

MODEL COMMUNICATION

The University of California Office of the President invites comments on a proposed Presidential Policy on Native American Cultural Affiliation and Repatriation. The proposed Policy substantively revises the existing Native American Cultural Affiliation and Repatriation Interim Policy (“Current Policy”). The Policy pertains to the treatment and repatriation of Native American and Native Hawaiian human remains and cultural items under the University’s possession or control and the University’s compliance with the federal Native American Graves Protection and Repatriation Act (“NAGPRA”), its accompanying regulations, and the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”). This effort began in 2018 in response to AB 2836, a California bill that required the University to revise its previous Policy.

On July 24, 2020, President Napolitano issued the Policy as interim in order to allow tribes additional time for review due to the COVID-19 pandemic. At that time, the comment period was extended through November 15, 2020, with the intention that UC would issue a final updated Policy by December 31, 2020. On September 29, 2020, AB 275 which made substantial changes to the CalNAGPRA was signed into law, effective January 1, 2021. The prevailing concern communicated by the responding tribes and the California Native American Heritage Commission (NAHC) during the extended comment period was that the Interim Policy did not reflect these new requirements. Respondents urged UC not to implement a final Policy by December 31, 2020, but rather to delay issuance and allocate additional time to ensure that AB 275 could be fully incorporated into the Policy. This revised Policy now incorporates AB 275 requirements.

Below is a list of the significant changes present in the proposed Policy from the Interim Policy:

1. Definitions (§ II) have been added and revised where needed to align with CalNAGPRA.
2. As required by CalNAGPRA, deference to tribal traditional knowledge, oral histories, documentation, and testimonies is now indicated when determining state cultural affiliation, identifying cultural items under CalNAGPRA, and making decisions related to the CalNAGPRA repatriation process (§§ V.C.1 and V.J.1).
3. In consultation with California Native American tribes, Campuses must prepare preliminary inventories/summaries by January 1, 2022 for submission to the NAHC (§§ V.B.1.k, V.C.1, and V.C.5).
4. The CalNAGPRA dispute procedures available to California Indian tribes have been added (§ V.I).
5. The AB 275 procedures for submissions of claims under CalNAGPRA have been incorporated (§ V.D.3).

6. The flowcharts and narrative previously described in Appendices A, A-1, and B of the Interim Policy have been removed. These documents were intended as visual aids in understanding the consultation, claims, repatriation, and appeals processes described in the Interim Policy rather than as a means of separately conveying policy requirements not described in the Interim Policy. However, as stated in the revised Policy (§§ III.C, V.B.1.i, V.B.2, V.D.1, V.D.3, V.I, V.J.3, and VI.1), UC will maintain these flowcharts on UCOP's NAGPRA website. This will allow UC to make more responsive ongoing updates to the flowcharts to clarify these processes as they are more fully implemented, based on feedback from tribes, committee members, and UC repatriation staff.

Please visit <http://ucal.us/nagpra> for the complete revision history.

If you have any questions or if you wish to comment, please contact _____ at _____, no later than _____, 2021.