MEMORANDUM

To: Dr. Robert Boeckmann, Faculty Alliance Chair

From: Ashok K. Roy

Date: April 7, 2014

Subject: Proposed Fraud, Waste & Abuse Regulation 05.02.090

This has reference to your noted dated March 21, 2014. Please see below for response to the concerns that you expressed.

A. Definitions
After review, it is not entirely clear to me how these definitions could be misconstrued to refer to protected speech or academic freedom. That of course is not the intent. If someone were to attempt to misconstrue them, Regents’ Policy P05.02.090 states that the policy and regulations for Financial Fraud, Waste and Abuse will not supersede or conflict with any existing laws, policies or regulations. That would include policies on Academic Freedom and laws governing freedom of speech (which would apply in any event). At the same time the definitions of fraud, waste and abuse cannot broadly exclude speech since financial fraud, waste and abuse may be accomplished through speech. I would be happy to add the qualifier “financial” to A.1. so that it reads, “Fraud means the intentional false representation, concealment, or failure to disclose a material fact for the purpose of personal FINANCIAL gain or causing FINANCIAL harm to another party.”

D. Reporting Requirements and Procedures
The Alaska Whistleblower Act applies to the university, irrespective of Regents’ Policy or University Regulation. To be more complete, D.2. regarding protection from retaliation will be amended to read: “Employees who make a good faith report are protected from retaliation in accordance with Regents’ Policy 04.07.040, P04.08.040.A. and the Alaska Whistleblower Act AS 39.90.100–39.90.150.”
E. Investigation Procedures
Consistent with Regents' Policy 05.03.018, and to ensure the credibility of an investigation that may either implicate an employee in wrongdoing or exonerate the employee, University Regulation 05.02.090.E.1. must provide the auditor with broad authority to sequester and preserve University records without “prior” knowledge or consent. That does not mean that investigations will be conducted in “secret” or that attention will not be paid to maintaining University operations affected by the investigation. Disciplinary procedures required by CBAs, including notice, as well as due process requirements, are not superseded by University Regulation and are followed as a matter of course to avoid unfairness as well as procedural objections to any disciplinary action that may result. Nonetheless, we will add the following language: “Investigations will be conducted in accordance with principles of fundamental fairness, including any applicable CBA procedures, and will minimize to the extent possible the impacts on affected University operations.”

Internal audit departments of universities and colleges are commonly and appropriately tasked with conducting financial (not academic) investigations. To avoid undue administrative or academic influence, Regents' Policy, including P05.03.020.A., provides a great deal of autonomy to the internal auditor: “The chief audit executive shall report administratively to the chief finance officer and functionally to the chair of the Audit Committee.” That said, the Internal Auditor does not operate in a vacuum and generally consults with appropriate administrative and academic officials and General Counsel before commencing an investigation. However, regulation must preserve the auditor's flexibility to limit the number of personnel involved in a confidential matter.

c.c. LaNora Tolman, System Governance