

VII. SECURITY INCIDENT REPORTING

An employee who believes that a security incident has occurred, shall immediately notify their appropriate administrator and the Director, Information Security Management and Compliance. After normal business hours, notification shall be made to the University police (562) 985-4101.

VIII. SERVICE PROVIDERS

The University remains responsible for compliance with the Red Flag Rules even if it outsources operations to a third party service provider. The written agreement between the University and the third party service provider shall require the third party to have reasonable policies and procedures designed to detect relevant Red Flags that may arise in the performance of their service provider's activities. The written agreement must also indicate whether the service provider is responsible for

notifying only the University of the detection of a Red Flag or if the service provider is responsible for implementing appropriate steps to prevent or mitigated identify theft.

IX. TRAINING

All employees who process any information related to a covered account shall receive training following appointment on the procedures outlined in this document. Refresher training may be provided annually.

FURTHER INFORMATION

Information Security Management and Compliance
iso@csulb.edu.
(562) 985-4862

COMMITTEE OF THE WHOLE

General Counsel's Report

Presentation By

Christine Helwick
General Counsel

Litigation Report

This is the semi-annual report on the status of significant litigation confronting the CSU, and is presented for information. "Significant" for purposes of this report is defined as litigation: (1) with the potential for a systemwide impact on the CSU; (2) that raises significant public policy issues; (3) brought by or against another public agency; or (4) which, for other reasons, has a high profile or is likely to generate widespread publicity. *New information since the date of the last report is printed in italics.*

The cases contained in this report have been selected from 73 currently active litigation files; in one, CSU is the party pursuing relief.

New Cases

Barour (dba Dolcini Caffè Espresso) v. CSULA Auxiliary Services, et al.

Board of Trustees v. Barour, dba Dolcini Caffè Espresso, et al.

Los Angeles County Superior Court

A campus coffee shop owner has sued the CSULA auxiliary and the university, seeking a declaration from the court that he has the right to operate on campus through 2023 pursuant to his license agreements with the auxiliary. He also claims that the auxiliary breached the license agreements by converting its coffee shop into a Starbucks-branded franchise named "Café L.A.". CSULA has filed a motion, which will be heard on September 23, 2009, to challenge the complaint for failing to state a cause of action.

CSULA brought a separate unlawful detainer action to evict the coffee shop owner under a license agreement with its auxiliary. The ground lease permits CSULA to regain possession of the land underlying the coffee shop to meet the demands and educational objectives of the university. The coffee shop owner claims that the open space study area planned is not needed by students and, therefore, his possession of the premises must continue until 2023. Trial will be scheduled for October 6, 2009.

Baxter-White v. CSU, et al.

San Diego County Superior Court

Kathryn Baxter-White, a former temporary SDSU student health center accounting technician, sued CSU and three individuals for alleged retaliation under the state whistleblower statutes, alleging she was retaliated against for complaining that SDSU incorrectly billed a Medi-Cal program. The lawsuit requests that the court reverse the University's determination that there was no whistleblower retaliation, and allow her to pursue her claim for money damages for breach of contract and violation of the whistleblower statutes.

CFA v. PERB

Court of Appeal

The California Faculty Association filed an unfair labor practice charge asserting, among other things, that CSU unilaterally changed its parking practices to bar union employees from using new parking facilities that are limited to students who are paying the higher parking fees. An administrative law judge concluded that use of parking facilities is within the scope of bargaining and that CSU had committed an unfair labor practice. CSU appealed. The full PERB Board reversed the decision and held that parking location is outside the scope of bargaining, and thus there was no unfair labor practice. CFA filed a petition challenging this outcome in the Court of Appeal. The Court of Appeal disagreed with PERB, but remanded the case back to address whether under all of the circumstances this constitutes an unfair labor practice. Upon re-review, PERB again ruled in favor of CSU. CFA filed this new petition challenging the new PERB decision but was late in its filing. The Court of Appeal has dismissed the appeal because it was untimely.

Corral v. CSU, et al.

Sacramento County Superior Court

Wilfrido Corral is a faculty member of Hispanic and "Amerindian" descent. He was investigated in 2006 for sexually harassing two students and ultimately reprimanded. The university paid \$15,000 in settlement on the claim of one of the students. Corral now claims that he was subjected to discrimination on the basis of his race, national origin and gender. He also claims that the University did not give him proper notice of the underlying allegations during the investigation. The case is in the discovery phase.

Donselman v. CSU

San Francisco County Superior Court

This is a purported class action filed by two students from San Francisco State University and CSU San Bernardino, challenging the July 2009 student university fee increase and the May 2009 Graduate Business Professional fee, both of which are to be imposed in the Fall 2009 term. Plaintiffs' application for a temporary restraining order and a preliminary injunction were denied. The case is in the pleading stage.

Mattiuzzi v. CSUS, et al.

Sacramento County Superior Court

Cici Mattiuzzi is a career counselor in College of Engineering and Computer Science at CSU Sacramento. She alleges that she was unlawfully retaliated against for complaining about the activities of a faculty member who she says treated students and employees in a threatening and discriminatory manner. She also claims that this same faculty member assaulted her. The case is in the pleading stage.

NetVersant v. Helix Electric, et al.

San Diego County Superior Court

In 2007, Netversant Solutions, a subcontractor, brought an action against Helix Electric, the general contractor on SDSU's telecommunications infrastructure project. The lawsuit includes claims for the reasonable value of work performed, breach of the subcontract, breach of the implied warranty of the fitness of plans, recovery on the bonds, and declaratory relief. In August 2009 Helix cross-complained against SDSU for breach of the prime contract and for implied contractual indemnity for any damages arising out of Netversant's claims against Helix. Helix also cross-claimed against Netversant's surety, which provided the performance bond on the subcontract. The cross-complaint is in the pleading stage.

SETC-United v. CSU, et al.

San Francisco County Superior Court

The State Employees Trades Council's collective bargaining agreement with CSU expired on June 30, 2008. The Education Code requires that prevailing wages be paid to certain hourly laborers unless a collective bargaining agreement states otherwise. SETC claims that when its collective bargaining agreement expired, its employees should have been paid prevailing wages. Because CSU pays SETC employees on a monthly, not an hourly basis, the Education Code requirement should not apply. The case is in the discovery phase.

Torres v. CSU, et al.

Alameda County Superior Court

Jerri Ann Torres, a CSU East Bay student, alleges she was sexually harassed by a faculty member. The case is in the discovery stage.

Construction Cases

CH2M HILL v. BOT

San Francisco County Superior Court

CH2M Hill was the general contractor on the SFSU technology infrastructure project. The project was only 50% complete on the date it was scheduled to be fully completed in April 2006.

CH2M Hill filed this action to have the court declare the contract illegal and invalid and excuse it from performing. In January 2007, the University terminated CH2M Hill from the project for failure to perform. CH2M Hill claimed the university's plans were deficient and that it was required to do much additional work for which it should be compensated. *SFSU lost its summary judgment motion on the issue of CH2M Hill using unlicensed subcontractors. SFSU defeated CH2M Hill's motion for summary judgment on the university's failure to have the telecommunication plans stamped by an electrical engineer. On the eve of trial that was set for May 2009, the case was settled for SFSU's payment of \$2,600,000 to CH2M Hill.*

Employment Cases

Bale v. CSU

San Diego County Superior Court

Courtney Bale, a strength and conditioning coach at SDSU, complains that an unfavorable performance evaluation, being denied the opportunity to work with the football and basketball teams, and being given a computer with pornography are sex discrimination and retaliation for reporting that she was treated differently from a male strength and conditioning coach. The case is in the discovery stage. *On August 24, 2009, CSU filed a motion for summary judgment. Trial is set for November 13, 2009.*

Block v. CSU, et al.

Los Angeles County Superior Court

Joel Block, a systemwide HR manager in the Chancellor's Office, was nonretained in January 2008 for performance reasons. He alleges that a pattern of adverse treatment, including a demotion, salary freeze and suspension, culminating in his non-retention, constituted discrimination and retaliation based upon his age, disability, efforts to redress grievances, and protests over the award of a no-bid contract to consultants. The case is in the pleading stage. *CSU's motion to dismiss certain claims and defendants from the lawsuit is pending.*

Brown v. CSU, et al.

Fresno County Superior Court

Auwana Brown, a former Fresno State police officer, settled a sexual harassment lawsuit against the University in 1998. As a part of the settlement, Brown agreed to a future resignation after she vested in the state retirement plan on August 31, 2000. After a large verdict in another Fresno State police department case was entered on August 11, 2000, Brown tried to unilaterally rescind her resignation less than two weeks before it was to become effective. The campus denied her request. Brown petitioned the State Personnel Board to reinstate her. The SPB refused, and Brown then petitioned the court to order the SPB to set aside her resignation. The court instead sent the case back to the SPB for further findings. After three years of inactivity, the SPB issued a second decision denying Brown reinstatement. Brown also filed a civil suit for

damages. Both cases were consolidated, but her civil suit was stayed while Brown further challenged the SPB's decision.

In November 2008, the court denied Brown's (second) petition to set aside her resignation. Brown claimed in her lawsuit for damages that the term in her settlement agreement that bars her reemployment is in violation of public policy. *CSU filed a challenge to the legal sufficiency of her claim. The court imposed a further stay of the proceedings, and ordered Brown to appeal the November 2008 writ decision before any ruling would be made on her claim for damages.*

EEOC v. CSU

U.S. District Court, San Francisco

Lawford Goddard, a long-term lecturer at SFSU, and then age 61, applied and was a finalist for a tenure-track position in the Department of Black Studies. The successful candidate, Antwi Akom, had a significant publication record and was then age 36. Goddard alleges he was the most qualified candidate and was rejected only because of his age. His complaint for age discrimination is being prosecuted on his behalf by the Equal Employment Opportunity Commission. *In April 2009, the case settled for \$50,000.*

Ohton v. SDSU, et al.

San Diego County Superior Court

David Ohton, a SDSU strength and fitness coach, sued CSU and various individuals for alleged retaliation under the state whistleblower statute, claiming he was retaliated against for statements he made in CSU's investigative audit of alleged improprieties in the SDSU Athletics Department and equipment room. The trial court granted CSU's motion for summary judgment on the ground that Ohton had not sought to reverse the university's administrative determination that there was no retaliation, before filing suit. Ohton appealed. The Court of Appeal reversed and instructed the trial court to give Ohton an opportunity to amend his complaint. Ohton then amended his complaint and added a new petition for writ of mandate to reverse the university's administrative determination. The trial court again ruled in CSU's favor, finding that CSU's process met the requirements of the California Whistleblower Protection Act.

Ohton filed a second lawsuit and writ petition seeking to set aside a later administrative finding that subsequent actions were also not retaliatory for his participation in the 2002-03 audit. The cases were consolidated. The court stayed the second Ohton lawsuit as Ohton appealed the decision in the first. *The appeal is in the briefing stage.*

Pagel v. CSU, et al.

Fresno County Superior Court

Ramona Pagel, formerly an assistant track coach at California State University, Fresno, applied for the head coach position and was not selected. Thereafter, she applied for an assistant coach position under the new head coach and also was not selected. Pagel claims that she was

discriminated against because of her gender, was retaliated against for complaining of Title IX and gender discrimination, and that the university failed to provide her with an environment free from harassment. *The case is in the discovery phase. A mediation is set for September 21, 2009.*

Runyon v. CSULB, et al.

Los Angeles County Superior Court

L.R. Runyon, a professor in the Finance Department of the College of Business at CSU Long Beach, alleges he was removed from his position as department chair in retaliation for reporting alleged improper activities by the Dean of the College of Business, Luis Calingo. Runyon made various complaints to his supervisors and others that the Dean made inappropriate and wasteful business trips and spent too much time away from campus. The Dean subsequently removed Runyon as chair of the department citing Runyon's failure to meet certain performance objectives. An extensive investigation into Runyon's claims of retaliation concluded that he was removed as department chair for performance reasons and not in retaliation for his complaints about the Dean. In 2006, the court granted CSU's motion for summary judgment and dismissed Runyon's case. Runyon appealed. On October 3, 2008 the Court of Appeal upheld the judgment in CSU's favor. Runyon filed a petition for hearing before the California Supreme Court, which was granted. The Supreme Court appeal is in the briefing stage, and the court has not yet set a date for oral argument.

Schoenthaler v. State Personnel Board, et al.

Sacramento County Superior Court

This is a writ action brought by a CSU Stanislaus faculty member, Dr. Schoenthaler, to appeal a State Personnel Board decision sustaining CSU's suspension and demotion of him for scientific and academic misconduct. Dr. Schoenthaler used false data in support of change of venue in the Scott Peterson trial in January 2004. *Judgment in favor of CSU was entered on July 13, 2009.*

Verellen v. CSU, et al.

Los Angeles County Superior Court

Paul Verellen, a systemwide HR manager in the Chancellor's Office, was nonretained in March 2008 for performance reasons. In September 2007, immediately after learning informally of his supervisor's dissatisfaction with his performance, Verellen filed a whistleblower complaint that a labor relations consultant was improperly retained by the CSU. After he was formally advised a few days later that he would not receive a merit salary increase because of his performance, he filed a whistleblower retaliation complaint and a complaint of age discrimination. He filed a second retaliation complaint after he was nonretained. His retaliation and age discrimination complaints were investigated and rejected. Verellen then filed a petition for writ of mandate claiming the retaliation investigative outcomes are wrong and requesting reinstatement. *The court denied Verellen's petition for writ of mandate, thereby precluding him from filing a lawsuit for damages under the California Whistleblower Protection Act. Verellen also filed a complaint for damages for whistleblower retaliation (under other statutes) and age discrimination. He is*

58 years old. This separate damages action is stayed but will likely proceed now that the ruling in the writ proceeding has been entered.

Environmental Cases

City of San Diego v. Trustees, et al.

Del Cerro Action Council v. Trustees, et al.

City of San Diego, et al. v. CSU

SDMTS v. CSU, et al.

SANDAG v. CSU, et al.

San Diego County Superior Court

The EIR for the 2005 SDSU campus master plan was challenged in three lawsuits filed by the City of San Diego, Alvarado Hospital and Del Cerro Neighborhood Association, each alleging the EIR did not adequately address necessary mitigation measures. The Alvarado lawsuit has been dismissed.

After the Supreme Court's City of Marina decision, SDSU prepared a revised 2007 master plan and EIR that has been challenged again by the City of San Diego, the San Diego Metropolitan Transit System and the San Diego Association of Governments. Each alleges that the EIR does not adequately address necessary mitigation measures and that the CSU must fund all mitigation cost, irrespective of Legislative funding. The Del Cerro lawsuit and these three new lawsuits have been consolidated. *The hearing on the writ petition is set for September 25, 2009.*

LandValue 77, et al. v. CSU, et al.

Fresno County Superior Court

LandValue 77, a private business entity in Fresno, filed a CEQA challenge to the Campus Pointe project, together with a claim of conflict of interest involving former Trustee Moctezuma Esparza, whose company will operate a movie theater in the project. *In a July 9, 2009, ruling, the court determined that the environmental impact analysis for Campus Pointe is in full compliance with CEQA, except for additional analysis required on overflow parking and traffic, and certain water and air quality issues. A revised analysis will be re-submitted to the Board for approval. The court also determined that because former Trustee Esparza had a financial interest in a sublease between Maya Cinemas and Kashian Enterprises, the developer on the project, an unresolvable conflict of interest existed when the Board took the vote on the Campus Pointe EIR, and the theater sublease must be voided as a result.*

Personal Injury Cases

Daniels v. The Fraternity Phi Gamma Delta, et al.

Fresno County Superior Court

Parents of Danny Daniels, a 19 year old student who died of alcohol poisoning in the Phi Gamma Delta fraternity house in January 2007, filed this wrongful death claim against CSU Fresno. Plaintiffs claim that CSU knew or should have known that the fraternity was serving alcohol to minors. Plaintiffs initially sued the fraternity as well although later dismissed it, leaving CSU as the sole defendant. *The case has settled. CSU agreed to pay Plaintiffs \$10,000 and name certain scholarships in memory of their son.*

Daves v. City of San Bernardino, et al.

San Bernardino County Superior Court

The father and son of decedent, Russell Daves, filed this wrongful death action against CSU, the City and County of San Bernardino and the State. Daves presented as a suspicious person in the hillside of the CSUSB campus at the time of the severe wild land fires of 2007. University police attempted to approach him and Daves fled. The police pursued him and were joined by the San Bernardino Police Department. The decedent was shot and killed after he backed his vehicle in the direction of the officers threatening their lives. *The case is in the discovery phase.*

Student Cases

Balderramos v. SJSU

Santa Clara County Superior Court

Alfredo Balderramos, a student at SJSU, filed this writ action to overturn a disciplinary sanction imposed during his freshman year after he was found to have made a threat of physical harm towards other students. His writ challenges procedural aspects of the disciplinary process, including whether hearsay testimony can support the imposition of discipline. Balderramos has taken no steps to complete preparation of the administrative record, a prerequisite to having the court hear the case.

Every Nation Campus Ministries, etc. v. Reed, et al.

U.S. District Court, San Diego

A group of Christian student organizations and students at the San Diego and Long Beach campuses sued under various legal theories to challenge the constitutionality of the CSU anti-discrimination policy, which refuses recognition of student organizations that discriminate on the basis of religion, sexual orientation or marital status. The plaintiff groups exclude non-Christians, homosexuals and others from joining or becoming officers. They allege that their First Amendment rights of freedom of religion and association trump CSU's anti-discrimination prohibition, and that they must be recognized and provided full access to university facilities.

The court denied plaintiffs' motion for a preliminary injunction, and both sides filed summary judgment motions. In February 2009, the court found CSU's non-discrimination policy constitutional, and granted CSU's summary judgment motion. Plaintiffs filed an appeal. Oral argument has not been set yet. This issue is raised in several similar suits throughout the nation that have produced mixed results. *The Ninth Circuit Court of Appeals recently ruled the University of California's non-discrimination policy was constitutional, but that case is currently before the United States Supreme Court.*

Martinez, et al. v. Regents of the UC, et al.

Yolo County Superior Court

This is a class action filed by non-resident citizen students against UC, CSU, and the California Community Colleges, challenging the exemption from out-of-state tuition for those, including undocumented immigrants, who meet the three year California high school attendance requirement of AB540. Plaintiffs allege AB540 violates federal immigration laws, the U.S. and California Constitutions, and the Unruh Act. Plaintiffs seek an injunction enjoining enforcement of AB540, a declaration that the statute is unlawful, class-wide tuition restitution, damages, and attorney fees. Defendants collectively filed motions to dismiss, which were granted. Plaintiffs appealed. The appellate court ruled in favor of the plaintiffs, remanding the matter back to the trial court. Defendants petitioned the California Supreme Court and review was granted. *Oral argument has not yet been set.*

Other Cases

CSU v. CFA

Los Angeles County Superior Court

CSU filed this petition to vacate the ruling in an arbitration of several consolidated CFA grievances regarding workload in the Faculty Early Retirement Program. One grievance covering a group of FERP faculty alleged they had impermissibly been assigned a teaching load entirely of classroom work. Another grievance, on behalf of an individual, claimed that his FERP workload didn't properly reflect his pre-FERP workload. After an initial award against CSU on both grievances, which treated the recoveries separately, the arbitrator issued a supplemental ruling extending the monetary award from the individual case to a wide group of faculty who did not grieve that issue. This supplemental ruling increases CSU's liability significantly. The petition was denied and CSU appealed. *The Court of Appeal ruled in CFA's favor, affirming the arbitrator's supplemental ruling.*

SDSU Foundation v. Redevelopment Agency of San Diego

San Diego County Superior Court

SDSU Foundation filed a complaint against the Redevelopment Agency of San Diego for breach of contract and to require the Agency to sell property in the old Paseo redevelopment area to the Foundation as required by the contract. The Agency and the City of San Diego cross-

complained against the Foundation for breach of contract for refusing to process land use entitlements relating to the Paseo redevelopment area through City permit processes and for failing to negotiate in good faith with the Agency to execute a development agreement for the Paseo project. The Agency and City also cross-complained against SDSU for inducement of breach of contract and interference with contract and economic relations. The Foundation accepted SDSU's tender of its defense. *SDSU has filed a motion to dismiss an amended cross-complaint that will be heard on October 23, 2009. No trial date has been set.*

Administrative Hearings Report

There was one administrative hearing outcome during this reporting period that raises significant public policy issues and/or has broad impact on the CSU system.

Fleming v. SJSU

Patrick Fleming filed a grievance challenging SJSU's decision to deny him tenure. There is no express standard for review of these decisions in the most recent faculty MOU, but rather that issue is left for the arbitrator to determine. This is the first decision under the new MOU where an arbitrator has adopted an evidentiary standard. Consistent with past practice, this arbitrator elected not to substitute his judgment in place of the university's, but rather, to apply a "reasoned judgment" standard in determining whether the university had appropriately decided Fleming's tenure application. He concluded under that standard that the university's decision was proper. Nevertheless, the case was returned for a new tenure review because of certain procedural irregularities.