



MARYLAND SENATE BUDGET AND TAXATION
SUBCOMMITTEE ON HEALTH, EDUCATION AND HUMAN RESOURCES

UNIVERSITY OF MARYLAND BALTIMORE LEGISLATIVE AUDIT
TESTIMONY OF BOARD OF REGENTS CHAIRMAN CLIFFORD KENDALL
BOARD OF REGENTS VICE CHAIRMAN ORLAN JOHNSON
BOARD OF REGENTS AUDIT COMMITTEE CHAIRMAN JIM SHEA
USM CHANCELLOR WILLIAM E. KIRWAN

MONDAY, MARCH 1, 2010

Chairman Kasemeyer, Vice-Chairman Madaleno, and members of the Committee, I want to thank you for the opportunity to address this very serious matter. I also want to acknowledge the good work of the Legislative Auditors. Obviously there are some troubling issues here, especially the \$410,000 in unauthorized compensation at the University of Maryland School of Law.

I want to note the quick action of the Board of Regents based on the comprehensive work, and decisive steps the Chancellor recommended. These issues came to our attention in an Executive Session of the Board, requested by the Chancellor, on February 12th. We immediately took action, authorizing Chancellor Kirwan to launch a thorough and expeditious investigation and recommend corrective steps. Earlier this week the Board of Regents approved his recommendations.

While Chancellor Kirwan will provide details of the investigation into these issues, I think it is important to underscore how seriously the Board took this matter. I will provide an up-date as to where things stand.

President Ramsay was slated to remain on at UMB through July, at which point newly-named President Jay Perman will take over. Instead, President Ramsay will step down effective March 1st, with Medical School Dean Albert Reece serving as interim President until July.

With Board approval, Chancellor Kirwan has sent Karen Rothenberg, former dean of the University of Maryland School of Law, a letter indicating that the \$60,000 in additional summer compensation she received should be returned, given the lack of written documentation from her supervisor, President David Ramsay, authorizing the payments. In addition, we have referred all of the issues raised by the auditors regarding Professor Rothenberg's compensation to the Attorney General's Office for further investigation.

Board of Regents Vice-Chairman Orlan Johnson, Audit Committee Chairman Jim Shea, and Chancellor Kirwan will now address these issues further.

BOARD OF REGENTS VICE CHAIRMAN ORLAN JOHNSON

Let me also thank the members of this committee as well as the Legislative Auditors. I can assure you the Board takes these matters very seriously and is committed to resolving all the concerns raised in the audit.

I also want to stress that we recognize that the University System of Maryland represents a public trust. We have an obligation to act responsibly, in accordance with established state and system policy. This is an obligation we take very, very seriously.

That is why it is vitally important that in the rare instance when that trust is violated, we act decisively. The Regents and the Chancellor have been focused on this issue since it was brought to our attention. And the professional staff at UMB has been very cooperative and forthcoming as we have worked through the results of this audit

Upon receipt of the Legislative Audit on February 12, the Board authorized the Chancellor to start an investigation into the issues raised. The investigation was carried out by a small group of top-level professionals: Joe Vivona, USM's Vice Chancellor of Administration & Finance and Chief Operating Officer; Robert Page, USM Comptroller; Kathy Byington, UMB's new Vice President for Administration and Finance; and Michael Travieso, Chief of the Educational Affairs Division in the AG's Office. This group worked quickly, cooperatively, and professionally to address the issues raised by the auditors.

Regent Shea, Chair of Audit and Institutional Assessment Committee will now provide additional context.

BOARD OF REGENTS AUDIT COMMITTEE CHAIRMAN JIM SHEA

Mr. Chairman and members of the committee, I am regent Jim Shea and I am Chair of the Board of Regents' Audit and Institutional Assessment Committee. I appreciate this opportunity to speak to issues raised in the Legislative Audit of UMB.

The Board of Regents' Audit Committee comprises six of my fellow regents and me. We meet at least 4 times each year. Among our responsibilities is to review independent audits, review Legislative Audits, and oversee the USM's Internal Audit function.

Since Internal Audit reports directly to the Audit Committee, it will be my committee that will oversee the follow-up activities of UMB on the corrective actions called for in the legislative audit.

While I am primarily here to speak to any specific questions or concerns members of this body may have with regard to our Internal Audit function, I am also here to join the Chancellor and my fellow regents to underscore how seriously we take the matters raised in the legislative audit. I can assure you the follow-up process will be thorough and complete. I am also acutely aware of the number of repeat findings cited in the Legislative Audit and will be especially vigilant in making sure they are addressed.

Chancellor Kirwan will now talk about the results of the investigation he was authorized to conduct.

USM CHANCELLOR WILLIAM E. KIRWAN

Mr. Chairman and members of the committee let me add my thanks to the committee for this opportunity to discuss the Legislative Auditor's report on the University of Maryland, Baltimore (UMB). I also want to thank the Legislative Auditors for their excellent work. And, I want to recognize as well the rapid action of the Board of Regents. As Chairman Kendall, Vice-Chairman Johnson, and Regent Shea noted, this is a troubling report and all of us at the USM are deeply regretful and apologetic that this matter has risen to the level of a General Assembly hearing.

I will briefly outline our investigation into all the audit findings, with emphasis on the first two. As I do, I believe you will see that most of the issues have very rational explanations and that the few that do not were actually the failing of a two individuals to follow established Board and university policies.

I will start with **Finding 1**. Beginning in FY 2007, Dean Karen Rothenberg of the University of Maryland School of Law received inappropriate payments totaling \$410,000. These payments breakdown into two categories: \$350,000 in FY 2007; \$60,000 over FY 2007 – FY 2009.

I'll discuss first the \$350,000 payment. Internal documents at UMB characterized this payment as compensation to Dean Rothenberg for a sabbatical that she had earned but did not take. There was a provision in her initial appointment letter (April 6, 2000) that provided her with the opportunity to take a sabbatical after 5 years of service as Dean at full salary. Due to work commitments, Dean Rothenberg felt she was not in a position to exercise this option. In order to keep her on as Dean of the Law School, President David Ramsay opted to provide her with this \$350,000 as payment for the unused sabbatical.

There were four violations of policies in making these payments. First, there is no provision within USM policy on sabbatical leave (II-2.00) that provides for a "buy out" of an earned—but unused—sabbatical. Moreover, I can say that in my 42 years with the University of Maryland and the University System of Maryland, I have never heard of anyone else receiving such a payment for an unused sabbatical. Second, this payment elevated Dean Rothenberg's compensation for the year to a level that exceeded the institution's presidential salary and, as such, triggered reporting requirements under System Policy VII-10.0 that were not followed. Third, President Ramsay also extended an offer to provide Dean Rothenberg with a year's paid administrative leave if she remained Dean for three more years. As a contract with a dean that had a term of more than one year, this action also should have triggered disclosure to the Chancellor and the Board under this same policy.

Since I've referenced USM Policy VII-10.0 twice, let me say a word about this policy, which is entitled *Review of Contracts for Highly-Compensated Personnel*. This is a Board of Regents policy that relates to contracts with "a term of more than one year" or that provide for "an annual total compensation package that exceeds the annual total compensation package of the institution's president". The policy states, "each institution shall consult with the Office of the Attorney General in the development of a contract under this policy and obtain approval of the contract . . . before the contract's execution." It also states, "the President must submit it to the Chancellor for Board of Regents review". These are steps that are required under the policy, but were not taken by President Ramsay with Dean Rothenberg's contract.

The Fourth policy violation concerns the Chancellor's annual salary guideline instructions. Every year I send a memo to all USM Presidents setting salary guidelines for the upcoming fiscal year. Quoting from the 2006 [FY 2007] memo under the heading of Salary Adjustments: "The total adjustments to an individual's salary in excess of 15% shall be reviewed by you [the President]." The memo goes on to say, "The term 'total adjustment' includes COLA, merit, one-time bonus, equity, and/or retention. Written documentation should support your decision for these adjustments. Further, total adjustments in excess of 15% shall be reported." The agreement to dramatically increase Dean Rothenberg's compensation way beyond 15% was never reported to me, again in violation of Board and USM policies.

Let me now discuss in some more detail the payment of \$60,000 of summer stipends to Dean Rothenberg. From FY 2007 to FY 2009, Dean Rothenberg's salary was augmented by \$20,000 each year in the form of "summer stipends." The process by which such summer research grants or stipends—which are fairly standard at major US Law schools—is intended to work is straight forward. The School of Law has a detailed application and vetting process for faculty on 10-month contracts who wish to apply for a research summer stipend during the two months when they receive no university salary. I want to emphasize the 10-month faculty aspect of these arrangements. The compensation pays a summer stipend to faculty in return for conducting research relevant to their teaching and scholarly responsibilities. The Dean reviews the recommendations of an Associate Dean, who is in charge of vetting the faculty's research proposals. The Dean then makes the final decisions and submits a form through the college budget officer authorizing payment to the selected faculty. The process also requires the submission of final reports describing the results of each faculty member's summer research project.

There is an unresolved dispute between President Ramsay and Dean Rothenberg as to how the \$60,000 in grants were authorized and approved over the course of the three years. To this point, we have not been able to determine which one is correct in their claims. I will simply note that regardless of the process, these payments were not appropriate. Dean Rothenberg did not apply for a summer research grant utilizing the formal process, but rather instructed the Associate Dean to submit paperwork to the UMB finance office to adjust her salary with these payments based on the assertion that President Ramsay had authorized the payments. While Dean Rothenberg is a 12-month employee, her paperwork describes the payments as a research grant for a 10-month faculty member. Finally, she did not submit any reports of her research activities.

The bottom line is that Dean Rothenberg failed to obtain written approval from President Ramsay for these payments and she required a subordinate to process the paper work without the proper documentation. This is inconsistent with basic operating principles across the USM and, indeed, I would say in essentially every organization in America. As Chairman Kendall noted—we have taken steps to recover these funds.

I want to stress that our investigation into this matter is continuing and we are turning over to the Attorney General's office any further findings that may call for additional action. Once the investigation is complete, the Attorney General's office will take the appropriate actions. In addition, the USM will take whatever internal policy actions deemed necessary to address these matters and prevent such issues going forward.

Moving to **Finding 2**, the issue of "additional compensation" in the audit report. The report identifies \$22.8 million in such compensation for FY 2008. I'd like to add some specificity to the amount and I refer you to the chart on "Additional Compensation" we have provided. Unfortunately, this amount has been reported as bonuses in some media outlets. The description of "\$55 million or \$22.5 million in bonuses" from 2005-2008 is not accurate. Less than one-and-one-half percent of that was in fact bonus

payments, all of which—recruitment, retention, recognition, performance, etc.—was in compliance with USM policies. The rest of the \$55 million—as outlined in your handout—was normal payments for work people preformed, or the normal pay-out of accrued leave to departing employees, or overtime, over-load, or extra summer work. Again, in each instance, entirely in-line with USM policy.

So, if you would now please turn to the chart entitled “Additional Compensation.” As this chart shows, of the \$55 million, all but the \$410,000 paid to Karen Rothenberg was distributed following established BOR and USM policies.

Finally, looking at **Findings 3 – 13**, you can see from the spreadsheet titled ‘Status of Corrective Actions’ we have provided that the USM, working in close partnership with UMB, has taken action to address each item of each finding. Actions have either already been implemented or are in process. Six months from now our internal audit staff will follow-up to make certain the actions are being fully implemented to address each concern.

Let me conclude by saying—on behalf of the entire USM—that we apologize and deeply regret that policies were not adhered to. Such policies are designed to prevent the very events that occurred. But, there are only two instances involving \$410,000 in the entire report where Board and institutional policies were not followed. While this is a significant amount of money, it is a tiny fraction of compensation questioned in the audit report. The fact that policies were not followed in these instances was a human failing representing bad judgment by two individuals. I feel it important to add that these two individuals have served the university well for many years and have made important contributions to advancing the institution.

Chairman Kendall has reviewed with you the prompt action that the Board and the USM took once the implications of the audit report were made known to us. I want to emphasize that the Board and I met to discuss this audit report less than one week ago. At that meeting, I was charged to launch an investigation, which has now been completed, and the Board has taken the actions we have described to you today. The board and I are committed to taking whatever actions are necessary to maintain the public trust and ensure that our citizens know that taxpayer dollars are used appropriately and prudently.

As my colleagues have noted, we appreciate the work of the Legislative Auditors and stand ready to make changes as needed. If you would like, we are prepared to come back with a status report before the end of the legislative session.

That concludes my report on the investigation. We will be glad to answer any questions you may have.

University of Maryland, Baltimore
February 2010 Legislative Audit Report
Components of 'Additional Compensation' (Finding 2)

July 2006 - Nov. 2008	FY 2008	Description	Tab	Policy
\$31.0M	\$12.5M	Regular compensation payments to employees who are exempt from FICA (Social Security and Medicare). These employees are often graduate students and non-resident alien post-doctoral fellows.	1	USM policy II - 1.21, VII - 9.20 UMB procedures on pay administration (Tab 10)
9.0M	3.6M	Accrued leave payouts to employees terminated or separated (e.g., retired, found another position).	2	USM policy II - 2.40, VII - 7.00, VII - 7.01 2009 MOU with AFSCME article 8, section 1 UMB procedures on pay administration
5.0M	2.5M	Payments to employees (UMB faculty/doctors as well as nurses) for weekend and evening "on call" coverage as well as additional clinical services.	3	UMB policy II - 1.21(C)
3.5M	1.6M	Salary payments for adjunct faculty. Payments for regular faculty teaching over-load, faculty teaching in addition to regular duties, staff teaching in addition to regular duties.	4	USM policy II-1.06, II - 1.25 UMB policy II - 1.21C, II - 1.25(A), VII - 9.11(A)
1.5M	0.6M	Summer stipends for 10 month faculty.	5	UMB policy II - 1.21(B)
3.9M	1.7M	Variable compensation amounts under employment contracts for performance, supplemental compensation for additional duties.	6	USM policy VII - 9.11 UMB policy II - 1.03(A), II - 1.21(C), VII - 9.11(A)
0.2M	0.1M	Staff bonuses under reward and recognition programs.	7	USM policy VII - 9.20, VII - 9.10 UMB procedures on pay administration
0.5M	0.2M	Retention, recruitment or performance bonuses for major recruits.	8	USM policy VII - 9.20, Section 12-109 Education Article, USM annual salary guidelines to institutions
0.4M	0.0M	Questionable compensation payments under Finding 1.	9	USM policy VII - 10.0, II - 2.00, Section 12-109 Education Article, USM annual salary guidelines to institutions
<u>\$55.0M</u>	<u>\$22.8M</u>	Total 'Additional Compensation' per Finding 2.		

**University System of Maryland
University of Maryland Baltimore
Audit Report February 2010 - Status of Corrective Actions**

Audit Findings	Repeat Item	Audit Report Recommendations	UMB Response	Status Implemented (v)	Corrective Action
Employee Compensation					
1 - Questionable payments totaling \$410,000 were made to a senior management employee		a - strictly comply with established USM and UMB policies for compensation payment, including sabbatical leave policy	agree	√	All mid-year base compensation changes and supplemental compensation payments reviewed by VP for Finance and Administration implemented July 2009.
				√	Campus procedures for review of contracts with highly compensated individuals approved December 2009.
				√	Finding of \$350,000 questionable payment referred to OAG. Employee notified that \$60,000 in summer stipend payments is to be returned.
		b - payment for summer research to be authorized by appropriate supervisory personnel	agree	√	Campus policy on summer stipends, including signatory requirements was revised December 1, 2009.
2 - Lacked policies concerning certain employee compensation payments		c - submit the June 2008 agreement to the OAG and Regents	agree	√	The agreement was submitted.
		d - formally disclose additional compensation payments to the General Assembly	agree	in process	Revised budget submission formats being developed to identify regular and additional compensation totals.
		a - establish policies on summer research, employee bonuses and all other forms of additional compensation	agree	√	Analysis of "other earnings" totaling \$55m over audit period was performed (results attached).
				√	Summer research policy revised December 1, 2009.
		√	Supplemental compensation to staff policy established - June 2009.		
		√	Supplemental compensation and salary adjustments for faculty policy established - December 19, 2009.		
		b - disclose additional compensation in Annual Budget to the General Assembly	agree	in process	Revised budget submission formats being developed to identify regular and additional compensation totals.
Cash Receipts					
3 - Adequate internal controls were not established over certain collections	R	a - ensure employees maintaining A/R records do not have access to related collections	agree	√	New process requiring all collections received by the restricted funds unit be delivered immediately to the financial services department office manager for deposit, implemented July 2009.
		b - timely deposit of collections	agree	√	New employees trained to submit checks for deposit immediately. Receipt recorded in a clearing account until any research necessary to make sure they are credited correctly is complete implemented July 1, 2009.
Accounts Receivable					
4 - Did not always pursue timely collections, sufficient controls were not established over non-cash credit adjustments	R	a - send written payment demands to grantor agencies at required intervals	agree	√	Employees and supervisors trained in the reporting requirements, process change implemented October 2009.
		b - forward delinquent accounts to CCU according to regulation	agree	√	Received from CCU an additional extension in the time to pursue collection before turning accounts over the CCU. Processes established to be in compliance with revised regulations.
				√	All 58 of the accounts cited in the audit have been resolved, 46 collected, 7 resolved by negotiation, 5 sent to CCU.
				in process	Work ongoing to get current with processing of dental clinic receivables. In the 21 months up to June 30, 2009 5,581 accounts with balances of \$1.2m were sent to SCCU. Discussions are underway with CCU on changes to the requirements. As of February 2009 a process to analyze the remaining 1448 is in place to be completed by October 2010.
		c - ensure final billings are prepared and sent to Dental clinic patients in accordance with internal procedures	agree	in process	Procedures are being updated to reflect agreements with CCU and will be implemented.
		d - separate processing of dental clinic insurance payments and non-cash credit adjustments	disagree		UMB uses established clinical business practices for handling payments from insurance as implemented in the software system used for this process.
		e - increase number of dental clinic non-cash credit adjustments that are independently reviewed	agree	√	Revised process results in review of 40 transactions a month rather than the 10 reviewed under the previous process. Implemented December 2009, review performed by accountant not involved in A/R transactions.
Contracts with Medical System					

**University System of Maryland
University of Maryland Baltimore
Audit Report February 2010 - Status of Corrective Actions**

Audit Findings	Repeat Item	Audit Report Recommendations	UMB Response	Status Implemented (v)	Corrective Action
5 - Untimely execution of contracts and receipt of payments, did not assess late payment fees	R	a - execute annual contract prior to beginning of fiscal year	agree	√	FY10 contract executed June 28, 2009.
		b - monitor payments and assess late fees	agree	√	Process put in place to monitor and assess late fees.
		c - take appropriate action to collect late payment fees	agree	√	Fees under 1 contract collected; the others have been invoiced and collection will be pursued.
Revolving Fund Accounts					
6 - Written plans to eliminate deficit balances on certain accounts had not been established	R	a - establish written plans for the accounts referred to in the audit and other large deficit balance accounts	agree	√	Plans have been written and all but 1 of the accounts referred to in the audit now have a positive balance.
		b - consult with legal counsel on remedies available in the event of default	agree	√	Legal counsel will be sought when the written plan benchmarks are not met.
Purchasing and Disbursement Transactions					
7 - Adequate internal controls were not established and required BPW approvals were not always obtained	R	a - ensure purchases and disbursements are subject to independent approval	agree	√	Revised processes limiting accounts payable personnel access to revise or create vendors implemented February 1, 2010. New report of vendor additions created September 2010. Report reviewed daily by the accounts payable manager.
		b - restrict ability to process transactions based on job responsibility	agree	√	System access changed February 1, 2010.
		c - immediately remove system access for employees who leave	agree	√	Employee termination process reviewed.
		d - report the cited service contracts to BPM and request approval in advance in the future	agree	√	In the future UMB will treat the annual library subscription contracts as service contracts and will seek BPM review.
8 - Purchases were made without formal procurement processes	R	a - use formal written procedures for purchases reasonably expected to exceed \$100,000	agree	in process	New review procedures are being developed to identify multiple purchasing card transactions which would reasonably be expected to exceed \$100,000 and will use formal procurement processes to negotiate for best pricing on these items.
Corporate Purchasing Cards					
9 - Purchases not always reviewed by supervisory personnel and supporting documentation was not always maintained	R	a - enforce existing procedures on supervisory review	agree	√	To ensure supervisor review, a 3rd verification signature and an automated IT reminder system was implemented March 2009.
		b - ensure that cardholder logs and related documents are forwarded to Procard program administrator or fiscal officer for review	alternative	√	Specific fraud incident was discovered in January of 2008, an internal audit was completed in August of 2008 and the individual pled guilty in June 2009. Responsibility for this final level of review has been assigned to the verification reviewer under a new process implemented in March of 2009. It is not practical for the central P-card admin to review all 590 cards.
		c - Internal audit review of the gift card purchases and associated procedures	agree	√	USM Internal audit began a comprehensive review on February 19, 2010 and is working expeditiously towards a late-spring completion of the effort.
Information Systems Security and Control					
10 - Proper user account and password controls for certain critical systems were not established	R	a - comply with account and password recommendations of the USM guidelines	agree	√	Specific findings from prior audit had been addressed but new findings in the area of account and password compliance were discovered. Strong password standards implemented and enforced - fall 2009. Passwords and account access for highly privileged accounts strengthened.
11 - Significant security-related events were not always logged and monitored	R	a - comply with logging and monitoring provisions of the UMS guidelines	agree	in process	The guideline calls for a comprehensive assessment of risks to the IT databases, application and host servers and monitoring of these systems to mitigate those risks. A formal risk assessment is underway and a reviewed plan for logging and monitoring system activity will be put in place by December 31, 2010.
12 - Internal computer network including key administrative systems were not adequately secured	R	a - detailed recommendations were made to improve network security	agree	in process	Network security is a complex and ever changing area of risk. The audit recommendations will be reviewed in detail and a plan for implementation developed - to be completed by December 2010.
Working Fund					
13 - Internal control deficiencies existed for two working funds	R	a - separate duties between recording working fund disbursements and printing and signing checks	agree	√	New procedures detailing access to checks, verification and daily report reviews were implemented July 1, 2009.

University System of Maryland
University of Maryland Baltimore
Audit Report February 2010 - Status of Corrective Actions

Audit Findings	Repeat Item	Audit Report Recommendations	UMB Response	Status Implemented (v)	Corrective Action
		b - separate duties between preparing working fund bank reconciliations and recording disbursements and printing and signing checks	agree	√	New procedures detailing access to checks, verification and daily report reviews were implemented July 1, 2009.