MEMORANDUM

TO: Randolph G. Moore  
Chairperson, Board of Regents

FROM: David Lassner  
President

SUBJECT: DELEGATION OF AUTHORITY TO THE PRESIDENT OR THE PRESIDENT’S DESIGNEE TO RENDER THE FINAL DECISION IN CONTESTED CASE PROCEEDINGS REGARDING RECOVERY OF DELINQUENT FINANCIAL OBLIGATIONS TO THE UNIVERSITY

SPECIFIC ACTION REQUESTED:

As authorized by Section 304A-105(a)(3) of the Hawai‘i Revised Statutes (“HRS”), it is requested that the Board of Regents delegate authority to the President or the President’s designee to render the final decision in contested cases involving recovery of delinquent financial obligations through setoffs against tax refunds.

RECOMMENDED EFFECTIVE DATE:

October 15, 2015.

ADDITIONAL COST:

There are no additional costs arising from this action.

APPLICABLE REGENTS POLICY:

Regents Policy (“RP”) 1.202, entitled “Relationship of the Board to Administration” and Policy 2.202, entitled “Duties of the President” provide that a distinction must be made between what “administration” of the university, and the Board’s policymaking and oversight roles. RP 2.202 states in Section III.A. that “the president shall be the chief executive officer of the university and shall exercise power under the board for governance, protection, and advancement of the university on both its educational and business aspects, in its colleges and subdivisions, and in each of its affairs and interests.” In Section III.B.4. of RP 2.202, the Board has assigned the President and/or delegates with the responsibility of the day-to-day administration and operation of the University.
PURPOSE:

The purpose of this request is to clarify the intent of the Board with respect to its delegation to the President of the responsibility to issue final decisions in contested case proceedings involving collection of delinquent debt through the State of Hawai‘i’s tax intercept program.

BACKGROUND:

The University utilizes the State of Hawai‘i tax refund intercept program set forth in HRS Sections 231-51 to -59 to recover delinquent financial obligations to the University. This program allows the University with the assistance of the Comptroller of the State Department of Accounting and General Services, with proper notice to the debtor, to apply the debt owed to the University against any state income tax refund due the debtor from the State.

In accordance with Sections 20-10-11 through 18 of the Hawai‘i Administrative Rules (“HAR”), the debtor is given the right to contest the withholding of said tax refund, and may request a hearing before the University to contest the setoff. The President or designee assigns an administrative hearing officer to conduct the hearing. The hearings officer issues his/her proposed decision, and if the debtor is adversely affected by said proposed decision, the debtor is given the opportunity to then present written and oral arguments to the Board or its designee; the outcome of this process is the final decision, which is appealable in State court pursuant to HRS Chapter 91.

HRS § 304A-105(a)(3) expressly provides that the Board of Regents may “[d]elegate to the President or to the President’s designee the authority to render the final decision in contested case proceedings subject to chapter 91 . . . .”

In September 2002, the Board adopted amendments to HAR Chapter 20-10 for the specific purpose of allowing the Board to delegate the final decision-making authority in tax setoff contested cases to the President or the President’s designee. The Board minutes state that, “[t]he proposed amendments are intended to free the Board from having to review each contested case, thereby reducing the amount of time it takes to adjudicate a contested case.”

Although general delegations have been approved by the Board in its policies set forth above, this request is for a specific delegation of authority as contemplated by HRS § 304A-105(a)(3).

ACTION RECOMMENDED:

It is recommended that the Board of Regents delegate to the President the authority to render the final decisions in contested case proceedings subject to HRS Chapter 91, regarding potential tax setoffs authorized by HRS Chapter 231. The President may further delegate this authority, as the President deems appropriate.