

AUDIT OF HSC ADVANCED DEGREE TUITION PAYMENTS FOR EMPLOYEES

THE UNIVERSITY OF NEW MEXICO

Report 2018-02
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THE UNIVERSITY OF
NEW MEXICO.

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ABBREVIATIONS

HR.....	University of New Mexico Human Resources
HSC.....	University of New Mexico Health Sciences Center
EOD.....	Employee and Occupational Development
FY.....	Fiscal Year
IA.....	University of New Mexico Internal Audit Department
Internal Audit.....	University of New Mexico Internal Audit Department
MHA.....	Masters of Health Administration
MOA.....	Memorandum of Agreement
NCC.....	National Certification Corporation
OEO.....	University of New Mexico Office of Equal Opportunity
SRS.....	University of New Mexico Safety and Risk Services
Taxation.....	UNM Unrestricted Accounting Tax Department
UAP.....	University Administrative Policy and Procedures Manual
University.....	University of New Mexico
UNM.....	University of New Mexico
UNM Banner.....	UNM Banner Finance Accounting System
USC.....	University of Southern California

KEY RECOMMENDATIONS

1. The University President should work with the UNM Policy Office to develop a narrow exception to policy for extraordinary circumstances to allow University payment of tuition for employees to obtain outside degrees.
2. HSC management should develop internal guidance and processes for initiating advanced degree training programs and processes for approving the payment of tuition and other related expenses for the employee.
3. In accordance with the Neonatal Practice Trainee Agreements, HSC should recoup the cost of the travel expenses related to the Neonatal Practitioner Trainees obtaining advanced degrees.
4. The University should establish a formal agreement with the employee whenever the University pays for tuition and other expenses for an employee to obtain a college degree at an outside institution.
5. In accordance with the Neonatal Practice Trainee Agreement, HSC should collect the amount owed the University over a more reasonable period of time.
6. The HSC and UNM Payroll department should determine the appropriate process for rectifying the taxable treatment of the tuition benefit for nurses that participated in the advanced degree program.
7. HSC and UNM Controller's Office should develop a formal process, prior to finalization of transactions, for routing of tax determination decisions to Taxation.
8. The UNM President should work with University Counsel, and the Attorney General to determine the effect of the anti-donation statute, and resolve any anti-donation issues.

EXECUTIVE SUMMARY

Background

This audit originated from an anonymous complaint against the UNM Health Sciences Center and the Senior Executive Officer for Finance and Administration. The complainant made the complaint on the UNM Compliance Hotline and via an anonymous letter to the UNM President, the HSC Compliance Office, and UNM Internal Audit.

The complaint alleged that the HSC Senior Executive Officer of Finance and Administration obtained an advanced degree from the University of Southern California (USC), paid for by the University, and that such payment was against UNM policy.

Based on further inquiry, HSC revealed that it has paid the tuition cost for twelve employees to obtain advanced college degrees.

Internal Audit expanded the scope of the inquiry to include all tuition payments made by both HSC and UNM Main Campus for employees to obtain advanced degrees at outside institutions; however, only HSC was engaged in the practice of paying employee tuition at outside universities.

The University has several policies that address training of employees and that provide limited educational benefits to employees. However, University Policy does not allow for use of University funds to pay tuition for employees to obtain degrees at other universities.

Anti-Donation Clause of New Mexico Constitution applies to certain tuition payments, and will require repayment of funds to the University.

INTRODUCTION

BACKGROUND

UNM received an anonymous complaint via both the UNM Compliance Hotline and a letter to the UNM President, the Health Sciences Center (HSC) Compliance Office, and UNM Internal Audit (IA). The complainant alleged that UNM paid for the HSC Senior Executive Officer of Finance and Administration to obtain an advanced degree from USC, and that such payment was against UNM policy.

Initial inquiries confirmed that the Senior Executive Officer did receive an Executive Master of Health Administration (MHA) degree from the USC Distance Learning Program (Sol Price School of Public Policy), and that the HSC paid the expenses associated with the degree program, including tuition, course materials, and travel. Further inquiry revealed that HSC also paid the tuition cost for additional employees to obtain college degrees. At this point, IA transitioned the anonymous complaint investigation into an audit of tuition payments for University employees to obtain advanced degrees. In addition, IA expanded the scope of the inquiry to include all tuition payments made by both HSC and UNM Main Campus for employees to obtain advanced degrees at outside institutions.

Methodology for Identifying Tuition Payments for Main Campus Employees

Pursuant to IA's request, the following Main Campus administrative areas reported that the University did not pay tuition for any employees pursuing college degrees at other institutions:

- UNM Human Resources Department – No instances of UNM paying tuition for employees.
- UNM Office of Research & Economic Development – No instances of UNM paying tuition for employees.
- Office of Provost/Academic Affairs – No instances of UNM paying tuition for employees.

To corroborate and support the main campus assertions that the University did not pay any tuition for employees, IA and the UNM Controller's office conducted accounting system queries for UNM main campus payments made to outside universities for FY 2016-2018.

- All types of payment were included in the search to capture any payments to a University, College Board, Board of Regents, Collegiate Association, Bursar or Registrar.
- The search filtered out any payments to the University of New Mexico.
- The search filtered out any payments coded to Research, Contracts or Grants.
- The inquiry was limited to payments > \$2000, focusing on patterns suggesting pursuit of a college degree.
- The payments were categorized by type of payment made, including:

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- DPEZ reports
 - Chrome River reports
 - Purchase orders
 - PCard statements
- The query returned approximately 4,000 line items, which were then analyzed to determine if there were any tuition payments for employees pursuing a college degree.

Internal Audit determined that none of the payments were tuition payments for any UNM employee pursuing a degree at another university.

A similar query and analysis conducted by HSC revealed that it has paid the tuition and other costs for twelve employees to obtain advanced college degrees, as shown in the following table:

University	HSC Department	Faculty/ Staff
Johns Hopkins	Department of Pathology	1 Faculty
Harvard	Department of Emergency	1 Faculty
Univ. of Illinois	Office of University Counsel	1 Staff
Vanderbilt	Department of Pediatrics	7 Staff Nurses
Carnegie Mellon	HSC Office of Academic Affairs	1 Faculty
University of Southern	HSC Chancellor's Office	1 Staff

PURPOSE AND OBJECTIVES

The purpose of the audit is to determine the extent to which the University has paid the tuition of employees obtaining advanced degrees at outside institutions; whether such payments are proper and allowable under University Policy; and, the tax consequence to the employee of such payments.

SCOPE AND PROCEDURES PERFORMED

The scope of the inquiry includes tuition payments leading to an advanced degree incurred from fall of 2013 through December 2017. Our audit focused on obtaining audit evidence to determine the extent of tuition payments and to evaluate if they were within policy, assessing the tax implications of the University paying the cost of employees to obtain advanced degrees, and any related travel expenses.

The focus of Internal Audit's work was on specific concerns expressed in the initial complaint, and was expanded to include all tuition payments by the University for employees to obtain advanced degrees, including the following procedures performed during the course of the audit:

- Discussions and interviews with the HSC Senior Executive for Finance and Administration, UNM Human Resources Personnel, and HSC and Main Campus Finance Personnel.
- Review of relevant UNM Policies and determined compliance of expense reporting with UNM Policies.
- Review of employment contracts, performance reviews, and training logs.
- Review of payment documentation for tuition paid to outside institutions.
- Review of travel expense reports for proper approval, business purpose, and supporting documentation.
 - Analysis included DPEZ expense forms, Chrome River expense reports, and PCard logs for tuition payments and travel expenses related to obtaining the advanced degrees.
- Review of Federal Tax Rules and Regulations, and assessed the tax implications to employees for UNM paying the cost of the tuition.
- Development of expense worksheets breaking out expenses between various components, and examination of receipts for each component.
- Performing audit tests for business purpose of travel, accuracy of expense reports vs. underlying receipts, and proper approval of expense reports.

IA conducted the audit of HSC Advanced Degree Tuition Payments for Employees in conformance with the International Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors. IA found areas for improvement as discussed below in the observations section of the report.

OBSERVATIONS, RECOMMENDATIONS, AND RESPONSES

FINANCIAL ANALYSIS OF TUITION PAYMENTS

Internal audit examined expense reports from FY 2014-2018 showing HSC paid tuition and travel expenses for 12 employees to obtain advanced degrees at outside universities. During the period FY 2014-2018, HSC spent a total of \$625,810 for 12 employees to obtain advanced degrees from outside universities, including \$521,570 for tuition and \$103,844 for related travel and meal expenses (**Exhibit 1**). University policy does not allow tuition payments for employees enrolled at outside universities. Below are tuition and other payments by HSC Departments for employees to obtain advanced degrees from outside universities:

Tuition Payments	HSC Finance & Administration	Office of University Counsel	Department of Pathology	Department of Emergency	Dept. of Psychiatry & Behavioral Sciences	Department of Pediatrics	Total Amounts
2014						50,295	50,295
2015	29,882		11,100	36,500	6,800	51,769	136,051
2016	31,033	15,548	11,150	36,500	9,800	120,621	224,651
2017		12,320	9,350		6,000	57,448	85,118
2018			3,775			22,036	25,811
Total Tuition Payments	\$60,915	\$27,868	\$35,375	\$73,000	\$22,600	\$302,168	\$521,926
Travel Expenses							
Meals	655	0	0	6,532	283	10,375	17,845
Incidentals	499	0	0	559	0	1,450	2,508
Airfare	1,078	0	0	5,202	487	16,976	23,743
Hotels	3,147	0	0	10,256	737	31,884	46,024
Books & Fees		0	0	1,974	74	11,716	13,764
Total Travel Expenses	\$5,378	\$0	\$0	\$24,524	\$1,581	\$72,402	\$103,884
Total Cost - Tuition & Travel	\$66,293	\$27,868	\$35,375	\$97,524	\$24,181	\$374,570	\$625,810

Source: UNM Health Sciences Center

Neonatal Nursing Practitioner Specialists - New Mexico has a shortage of neonatal nurses and the HSC Pediatrics Department has had a long-standing practice of sending Neonatal Practitioner Trainees to Vanderbilt University for advanced degrees in neonatal nursing. During FYs 2014-2018, the Pediatrics Department paid seven Neonatal Practitioner Trainees to attend Vanderbilt University and obtain Masters of Science in Nursing with specialty area in Neonatal Nurse Practitioner degrees. The total cost to the Pediatrics Department during this period was \$374,570, including \$302,168 for tuition and books, and \$72,402 for related travel and meals.

Senior Executive for Finance and Administration - In FYs 2015-2016, HSC paid for the HSC Senior Executive Officer of Finance and Administration to obtain an Executive Master in Healthcare Administration degree from the University of Southern California. In August 2014, the HSC Senior Executive Officer for Finance & Administration enrolled at USC Online to

obtain a MHA. The University paid the cost of that master's degree, including tuition and related travel expenses, to the USC campus in Los Angeles. The total cost of the degree was \$66,293, including \$60,915 tuition cost, and \$5,378 in travel costs. The University paid the cost of the tuition by using a UNM PCard, and the department charged the travel on a DPEZ Banner travel expense form. The authorization for UNM to pay the cost was somewhat informal; it was documented on an email (dated 6/11/2014) from USC showing the costs of the degree, which was then approved by the handwritten, but undated, signature of the Chancellor for Health Sciences.

IA reviewed the HSC Executive Officer for Finance and Administration's job description, employment contracts, and annual performance reviews in effect during the time she attended USC. The job qualifications for the HSC Executive Officer for Finance and Administration position are a bachelor's degree in Business Administration, Management or related field, possession of current CPA certification, and at least 10 years of demonstrated experience applicable to the duties listed in the job description. A directly related master's degree gained from an accredited institution may substitute for up to 3 years of experience; however, the executive already had the necessary experience; therefore, a master's degree was not required. The HSC Senior Executive Officer of Finance and Administration's employment contract did not contain any requirement for an advanced degree as part of the job. Nothing in the employee's annual performance reviews indicated that a master's degree in Healthcare is a requirement for her employment, nor part of a plan for future training or improvement. Formal documentation of approval of payment for the advanced degree was not provided.

HSC Physicians - In FYs 2015-2018, HSC Department of Pathology paid for a faculty member to obtain a Master of Education with a concentration in Health Professions degree from Johns Hopkins University. The total cost of the degree was \$35,375, which was all for tuition.

In FYs 2015-2016, HSC Department of Emergency Medicine paid a faculty member to obtain a Master of Science in Healthcare Management degree from Harvard University. The total cost of the degree was \$97,524, including \$73,000 for tuition, and \$24,524 for related travel and meals.

In FYs 2015-2017, HSC Department Psychiatry and Behavioral Sciences paid a faculty member to obtain a Master of Science in Medical Management degree from Carnegie Mellon University. The total cost of the degree was \$24,181, including \$22,600 for tuition, and \$1,581 for related travel and meals.

University Counsel - In FYs 2015-2017, HSC paid for a paralegal at the UNM Office of University Counsel to obtain a Master of Science in Patient Safety Leadership degree from the University of Illinois - Chicago School of Medicine. The total cost of the degree was \$27,868, which was all for tuition.

None of the above advanced degrees were required as a part of the employee's position or job duties.

UNM POLICIES ON TRAINING AND EDUCATION BENEFITS

Four (4) UNM Policies that address career and professional development, education benefits, or tuition payments may be relevant to the HSC practice of paying for tuition of certain employees. The following policies address tuition payments, and/or education benefits. None of the policies discussed below allow the University to pay for advanced degrees of employees at outside universities.

1. Policy 4000: Allowable and Unallowable Expenditures
2. Policy 3260: Career Development
3. Policy 3290: Professional Development and Training
4. Policy 3700: Education Benefits

UAP Policy 4000: Allowable and Unallowable Expenditures

UAP Policy 4000 discusses allowable and unallowable expenditures for the procurement of supplies, materials, equipment, and contractual services, and the reimbursement of employees for business-related expenses. The policy states:

As a major public institution funded in part by state allocations and student tuition, the University of New Mexico is held to a high level of accountability for its business practices. All expenditures of University funds should clearly and directly support the University's mission of teaching, research, patient care, and community service.

When potential expenditures are questionable, or not specifically addressed in this policy, advance confirmation should be sought by contacting the appropriate Financial Services accounting office.

Personal Benefit - It is prohibited to use University funds for any type of personal benefit, other than for salary and benefits to which employees are entitled under University policy. Among the common examples of personal expenses that cannot be reimbursed with University funds are tuition and fees as listed below:

Tuition and Related Costs. University funds may not be used to pay for tuition for University credit courses, books, school supplies, or other University fees, unless authorized by University Administrative Policies (such as the tuition remission program) or other University published policy (such as teaching, research, and graduate assistantships).

The policy underscores that use of public funds for an individual's tuition is disallowed except in the case of approved programs, such as tuition remission available to all employees. The policy offers no further guidance, but it is important to note that an exception to policy cannot overcome anti-donation concerns that may result from expending public funds for an individual's benefit.

Exceptions - Policy 4000 also has an exception clause as follows:

16. Exceptions: *Any exceptions to this policy that are not otherwise provided for must be approved, in advance and in writing, by the Executive Vice President for Administration, the Provost, or Chancellor.*

IA is not aware of any written exceptions authorizing payment of tuition for employees.

Policy 3260: Career Development

Policy 3260 describes career development programs designed to prepare employees to meet the challenges of the workplace. The University's career development programs consist of the following opportunities that can stand alone or be combined with each other:

- Continuous occupational and/or professional education and training to maintain expertise.
- Career ladders to provide for planned progression within the same position.
- Career advancement to support movement to other University positions through limited competition.

Occupational and/or professional education and training - This training comes in many forms such as academic programs, workshops/seminars, annual conferences, distance education, books or journals, specific training courses, membership in professional associations, and electronic discussion groups.

Career Ladders - A career ladder is a planned progression to a higher level of job responsibility, usually reflected by a position at a higher grade than the one currently held by the employee.

Career Advancement - This involves movement to a higher grade, although an employee may make a lateral move or take a position at a lower grade in order to change careers or bridge to another career path.

Conclusion Policy 3260 - Departments must pay for career development activities required by supervisors such as required training for licenses and certifications, or commitments made on an employee's performance evaluation. Departments are also encouraged to pay for other career development activities with a fair and reasonable distribution of available resources. However, nothing in the policy suggests the department pay for tuition of an employee pursuing an advanced degree at another University.

Policy 3290: Professional Development and Training

Policy 3290 was initially effective July 1, 2010 to January 27, 2016. UNM revised the policy in 2015, with revisions to be effective January 28, 2016. Most of the advanced degrees in this audit were obtained under the policy in effect prior to January 28, 2016.

General Section - Application of Policy 3290

This policy is applicable to employee training offered by the University Division of Human Resources (HR) and other departments responsible for state, federal, and regulatory compliance. This policy does not apply to courses offered by academic units, the University Division of Continuing Education, and other similar organizations.

Types of Training (2010 policy)

Courses may be offered using a variety of methods, including but not limited to the following:

- Orientation(s) - information sharing led by University administrators.
- Instructor Led Training - training facilitated by an instructor in a classroom setting.
- On-Line Competency Training - computer-based training courses available on-line through Learning Central that employees can take at a time that suits their schedules.

Training Directives in Policy 3290 (2010 policy)

All of the types of training outlined in this policy are internally developed and instructor led training initiatives as follows:

3.1. University-Wide Mandatory Training

The University President may designate specific training courses as mandatory for all faculty and staff.

3.2. Mandatory Job-Specific Training

The University will also designate via policy certain mandatory training courses for specific positions within the University. In addition, a department head may require employees to complete specified training in order to continue in a position and fulfill the duties of that position. Examples of mandatory job-specific training include, but are not limited to, courses pertaining to safety, cash management, HIPPA, Banner, UNMJobs, time reporting, and FERPA.

3.3. Recommended Training

The Division of Human Resources or an employee's supervisor may recommend that employees take specific courses offered by the University. Examples of recommended training include, but are not limited to, leadership courses and business systems training.

Development of Training Programs (2010 policy)

Development of training programs are the responsibility of UNM Employee and Organizational Development (EOD), UNM Office of Equal Opportunity (OEO), UNM Safety and Risk Services (SRS), and the HSC Compliance Office.

Exceptions (2010 policy)

Nothing in Policy 3290 explicitly allows the University to pay for tuition for UNM employees to obtain degrees from other universities; however, Policy 3290 apparently allows for exceptions to the policy:

8. Exceptions: Any exceptions must be approved by the Vice President of Human Resources for staff and the Executive Vice President for Academic Affairs/Provost for faculty.

Policy Revision

Policy 3290 was revised effective January 28, 2016, to include the following provision:

Types of Training (2016 policy)

Specific training courses may be designated as mandatory University-wide training. Required job-specific training may be designated based on employees' roles or job responsibilities. Specialized training may be recommended for certain employees.

Conclusion Policy 3290 – Historically, Policy 3290 has governed internally developed training programs. The policy does not explicitly allow use of University funds to pay for tuition. There are exceptions to the policy; however, the provision does not provide details on what expenditures any such exceptions cover:

Any exceptions must be approved by the Vice President of HR for staff and the Executive Vice President for Academic Affairs/Provost or Chancellor of Health Sciences, as appropriate, for faculty.

Policy 3700: Education Benefits

Under Policy 3700, UNM offers education benefits for employees to develop themselves through academic, professional, health, fitness, and personal enrichment courses. Each with restrictions and limitations, UNM also provides additional education benefits to spouses or domestic partners, and dependent children of eligible employees, and retirees.

Eligibility – Generally, the following employees are eligible to participate in the UNM educational benefit:

- Regular staff employees who are full-time, or part-time with appointment percent of 50%.
- Contract staff employees who are full-time, or part-time with percent of 50%.
- Temporary staff employees with an appointment percent of 75% and a minimum three-month appointment.
- Faculty members with a minimum three month contract with appointment percent of 50%.
- Adjunct faculty with a minimum three-month contract and an appointment percent of 75%.

Education Benefit – Tuition Remission - The University will pay tuition for eight credit hours each fall or spring academic semester (up to six of the credit hours may be taken at NMSU), and up to four credit hours each summer session (three credit hours may be taken at NMSU). Time off from work is allowed with supervisor’s approval, provided the education is related to the employee’s job.

Taxability of Tuition Remission - If the amount of tuition and mandatory student fees paid during the calendar year exceeds the published IRS maximum amount, the amount in excess of the IRS maximum will be added to the employee’s wages as taxable income.

Conclusion - existing UNM policies do not appear to provide any basis for UNM to pay for an employee’s coursework leading to a degree from another educational institution.

University policies do not provide specific guidance on college or departmental programs that send employees to outside universities to obtain degrees. University policy does not specifically address payment of tuition for employees to obtain college degrees - except for Policy 4000, which prohibits payment of tuition as a personal benefit. The HSC has had a practice of sending certain employees to outside universities to obtain expertise and training needed to carry out its mission. While the business need may be real, the HSC has relied upon exceptions to policy for approval of the practice; however, they did not follow the requirements set forth in the exception provision.

Recommendation 1:

The University President should work with the UNM Policy Office to develop a narrow exception to policy for extraordinary circumstances to allow University payment of tuition for employees to obtain outside degrees. Final approval of any resulting tuition payments should rest with the University President.

Response from UNM President:

Action Items
<i>Targeted Completion Date: March 31, 2019</i>
<i>Assigned to: UNM President</i>
<p><i>Corrective Action Planned: The UNM President will work with the UNM Policy Office to re-draft UAPPM Policies 3260 and 3290 to address the University funding the payment of tuition to third-party educational institutions (and associated travel expenses) and to articulate certain criteria for approval for that funding:</i></p> <ul style="list-style-type: none"> <i>• The substantive course underlying the degree in question must be one as to which the University will derive a benefit or value related to the employee’s job function within the University;</i> <i>• The substantive course curriculum is not offered at the University of New Mexico; and</i> <i>• The employee is responsible for any of the federal or state tax consequences of the University’s funding of the tuition and related expenses.</i>

HSC APPROVALS OF TUITION PAYMENTS FOR EMPLOYEES

Deans, directors, and department heads define departmental approval processes and designated individuals in their organizations who are authorized to process business and administrative transactions. Deans, directors, and department heads are responsible for exercising good judgment, upholding ethical standards, and should have internal procedures in place to ensure periodic review of designations and related training.

UAP 2000, 2.2. Departmental Approvers provides the following guidance:

Approvers are individuals designated by deans, directors, or department heads to review and approve electronic transactions and/or forms before they are released for processing. Depending on the type of transaction and the level of risk, there may be more than one individual required to approve a transaction. However, the first-level approver is responsible for the following:

- Conformity with budget;
- Verifying the appropriateness of the transaction; and
- Ensuring compliance with University policies and procedures.

HSC's selection of candidates for outside degrees and approval for payment by the University is lacking consistency and guidance. Approvals range from adoption of formal agreements to approval of payment via email. The level of approval is also not consistent among the 12 identified employees obtaining advanced degrees, ranging from final approval by a department chair in some cases, to approval by the HSC Chancellor in other cases.

The authorization and approval for the 12 employees that obtained advanced degrees at other universities during the FY 2014-2018 period are as follows:

- Each of the seven neonatal nursing trainees have a formal agreement signed by the trainee nurse, the department chair, and the HSC Senior Executive for Finance and Administration.
- One Faculty member has a formal Memorandum of Agreement (MOA) signed by the faculty member and the department chair, but not signed by HSC Executive Management.
- Two other faculty members' advanced degrees have department chair approval via email, but there is no indication of approval by HSC Executive Management.
- The HSC Chancellor provided informal approval of the advanced degree for the HSC Senior Executive for Finance and Administration.
- The Office of University Counsel employee's advanced degree approval occurred in an internal memo, signed by the supervisor, and approved by the HSC Senior Executive Officer for Finance & Administration.

Recommendation 2:

For special circumstances where management decides to allow payment of tuition for employees, appropriate guidance should be developed and followed. For such exceptions, HSC management should develop internal guidance and processes for initiating advanced degree training programs and processes for approving the payment of tuition and other related expenses for the employee. The guidance should include: consideration of budgetary constraints; appropriateness of the transaction; sufficient documentation to justify the need; and compliance with University policies and procedures, including obtaining final approval by the University President.

Response from UNM Health Sciences Center Chancellor:

Action Items
<i>Targeted Completion Date: March 31, 2019</i>
<i>Assigned to: HSC Chancellor</i>
<i>Corrective Action Planned: Any internal policy and internal guidance and/or processes will have University-wide application through the amendment and restatement of UAPPM Policies 3260 and 3290 and will be consistent with those revised policies. The HSC Chancellor will develop implementing internal guidance for administering at the HSC any programs where the University pays tuition for employees to obtain advanced degrees consistent with those amended and restated policies.</i>

HSC TUITION AGREEMENTS WITH EMPLOYEES

Internal Audit has identified 12 individuals, all at HSC, who have or are pursuing master's degrees at other institutions, and UNM is also paying (or paid) for their tuition and books. Some departments and employees have formal agreements covering the education arrangement and tuition payments, while other HSC departments and employees do not have agreements.

HSC Pediatrics Department - Neonatal Practice Trainees

Neonatal Practice Trainees are employees of the Pediatrics Department. From FY 2014-2018, seven (7) Neonatal Practice Trainees pursued degrees, and the Pediatrics Department paid for their tuition, books, and related travel expenses.

Each of the Neonatal Practice Trainees have a formal agreement covering the payment of education costs signed by HSC Administration, the HSC Department Chair, and the Neonatal Practice Trainee. Each agreement is tailored to the specific employee; however, all agreements are similar in nature and have common provisions. Following are the key provisions of the Neonatal Practice Trainee education agreements:

Employer agrees to:

- Pay for the Program at Vanderbilt University, including the cost of tuition, in exchange for Employee's completion of the Program and subsequent employment commitment.
- Pay only for Program-required books.

Employee agrees to:

- Pay for any costs associated with the participation and completion of the Program, other than those to be paid by Employer pursuant to the above items.
- Continue full-time exempt employment with Employer in the position of Neonatal Practice Trainee during the time of the Program.
- Maintain enrollment and academic standing until completion of the Program, and maintain an acceptable level of academic standing (passing grades and attendance as required by the Program) while enrolled in the Program.
- Provide nursing services for the Division of Neonatology as a graduate of the Program while preparing for the National Certification Corporation (NCC) examination. Employee will take the NCC exam no later than six months after graduation from the Program and with no more than two attempts.
- Serve a predetermined period of obligated service to Employer by continuing full time employment as a Neonatal Nurse Practitioner, beginning at the time of NCC Certification, and until after graduation from the Program, not including any leave without pay.
- If employee terminates the training program or leaves employment prior to the end of the service period, they must repay the University for the costs of obtaining the degree.

HSC paid for all the travel costs associated with the Neonatal Practice Trainees obtaining their advanced degrees from Vanderbilt University. According to the provisions of the Neonatal Practice Trainee Agreement, any costs associated with participation and completion of the program, other than tuition and books, are to be borne by the Neonatal Practice Trainees. Based on the provisions of the agreement, HSC should not have paid for any of the other costs associated with completing the degree program, including travel, per diem and hotel costs.

Recommendation 3:

In accordance with the Neonatal Practice Trainee Agreements, HSC should recoup the cost of the travel expenses related to the Neonatal Practitioner Trainees obtaining advanced degrees.

Response from UNM Health Sciences Center Chancellor:

Action Items
<i>Targeted Completion Date: March 31, 2019</i>
<i>Assigned to: HSC Chancellor</i>
<i>Corrective Action Planned: The HSC Chancellor will work with University Counsel and the UNM Pediatrics Department to determine if University payment of travel costs should be allowable or not; and, if not allowable, HSC management will take steps to collect reimbursement to the University of such travel costs.</i>

HSC Pathology Department

HSC Department of Pathology has a Memorandum of Agreement (MOA) with a physician to provide tuition support to complete a Master of Education degree program through the Johns Hopkins University School of Education. The Pathology Department Chair and the physician signed the MOA, but the HSC Executive Administration did not sign the MOA.

The key provisions of the MOA are as follows:

- The program will have a concentration in Health Professions. Employee must complete the program within four years. The degree program consists of 33 total credits.
- The Department will pay for tuition each academic year the employee is enrolled and is successfully completing degree requirements (up to \$40,000 over four years).
- Employee will make substantial progress on an identified project during the second year of the program. By the end of the fourth year, employee will complete implementation of planned interventions designed within the scope of the project.
- Employee will develop an enhanced curriculum for pathology residency or other departmental training program in accordance with the Accreditation Council for Graduate Medical Education guidelines.
- Employee will continue employment for a minimum of four years post-degree, or will reimburse funds provided for this tuition support. Similarly, if the program is started but not completed, this agreement will become void.
- Continuation of this MOA will occur annually and depend on meeting the goals relevant to this program, and as agreed upon during the employee's annual performance evaluation. Payments also depend upon the availability of department funds.

No Formal Agreements in Place

The other four HSC Departments do not have formal agreements in place for the employees that obtained advanced degrees paid for by the University. These departments include HSC Chancellor's Office, Office of University Counsel, HSC Department of Emergency Medicine, and HSC Department of Psychiatry & Behavioral Sciences.

UAP Policy 2010: Contracts Signature Authority and Review provides:

For the purposes of this policy, a "contract" is defined as a written agreement between two (2) or more parties intended to have legal effect, including Memorandums of Understanding, Memorandums of Agreement, Nondisclosure Agreements, and Letters of Understanding, in one of the following forms listed below.

- *Documents signed by UNM and another party or other parties.*
- *Offers signed by UNM.*
- *Certain pre-approved UNM forms signed by others.*
- *Contract forms promulgated by others signed by UNM.*

5.2.1. Legal Form - The contract review officer shall review contracts to ensure all the requirements listed in Section 5.1. have been met and review the contract to the extent appropriate for:

- *Consistency with law (obtaining University Counsel review, if necessary);*
- *Consistency with UNM rules and regulations;*
- *Reasonable internal consistency and clarity; and*
- *Consistency with any predecessor documents.*

Recommendation 4:

Payment of tuition for employees to obtain outside degrees must only be allowed for narrow exceptions to University policy, if granted by the University President. In such cases, the University should establish a formal agreement with the employee whenever the University pays for tuition and other expenses for an employee to obtain a college degree at an outside institution. The agreements should require appropriate levels of approval, a service requirement by the employee, and repayment terms, should the employee fail to meet the service requirement or other terms of the contract.

Response from UNM Health Sciences Center Chancellor:

Action Items
<i>Targeted Completion Date: March 31, 2019</i>
<i>Assigned to: HSC Chancellor</i>
<p>Corrective Action Planned: <i>The HSC Chancellor will work with University Counsel to establish formal agreements with employees where the University agrees to pay for tuition and other expenses for an employee to obtain a college degree at an outside institution:</i></p> <ul style="list-style-type: none"> • <i>The employee must sign an agreement under which the employee agrees, in exchange for the University's funding of the tuition and related expenses, to continue his or her employment with the University for a specified period of time, and, in the event the employee, for any reason, separates from employment at the University, any unamortized amount will be repaid in a manner consistent with a pre-determined repayment plan; and</i> • <i>The employee is responsible for any of the federal or state tax consequences of the University's funding of the tuition and related expenses.</i>

TERMINATED NEONATAL PRACTICE TRAINEE

On February 28, 2018, one of the Neonatal Practice Trainees was voluntarily terminated from the UNM Pediatrics Department. In accordance with the Neonatal Practice Trainee Agreement, the employee is required to repay the University the cost of obtaining the advanced nursing degree obtained from Vanderbilt University. The agreement requires the employee to repay to the University amounts paid to the Program should they terminate employment before the agreed upon period. The department indicated that collection of the travel expenses is not required by the Agreement. Internal Audit believes this amount should include both tuition and related travel costs to obtain the degree. The Pediatrics department has been attempting to make arrangements for the employee to repay the tuition. In April 2018, the employee made a monthly installment of \$500.

The Neonatal Practice Trainee Agreement states that if termination occurs before completion of the NCC certification or before 12 months of obligated service for the Employer, Employee agrees to reimburse the Employer 100% of the amount paid by Employer to the Program, over a one (1) year term beginning on the date of Employee's termination, in equal monthly installments.

Recommendation 5:

UNM Pediatrics department should work with the Bursar's office to collect the amount owed the University, to include both tuition and travel costs, over a more reasonable time period, in accordance with the Neonatal Practice Trainee Agreement.

Response from UNM Health Sciences Center Chancellor:

Action Items
<i>Targeted Completion Date: March 31, 2019</i>
<i>Assigned to: HSC Chancellor</i>
<i>Corrective Action Planned: HSC Chancellor recognizes this deficiency in the current form of the Neonatal Practice Trainee Agreement, although the agreement does make the amounts immediately outstanding, and the University, if it chose to, could commence collection activities. Going forward, the University will amend the form of the Neonatal Practice Trainee Agreement, to provide that any amount that may be owed to the University be repaid over a specified period of time.</i>

TAX EFFECT OF UNM TUITION PAYMENTS FOR EMPLOYEES

Under the US Internal Revenue Code (IRC), there are three sections that permit the payments or reimbursements of educational expenses to be excludable from wages under certain circumstances. The three sections of the IRC are as follows:

- IRC § 117(d) – Qualified Tuition Reduction
- IRC § 127 – Educational Assistance Programs
- IRC § 132(d) – Education as Working Condition Fringe Benefit

An educational payment that is not exempt from tax under one IRC section may be exempt under a different section.

Provided below is a high-level summary of each of the IRC sections. IA has also included the Internal Revenue Service's Comparison of Code Sections Covering Educational Assistance table as a quick reference of the three IRC sections (Exhibit 2).

IRC § 117(d) – Qualified Tuition Reduction

An educational organization can exclude the value of free or reduced tuition it provides to an employee from the employee's wages. It is not required that the employer have a written plan or dollar limitations, and the employer cannot discriminate in favor of highly-compensated employees. Whether a tuition reduction is a qualified tuition reduction, and therefore excludable from income, depends on if the education provided is below the graduate level or is graduate education, and whether the tuition reduction represents payment for services. At the undergraduate level, the education need not be at the same institution where the employee works. A tuition reduction for undergraduate education generally qualifies for this exclusion if it is for the education of one of the following individuals:

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a former employee who retired or left on disability.
- A dependent child or spouse of any individual listed above.

At the graduate level, the courses must be taken at the school where the employee is working. A tuition reduction for graduate education qualifies for this exclusion only if it is for a graduate student who performs teaching or research activities for the educational organization.

Any tuition reduction received that is payment for services must be included in the employee's wages.

UNM provides education benefits to spouses or domestic partners, and dependent children of eligible employees, and retirees. UNM Policy 3700 outlines the tuition reduction benefits applicable to spouses and dependents of an eligible employee.

IRC § 127 – Educational Assistance Programs

An Educational Assistant Program employee benefit requires a written plan, cannot discriminate against highly compensated employees, and has a dollar limit of \$5,250 per year that can be excluded from the employee's wages. The education may be at the undergraduate or graduate level, and is not required to be job-related. UNM does have an Educational Assistance Plan (Plan) providing educational assistance to eligible employees of UNM. According to the Plan, an eligible employee includes, for any calendar year, any employee who is currently (or formerly) employed by UNM and is eligible during that year for an Education Benefit Program under UNM Policy 3700.

IRC § 132(d) – Education as Working Condition Fringe Benefit

Certain job-related education provided to an employee may qualify for exclusion from wages as a working condition benefit. To qualify, the education must meet the same requirements that would apply for determining whether the employee could deduct the expenses under IRC § 162 – Trade or business expenses – had the employee personally paid the expenses. It is not required that the employer have a written plan or dollar limitations, and the employer may discriminate in favor of highly-compensated employees. Degree programs as a whole do not necessarily qualify as a working condition benefit. Each course in the program must be evaluated individually for qualification as a working condition benefit. The education must meet at least one of the following tests:

- The education is required by the employer or by law for the employee to keep his or her present salary, status, or job. The required education must serve a bona fide business purpose of the employer.
- The education maintains or improves skills needed in the job.

However, even if the education meets one or both of the above tests, it is not qualifying education if it:

- Is needed to meet the minimum educational requirements of the employee's present trade or business, or
- Is part of a program of study that will qualify the employee for a new trade or business.

IRC § 1.162-5 – Expenses for education – provides further clarification of the two categories of education not qualifying as a working condition fringe benefit. The categories relate to the minimum educational requirements and qualification for new trade or business, as noted below:

- Minimum educational requirements
 - The minimum education necessary to qualify for a position or other trade or business must be determined from a consideration of such factors as the requirements of the employer, the applicable law and regulations, and the standards of the profession, trade, or business involved. The fact that an individual is already performing service in an employment status does not establish that he has met the minimum educational requirements for qualification in that employment. Once an individual has met the minimum educational requirements for qualification in his employment or other trade or business (as in effect when he enters the employment or trade or business), he shall be treated as continuing to meet those requirements even though they are changed.
 - The minimum educational requirements for qualification of a particular individual in a position in an educational institution is the minimum level of education (in terms of aggregate college hours or degree) which under the applicable laws or regulations, in effect at the time this individual is first employed in such position, is normally required of an individual initially being employed in such a position. If there are no normal requirements as to the minimum level of education required for a position in an educational institution, then an individual in such a position shall be considered to have met the minimum educational requirements for qualification in that position when he becomes a member of the faculty of the educational institution.
- Qualification for new trade or business
 - In the case of an employee, a change of duties does not constitute a new trade or business if the new duties involve the same general type of work as is involved in the individual's present employment. For this purpose, all teaching and related duties shall be considered to involve the same general type of work. The following are examples of changes in duties which do not constitute new trades or businesses: (a) Elementary to secondary school classroom teacher. (b) Classroom teacher in one subject (such as mathematics) to classroom teacher in another subject (such as science). (c) Classroom teacher to guidance counselor. (d) Classroom teacher to principal.

Often, courses needed for acquiring a license or certificate are considered to be leading to a new trade or business. Examples include the following:

- Accountant to CPA
- CPA to lawyer
- Mechanic to engineer

An educational benefit under IRC §132(d) can be excludable only if benefits under any other Code sections do not apply. IA has included the Internal Revenue Service's Working Condition Educational Fringe Benefit -General Guide chart to provide a flowchart in determining whether specific payments or reimbursements for education expenses are excludable as a working condition fringe benefit (Exhibit 3).

IRC § 117(d) – Qualified Tuition Reduction – exclusion does not apply in the present case of HSC paying tuition for employees to attend outside universities as the tuition reduction benefits outlined in Policy 3700 apply only to spouses and dependents of an eligible employee. IRC § 127 – Educational Assistance Programs – exclusion does not apply in the present case of HSC paying tuition for employees to attend outside universities as the education benefits outlined in Policy 3700 apply only to eligible employees for education received at UNM or NMSU. Provided below is the effect of Education as Working Condition Fringe Benefit (IRC § 132(d)) on the HSC payments of tuition for employees to attend outside universities.

HSC Administrative Positions – The master's programs attended by the physicians, the HSC Executive Officer for Finance and Administration, or the University Counsel employee qualify as a working condition fringe, which would be deemed nontaxable tuition assistance to the employee. The master's program studies were not needed to meet the minimum educational requirements of the employees' present trade or business nor did it qualify the employees for a new trade or business. The master's program studies were not required for the employees' continued salary, status, or job with UNM. However, the employees' participation in the master's programs improved skills required for the employees' then-current jobs.

Based on the above, the conclusion can be reasonably made that the degree for these employees was solely for the benefit of the HSC, and the cost of the degree and related travel should be excluded from the employee's W-2 wages (i.e. is non-taxable as a working condition fringe benefit). However, each employee's case is unique, and the tax determination should be made on a case-by-case basis.

Neonatal Practice Specialists – The Neonatal Practice Specialists' initial employment with UNM was as Neonatal Practice Trainees. The education was not needed to meet the minimal educational requirements of a Neonatal Practice Trainee. However, the education was needed to meet the minimal educational requirements of a Neonatal Practice Specialist. The Neonatal Practice Trainee agreements require participation in the Neonatal Practice Specialist master's program as a condition of employment by UNM, and full time employment as a Neonatal Nurse Practitioner upon graduation and NCC Certification. As such, the education qualified the employees for a new trade or business, thus rendering the education benefit taxable to the Neonatal Practice Specialists.

The following table shows the taxable education benefit to the Neonatal Practice Specialists by year; including the employee's responsibility for travel costs under the Neonatal Practice Trainee Agreement.

Name	<u>Tuition & Books by Tax Year</u>					Taxable	Travel	Total
	2013	2014	2015	2016	2017	Education Benefits	Costs	Education Costs
Olivia Dearholt	\$51,422					\$51,422	\$7,562	\$58,984
David Henderson		\$20,388	\$33,201			\$53,590	\$10,214	\$63,804
Christina Kamm			\$18,562	\$22,495		\$41,057	\$10,261	\$51,318
Jazmine Valencia			\$18,627	\$25,604		\$44,231	\$10,185	\$54,416
Shelia Kobiella			\$15,816	\$25,804		\$41,620	\$12,749	\$54,369
Nicole Trujillo Taylor				\$21,927	\$37,352	\$59,279	\$6,910	\$66,189
Dawn Rupley					\$22,686	\$22,686	\$2,804	\$25,491
Total Taxable Tuition	\$51,422	\$20,388	\$86,206	\$95,829	\$60,039	\$313,884	\$60,685	\$374,570

Recommendation 6:

The UNM School of Medicine Pediatrics department should work with the UNM Payroll department and all nurses participating in the advanced degree program to determine the appropriate process for rectifying the taxable treatment of the tuition benefit.

Response from UNM Health Sciences Center Chancellor:

Action Items
<i>Targeted Completion Date: March 31, 2019</i>
<i>Assigned to: HSC Chancellor</i>
<i>Corrective Action Planned: The UNM School of Medicine Department of Pediatrics, working with School of Medicine, HSC financial leadership, and the UNM Payroll Department will meet and confer to rectify the tax treatment consequences of the tuition benefit for all of the nurses participating in the advanced degree program.</i>

UNM Unrestricted Accounting Tax Department

The tax treatment of the tuition payments have not been, in all cases, determined by Taxation. In some cases, Taxation is only consulted after the payment is made, and the HSC Finance and Accounting department determines the tax treatment. There is no process in place to require forwarding the transaction or tax questions to Unrestricted Accounting for review, and Taxation may only become aware of the tuition payment issue when the PCard office forwards a question about the tax impact when they approve a tuition payment.

Recommendation 7:

HSC should work with the UNM Controller's Office to develop a formal process, prior to finalization of transactions, for routing of tax determination decisions to Taxation Department. Departments should address the following concerns when consulting with Taxation about the tuition payments:

- Departments should use a standardized tax worksheet listing all facts and circumstances of the tuition payment to address tax impact.
- Departments should include business need and justification for the tuition payments.
- Departments must obtain appropriate level approvals for tuition payment transactions.
- In each case, the University should document how the advanced degree maintains or improves skills for current required job, and demonstrate that the benefit does not create a qualification for an entirely different position within the University.

Response from UNM Health Sciences Center Chancellor:

Action Items
<i>Targeted Completion Date: March 31, 2019</i>
<i>Assigned to: HSC Chancellor</i>
<p>Corrective Action Planned: <i>The HSC Chancellor will work with University Controller to develop a formal process for tax determinations.</i></p> <ul style="list-style-type: none"> • <i>Tax treatment and taxation determinations should be made by the University's Taxation Department, in advance of any funding of tuition advances. However, even in the absence of that, the HSC Finance and Accounting Department should route its proposed tax treatment of tuition advances to the University's Taxation Department prior to any funding.</i> • <i>In addition, because the funding of such tuition payments may have tax implications to the affected employees, UAPPM Policy 3290 should be amended to provide:</i> <ul style="list-style-type: none"> ○ <i>The Taxation Department should develop and implement a standardized worksheet to be used by all Departments listing all facts and circumstances of the tuition payment to address tax impact;</i> ○ <i>The worksheet should provide for the Departments to include business purpose and justification for the tuition payments;</i> ○ <i>The worksheet should provide for appropriate level approvals for tuition payments to third party institutions;</i> ○ <i>The worksheet should provide for the Departments to explain how the advanced degree provides for a value or benefit to the University.</i>

ANTI-DONATION CLAUSE OF THE NEW MEXICO CONSTITUTION

The existing UNM policies do not provide any basis for UNM to pay for an employee's coursework leading to a degree from another educational institution. Except for the Neonatal Practice Trainees, no other HSC employee had an agreement covering tuition payments, any service commitment, or any conditions requiring specialized education. This raises concerns that use of public funds to pay for coursework resulting in an advanced degree is a violation of the anti-donation clause of New Mexico's Constitution.

Article IX, Section 14, Aid to Private Enterprise prohibits any state entity from "directly or indirectly lending or pledging its credit or making any donation to or in aid of any person..." In these circumstances, public funds were used to provide certain employees with an item of value, an advanced degree that only the individual degree holder can use. It was not a requirement of the employee's job, and therefore it is difficult to identify any benefit to the institution.

Furthermore, UAP 3260 addresses employee career development, and recognizes in Section 5 that "employees benefit from and are expected to participate in some form of occupational and/or professional education and training on an ongoing basis to ensure they keep up-to-date with their field of expertise... Departments must pay for career development activities required by supervisors such as required training for licenses and certifications, or commitments made on an employee's performance evaluation. Departments are also encouraged to pay for other career development activities with a fair and reasonable distribution of available resources." Nothing in policy suggests departments should pay for tuition of an employee pursuing an advanced degree at another university that is not required for the employee's position at UNM. To maintain a Certified Public Accountant license, the certificate holder is required to have 40 hours of continuing education per year by attending workshops/seminars, annual conferences. It appears that the HSC Executive Officer for Finance has been attending such workshops/seminars in the healthcare field; and therefore, this focused coursework would be more appropriate and cost effective, as opposed to receiving a master's degree using public funds.

Article IX, Section 14 of the New Mexico Constitution, commonly referred to as the anti-donation clause, provides, in relevant part:

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly . . . make any donation to or in aid of any person . . .

There is no case law, but there are a number of Attorney General Opinions issued related to anti-donation which establish the following requirements to not violate the anti-donation clause:

- The State Employer Must Receive Adequate Consideration for the Payments to the State Employee (1972 Op. Att'y Gen. No. 72-67)
 - The training is related to his work, and which will improve the quality of his service to the state; and,

- If the leave is with pay, the employee must agree to return to work for the state agency for an agreed period of time.
- Benefit to employee permissible only if paid pursuant to a contract as bargained-for consideration in return for services rendered (1977 Op. Att’y Gen. No. 77-18).
- Additional benefits to employee are not allowed if degree not required by employer (1944 Op. Att’y Gen. No. 44-4440), and any benefit to state employees that were not contractually required is not allowed.

Applying the above principles to the HSC employees obtaining the advanced degrees:

Neonatal Nurses – Each of the seven neonatal practice trainees have a formal agreement in place, which set forth the following:

- Condition of employment is completion, at UNM’s expense, of a Master’s of Science in neonatal intensive care at Vanderbilt University.
- Upon successful completion of the program, the job designation is changed to Neonatal Practice Specialist.
- The agreement requires the employee successfully complete the Program, take and pass the National Certification Corporation examination to qualify as a neonatal specialist, then continue in UNM’s full-time employ as a Neonatal Nurse Practitioner for sixty months.
- Failure to satisfy any of these requirements would have triggered clawback provisions, under which the employee has to reimburse UNM for all or some portion of the tuition and costs.

Based upon the foregoing, UNM’s payment for the neonatal nursing tuition and related costs meets the requirements of the anti-donation clause. The course of study was related to employment, employees were contractually obligated to successfully undertake the course of study as a condition of employment, and UNM was contractually obligated to pay the costs of that course of study.

The HSC faculty and staff (other than the Neonatal nurses) did not meet the requirements and thus were in violation of the anti-donation clause.

- Employment contracts do not require, or even refer to, obtaining a Master’s degree, participation in the Master’s program, nor to UNM’s payments of the tuition or other costs.
- None of the UNM policies allow for an employee’s participation in graduate studies at institutions outside of New Mexico, or for UNM’s payment for such participation.
- There is no documentation referring to benefit to be obtained by UNM by employees’ participation in the advanced degree programs.

- Job descriptions do not indicate that a Master's degree in health administration is required for the position, and no documents were provided that require additional formal training for the position.

It does not appear that the payments for tuition meet the requirements, as expressed in the relevant Attorney General's opinions under the anti-donation clause. Although it might reasonably be assumed that the knowledge gained from participation in advanced degree programs is a benefit to UNM HSC if the employees continues employment with UNM, there is nothing in any of the documentation provided that expressly states this.

UNM does have a claim for reimbursement for those payments of tuition and related travel costs that were in violation of the anti-donation clause. Because UNM is not obligated to assert those claims, however, UNM has discretion in determining whether to do so or not. In determining whether to exercise that discretion, UNM should take into consideration the defenses and counterclaims that might be asserted by the employees based on express and implicit representations that the payments were legally authorized. After appropriate investigation and an evaluation of the potential defenses and counterclaims, UNM might well determine that the expense of the litigation and the chances of success in overcoming the defenses and counterclaims do not justify asserting the claims for reimbursement.

The University paying for advanced degrees for employees raises additional concerns that the University could be vulnerable to discrimination or other similar claims by employees not afforded the same opportunities to receive an advanced degree at no personal cost. The tuition and related payments do not appear to follow any sort of process available to all employees. In absence of any additional or contrary information, it is impermissible to use public funds to pay the tuition and associated travel costs for certain employees to receive advanced degrees from other educational institutions that are not necessary for the employees to perform their job duties.

The seven (7) neonatal nurse practitioners should be excluded from repayment of university funds for tuition and books based upon the following:

- Each has a formal written contract that was agreed to before commencing pursuit of the degree.
- Payment of the tuition costs was enumerated and approved in the signed contracts, and the agreements provided for repayment of the tuition costs should the employee not finish the program or leave University employment before a predetermined timeframe of service.
- Although the degrees were approved, it should be noted that they were not approved by the EVP for Administration or UNM Human Resources, as enumerated by the University Policies.
- The shortage of neonatal nurses in New Mexico has been documented; therefore, the need and business purpose for the degrees was sufficiently explained.

As previously noted, travel costs are the responsibility of the Neonatal Practice Trainees and should be repaid to the University.

The University has referred this audit report to the New Mexico Attorney General for a determination on the anti-donation issue, and repayment of tuition costs, if any. Based upon the forgoing discussion of UNM Policies, management approval processes for tuition payments, whether formal agreements exist, and the anti-donation clause, IA has the following recommendation concerning recovery of the University funds expended for advanced degrees:

Recommendation 8:

The UNM President should work with the Office of University Counsel, and the New Mexico Attorney General to determine the effect of the anti-donation statute, and resolve any anti-donation issues inherent in the HSC tuition payments, including repayment of tuition costs, if any.

Response from Office of the President:

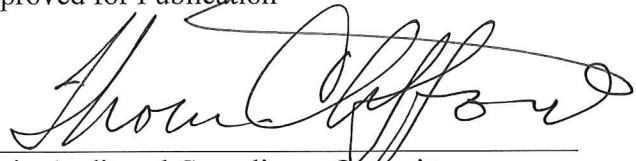
Action Items
<i>Targeted Completion Date: TBD- Dependent on receiving a formal opinion from the State of New Mexico Attorney General</i>
<i>Assigned to: Terry Babbitt</i>
<p><i>Corrective Action Planned: The President's office will coordinate with University Counsel to request a formal opinion on this issue. The New Mexico Attorney General will be asked to provide an opinion regarding use of Public Funds (UNM paid the tuition and travel costs for one or more UNM employees to receive degrees from non-UNM institutions that were not required for the employees' jobs with UNM). The questions are:</i></p> <ul style="list-style-type: none"> <i>a) Whether UNM's payment of the tuition and related travel costs violated the anti-donation clause of the New Mexico constitution.</i> <i>b) If so, whether UNM should require the employees to reimburse UNM for the funds expended on their behalf.</i>

APPROVALS



Manu Patel, CPA
Director, Internal Audit Department

Approved for Publication



Thom Clifford
Chair, Audit and Compliance Committee

UNM Health Sciences Center
HSC Tuition Payments & Related Travel Expenses for Employees
Audit #2018-02

Employee	Ava Lovell	David Czuchlewski	Alan McLean	Michelle Williams	Jonathan Bolton	Olivia Dearholt	David Henderson	Christina Kamm	Jazmine Valencia	Shella Kobella	Nicole Trujillo - Taylor	Dawn Rupley	Total Amount
School	University of South California	Johns Hopkins University	Harvard University	University of Illinois - Chicago SOM	Carnegie Mellon University	Vanderbilt University	Vanderbilt University	Vanderbilt University	Vanderbilt University	Vanderbilt University	Vanderbilt University	Vanderbilt University	
Degree	Executive Master - Health Administration	Master of Education - Health Professionals	MS Healthcare Management	MS Patient Safety Leadership	Masters in Medical Management	MS Nursing - Neonatal Specialty	MS Nursing - Neonatal Specialty	MS Nursing - Neonatal Specialty	MS Nursing - Neonatal Specialty	MS Nursing - Neonatal Specialty	MS Nursing - Neonatal Specialty	MS Nursing - Neonatal Specialty	
2014						50,295.00							\$50,295.00
2015	29,881.69	11,100.00	36,500.00		6,800.00		51,769.00						\$136,050.69
2016	31,032.98	11,150.00	36,500.00	15,547.84	9,800.00			39,217.40	42,155.85	39,247.4			\$224,651.47
2017		9,350.00		12,320.00	6,000.00						57,448.00		\$85,118.00
2018		3,775.00										\$22,035.50	\$25,810.50
Total Tuition Payments	\$60,914.67	\$35,375.00	\$73,000.00	\$27,867.84	\$22,600.00	\$50,295.00	\$51,769.00	\$39,217.40	\$42,155.85	\$39,247.40	\$57,448.00	\$22,035.50	\$521,925.66
Travel Expenses													Total Amount
Meals	654.95	0.00	6,532.27	0.00	283.00	1,504.80	2,204.40	1,828.00	1,692.95	1,916.80	909.50	318.50	\$17,845.17
Incidentals	498.99	0.00	559.26	0.00	0.00	210.00	0.00	300.00	208.48	474.30	219.30	37.87	\$2,508.20
Airfare	1,077.62	0.00	5,202.03	0.00	486.96	2,367.30	2,546.70	2,775.20	2,951.39	3,074.36	2,194.26	1,066.92	\$23,742.74
Hotels	3,146.64	0.00	10,256.28	0.00	736.85	3,479.79	5,463.27	5,358.02	5,331.80	7,283.83	3,586.78	1,380.89	\$46,024.15
Books & Fees			1,973.72	0.00	73.77	1,126.93	1,820.59	1,839.39	2,075.05	2,372.24	1,831.27	650.83	\$13,763.78
Total Travel Expenses	\$5,378.20	\$0.00	\$24,523.56	\$0.00	\$1,580.58	\$8,688.82	\$12,034.96	\$12,100.61	\$12,259.67	\$15,121.53	\$8,741.11	\$3,455.01	\$103,884.04
Total Cost - Tuition & Travel	\$66,292.87	\$35,375.00	\$97,523.56	\$27,867.84	\$24,180.58	\$58,983.82	\$63,803.96	\$51,318.01	\$54,415.52	\$54,368.93	\$66,189.11	\$25,490.51	\$625,809.70

Comparison of Code Sections Covering Educational Assistance

The following table is for quick reference. For more information, see the text, the relevant Internal Revenue Code sections, or [Publication 970](#).

Feature	§127 Qualified Educational Assistance	§132(d) Working Condition Fringe	§117(d) Qualified Tuition Reduction
Written Plan Required	Yes	No	No
Undergraduate Courses Covered	Yes	Yes	Yes
Graduate Courses Covered	Yes	Yes	No*
Must Be Job-Related	No	Yes	No
Courses Qualifying Employee for New Trade or Business Covered	Yes	No	Yes
Courses Needed to Meet Minimum Job Requirements Covered	Yes	No	Yes
Can Discriminate in Favor of Highly Compensated Employees	No	Yes	No
Dollar Limitation	\$5,250	No	No
Definition of Employee Includes:			
Current Employees	Yes	Yes	Yes
Family Members	No	No	Yes
Laid-Off Employees	Yes	No	No
Employees Retired or on Disability	Yes	No	Yes
Independent Contractors	No	Yes	No
Educational Expenses Covered:			
Tuition	Yes	Yes	Yes
Books, Supplies, Equipment	Yes	Yes	No
Tools or Supplies employee may keep	No	No	No
Education Involving Sports, Games, Hobbies	No**	No**	Yes
Meals, Lodging or Transportation	No	Yes	No

* See text for exceptions

** Yes, if specifically job related

Note: These are general rules. For details, refer to the text and Publication 970.

Working Condition Educational Fringe Benefit -General Guide

