UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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Mary Croughan
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Chair of the Assembly and the Academic Council
Faculty Representative to the Board of Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

June 22, 2009

PRESIDENT MARK YUDOF
UNIVERSITY OF CALIFORNIA

Re: Systemwide Academic Senate comments on SOR 100.4

Dear Mark:

Thank you for the opportunity to review the proposed revisions to Standing Order of The Regents (SOR) 100.4 and the associated Draft Furlough/Salary Reduction Guidelines. While the Academic Council does not endorse the policy as written, the Academic Senate appreciates the opportunity to be active participants in the budgetary process and in shared governance at this challenging time.

All ten divisions and eight standing committees (UCAAD, UCAP, UCCC, UCEP, UCFW, UCORP, UCPB, UCPT) opined; their responses are enclosed. There was significant agreement on the following common concerns: (1) the lack of a sunset review clause, termination date, or a mechanism to declare an end to the emergency; (2) the ability for the President to act before seeking approval and consultation; (3) the authority of the President to override policies not limited to those governing furloughs and salary cuts; (4) the conflation of emergencies such as natural disasters that require quick action with fiscal emergencies, which can be foreseen and dealt with through regular channels of consultation; and (5) lack of clarity surrounding the ways in which salary cuts and furloughs would be implemented (e.g., would cuts later be restored, would they apply to employees who are externally funded, what are the implications for HAPC, etc.). Many respondents felt that these complex issues should be addressed prior to granting the President the authority to implement furloughs or salary reductions, or more generally to override existing policy.

Some divisions and committees (UCI, UCSC, UCPB) felt strongly that the policy requires such extensive revisions that they oppose its consideration by the Regents at their meeting in July. They argued that the financial crisis does not warrant giving the President such unprecedented power, encoded in a Standing Order.

Many of the concerns about the breadth of the policy and the requirements for consultation could be alleviated by creating two separate policies—one for emergencies such as natural disasters, which would grant the President greater unilateral authority, and one addressing fiscal crises, which would require greater consultation. Similarly, a clearer statement that that only Human Resources policies,

and not policies governing other arenas, may be suspended during a declared emergency would reduce the concerns expressed.

Senate respondents disagreed on two major issues: (1) whether furloughs or salary cuts are the most appropriate vehicles to achieve budget savings; and (2) whether campus-based or systemwide responses to the budget crisis are preferable. Some divisions and committees believe that furloughs are not practicable for faculty, while others preferred this option over salary cuts because it would protect the base salary on which retirement compensation is calculated. UCPB and UCFW continue to emphasize that furloughs and salary cuts should be a last resort, considered after all other options have been explored, and stress the great importance of protecting faculty salaries so as not to further erode UC's competitiveness. A clear majority of respondents believe that a statewide financial emergency requires a common, systemwide response and that allowing implementation of furlough and salary cuts campus by campus will undermine a single faculty salary scale, but a strong minority argues that campus circumstances differ so significantly that systemwide implementation of furloughs or salary cuts would be inequitable and contrary to the idea of campus autonomy (UCB, UCSD, UCSF).

Finally, several committees and divisions (UCSC, UCAP, UCFW, UCPB, UCORP) noted that the implementation guidelines should formally list additional Senate groups with whom the President and chancellors should consult: divisional committees on educational policy, research, admissions, graduate councils and division chairs.

We appreciate the opportunity to participate substantively in the budgetary decision making process, at both the systemwide and campus levels. Such extensive consultation will result in more robust and well-received policies. Please do not hesitate to contact me if you have any questions regarding Council's comments.

Sincerely,

Mary Croughan
Chair, Academic Council

Copy: Academic Council
John Sandbrook, Interim Chief of Staff
Martha Winnacker, Academic Senate Executive Director
Jeffrey Blair, Acting Deputy General Counsel
Katherine Lapp, Executive Vice President, Business Operations
Lawrence Pitts, Interim Provost and Executive Vice President

Encl (18)

ACADEMIC SENATE
BERKELEY
320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

May 26, 2009

MARY CROUGHAN
Chair, Academic Council

Subject: Proposed amendment of Standing Order 100.4 – Duties of the President

On May 18, 2009, the Divisional Council (DIVCO) of the Berkeley Division discussed the proposed amendment of Standing Order 100.4 governing the duties of the President. The discussion was informed by the comments of the divisional committees on Budget and Interdepartmental Relations (BIR), Faculty Welfare, and Academic Planning and Resource Allocation.

(1) As a general matter, we are deeply concerned about the nature of the proposed amendment. We believes that if the intent of the provision is to enable UCOP to facilitate campus level decisions about emergency payroll reductions, then the new order is at the same time too sweeping and too bureaucratically prescriptive, given differences in individual campus governing processes. We would strongly prefer an implementing order narrowly tailored to the specific budget circumstance at hand, rather than one meant to cover both fiscal and natural disasters. Better would be a requirement that the campus administration consult with its Academic Senate executive council, and that the executive council offer a separate statement to UCOP about the proposed salary cuts or furloughs.

(2) By contrast, if the purpose of the provision is to enable UCOP to impose furloughs and salary cuts over and against the preferences of individual campuses, then it is again troubling in the wide and vague scope of powers it grants UCOP, but here too limited in the consultation it requires with the divisions of the Academic Senate (as opposed to the consultation with the systemwide Senate leadership). In such a situation, the draft amendment provides that the President can either act in consultation with a campus strategic planning committee or task force or develop a plan using "Office of the President personnel and equivalent academic senate representatives" (p.3, B). We do not view these as equivalent alternatives. We recommend that the preparation of a campus Furlough/Salary Reduction Plan should always involve a campus strategic planning committee or task force (whether the committee is assembled by a Chancellor or by the President). The substitution of UCOP personnel for a campus committee should be left as an instrument of last resort.

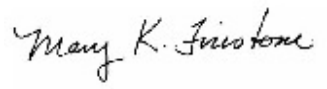
(3) A different scenario occurs where a Chancellor recommends a condition of Emergency for her/his campus and proposes a Furlough/Salary Reduction Plan, but this recommendation is not endorsed by the President. We propose that the President be required to respond to the campus-level Emergency recommendation within a stated period of time with a formal written explanation for the decision not to support the Chancellor's recommendation. Where appropriate, UCOP should give guidance concerning how the campus's recommendation and Furlough/Salary Reduction Plan might be revised so as to secure support and implementation.

(4) DIVCO presumes that the implementation of any systemwide Furlough/Salary Reduction Plan will necessarily involve elements of interpretation and flexibility at the campus level. Given the highly differentiated character of funding sources within UC, it may well be that no single form of salary action fits all categories, and that the added administrative costs of distinguishing categories of employees is worthwhile. While the current draft gives the President responsibility for ensuring "consistency" and "fairness" in the operation of a Furlough/Salary Reduction Plan (p.3, A), which we endorse, the Amendment also should contain a corresponding statement of reasonable campus autonomy in the implementation of a Furlough/Salary Reduction Plan. While the Amendment necessarily specifies the special authority exercised by the President during a condition of Emergency, it also should make explicit that the condition of Emergency should leave in place to the fullest extent possible the normal structures of campus self-government and administration.

(5) The Draft Guidelines (p.1, final paragraph) presume that the period of declared Emergency will be of limited duration. However, no procedure or requirement is specified for the ending of an Emergency. We propose that the required approval by The Board of Regents include a specific termination date for the Emergency, not longer than one year, and that any extension of the Emergency beyond this date requires a new recommendation to the Regents and submission of a revised Furlough/Salary Reduction Plan.

While DIVCO appreciates the urgency of the current budget climate, it rejects the tenor of fear implicit in the emergency powers. The University has a rich culture of shared governance and campus autonomy that has served the institution well. We call upon Academic Council to strongly support this tradition in its response to the proposed amendment of Standing Order 100.4.

Sincerely,



Mary K. Firestone
Chair, Berkeley Division of the Academic Senate
Professor, Environmental Science, Policy and Management

Cc: John Ellwood, Chair, Committee on Academic Planning and Resource Allocation
Christopher McKee, Chair, Committee on Budget and Interdepartmental Relations
Yale Braunstein, Chair, Committee on Faculty Welfare
Aimee Larsen, Manager, Committee on Budget and Interdepartmental Relations
Diane Sprouse, Senate Analyst, Committee on Academic Planning and Resource Allocation
Committee on Faculty Welfare 08-09 file

UNIVERSITY OF CALIFORNIA, DAVIS

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May 26, 2009

MARY CROUGHAN, CHAIR
University of California
Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607

Re: Systemwide Review: Proposed Amendment to Regents Standing Order 100.4: Duties of the President and Draft Furlough/Salary Reduction Guidelines

The Davis Division of the Academic Senate forwarded the proposal for review by Divisional standing committees and Faculty Executive Committees of the schools and colleges as well as to the members of the Representative Assembly. Given the current climate, much of the discussion centered around financial emergencies. It is clear that the Davis Division strongly urges that the pay cuts or furloughs envisioned by this policy be seen as a last resort once all other means of dealing with a crisis have been exhausted.

In terms of the proposed Standing Order, the Davis Division recommends that the language describing the response to physical emergencies be clearly separated from that dealing with financial emergencies. We defined a physical emergency as an earthquake, fire or some other unforeseen act of nature or issue impacting operation of a campus or campuses. A financial emergency would result from a significant reduction in state-supported funding for the operations of the university.

A financial emergency is generally foreseeable, although under some circumstances a physical emergency might result in a financial emergency. In fact, throughout our discussions, none of the committees or individual members of the Academic Senate were able to craft an example of a financial situation that would emerge so rapidly as to make consultation impractical on a time scale that is meaningful. This part of our discussion identified three major questions:

1. What constitutes a financial emergency?
2. During a financial emergency what is a reasonable amount of time for consultation?
3. What is the process to assure that all other reasonable means of meeting the financial crisis have been exhausted?

The Davis Division believes strongly that any exercise of this policy, occurring without consultation, should be limited. The policy currently allows for up to a 60 day period before consultation must occur. Again, this seems long for a financial emergency since these do not occur without some forewarning. On the other hand, 60 days may be reasonable if responding to a physical emergency. In both cases, the policy should mandate a clear beginning and

ending date. This would maintain the ability, in extreme circumstances, to allow swift management of an emerging situation but also afford the ability to correct course quickly, if needed, when the situation stabilizes.

The answers to the first and third questions require that faculty be fully engaged. The Davis Division believes that in a time of emergency shared governance will provide the appropriate backdrop for the substantive discussions and consultation that must attend difficult decisions. The Davis Division believes that the task force (contemplated in the draft Furlough/Salary Cut Guidelines) that would be put in place to implement any proposed cuts or furloughs must be broadly representative of the faculty. Many feel that there should be more than four Senate representatives. It is important to have as much faculty participation as possible since faculty is not as interchangeable as other employees. The prospects of large scale retirements and resignations are daunting.

For a financial crisis, there is a clear majority opinion that allowing individual implementation of furlough and salary cuts campus by campus rather than as a system erodes peer review and undermines the idea of a single faculty salary scale. The Davis Division believes that a statewide financial emergency requires a system-wide response.

In summary, once again we are compelled to state that the University of California is not simply an amalgamation of ten separate campuses. It is a system garnering strength from the whole. As stated above, there must be a mechanism for initial review of physical and financial emergency situations to assure exhaustion of all options to manage the emergency before a single campus or campuses embark on the drastic step of implementing furlough or pay cuts. Effective faculty consultation through the Academic Senate must be a paramount consideration.

Sincerely,

Robert L. Powell III, Chair
Davis Division of the Academic Senate and
Professor and Chair, Department of
Chemical Engineering and Materials Science

UNIVERSITY OF CALIFORNIA, IRVINE

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May 21, 2009

Mary Croughan, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Proposed Standing Order on Furloughs and Salary Cuts

At its meeting of May 19, 2009, the Irvine Division Academic Senate Cabinet reviewed the proposed new Standing Order of the Regents and the proposed implementation guidelines regarding furlough and salary cuts during an emergency. The Cabinet strongly opposed these proposals, on the grounds that too much authority and flexibility would be given to the President to cut some but not other salaries by as little or as much as he saw fit. This sets up the opportunity for differential treatment within and between UC campuses. Furthermore, the Academic Senate would only be consulted, without the opportunity to vote; i.e., officially approve, restrict or limit any proposed policy changes related to salary cuts.

The following concerns were raised during the discussion:

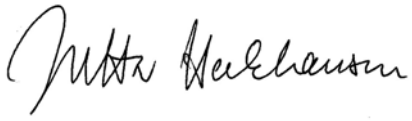
1. The UC system of shared governance recognizes that consultation with faculty is a source of valuable information and feedback on administrative matters. Such consultation would be particularly helpful and important regarding budgetary matters during times of emergency. The proposed new Standing Order of the Regents would allow the President to unilaterally impose furloughs and salary cuts without prior consultation and approval of the faculty.

2. The proposed new Standing Order has several other flaws. These are listed below:
a. The policy as drafted is too broad in its expansion of the President's discretion over various UC policies. The policy does not just address furloughs and pay cuts, but suggests that the President can also suspend other policies, with very broad scope. Can the President suspend UC's contributions to the cost of employees' health-care coverage and/or UCRP payments? Both are rather drastic and seem to give too much power to the President, including letting the administration protect priorities other than those of faculty, staff, and students.

b. If the consultation with a division or the system-wide Senate does not lead to faculty endorsement of the plan, would the President be able to act unilaterally, citing emergency powers? The proposed Standing Order is ambiguous on this point. We are particularly worried that 100.4(5) would allow the President to act alone, and only consult with the Regents and the Senate within 60 days. That clause should be eliminated altogether.
c. The policy leaves the duration of the emergency as indefinite. There should be explicit language that addresses the issue of duration of cuts and restoration. What is the mechanism for declaring it to be over, and what, if anything, is the Senate's role during the emergency and in declaring it to have ended?
d. A statement about how to declare an end to the crisis ought to indicate what happens at that time. The question is whether or not full restoration is expected to occur, with the prior salary structure serving as the basis for future COLAs or salary increases.
e. Numerous questions remain unclear (e.g., whether faculty may “moonlight” during a furlough or substitute grant income for base salary); these issues are not mentioned in the draft policy. Similarly, implications for UCRP service credit, and for post-emergency salaries and benefits are left unstated.
f. Turning to the one-campus nature of some emergencies, if one campus experiences a natural disaster that requires indefinite closure, it is not obvious that this is a time that UC should seek to cut anyone’s pay, or cut only the pay of people at that campus. Such true emergencies suggest that employees will also be facing personal crises, and the last thing they need to do then is worry (more than usual) about paying their bills.
g. It remains unclear why such special Regents Orders and implementation guidelines are needed when the last salary cut in the early nineties was implemented without creating any such unusually broad and sweeping emergency powers.

In sum, the Irvine Division is very critical of both the Standing Order for the Regents and the Implementation Guidelines regarding emergency-related furlough and salary cuts.

The Irvine Division appreciates the opportunity to comment.



Jutta Heckhausen, Senate Chair

C: Martha Kendall Winnacker, Executive Director, Academic Senate

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May 26, 2009

Mary Croughan
Chair of the Academic Council

In Re: Proposed Furlough and Salary Reduction Policy

Dear Mary,

Thank you for the opportunity to opine on the proposed Furlough and Salary Reduction Policy. I am writing in my role as Vice Chair for the UCLA Division of the Academic Senate, as Divisional Chair Michael Goldstein is away from campus.

When we received the request to review the policy, we requested responses from the Council on Academic Personnel, Faculty Welfare Committee, Council on Planning and Budget, Graduate Council, Undergraduate Council, Privilege and Tenure, and all twelve Faculty Executive Committees. Professor Stephen Yeazell, School of Law, also submitted comments. I have attached the responses we received for your information. The Executive Board, which speaks for the campus, reviewed all feedback and formulated this response for the campus. In essence, the UCLA Academic Senate does not support the proposal as written. Before it could consider endorsing such a proposal, the following revisions would be required.

Policy considerations

1. The policy is designed to address disparate events or circumstances that would significantly impact the operations of the University. The two broad categories of events discussed by the Board were natural disasters (e.g., earthquakes, wildfires) and severe economic downturns (such as the one in which we now find ourselves). The use of the term "emergency" accurately applies to the former category in that the effects are disastrous and unforeseen. Application of the term "emergency" to the current economic downturn is, to our thinking both alarmist and inaccurate, in that the situation has developed slowly over time and the effects could be foreseen. This difference is more than semantic. While a true emergency would require immediate action, sometimes with limited opportunity for consultation, a fiscal crisis that is foreseeable provides greater opportunity for deliberate action. We therefore recommend that the single policy be bifurcated into two separate policies, one for a true emergency (largely the result of natural disasters) and the second for a "fiscal crisis." In the spirit of transparency, the Board

recommends that consultation flow charts, with ideal timelines articulated, be included in the policy or implementation guidelines.

2. Specific reference to campuses with Medical Centers was made, possibly related to the impact on patient care. Yet other programs, such as Dentistry and Optometry, would have similar concerns. Thus, the language should be modified to better reflect the breadth of patient care programs: e.g., "Health Sciences," or "Medical Centers and Other Patient Care Programs."

Process

1. The *process* for responding to critical circumstances in the two separate policies should be different, depending upon whether the crisis developed suddenly *or* over a long period of time. A true emergency (i.e., natural disaster) would likely require quick decision-making authority for the President, wherein consultation with the Academic Senate would occur on an abbreviated timeline or in a post-audit fashion. A foreseeable financial crisis, conversely, provides the opportunity for broader Senate consultation as well as more time to conduct the consultation. Because the antecedent circumstances are greatly different for each of the two categories, the Standing Order and related procedural documents should be divided into procedures unique to each category. Both categories, however, should require formal, written consultation.

2. The duration of the declaration should be specified within the Regental Standing Order. The Declaration must have a specified start and end date, with mandatory Regental renewal, complete with full Academic Senate consultation, at twelve months and interim review at six months.

3. The question of the role of Chancellors in a document titled "Duties of the President," raised questions among Board members. Confusion would likely be dispelled if the sentence in paragraph 4, which currently reads as "If the request for approval of a Declaration of Emergency is submitted by a Chancellor to the President, the Chancellor shall engage in consultation with representatives of the divisional Academic Senate…" was modified to read as follows: "The President shall require that Chancellors requesting the declaration of a financial crisis, specific to the campus, consult with the divisional Academic Senate and the appropriate campus staff and academic representatives concerning the matters to be included in the request for approval of a Declaration of Financial Crisis."

   Moreover, if Chancellors are to be authorized to request a Declaration of Financial Crisis, the Board strongly believes that language under Regental Standing Order 100.6, "Duties of the Chancellors," should be modified to give structure to the process by which a Chancellor must consult with the Academic Senate in seeking such a declaration. As with recommendation #1 herein, the process should be divided into two sections, (1) natural disasters and (2) financial crises.

   Finally, the language as written in the draft Regental Order is not clear regarding the extent of Chancellorial authority, although it is more explicit in the Draft Guidelines. Presumably each Chancellor would be seeking the Declaration of a Financial Crisis for her or his campus alone, although this is not stated in the draft Regental standing order.

4. Under paragraph five, the Board strongly believes that the last sentence that currently reads as "…and in no event later than 60 days after the initial grant of approval by interim action" should

be changed to read "…and in no event later than 30 days after the initial grant of approval by interim action."

5. The text should be explicit regarding the return to normalcy, e.g., "Salary reductions and furloughs shall expire at the expiration of the Declaration of Financial Crisis."

Policy Implementation

The Standing Orders establish the principles and framework for developing policies in response to financial crises. With the understanding that the UC will likely need to develop such policies in the near future, we take this opportunity to document the following concerns.

1. There was strong sentiment among faculty regarding the need for compassionate implementation of salary reductions or furloughs. Then again, preliminary discussions of progressive, scaled, or tiered salary reductions have not yielded a uniform position among members of the UCLA Academic Senate. Many faculty members believed that employees who made below a certain annual salary, for example, should be spared any further reduction; others suggested a tiered approach, while still others advocated a uniform approach.

2. The Board strongly believes that any policy that is developed should specify the mechanism and timeline for returning salaries regular rates and address the length of the furlough.

3. There was great concern about the impact of furloughs, with correlative salary reductions, on benefits in general and UCRP in particular. Would, for example, a required 10% furlough reduce retirement time credit for that year to 90%? Presently, HAPC calculations average 3 years of highest compensation to determine the defined benefit rate. In a situation where a 10% furlough was mandated, for example, would a UCRS member's retirement benefit be calculated on the pre-furlough salary or by the 90% furlough rate? If the furlough reduces the HAPC calculation, then the UCRS member would not only endure the immediate reduction in take-home pay, but also years, potentially decades, of reduced pension benefits.

4. The policy would need to address how a furlough would impact research series, In-Residence, and other grant-funded faculty and staff. If a university employee whose salary is drawn from a grant is furloughed, the salary savings would presumably be returned to the granting agency, not to University coffers. If such employees are not furloughed, it would create an inequity between factions of employees.

5. The policy would need to explicate the impact of a furlough on sabbatical credit and sabbatical pay. Currently, faculty serving on a part-time basis receives a correspondingly reduced sabbatical credit. Will a furlough likewise reduce sabbatical credit? If a faculty member earned a sabbatical during regular, non-furloughed, years, but took the sabbatical during an imposed furlough, would the salary rate be pre-furlough or reduced by the furlough?

Thank you again for the opportunity to review and opine upon this critical proposal. I hope that we will be granted the opportunity to review future drafts of the proposed amendment to Standing Order 100.4 before it is put into effect.

Sincerely,

Robin L. Garrell
Vice Chair, UCLA Academic Senate

Cc: Michael Goldstein, Chair, UCLA Academic Senate
Martha Kendall Winnacker, Executive Director and Chief of Staff, Systemwide Senate
Jaime R. Balboa, Chief Administrative Officer, UCLA Academic Senate

P.S. The Council on Academic Personnel submitted its memorandum after the Executive Board had reviewed the various responses from the Division; the Board was unable to consider CAP's insights when formulating this response. CAP's concerns were less focused on the process being proposed than about the policies that might be implemented. They were particularly concerned about the implications of furloughs on timelines for advancement to tenure and merit advances. They also questioned how furloughs would affect expectations for teaching and time devoted to outside activities?

May 26, 2009

To: Michael Goldstein, Chair
Academic Senate

From: Council on Academic Personnel

Re: Proposed Amendment to Standing Order 100.4 – Duties of the President and Draft Furlough/Salary Reduction Guidelines

The Council has reviewed the "Proposed Amendment to Standing Order 100.4 – Duties of the President" and "Draft Furlough/Salary Reduction Guidelines" [hereafter, "proposals"], and finds that they leave all the important academic personnel matters associated with furloughs unresolved. Rather than addressing these issues, the proposals establish a process for consideration of such matters. Under these circumstances, CAP can only express its concerns about the process and identify the academic personnel matters that should be addressed. Our analysis of the process and these matters, provided below, should not be interpreted as an endorsement of the proposals.

Analysis

First and foremost, these proposed policies do nothing but establish a process, and leave all the significant substantive issues associated with emergencies and furloughs (defined as "temporary unpaid time off of work") to future determination through that process. Among the many academic personnel issues it *does not* address are how, if at all, the furloughs will affect time to tenure or expectations at the time faculty are reviewed for promotions; appropriate teaching loads for faculty who are subject to furloughs; implications for time devoted to outside activities; and accommodation of obligations/representations under federal grants and related effort reporting. Under the proposals, these topics are to be taken up in the "Furlough/Salary Reduction Plan" that may be requested by the President or initiated by an individual campus and transmitted to the President. Such plans are to address "How operational issues will be addressed such as continuation of essential services (e.g., police, fire, clinical and animal care, custodial)" and "How operational issues related to academic research and teaching will be addressed."

Second, the process itself is not easily decipherable from the proposal, mainly because the proposal presents various stages of the process out of chronological order. It begins by detailing the circumstances under which a financial emergency may be declared; but the financial emergency can be declared only if the Board of Regents approves a request from the President, and that request must include a written plan setting forth "the effect of such conditions on campus or University operations, the expected duration of the

Declaration or provisions for renewal, the plan for implementing the proposed furloughs and/or salary reductions, and the expected outcome of the proposed plan." The centerpiece of the process, then, is the mechanism for generating THE PLAN, a mechanism that is detailed later in the proposals.

Third, before plans are generated, the President is to set a framework that will constrain the terms of the plans. According to the proposals, "it is expected that the President will establish guidelines and parameters by which any Plan can be implemented. These guidelines and parameters will be established to ensure consistency, fairness, optimized savings and avoiding effects of unintentionally penalizing classes of employees or campus locations." It's difficult to figure out what this passage means, because the language is so vague; but it could be read to authorize the President to equate faculty and staff, regardless of the consequences for academic program. It would be important to receive some elaboration on the meaning of this language from UCOP.

Fourth, the process for generating plans at the campus level involves establishment of a "strategic planning committee or task force" comprised of *at least* eleven individuals, including the Vice Chancellor for Academic Personnel and four representatives of the Academic Senate, the Chair of CAP among those. CAP notes that the proposals authorize the Chancellor to augment the eleven-person group with other administrators, thereby potentially diluting the percentage of Academic Senate representatives. It is clear that this committee or task force is going to have to do a lot of work in preparing the plan, with tasks delineated on page 4 of the "Draft Furlough/Salary Reduction Guidelines." The issues the committee or task force must tackle include all the matters described as unspecified in the first point, above, as well as, ominously, "nine month appointments for faculty." Clearly the Chair of CAP is going to have a major burden or her or his hands should the process commence, as well as a potentially significant role in crafting the plan.[1] Once a plan has been prepared, it is to be evaluated by the Vice Chancellor for Academic Personnel to "assess the impact of the proposed plan on faculty, as well as non-represented and represented academic appointees." Once this evaluation has been performed, it is to be incorporated into the plan, and the plan is to be transmitted, with supporting documentation, to the Executive Committee of the Academic Senate "for its review and endorsement." The Senate is given 30 days to perform this review, a pretty stingy time period given the gravity of the issues and the complexity of Senate organization. More Senate consultation occurs (absent tremendous emergency) when the President submits the plan to the Regents; but by that time, it will be difficult to change course.

[1] If the President is the one to initiate the furlough process, then the President is to establish a committee or task force that replicates this type of representation at the systemwide level, though it's not clear what that would entail in terms of representation for each campus.

May 19, 2009

Professor Michael Goldstein
Chair, Academic Senate

RE: Response to the Furlough and Salary Reduction Policy Proposal

Council on Planning and Budget appreciated the opportunity to discuss with you the draft document on Furlough and Salary Reduction Policy Proposal that was recently issued from UCOP. As our discussion of the proposed policy made clear, the document requires some revision so that it will address five important matters.

First, the proposal currently does not specify a duration period for the implementation or pay cuts or furloughs. CPB believes it would be helpful for UCOP to specify the maximum period in which furloughs or pay cuts be implemented during "emergency conditions."

Secondly, CPB agrees that the document needs to be clear about the specific nature of "emergency conditions" that arise from a severe financial crisis. Obviously, such "emergency conditions" are distinct from emergencies that arise from a "natural disaster or other major debilitating event" (p.1). CPB believes that there are potential problems in conflating a natural disaster such as an earthquake or a pandemic with a fiscal emergency, even if the one might lead to the other. Moreover, CPB would like to see much greater clarity on what exactly constitutes an "emergency" in a fiscal context (see "Definition of Extreme Financial Circumstances," p.1). While it is obvious that an earthquake or pandemic immediately constitutes a state of emergency, it is not possible to make such judgments when it comes to examining budgetary shortfalls.

Thirdly, there are a number of areas regarding conditions of employment that this policy needs to consider. The document does not make any explicit statement about the ways in which administrative stipends might be affected by furloughs or pay cuts. In addition, CPB questioned the degree to which salaries paid from non-19900 funds might be affected by furloughs and pay cuts, since some of these stipends have been contractually agreed with outside funding agencies. Further, the document must consider the ways in which furloughs might affect employees whose visas require 100% employment within the UC system.

Fourthly, in order to achieve the "fair and compassionate" implementation of a policy on furloughs or pay cuts, the document could consider a "progressive" model of cuts based

on total pay (not base pay or rank). CPB has mixed responses to this idea. One of our Council members suggested that, in the name of fairness, faculty and staff earning $60,000 or less should be spared furloughs or pay cuts.

Fifthly, the proposal needs to clarify that it affects non-represented employees. CPB agreed that there would be serious problems of inequity if represented and non-represented employees were treated differently if and when the President's Office deemed that "emergency conditions" required the implementation of furloughs or pay cuts.

Best regards,

Joseph Bristow
Chair, Council on Planning and Budget

cc: Jaime Balboa, Chief Administrative Officer, Academic Senate
Elizabeth Bjork, Immediate Past Chair, Academic Senate
Robin Garrell, Vice Chair, Academic Senate
Linda Mohr, Assistant Chief Administrative Officer, Academic Senate
Council on Planning and Budget Members

May 20, 2009

To: Michael Goldstein
Academic Senate, Chair

From: Mitchell Wong
Faculty Welfare Committee, Chair

Re: Senate Item for Expedited Review: Furlough and Salary Reduction Policy Proposal

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The Faculty Welfare Committee reviewed and discussed the Furlough and Salary Reduction Policy Proposal at their meeting on May 12, 2009. The Committee agreed that there is a need for a new Standing Order for the Declaration of Emergency and clarification of policy guidelines regarding Furlough and Salary Reductions. The Committee decided not to endorse the proposal as currently written due to the following and concerns:

Proposed Amendment to Standing Order 100.4 – Duties of the President

(1) 100.4 (3) indicates that the Declaration "must describe with specificity the emergency conditions underlying the Declaration, the effect of such conditions on campus or University operations, the expected duration of the Declaration or provisions for renewal, the plan for implementing the proposed furloughs and/or salary reductions, and the expected outcome of the proposed plan."

a. There should be specification of a maximum amount time for the duration of the Declaration, such as 1 year, at which time a review of the proposed plan and its outcomes must occur. In addition, the President should be required to request an extension of the Declaration of Emergency beyond the maximum time limit of 1 year following the same procedures for initiating the Declaration of Emergency.
b. After the 1 year time limit, the review of the proposed plan and its outcomes should be prepared by the President and be reviewed by The Board of Regents, Chair of the systemwide Academic Senate, and the appropriate systemwide staff and academic representatives.

(2) 100.4 (4) indicates that "the President shall engage in consultation with representatives of the systemwide Academic Senate and ...representative of the divisional Academic Senate..."

a. The consultation with the representatives of the systemwide Academic Senate should be "written consultations."
b. The titles and positions of the systemwide and divisional Academic Senate representatives should be stated.

(3) 100.4 (5) indicates that "when circumstances are such that seeking approval under those provisions would be impracticable or place the University at substantial risk, the President

may exercise the authority provided herein by obtaining interim approval of a Declaration of Emergency under the provisions of the Regents Policy on Interim Actions."

a. Interim actions seem appropriate for natural disasters, which are likely to occur suddenly without warning, thus preventing adequate time to respond. We recommend that this provision be limited to natural disaster emergencies only.

We thank you for the opportunity to participate in this process.

Cc: Jaime Balboa, Chief Administrative Officer, Academic Senate
Dorothy Ayer, Assistant to the Chair, Academic Senate
Brandie Henderson, Policy Analyst, Academic Senate

To: Michael Goldstein, Chair, Academic Senate
From: Jan Reiff, Chair, Graduate Council
Re: Proposed Amendment to Standing Order 100.4 – Duties of the President
Date: May 20, 2009

At its meeting on May 8, the Graduate Council discussed the above documents. It is important to note at the outset that we framed the discussion within the context of the emphasis you provided at the last Executive Board meeting: these documents were meant to codify an authority that already belonged to the President of the University of California. That framing met with some doubt and great consternation, especially from the members who had just attended a discussion at the College FEC meeting that was based on a very different assumption.

Council members agreed that attempting to define the authority of the president more clearly and to document the individuals and organizations that had to be consulted in the process of implementing the existing authority was an important task. Indeed, they felt that there were many reasons for defining the limits of presidential authority. However, they had multiple concerns about the Amendment as proposed in these documents and I have summarized those below.

The strongest concern focused on the absence of any guidelines for determining when an emergency situation is over. This concern was heightened by what could only be described as a basic dissatisfaction over what many felt was an elusive definition of "extreme financial circumstances". The Council felt strongly that the Amendment must provide some mechanism for determining the end of the emergency situation. Most felt that defining a specified period of time, at the end of which a re-evaluation of the situation must be made, would be the most transparent way to accomplish this task for both financial and other emergencies. The Council was unanimous in agreeing that the Senate must be involved in this determination.

In discussing the possible implications of the proposed amendment's impact on graduate students, there was also significant concern its lack of attention to the issue of represented and non-represented employees and to its impact on students employed on non-19900 funds. This document does not pay adequate attention to those issues which also affect members of the UC community other than graduate students.

The Council was also concerned with issues of equity in terms of furloughs and salary cuts and felt that equity had to be an additional guiding principle in implanting either furloughs or pay cuts. There was a general consensus that input from the faculty and staff would be invaluable in arriving at the most equitable solutions should such a financial emergency arise.

UCLA **MEMORANDUM**

Academic Senate Executive Office
Los Angeles Division
3125 Murphy Hall
140801

May 20, 2009

Jaime Balboa
UCLA Academic Senate Executive Office
Box 951408, 3125 Murphy Hall
Los Angeles, CA 90095-1408

RE: Senate Item for Review: Furlough and Salary Reduction Policy Proposal

Dear Jaime,

As per the request in your email of April 27, 2009, the Committee on Privilege and Tenure has reviewed the proposed guidelines drafted in the Furlough and Salary Reduction Policy. After careful review, the Committee has no (zero) comments to submit with respect to the proposed guidelines.

For any questions, concerns or further clarification on this response, you may contact John Leary at (310) 206-2469 or email jleary@senate.ucla.edu.

Sincerely,

Michael F. Lofchie
Chair, Committee on Privilege and Tenure

Cc: Dorothy Ayer, Executive Assistant, Academic Senate
John Leary, Policy Analyst, Committee on Privilege and Tenure

UCLA *Undergraduate Council, Academic Senate*

May 20, 2009

To: Michael Goldstein, Chair
Academic Senate

From: Dorothy Wiley, Chair
Undergraduate Council

Re: Furlough and Salary Reduction Policy Proposal

I am writing to report that at its May 15, 2009 meeting, the Undergraduate Council (UgC) discussed at length and expressed serious concerns about the draft documents proposed by President Yudof to address the lack of an existing policy by which temporary furloughs or temporary or permanent salary reductions might be implemented. The Council opposed unanimously the proposed documents, *Proposed Amendment to Standing Order 100.4 – Duties of the President*, and the *Draft Furlough/Salary Reduction Guidelines* with 0 votes in favor, 13 opposed, and 0 abstentions. The students voted 0 in favor, 2 opposed, and 0 abstentions.

Members supported strongly four points that emerged during discussion:

1. Council is willing and supports that faculty must be part of the solution, and stresses faculty are not avoiding being good citizens and taking financial responsibility in time of emergency. However, the proposal does not address but obfuscates the issues by conflating furloughs and salary reductions, which are separate and distinct issues. Further, the contextualization of this problem as a natural disaster complicates and does not resolve the issues.
2. Furloughs should be considered in an emergency situation. Faculty should not be the only population on campus exempted from this measure. However, any action would effect retirement and benefits, is not addressed in the proposal.
3. The general philosophy of the proposal is asking campuses to do more with less. A fair and unbiased assessment of what can be accomplished with less funding is imperative. The documents imply that the proposed solutions are temporary budget cuts in case of a disaster, and would be implemented under the most urgent situation. Budget cuts in the past have not been recovered, and the proposal does not suggest a recovery plan for funding lost temporarily.
4. It appears that the documents have been developed to address concerns raised by a few campuses. The conflation of multiple, unrelated problems tears at the fabric of ten campuses within the UC system.

If you have any questions or need additional information, please feel free to contact me (x 5-0803; dwiley@ucla.edu) or Judith Lacertosa, UgC Principal Policy Analyst (x51194; jlacertosa@senate.ucla.edu).

cc: Jaime Balboa, CAO, Academic Senate
Judith Lacertosa, Principal Policy Analyst, Undergraduate Council
Dorothy Ayer, Assistant to Senate Leadership & CAO

UCLA MEMORANDUM

College Faculty Executive Committee
UCLA College of Letters and Science
A265 Murphy Hall

May 19, 2009

Michael Goldstein
Chair of the Academic Senate
UCLA

Dear Michael,

At your request, the College Faculty Executive Committee (FEC) has considered the Proposed Amendment to Standing Order 100.4 – Duties of the President. The members were unanimous in opposition to the proposal as currently formulated. A synopsis of the extensive and energetic discussion that took place during our meeting of 8 May 2009 follows.

It is important to understand at the outset that the FEC members appreciate the gravity of the current fiscal situation, and understand that conditions may be both long-lasting and could deteriorate further. The members realize that sacrifices must be made and that faculty must share in the financial burden. There was a spirited discussion of the pros and cons of the proposed remedies (furloughs vs. salary reductions or other possible alternatives). However, faculty expressed very significant reservations regarding the expansion of presidential powers being proposed to implement the remedies. Our remarks will focus on the implementation process, which is the more immediate concern.

The FEC unanimously feels this proposal, as written, constitutes a blank check conferring very considerable powers upon the President of the UC System and the Regents without appropriate checks and balances. The list of possible emergencies is very broad, and we feel that the outlined process for faculty consultation is poorly defined and easily circumvented, and thus the granted powers could be abused. This should not be construed as a lack of faith in President Yudof. The concern is that this proposal would put a process in place that we might come to regret.

We understand that the motivation for this proposal originated with a single campus wishing to implement salary and/or furlough actions for which no policy or implementation mechanism presently exists. A policy for this, and a vigorous discussion of the merits and consequences of actions such as furloughs and salary reductions, is clearly needed. However, in our opinion, the proposed changes to the Standing Order 100.4, go much farther than necessary and the situations constituting an emergency are too broadly and imprecisely defined. In particular, the FEC feels that financial crises of the kind we are presently facing, while very grave, do not constitute an "emergency" that should allow for or require unilateral action without consultation with the campuses and the faculty.

Sincerely,

Robert Fovell
Chair, College Faculty Executive Committee

May 13, 2009

To: Jaime Balboa, CAO
UCLA Academic Senate

From: Earl Freymiller
Chair, Faculty Executive Committee
UCLA School of Dentistry

Re: Furlough and Salary Reduction Policy Proposal

On April 27, on behalf of the Academic Senate Chairs Mary Croughan (systemwide) and Michael Goldstein (UCLA), you distributed for review two draft documents related to U.C. furloughs and salary reductions. One was the proposed new Standing Order of the Regents, and the other contained the proposed implementing guidelines. In order for the UCLA Executive Board to formulate UCLA's response at its meeting on May 21, you requested that each FEC review the documents and respond by May 20.

The documents were distributed to members of the School of Dentistry's FEC for review, and the committee met on May 7 to discuss the issues. The following points were made at that meeting and approved by a vote of the FEC.

Proposed Amendment to Standing Order 100.4—Duties of the President

1. The FEC of the School of Dentistry supports the concept of furloughs in an emergency situation, but not salary reductions.

2. The FEC of the School of Dentistry does not support granting the broad authority to implement furloughs and/or salary reductions for some or all categories of University employees to the President of the University upon Declaration of an emergency. The committee feels that the President should have the authority to declare such an emergency on approval of The Board of Regents; however the authority to implement furloughs and/or salary reductions should be made at the campus level, with this authority residing with the individual Chancellors.

Draft Furlough/Salary Reduction Guidelines

1. If furloughs are required, the scheduling of such furloughs should be flexible enough to minimize the impact on teaching, patient care, administrative and other essential university activities. The FEC of the School of Dentistry favors individual and staggered scheduling of employee furlough days so as to cause minimal disruption to our missions of patient care, teaching, service and research.

2. The document makes specific reference to campuses with Medical Centers, presumably due to the issues related to the potential disruption of patient care services. The FEC of the School of Dentistry recommends that these references be modified to include Medical Centers and Other Patient Care Programs (i.e. Dentistry, Optometry), to further minimize disruption of patient care.

May 3, 2009

The FEC of the Henry Samueli School of Engineering and Applied Science met on April 30, 2009. One item on the agenda was the proposed amendment to Standing Order 100.4 – Duties of the President and the associated guidelines.

The FEC understands the need for extending the duties of the president to include a process in the manner described and a process to be followed should be defined. However this is, of course, not an endorsement of either furloughs or salary cuts. Thus there was a consensus that the extension and the guidelines for this purpose is appropriate but there were some specific suggestions for possible improvement, which are listed below.

Suggestions:

1. It is understood that the length of a period of emergency may not be precisely predictable. However it is suggested that some periodic review (e.g., every 6 months) be specified.
2. It is suggested that an independent auditor be included in the evaluation of the financial situation and the plan for dealing with the situation.
3. There are guidelines for plans and review of plans from Chancellors but not at school level. If schools within a campus will have flexibility in how cost reductions are made, what will be the process at this level? What will be the opportunity for faculty to consult on these plans?
4. The process seems to emphasize furloughs or salary cuts and neglects the possibility of increased revenues. The President's justification for instituting furloughs or salary cuts should explicitly provide rationale as to why the emergency cannot be met or ameliorated by increased revenue.

Richard Muntz
FEC Chair, HSSEAS

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May 10, 2009

Professor Michael Goldstein
Chair, Academic Senate
3125 Murphy Hall
UCLA Academic Senate Executive Office

Dear Professor Goldstein:

At its May 2009 meeting, the School of Medicine FEC considered the proposed amendment to Standing Order 100.4, along with the Draft Furlough / Salary Reduction Guidelines.

In view of the current fiscal environment, it seems reasonable to amend Standing Order 100.4 to deal with real budgetary emergencies. Although the FEC appreciates the difficulty imposed by the current financial crisis, we feel both of these proposals violate the principle of shared governance and, if enacted, will lead to a deterioration of the university's high standing in the academic community and negatively impact faculty retention and recruitment.

There were also specific concerns regarding the vagueness in the proposed amendment to Standing Order 100.4 regarding the composition of any School of Medicine / Medical Center strategic planning committee (page 4 – top) and there was a clear lack of SOM FEC participation. There should be FEC or FEC leadership membership on such a strategic planning committee. Furthermore, any School of Medicine / Medical Center strategic planning committee recommendations or plans should also be vetted with the SOM FEC for their independent assessment before being forward to the Chancellor.

A second specific issue concerns the failure to define the duration of any budgetary emergency, and issues related to restoration of any salary reductions and impact on retirement. There is also no indication on how a budgetary emergency would impact on administration and staff salaries.

While budgetary cuts seem inevitable in the current climate, the FEC's position is that the only acceptable way to address budgetary emergencies is with ongoing input and dialog with the faculty through the FECs and Academic Senate.

We encourage the Board of Regents to maintain a balance of governance and refrain from granting the President emergency powers without assuring appropriate safe guards are in place to prevent unilateral action by the President's office and administration.

Sincerely,

Nicholas Brecha
Chair, SOM FEC

Randolph Steadman
Vice Chair, SOM FEC

UCLA
School of Theater, Film, Television, and Digital Media
Faculty Executive Committee

May 16, 2009

Mr. Jaime Balboa, CAO
UCLA Academic Senate

Dear Jaime Balboa:

At its meeting of April 30, 2009, the Faculty Executive Committee (FEC) of the School of Theater, Film, Television, and Digital Media (TFT) discussed the Furlough and Salary Reduction Policy Proposal as contained in the two documents forwarded to Senate Committees and FECs campus-wide for comment with your email of April 27, 2009 sent on behalf of Senate Chairs Goldstein (UCLA) and Croughan (Systemwide). As you know, the first of the documents, relating to the Standing Orders of the Board of Regents of the University, is the Proposed Amendment to Standing Order 100.4—Duties of the President, and the second is the Draft Furlough/Salary Reduction Guidelines, which have been drawn up to "define extreme financial circumstances and describe a consultation and review process to be used in cases where the President is prepared to recommend that the Regents declare a state of financial emergency under the President's authority described in Standing Order 100.4x".

The TFT FEC acknowledges the need for such an amendment and understands the need for guidelines to be put in place, guidelines which will define the "extreme financial circumstances" that might conceivably cause the proposed furlough or salary reduction powers to be invoked, as well as define a mandated process of consultation and review between the Administration and the various stakeholders affected by such an eventuality. However, we wish to clarify what, if any, role and responsibility are defined for the Dean and Department Chairs with respect to represented (union) employees, including represented Staff Members, Teaching Assistants, and Lecturers.

While acknowledging the need for these policies, our initial review of the Proposed Amendment and the Draft Guidelines does not convince us that the language of these policies provides an adequate basis for interaction with union-represented groups on matters of furlough or salary reduction at the school or departmental level.

This commentary is provided so that the purpose of the amendment and the guidelines which detail its implementation will be fully realized in the language that is ultimately adopted. TFT's FEC appreciates the opportunity to provide this input and provisionally endorses the intent and purpose of the Proposed Amendment and Draft

Guidelines, with the expectation that additional refinements in the language will be put in place should it be determined that the concern we mention requires additional clarification.

Sincerely,

Michael McLain, Professor and Chair
Faculty Executive Committee
School of Theater, Film, Television, and Digital Media

c: Members of the TFT FEC

Prof. Barbara Boyle (Chair, Film, Television, and Digital Media)
Mr. Dean Dacumos (School)
Prof. Neil Peter Jampolis (Theater)
Prof. Denise Mann (FTVDM)
Dean Robert Rosen (School)
Prof. C.E. Sheetz (FTVDM)
Prof. Mel Shapiro (Theater)
Asst. Dean Ollie Van Nostrand (School)
Prof. William Ward (Chair, Theater)

Mr. Raoul O'Connell (School)

Mr. Curtis Casella (Student Representative, FTVDM)
Mr. Conor Hanratty (Student Representative, Theater)
Ms. Jenny Sherman (Student Representative, FTVDM)
Ms. Maritza Yoes (Student Representative, Theater)

Prof. A.P. Gonzalez, Incoming Chair of TFT FEC (2009-2010 AY)

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SCHOOL OF PUBLIC HEALTH, CHS 26-081
BOX 951772
LOS ANGELES, CALIFORNIA 90095-1772

May 20, 2009

Michael Goldstein PhD.
Chair, UCLA Academic Senate

Dear Mike,

I am writing on behalf of the School of Public Health Faculty Executive Committee. Enclosed are my summaries of comments from faculty in the school of Public Health regarding the new Standing Order of the Regents for changing University Policies as regards salary reductions in light of current economic realities in California.

Comments encompass a number of main themes. They are as follows:

1) Faculty overwhelmingly favor furloughs over salary cuts, because of the impact of actual cuts on salary scales and retirement benefits.

2) Overwhelming sentiment is that these cuts be progressive or "prorated" (e.g., higher salary, larger percentage), with particular attention paid to protecting junior faculty and staff.

3) The "rules" for prorating need to be absolutely transparent.

4) In regards to how much to prorate, one suggestion is that UC follow the same thresholds that are used for the tiered health insurance payments, as using rank is less effective because people at the same rank earn very different salaries when off scales are considered. If rank is used, then step within rank should be a factor, at least in the full professor range.

5) Thorough documentation of furloughs should be provided for IRS purposes, as decreases in income from the same job might spark inquiries.

6) Policies enacted must be clearly temporary with explicit time period/duration of salary reduction policy enactment written that includes a clear policy for either ending or renewing these emergency standing orders.

7) Clear policies for handling soft money funded positions in research projects must be discussed. That is, are components of salaries that are entirely grant funded going to be cut in the same manner as those funded by 19900 funds. The consequences of doing this may in fact cost the University money as there are no state-funds saved by requiring, for example, a 100% grant-funded project director or a 100 % funded in residence faculty to take Fridays off without pay (or cutting his or her salary). In fact, the

reduced project spending reduces the indirect funds the University receives since indirects are only paid out when expenses are incurred. So this is actually counter-productive. As one faculty member said:

> "Cutting externally-funded research pay would reduce the incentive for ladder rank or soft money faculty to bring in extramural funding, which is the last thing UC should do now."

Thus such cuts might actually reduce the flow of funds to the University over and above the amount saved by cutting salaries.

8) Economic models or projections used to support final decisions made on these matters need to be shared with faculty and staff.

Hope these are useful.

Sincerely,

Deborah Glik, Professor & FEC Chair
School of Public Health
dglik@ucla.edu

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May 20, 2009

Vice Chancellor Tom Rice
Michael Goldstein, Chair, UCLA Faculty Senate

Dear Colleagues,

As a member of my School's advisory committee (roughly corresponding with FECs in other units), I've had occasion to consider President Yudoff's draft proposal for various responses to a fiscal emergency, among which are furloughs. Our collective comments about the proposal will duly arrive through the usual channels, but I want to write separately to convey my views that furloughs are a very bad idea, on two grounds: its likely effect on faculty retention; and the many complex entailments, some of which will chew up countless hours of our collective time.

First, the effect on faculty. For years the University has acknowledged that its current compensation of faculty has lagged whichever plausible benchmarks one can identify. But—the University has been able truthfully to point out that UC's deferred compensation system, the UCRS pension, is equal or superior to most peers. If one assumes that furloughs (with attendant salary reductions) will affect those pensions—a question I raise below—the University's most important retention tool will disappear. That is a very high price to pay for a couple of years' savings. If, on the other hand, furloughs will not affect pension benefits, it will be important to say so loudly, clearly—and soon.

Second, the collateral complications. In thinking about how a furlough might work, I began to pose some collateral questions not addressed in the proposal but likely to be troublesome. I've listed the instances I can think of below. In most of these I make assumptions about how a furlough would be implemented. If my assumptions are wrong, then the problems won't occur; if they are correct, then some planning and thought are in order. If any of these problems do occur, they will involve a variety of different administrative and senate bodies, some at the campus, others at the University level. I'm writing to you in the hope that you can—if you think the concerns well-founded--route them to the right people for thought and planning.

1. Effect on retirement & pension: If furloughs (with attendant salary reductions) occur, how will these affect pension benefits?

a. Time credit: at present, a UCRS member employed for a year receives retirement credit for that year. A faculty member who takes a sabbatical at a fraction of full time receives a correspondingly reduced retirement credit. Apply this to furloughs. Suppose a furlough plan were to require a faculty or staff member to take furlough for 10% of a year. Would that reduce the retirement credit for that year to 90%?

b. HAPC calculations: at present, pension benefits are calculated on the 3-year average highest compensation. For most employees, those will be the three years immediately preceding retirement. If those employees encounter a furlough with attendant salary reductions in those years, will the base on which the pensions are calculated be accordingly reduced? If so, furloughs will disproportionately affect faculty and staff nearing retirement and those who have recently received a merit increase. If the furlough reduces the HAPC, such faculty will encounter not only the year(s) of reduced salary, but perhaps decades of reduced pension benefits. Such a result—in a program on which faculty have been encouraged to rely--would create substantial ill will among faculty as well, perhaps, as legal challenges.

2. Effect on In-Residence and Grant-compensated faculty: Will faculty whose salary is largely or entirely derived from grants also be furloughed? If so, presumably the portion of the grant designated as salary replacement will have to be returned to the granting agency. If not, furloughs will introduce an unfortunate discrepancy between the position of In Residence faculty, who would be unaffected by furloughs, and regular series faculty, who would be subject to a reduction. (True, many In Residence faculty might consider this only a fair recompense for their more precarious employment situation, but we ought to start thinking about how this might play out.)

3. Summer ninths and administrative stipends: at present many faculty performing administrative tasks receive ninths in compensation. Others receive stipends, usually in the form of stated amounts. Presumably those ninths, which are calculated on the base pay, will be reduced as base pay decreases in response to the furloughs. If so, we can anticipate that many such persons will ask that their ninths be converted into flat-amount stipends in the amount of their ninths—to avoid the reduction. Were we to grant such requests, we can anticipate much unhappiness from other faculty who receive ninths not linked to administrative service and who therefore could not seek to substitute flat amounts.

4. Sabbatical credit and sabbatical pay: at present faculty earn sabbatical credit by term and are paid while on sabbatical the fraction of their salary to which their earned credits correspond. Two questions arise:

a. At present a faculty member working on less than full time basis receives correspondingly reduced sabbatical credit. If part of a term for which a faculty member is earning credit involves a furlough, will the sabbatical credit be correspondingly reduced?

b. If a faculty member has earned sabbatical credit during "unfurloughed" years, will s/he be paid a full salary on sabbatical, or will that salary to be subject to furlough reduction?

5. Voluntary retirement contributions: at present many faculty and staff contribute to 403(b) plans. These plans are subject to an annual cap on contributions, a cap calculated as a percentage of compensation. If compensation drops, but the contributions are not adjusted downwards, the contributors or the University could find themselves subject to penalties.

I am sure that minds more fertile than mine will identify other problems. Some of those problems may involve significant legal or regulatory issues; others involve administrative adjustment or clear communications with faculty and staff. If my assumptions are correct, furloughs will create not only demoralization among faculty but also very substantial administrative complications. If my assumptions are wrong, it will be very important to communicate that clearly and often to UC's faculty and staff if and as furloughs are contemplated. I feel confident that better minds than mine have already identified at least some of these problems, and I am grateful for that.

Sincerely,

Steve

Stephen C. Yeazell

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May 20, 2009

MARY CROUGHAN, CHAIR
ACADEMIC COUNCIL

RE: FURLOUGH AND SALARY CUT POLICIES, EXPEDITED REVIEW

The proposed amendment to Standing Order 100.4—Duties of the President addresses timely issues facing the University of California system and usefully defines a process for consultation on and implementation of furloughs and/or salary reductions. The Merced Division would like to thank you for the opportunity to opine on this proposed amendment. The documents were distributed to the standing committees; the Committee on Academic Planning and Resource Allocation and the Committee on Academic Personnel responded. Their comments are included below.

Part A. Comments on policy with specific ramifications to UC Merced.

1. Systemwide emergencies vs. emergencies on a subset of the ten campuses.
   - Conceptually speaking, what would it mean to have a financial emergency at some campuses but not others?
   - Some campuses have greater financial resiliency than others. Could different levels of financial stability simply reflect that there are different funding models for the different campuses (e.g. the different *average* funding per student)?
   - The Merced Division is very concerned that declaring a financial emergency at some campuses but not others would exacerbate the current differences in how the system funds each campus.

2. Differential effects.
   - Cuts in Merced's budget would have *negligible* impact on UC's overall budget (the Merced campus comprises only 0.5% of the systemwide budget).
   - On the other hand, the Merced campus is highly dependent on state funding (57% of revenues, compared to an average of about 20% on the other campuses), and would be disproportionately impacted.

Part B. General Comments on policy.

1. University of California's academic quality.
   - A statement should be added to emphasize the importance of maintaining academic quality at a comparable level across campuses.

2. "Extreme Financial Circumstances under Standing Order 100.4x are any event(s) or occurrence(s) creating an imminent and substantial deficiency in available University financial resources so severe that it jeopardizes the ability of the University to sustain its current operations in fulfilling its tripartite mission."
   - "Sustain" should be defined in terms of a reasonable time frame.
   - What qualifies as an "extreme" financial circumstance? Is it arbitrary? Are there some parameters that can be used to define this?
   - Should a state of fiscal emergency, which the university usually has some advance notice of, be treated the same as a natural disaster?

3. Definitions and qualifications. "Emergency" for purposes of this Standing Order shall mean any natural disaster or other major debilitating event or any extreme financial circumstance
   - Why should a natural disaster be the basis for not operating and not providing salaries?
   - What qualifies as such an emergency?
   - What is a "major debilitating event"? This language should be replaced with "natural or other major disaster" which is the wording used in the Draft Guidelines, Section II, last line.

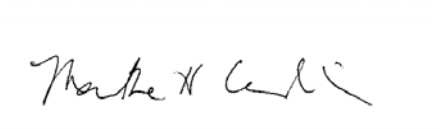
4. Term limits. "… the expected duration of the Declaration or a review date for possible renewal…"
   - Instead of leaving it vague, the declaration of financial emergency should only be valid for a specific period (e.g. 6 months) and then require a renewal. Leaving it to a "review date for possible renewal" is too open-ended.

5. Accountability.
   - As a means of controlling liability issues, and improving accountability, any emergency declaration, in addition to having a fixed term, should include a specific goal or measureable target.

6. Background. "The President further shall have the authority, during the pendency of the Declaration and consistent with applicable legal requirements, to suspend the operation of any existing Regental or University policies otherwise applicable to furloughs and/or salary reductions that are contrary to the terms he or she deems necessary to the proposed implementation."
   - What are the existing "Regental or University policies otherwise applicable to furloughs and/or salary reductions"? They should be cited here by number and provided with the document, to know what is at stake.

7. Clarification. "Notwithstanding the provisions of subsections (3) and (4) above, when circumstances are such that seeking approval under those provisions would be impracticable or place the University at substantial risk, the President may exercise the authority provided herein by obtaining interim approval of a Declaration of Emergency under the provisions of the Regents Policy on Interim Actions. In such event, the President shall seek further approval by The Board of Regents under subsections (3) and (4), specifically will engage in the consultation process required under subsection (4) as soon as practicable, and in no event later than 60 days after the initial grant of approval by interim action."
   - This section needs clarification, 60 days seems too long for initiating the consultation process. The President should meet with the Regents within 10 days [two weeks or a month at the most] to determine whether the emergency is real or not and then start the consultation process [up to 60 days].

Sincerely,



Martha Conklin

cc: Divisional Council

UC RIVERSIDE UNIVERSITY OF CALIFORNIA | Academic Senate

May 25, 2009

Mary Croughan, Chair
Academic Council
111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Proposed Amendment to Regents Standing Order 100.4 Duties of the President and
***DRAFT* Furlough/Salary reduction Guidelines**

Dear Chair Croughan,

I am writing to forward to you the advice and concerns of the Riverside Divisional Senate on the above referenced documents from the President's Office. The following UCR Senate committees provided written responses: Faculty Welfare, Planning & Budget, Academic Personnel, Physical Resources, Biomedical Sciences Executive Committee, and Rules & Jurisdiction. In addition, our Executive Council of 22 members conducted a vigorous discussion on the two documents on May 11, 2009.

Our major concerns focused on the four following topics.

<u>Equating a Natural Disaster with a Financial Disaster</u>

We find no merit in proposing changes in the Regents Standing Orders 100.4 that, in the same precise section, equates natural disasters (e.g. earthquakes, fire, disease pandemic, serious energy shortage, terrorism) with financial disasters. They are inherently different events. The natural disasters will be focused on one geographical location and likely will affect only one campus. In contrast, the present ongoing State of California budget 'crises' has been going on for multiple years. Apparently we are now in a late phase of financial disaster that now merits it being defined as an acute emergency? We do feel that the state budget situation certainly has the potential of affecting all 10 campuses.

We request that the President's office generate separate policies for dealing with natural and financial disasters. Further, there is no explicit definition for either category of what constitutes a disaster. Some language describing the

scale or breadth and elements of each of the disaster scenarios is mandatory. The metrics that will be used to identify a situation as a university emergency, and how and by whom will this information be documented and evaluated is crucial. Of course, it is essential that this process includes mandatory Senate shared governance consultations.

The following comments are focused only on the proposed policies as relate to the current financial disaster.

One Campus versus the 10 Campus UC system

As stated, the proposal gives the President authority (without involvement of the campus level administration or academic senate) to unilaterally declare a financial emergency to be 'campus specific'; this has the potential of dividing the system into viable and not-so-viable campuses. It is the view of the UCR Senate that any policies emanating from the President's Office should be applied to the entire 10 campus system. It is in times of 'trouble' that it is appropriate for all campuses to work together to support the system.

Relative Merits of a Furlough versus Salary Cuts

As to the issue of furloughs and salary cuts, it is not clear what exactly constitutes an extreme financial circumstance that mandates use of one or both of these options. Is it a 1%, 5%, 10% or a 20% budget cut? And from what budgetary sources can the cuts be taken? What can, should or must be the systemwide response to the budgetary difficulties of a single campus?

Transparency is totally lacking in the President's presentation of furloughs and salary cuts. The Furlough/Salary Reduction Guidelines are completely devoid of a comparison of the relative strengths and weakness of imposing a furlough versus a salary cut. This information could have been supplied as an Appendix to the proposed policies. Also, totally lacking in the Furlough/Salary Reduction Guidelines was any specific information on the magnitude of financial savings that can be achieved, both for each individual campus, as well as the system-as-a-whole, by imposing furloughs versus salary cuts. It would have been helpful for both faculty and staff to see tabular projections of what is the savings from a 1% salary cut versus 1-3 furlough days per month. Also, no detailed specifications are provided as to how the furlough and/or salary cuts would be administered to faculty and staff that are supported by non UC salaries (e.g. federal or private grants, etc.). Finally, in the event that a furlough or salary cut is actually proposed, it is imperative that it be clearly stated what is the precise start and stop dates. That is, the policy should only be in effect for a specified window of time and then must be reauthorized only after full senate consultation.

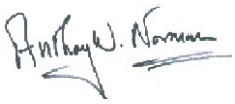
Consultation and Shared Governance

The two proposals give an enormous amount of power to the President which, because of its scale, threatens the ability of the senate to effectively participate in shared governance. The Office of the President has consulted with counsel in the course of preparing the two proposed policies. It would behoove the Academic Senate to also consult with counsel in this process to be sure that all concerns about faculty rights and responsibilities are addressed.

Finally, the current mood of the faculty and staff about the uncertainty of their financial future leads inevitably to a heighted *angst*. In this setting, the President, UCOP members, and Chancellors, all need to ratchet up their appreciation of the importance of shared governance. All proposed changes need to be properly and thoroughly vetted through the Academic Senate, both on the campuses and at the Academic Council levels in the absence of *'rush'.*

An overall summary is that that the Riverside Division has a significant disappointment in the quality and vision of both the Proposed Amendment to the Standing Orders for the Regents and the *Draft* Furlough/Salary Reduction Guidelines. We find them unacceptable in their present form and that the proposed delegation of sweeping authority to the UC President is not adequately justified.

Sincerely,



Anthony W. Norman, Chair
UCR Academic Senate

CC: Senate Executive Council
Chancellor Tim White

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

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Joel Michaelsen, Chair
Deborah Karoff, Executive Director

May 26, 2009

Mary Croughan, Chair,
Academic Senate

Re: Regents Standing Order 100.4-Duties of the President

Dear Mary,

The Santa Barbara Division of the Academic Senate has considered the proposed amendment to Regents Standing Order 100.4-Duties of the President. The Council on Planning and Budget (CPB), the Council on Faculty Issues and Awards (CFIA) and the Committee on Academic Personnel (CAP) provided comments; we have attached the comments from CPB separately and offer summaries of the comments from CFIA and CAP below.

The Council on Faculty Issues and Awards opposes this proposal. CFIA opposes the granting of such broad and far-reaching authority to the President, feeling that it violates the principle of shared governance by authorizing an inappropriate degree of power to the President effectively bypassing the Academic Senate.

Secondly, it is unclear to CFIA whether (or how) a furlough or pay cut at one campus would affect the budget of another campus. CFIA believes that fiscally responsible behavior of one campus should not be penalized by using furloughs or pay cuts to offset budget shortfalls of other campuses.

CFIA advocates a consensus building approach that goes beyond the usual consultation and shared governance and an explicit recognition and commitment to protect and fortify faculty members' household incomes. The proposal ignores UCOP's analyses and studies that show clearly that the salaries of faculty members are falling behind the cost of living and falling behind the salaries of their peers in other institutions.

Implied in this proposal is the understanding that furloughs and pay cuts can only be implemented by mandate. CFIA rejects this assumption and urges the investigation of all possible voluntary interventions, such as voluntary furloughs, the START Work-Time Reduction Program and the creation of additional buyout from research projects.

Finally, CFIA notes that the document does not indicate when or how a "declaration of financial emergency" would be lifted once implemented. The limits of such authority to decree a financial emergency should be clearly articulated, including when such a declaration would expire. The Committee on Academic personnel (CAP) also raised the concern that there is no specified end date for the remedy that is implemented. They recommend that specific language be added to the following sentence: "Such writing must describe with specificity the emergency conditions underlying the Declaration, the effect of such conditions on campus or University operations, **the expected duration of the Declaration or provisions for renewal, the plan for implementing the proposed**

furloughs and/or salary reductions, ~~and~~ the expected outcome of the proposed plan, *and the probable end-date for any remedy proposed*." (100.4 (3.))

The comments from the Council on Planning and Budget (CPB) are appended below.

Thank you for the opportunity to comment.

Sincerely,

Joel Michaelsen, Chair
Santa Barbara Division

cc. Martha Winnaker, Executive Director

UCSB Council on Planning and Budget comments

I. Introductory Comments
- **a) Deadline for Comment: rushing a standing order into acceptance may create more problems than solutions**
- **b) Definition of an Emergency: emergencies are sudden and temporary**
- **c) Breadth of Powers: too much extraordinary power is being granted through this draft**
- **d) Duration and Restoration: need for greater attention to timeline of implementation**

II. Need for 2 Separate and Distinct Standing Orders:
- **a) Emergencies**
- **b) Furloughs and Salary Reductions**

III. Research Needed: State and Federal Fair Employment Practices

IV. Furlough and Salary Reduction as Last Resort

I. Introductory Comments

a) Deadline for Comment: In reading the proposal, the UCSB Council on Planning and Budget has numerous concerns and recommendations. Although a guideline policy for the implementation of furloughs or pay cuts is a necessary aspect to any consideration of these actions, it is also of utmost importance to insure that the guidelines do not inadvertently cause greater harm than good. With this in mind, the first comment from our council is that this document needs further study and **should not be rushed into acceptance by May 26**. This having been said, the council will in good faith attempt to find the most immediate points that need clarification.

b) Definition of an Emergency: The definition of an emergency and how it differs with an extreme financial circumstance seems to be the aspect that could be detrimental to UC if used incorrectly or too liberally in concert. The common understanding of an emergency is that it is **sudden and temporary**. This draft proposal conflates an emergency with that of an extreme financial circumstance. The result obfuscates the central issues of this policy. The speed with which UC may need to act in a catastrophic emergency (eg. a natural disaster) is very

different from an anticipated fiscal crisis due to of lack of funding. It is unclear whether or not our current situation could be called an emergency since it has emerged over time. Merging this range of problems under the heading of an emergency is unworkable.

c) Breadth of Power: The overarching presidential powers delineated in 100.4(xx)(2) are far too broad in that it states that the president has the authority: **"to suspend the operation of any existing Regental or University policies otherwise applicable to furloughs and/or salary reductions that are contrary to the terms he or she deems necessary to the proposed implementation."** If adopted, the misuse of the powers conferred by this statement could be disastrous. There is too great a reliance on the good will of the executor of this standing order draft. What is protecting UC from abuse of this statement other than a few consultations that may result in disagreement? What happens if Academic Senate consultation and advice is not heeded to determine whether or not a situation is an emergency? There do not seem to be any repercussions in place should the consultation process be overlooked.

d) Duration and Restoration: The draft fails to adequately address timelines for implementation, duration, and restoration of previous status and restoration of lost income for both emergencies and fiscal crises. In an emergency or fiscal crisis, standard procedures would dictate that any delay of income would be restored after stabilization. This is the understanding of the thousands of employees of UC. Accepting the terms of this draft policy would mean altering that agreement without adequate democratic representation due to point 100.4(xx)(2). Much more work needs to be done regarding **restoration** in this document.

II. Need for 2 Separate and Distinct Standing Orders

The council came to the conclusion that due to the incompatibility of the broad definitions implied in the draft for an emergency, that two standing orders are required. One Standing Order for Emergency Procedure should be established and a Standing Order for the Implementation of Furloughs and Salary Reductions. There are many reasons for this conclusion in the draft but the most striking example is in the "New Section, 100.4(xx) (5)" which states:

> **100.4(xx)**
> **(5)** Notwithstanding the provisions of subsections (3) and (4) above, when circumstances are such that seeking approval under those provisions would be impracticable or place the University at substantial risk, the President may exercise the authority provided herein by obtaining interim approval of a Declaration of Emergency under the provisions of the Regents Policy on Interim Actions. In such event, the President shall seek further approval by The Board of Regents under subsections (3) and (4), specifically will engage in the consultation process required under subsection (4) as soon as practicable, and in no event later than 60 days after the initial grant of approval by interim action.

This statement regards emergency in general. There is no reason to impose an immediate pay cut or furlough without proper consultation in subsections (3) and (4). Why would this University, under the duress of a natural disaster for example, enable one person, the President, to immediately cut the pay or work hours of its employees? **This section should be eliminated from this Standing Order** and be placed in the new Standing Order for Emergency Procedures.

a) Emergencies: Clearly defined language needs to be established for the Declaration of an Emergency and all procedures necessary in addition to the Regents' Policy on Interim Actions. The Declaration of an Emergency should contain a well-defined lineage of authority, procedures for suspension of services, and a clause defining the constitution of an action committee to help guide fiscal decisions that includes Academic Senate representatives, the President and Regents. Council feels that it is important that the Declaration is defined by expectation for duration, communication guidelines (including State and Federal Authorities, the Red Cross, and local communities), and the restoration of stability. Events that might trigger such a declaration include natural disasters or military conflict. Council feels that UC would act as one institution in these circumstances - that if one campus had the misfortune of undergoing an disastrous event beyond their control, that UC would try to

work together to restore services where possible. CPB recommends language in the policy requiring the President to report to the Regents on a regular basis the circumstances that justify continuing the state of emergency.

b) Furloughs and Salary Reductions: Clearly defined language needs to be established that describes the circumstances necessary to declare the implementation of furloughs and salary reductions that includes Academic Senate consultation. This policy must contain a list of procedures that includes the expected duration, rate of reduction, date of termination and reinstatement of previous status. Should any of these details require alteration, a new fully delineated proposal would need to be submitted for approval. In addition, the policy should address parameters for restoration of lost income through careful fiscal analysis. Events that might trigger such a declaration might include extreme financial circumstances. In this case, Council feels that the Standing Order would make a distinction between fiscal problems brought on by (possible) mismanagement of a single campus and a system-wide fiscal crisis. The policies that will define this difference need close examination and the implementation of furloughs and salary reductions on a local and system-wide basis requires research that goes beyond the capacity of this council on such short notice. Much discussion has taken place over the origins of the fiscal crisis and how directly this relates to the employees who experience the cuts. The majority of Council feel that these should be directly related, in other words, those employees who work from 'soft money' and grant sources should not bear the brunt of a state shortage. In addition, the rate of reduction should be based on a sliding scale so that those who already earn less than others are not deleteriously affected by the policy.

For the purposes of any Declaration of Furloughs and Salary Reductions on the UCSB campus, this council has determined that furloughs are far preferable to salary reductions. Furloughs would not affect summer salary, would be easier to restore to previous status, address the difference between grant funded verses state funded positions, and would not affect retirement investments (benefits instead of investments?). Furthermore, furloughs would help to create a visible and felt absence that would affect all services. Council feels that if an extreme circumstance requires these drastic measures, that it is most important to communicate this loss to the university community and general public. Salary reductions do not perform this task. The Regents and Office of the President must keep in mind that the level of research and teaching as well as the status of the University of California is at risk whenever these measures are taken.

III. Research Needed: State and Federal Fair Employment Practices

UC guidelines should comply with State and Federal law defining such catastrophes and resulting conditions for furloughs and salary reduction. Work needs to be done to reveal the guidelines now in place such as details from the federal Fair Employment Practice Act. What are the current guidelines for temporary termination of all services at UC or at one specific campus? How do these guidelines differ from a partial breakdown of services? What lessons can be learned from examples of catastrophic events like Hurricane Katrina? We would like to review copies of relevant extant policies before accepting any alteration of the terms of agreement.

IV. Furlough and Salary Reduction as Last Resort:

Above all, it is most important to note that any of these actions may result in a great loss to the University of California. UC's research profile and instructional excellence depend on the ability to garner the best of both. Loss of morale and the ability to earn research funds are at stake in this emergency draft as well as the functioning of degree programs. If furloughs or salary cuts are enacted, it is of utmost importance that these cuts are evident and visible to the constituents of California. The Council recommends that if furloughs or pay cuts are implemented at UCSB no additional positions for hiring beyond those already allotted should be granted, except for extraordinary circumstances.

Addendum

The submitted draft brought up a very long list of questions that focus attention on problems of putting emergencies in the same Standing Order as furloughs and salary reductions and on the implementation policies of any of these actions. Here is a short list:

1. Would it be possible to buy furlough time with grant money?
2. Will a fiscal emergency at one campus be the responsibility of the entire system?
3. If furlough time for faculty results in a loss of instruction time throughout the year, how would UC handle the necessary changes in curriculum and the resulting lengthening of time to degree?
4. There is concern that this policy may facilitate 'restructuring' by declaring an emergency to get around normal procedures. What limitations are being put in place to prevent this from happening (i.e., closing down a unit, center, department or division due to fiscal 'emergencies,' but really aiming to restructure the composition of the unit)?
5. There is also much discussion about whether or not actions taken for a fiscal crisis should be targeted to those whose salary is directly related to the fiscal crisis. How does the UC, its faculty, staff and administrators, view extreme fiscal circumstances, as a unified whole or as separately sourced? How would those who work from grants and other external sources be treated?
6. If furlough time for faculty is arranged to extend summer research time, what changes would need to be made in the school calendar and what would be the curricular and time to degree ramifications?
7. What does UC propose in terms of actions or policies to counteract the loss of morale resulting from these actions? What would happen to UC's research profile?
8. Will this policy deny those furloughed or undergoing pay cuts to find other supplemental income?
9. What effect will this have on Teaching Assistants (TAs)?
10. What effect will this have on Graduate Student Researchers (GSRs) and Research Assistants (RAs)?

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125 CLARK KERR HALL
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May 22, 2009

Mary Croughan, Chair
Academic Council

RE: UCSC Response to the Proposed Amendment to Standing Order 100.4

Dear Mary,

The Santa Cruz Division has reviewed the Proposed Amendment to Standing Order 100.4 and its accompanying Guidelines. We received comments from 11 of our committees, including Academic Personnel (CAP), Affirmative Action and Diversity (CAAD), Committees (CoC), Educational Policy (CEP), Faculty Welfare (CFW), Graduate Council (GC), Planning and Budget (CPB), Preparatory Education (CPE), Privilege and Tenure (P & T), Research (COR), and Teaching (COT). All committees submitted extensive and comprehensive responses, and all were united in their **strong opposition** to the Proposed Amendment. Indeed, no single item in my experience as Divisional Chair (and Vice-Chair) has attracted such strong and unanimous condemnation from ALL parties.

While our Senate fully recognizes that we are in challenging budgetary times, and that sacrifices beyond those the faculty have already made (such as non-competitive salaries, larger classes, and less support for the teaching and research missions of the university) are likely to be needed in future. These might well include faculty pay cuts—but the authority for such cutting of pay already exists between the Regents and the Office of the President.

The comments received incorporated: (1) objections that can be summarized as questioning the necessity of this proposed Amendment; (2) overarching concerns about the document and process that include the lack of analysis and documentation associated with the amendment, the undue haste of assessment and proposed voting by the Regents, and lack of consultation; and (3) specific comments on, and objections to, the content of the Amendment and its Guidelines themselves. The first of these areas treats whether such an amendment should exist (our opinion is “no”); the second objects to the process and timeframe (too poorly documented, too fast, and with a process seemingly designed to minimize true Senate consultation); and the third raises major flaws that we see in the policy (flaws that we believe are fatal with respect to its adoption in anything approaching its current form). Our overarching statement is:

This cannot go forward for a Regents vote in July.

We expand on and justify this statement in the three sections below.

Is this Proposed Amendment Necessary?

Declaring "Financial Emergencies:" At the outset, we fundamentally question the notion of a "financial emergency". The economy takes its turns, but even in such difficult times as now it moves slowly enough to render any need for "emergency powers" dubious. In our view, what this amendment *would* do if approved would be to foster a lack of foresight and planning by UCOP, since UCOP would know that emergency powers could always be invoked in the instance of financial downturns—and this amendment not only codifies but, in our view, regularizes the process of declaring a "financial emergency."

Moreover, it is simply not clear what constitutes a financial "emergency". The proposed amendment defines it as "any extreme financial circumstance that significantly impacts the operations of the University or a part thereof." The accompanying guidelines state that the financial crisis "must be so severe that it jeopardizes the ability of the University to sustain its current operations in fulfilling its tripartite mission." Although we understand the challenges of coming up with something more specific, without such criteria the Senate would have very little by which to evaluate the legitimacy of a proposed "emergency," or to distinguish a true emergency from chronic mismanagement. This represents a major consideration: inept system-wide management (whether related to poor legislative advocacy, inadequate fee structures, or –for example- lack of retirement-system withholding) could simply be glossed over through the declaration of a financial emergency.

Natural Disasters vs. Extreme Financial Circumstances: The document is too broad in its attempt to group responses to financial emergencies together with natural disasters and/or medical emergencies, for two reasons:
1) The timescales, and therefore the degrees, of emergencies are different. Natural disasters and medical emergencies happen fast and require fast response. Financial emergencies emerge slowly and permit a more measured, considered response.
2) Financial emergencies hit the entire system whereas natural disasters typically affect only one campus (medical emergencies represent a possible exception here).
However, the Amendment does not appear to be due to an urgent need for a Natural Disasters Policy: when we have had natural disasters, as in the case of the 1989 Loma Prieta Earthquake (a time well-remembered on our campus), the central and northern California campuses that were affected worked together and in concert with the President's office to see that the work of the university was restored as quickly as possible and with as little disruption as possible. The same was true during the 1994 earthquake in Southern California, and during the recent and terrible wildfires that have wracked the state. Given our history with respect to natural disasters, we can only assume that this request for a change in the Standing Orders is not precipitated by the desire to be prepared for a natural disaster, but rather that it is entirely motivated by the economic crisis.

Additional Powers and Furloughs: We understand that the President already has the power to cut the pay of UC employees, with this power being deployed in 1993, and possibly during the Great Depression. Hence, the motivation cannot be to simply grant the President the power to cut salary from the budget. The case of furloughs seems more complex (but no discussion is presented of what the President could do right now with respect to furloughs, so we are engaging in informed speculation), and might be the real rationale for

the policy, as might giving the President the ability to declare emergencies on individual campuses. Therefore, the aspects of this policy in which the President may not clearly already have documented authority is with respect to furloughs and/or campus-targeting of states of emergency—and we do not believe that such authorities need to be extended to the President (and, in any case, no rationale is given for why -or even whether- such authorities are needed).

Indeed, the possible imposition of furloughs raises an entirely separate set of concerns that are not addressed in this document. We are aware of no precedents for this action at UC. Salary cuts would likely affect the base salary, impacting benefits and compensation. While furloughs do not affect the salary base, they may well have extremely grave consequences in regard to their distribution and equity among the faculty. Those faculty in fields who are able to use external grants for summer salaries (or regular year salary) in order to make up for the loss of salary due to furlough, would be able to maintain their economic stability. However, those in fields such as Arts, Humanities, and some Social Sciences, which typically are not funded externally in this way will be disadvantaged and put in a different employment situation than their colleagues. In other words, this would cultivate a culture of "the haves and the have nots." We note that there are no guidelines in the proposed amendment and it implementation document regarding the effects and outcome of furloughs. And, given that this document would formally create an avenue to pursue furloughs, an actual analysis of the furlough process, its implementation and ramifications should have been made—and none is apparent here.
Rather:

Suspending Due Process for Faculty?: Our concerns also extend to the suspension of the Rights of Privilege and Tenure as suggested in the wording of the amendment to Standing Order 100.4 (2) and the implementation document ("The President shall have the authority…to suspend the operation of any existing Regental or University policies otherwise applicable to furloughs and/or salary reductions that are contrary to the terms he or she deems necessary to the proposed implementation"). In short, whether the Amendment could result in the removal of the Rights of Privilege and Tenure of the faculty is entirely unclear, and no analysis of what 100.4(2) might involve is included. Moreover, there is no timeline indicated for the emergency powers of the President once assumed. Much like the (occasionally abrogated) right of *habeas corpus*, Privilege and Tenure rights are essential to our protections under the APM, with its procedures for fairness and transparency. To consider in a hasty fashion a poorly-justified Amendment involving potentially sweeping authority is not acceptable.

To summarize this section: We believe regularizing procedures for declaring "financial emergencies" is undesirable, and prone to abuse; We do not believe natural disasters and financial emergencies should be conflated; Given that the President clearly has the power to cut pay, we do not see the rationale for granting the power to pursue furloughs given that we do not understand, and are not told, how furloughs might be instituted (only that a Plan will be delivered when it is decided to furlough); And, we are concerned that the Amendment could produce abrogation of basic faculty Privilege and Tenure Rights. Hence, we view this amendment as not justified.

Timeframe, Context/Analysis, and Consultation with the Senate

Senate Consultation: With respect to Senate consultation, the cover letter's statement that "…the Senate leadership has striven to incorporate strong Academic Senate consultation at the campus and systemwide level" directly contradicts our campus's experience. We note that at the May Regents meeting when this proposal appeared as a discussion item, there was not quorum of the Regents and the only discussion was a comment from the Council Chair who spoke in support of this document, and commented on the high level

of involvement of the Senate in producing it. Given both the lack of information and prior consultation, we consider it entirely unacceptable for the Regents to vote on this amendment at their July meeting, and we are deeply troubled that, while the item was under Senate Review, the Council Chair appeared to be conveying Senate complicity in this document to the ultimate deciding authority on this policy.

Why is the Amendment So Poorly Documented? The document, as submitted for comment, contains no analysis of the nature of these changes, no contextualization, and no substantive statement as to why these policies are being proposed now, nor what the extant powers of the President are—all of this highly relevant information has been left to the reviewers to research. What are the relevant policies that are already in place? How would they be expanded or altered if the proposed changes are adopted? Which other institutions have such policies? Is this based on a template that is widely used? Why did it come to us without any analysis of the history or precedent for such powers? Indeed, there is no discussion of how the new proposals would interact with existing UC regulations and policies. And, as mentioned in the previous section, the implications of furloughs vs. salary cuts on employee benefits are also not analyzed. The extraordinary lack of analysis puts faculty at a disadvantage, as they typically are not experts in UC rules and regulations. A thorough, authoritative analysis of the impacts and implications of both the emergency-powers policy and any specific proposed financial measures should have been circulated when we were asked to give input. This is not a minor oversight: for a policy that has the level of prospective consequences that this "Emergency Powers" Act has, the complete lack of analysis and contextualization, coupled with the short timeframe for comment, implies either shoddy vetting and/or a lack of concern for substantive comment that many of our committees viewed as simply contemptuous of the Senate.

Timeframe: The document was submitted for systemwide comment on April 27th, with responses due May 26th, for (as we understand it) potential Regental action at their July meeting. Given the number of issues raised by this policy and the extraordinary lack of analysis presented to date, we believe that the proposed July date for Regental action is entirely unacceptable. If such a document is required, at a bare minimum, a revision which includes a decent level of analysis and documentation needs to be generated—and commented on. The timescale hence should move into the fall, and the Academic Council should insist that this item not proceed to a Regental vote in July.

Section Summary: It is incredibly important to ensure that this policy—which has implications for *every* employee of the system—is done thoughtfully and with due diligence. While we recognize that it might be easy to define ourselves as being in a "financial emergency," we believe that the avenues of action that are available to the President—which include systemic pay cuts—are sufficient to sustain UC for the next 4-6 months (at least!) without the declaration of a state of emergency. Hence, there is no rationale that we can discern for the level of haste attached to this document, and a longer timeframe (extending into the fall) is required *if* the System decides to move forward with such an Amendment.

Specific Comments on the Amendment and its Guidelines

Impact on Education The educational mission of the University of California should be underscored; as it stands, the Amendment is silent on our educational role, and the Guidelines only include it in the context of Furloughs and Salary Reduction Planning. Indeed, any such policy should explicitly establish as a principle the aim to minimize to the extent possible the impact of emergencies (including salary cuts and furloughs) on students and their educational experience.

Declaration of Emergency under Interim Authority Policy Unlike natural disasters, extreme financial circumstances do not occur from one moment to the next or even overnight; instead, they develop over a

period of time that allows for consultation and planning before action is taken. For this reason, we oppose giving the President the authority to declare an Emergency for financial reasons under the Interim Authority Policy (which allows decisions to be taken by two or at most three individuals, see http://www.universityofcalifornia.edu/regents/policies/6004.html).

Declaration of Emergency on a Campus The language of the proposed amendment allows for the President to declare an Emergency on a campus without the request for such a declaration originating from the Chancellor of that campus; in fact, under the proposed amendment, this is allowed even if the "deficiency in available resources may result from significant reductions" in any one of a number of items, including "contracts and grants" and "gifts". Hence, our reading of this Amendment is that it appears that, in its sweeping character and vagueness, it could actually allow a President to pursue the declaration of a campus emergency over gift receipts! Frankly, this is an absurd extension of Presidential powers**.** We believe that only the Chancellor of a campus should be able to request a declaration of Emergency on that campus and only after consultation occurs on the campus itself. This also raises the broader issue of whether it should be possible to have an Emergency declared on a single campus or a number of campuses without having a global declaration of Emergency across the entire UC system.

In many ways, the proposal conveys a view that reduces the system to ten campuses rather than a single university system. This is clearest in the statement that a financial emergency may arise that "impacts the operations of the University **or a part thereof**."(bold added) An important question for the system, as a whole, is whether an emergency can exist on a campus basis, or whether for the UC system, a financial emergency is (only) one where the system itself is "endangered." For one campus to face a budgetary crisis, with its own faculty and staff experiencing furloughs and/or salary cuts, while the other campuses conduct business as usual, flies in the face of the notion that the system is one university with ten campuses. Moreover, it is standard operating procedure for resources to flow between campuses, so that the sharing of resources is an established practice in times of both crisis and confidence. We note that the AAUP offers a useful understanding of "a demonstrably bona fide financial exigency, i.e., an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means."[1] In its implicit endorsement of campus autonomy, the proposal raises fundamental questions about the nature of our UC system. These questions cannot be asked and answered in the short review period created by the Regental meeting calendar.

Timeframe of "Emergencies" There are no parameters in the proposed draft for how long such a state of emergency should last, or at what point economic conditions would warrant either its initiation or its termination. In other words, this is a wide open invitation to unchecked presidential power of declaration, implementation and sanctions with no institutional safeguards for long established principles of academic freedom, federal and Regental mandates for affirmative action, and many other procedural safeguards for the hiring, promotion and retention of faculty, the establishment and disestablishment of departments and programs, and binding legal agreements with unions affecting tens of thousands of university employees. In our view, it is not acceptable that the request for emergency powers extend to whatever timeframe that the President sees fit.

Breadth and Scope of Powers The proposal is both overly broad in its granting of presidential powers and threatening in its circumvention of the normal review process that served us well for many years. The

[1] American Association of University Professors, Recommended Institutional Regulations on Academic Freedom & Tenure, available at http://www.aaup.org/AAUP/pubsres/policydocs/contents/RIR.htm.

policy is not restricted to furloughs/pay cuts but suggests that the President can also suspend other policies, defined with very broad scope. In addition to the Privilege and Tenure concerns described above, can the President suspend UC's contributions to the cost of employees' health-care coverage? UCRP payments? Such possibilities are not explicitly excluded from the purview, and may well grant discretionary powers to the President that the Senate, the faculty, staff and students of UC might discover, to their regret, at some later date. Indeed, the sentence from (2): "The President further shall have the authority, during the pendency of the Declaration and consistent with applicable legal requirements, to suspend the operation of any existing Regental or University policies otherwise applicable to furloughs and/or salary reductions that are contrary to the terms he or she deems necessary to the proposed implementation" absolutely requires an analysis of what this means, as well as a justification for this apparently far-reaching provision.

Possible Differential Treatment of Campuses The next sentence in (2) states that salary cuts or furloughs might be ordered for some campuses but not for others. Given repeated references from UCOP in other contexts to "flagship campuses", we find this provision deeply disturbing. **We believe that the present fiscal challenge is a systemwide challenge, and the burdens of facing it should be shared over the whole system. We would like the document to state this as a guiding principle.** Additionally, analysis is needed that shows how the present language allowing for different measures on different campuses might actually play out in reality.

Implications for Benefits Both the proposed amendment and accompanying guidelines are silent on the implications that a declaration of Emergency would have on the benefits of UC employees. These implications may very well be different, depending on whether the employee is affected by a furlough or by a salary reduction, and they should be spelled out.

Timeframe of Consultation We do not understand why the President could wait up to 60 days before consulting with the Senate (Amendment Section 5), after invoking emergency powers without prior consultation. We would suggest a much shorter time frame (1 day or 1 week?), but in any case we simply do not accept that the President could invoke emergency powers without prior or immediate consultation with the Senate, which seems to be a violation of UC's constitutional shared governance.

Effects on Diversity We are greatly concerned about the particular vulnerability of people of color and women to programmatic cuts, prospective lay-offs and furloughs. These groups tend to be lecturers rather than Senate faculty, and/or proportionally tend to be those without tenure or with the least seniority. An overwhelming majority of staff are women. Gains made in the last 15 years or so in the hiring and retention of women and people of color faculty could be seriously and tragically compromised in the course of actions associated with an "emergency." In this regard we are particularly concerned that furloughs/lay-offs/cuts in particularly vulnerable academic departments, because they are small, or because they are in non-traditional or inter-disciplinary fields, could in effect disestablish them without following established protocols.

Sufficient Vetting and Shared Governance The proposed amendment and accompanying guidelines provide for very limited input from the Academic Senate, since only the campus Committees on Academic Personnel, Planning and Budget, and Faculty Welfare (and their counterparts at the system-wide level) are supposed to be involved in the consultation process. Yet, any declaration of Emergency would have profound implications for teaching and research, the core mission of the University of California. For this reason, we believe that the campus Committees on Educational Policy, Research, Admissions and Financial Aid, and the Graduate Council (and their counterparts at the system-wide level) should also be included. The principles of shared governance should not be compromised in matters of such gravity.

Conclusion

One of the most important functions of the UC President is to provide the forward-looking vision that the University as a whole might otherwise lack. Under normal circumstances, a President would have plenty of time to foresee a budget crisis such as the current one, which has been years in the making—it is no secret that our economy is cyclic, although the depths of troughs are, at times, difficult to discern. The need to plan aggressively for large budget cuts has been clear for some time, as has clearly been illustrated by our markedly declining level of state support. Our viewpoint is that the institution of Emergency Powers on financial grounds is a blunt and draconian tool with dictatorial overtones. Rather than promulgating a proposal for emergency powers, a more effective and comprehensive strategy of institution-wide consultation and communication (including with the Senate) over hypothetical cuts, furloughs, and salary reductions, which now seem all too likely to become reality, needs to be instituted. We fully recognize and appreciate that improvements in communication on budgetary matters have occurred at both the system-wide and campus levels—but we do believe that this process is not yet optimized. Our view is that the extant powers of the President, coupled with buy-in from campus constituencies (who are all well aware of the currently dire economic straits), would obviate the need for special "emergency powers" that abrogate normal consultative procedures.

Such an approach would have removed the need for this Amendment, which is ill-justified, poorly thought-out, and seems to open the possibility of invocation of authority that could be highly destructive to the University of California (even if the invocation of that authority were well-intentioned). It also undermines campus authority. **The UCSC Division urges the Academic Council to ensure that the strongest possible stance is taken with the Regents to ensure that this regrettable and potentially destructive mess is not enacted into Policy.**

Sincerely,

Quentin Williams, Chair
Academic Senate
Santa Cruz Division

UNIVERSITY OF CALIFORNIA, SAN DIEGO UCSD

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May 26, 2009

Professor Mary Croughan
Chair, Academic Senate
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Oakland, California 94607-5200

SUBJECT: Proposed Revisions to Standing Order of The Regents 100.4; Draft Furlough/Salary Reduction Guidelines

Dear Chair Croughan:

In response to your request of April 27 for expedited review, the San Diego Division sought and received comment from the appropriate Divisional committees on the proposed revisions to the Standing Order of The Regents (SOR) 100.4 and the Draft Furlough/Salary Reduction Guidelines. Both the Divisional Senate Council and the Senate-Administration Council also considered the proposal at their meeting on May 4 and May 18, 2009, respectively. Finally, the Representative Assembly discussed the proposal at its meeting today, May 26, 2009, where three resolutions were adopted (see below).

While generally acknowledging that the very fact these revisions were proposed was extremely sobering and an indication of the gravity of the situation facing the University, the vast majority of reviewers opposed the proposed revisions to SOR 100.4. The following points summarize the main objections.

- Some reviewers were generally horrified that so much power would be granted to a single person. This was particularly disconcerting because it is not clear what impact this authority would have and there is no explanation of why this additional authority is necessary. UC campuses have experienced emergencies in the past, (e.g., in San Diego, the wildfires of 2003 and 2007), which were handled well by the individual campuses. Why is this broad, sweeping authority necessary? What ties the President's hands now from exercising such authority?
- The language in the document is especially vague with regard to granting the President the authority to declare a financial emergency and to suspend any existing Regental or University policies; many felt that the power to decide unilaterally what constitutes a financial emergency should not reside with any one person within the system. Of special concern is the absence of any checks and balances of this power from the Academic Senate. Fiscal crises can often be forecasted and anticipated, and the preparation for such crises should be done with full consultation and cooperation between the Academic Senate and the Administration.
- Reviewers agree that while the order outlines a process involving The Regents, the President, and the Senate, it does not define the exact steps necessary to invoke these new powers. Do The Regents, the President, or the Academic Senate have vetoes over such proposed rules? Do local campuses and their Chancellors have vetoes? What input is required and when? What exactly triggers a proposal for pay cuts and furloughs? The exact circumstances needed to invoke these powers need to be laid out.
- Who stops the "state of emergency"? Reviewers suggested that the powers, and any rules defined under these powers, should expire at the end of the fiscal year in which they are invoked. What standard of proof needs to be shown by the President in requesting the power to act under this proposed rules change? Finally, do these powers, and any proposed actions taken under these powers, expire if and when the standard of proof can no longer be met?
- How would furloughs impact classes and instruction?
- Page 2, section 5 states, "The President may exercise the authority provided herein by obtaining interim approval of a Declaration of Emergency under the provisions of the Regents Policy on Interim Actions. In such event, the President shall seek further approval by The Board of Regents under subsections (3) and (4), specifically will engage in the consultation process required under subsection (4) as soon as practicable, and in no event later than 60 days after the initial grant of approval by interim action." Reviewers thought the time period should be 30 days rather than 60 days.

- On page 2, section 4 of the "Draft Furlough/Salary Reduction Guidelines", the text provides bulleted items concerning matters that the plan must establish. Reviewers felt strongly that an additional bullet should be provided naming how and when the financial loss to faculty and staff will be recompensed.
- Little or no reference is made to consideration of the impact of furloughs and/or salary reductions on students; in addition, the campus consultation section does not mention students or student organizations among those to be either included on committees or consulted. Given the potential impact of the proposed actions on students and the student educational experience at the University, it seemed that including students among the stakeholders in the consultation process would help ensure that "The Plan will be implemented in a fair and compassionate way" for all who will feel its impact.

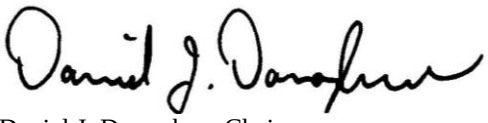
Following a discussion of these points and others at the Representative Assembly meeting earlier today, the Assembly considered, and adopted, the following resolutions:

1) Given the differences between the campuses in the areas of undergraduate and graduate education, research, and service to their local communities, the state and the nation, the faculty of the San Diego Division of the Academic Senate opposes systemwide solutions that do not recognize these differences and instead supports the development and implementation of budget policies to address shortfalls at the campus level in consultation with all Vice Chancellor areas, and traditional bodies of shared governance. (46 votes in favor; 1 vote opposed)

2) The faculty of the San Diego Division of the Academic Senate opposes adoption of the "draft" version of the proposed revisions to SOR 100.4 (transmitted 4/27/09) as being incompatible with shared governance, Regental oversight, and as failing to recognize differences between campuses. The extreme financial circumstances faced by the University have been anticipated for some time and do not require the granting of augmented power to the President of the University to develop and implement systemwide policies, even on a temporary basis as detailed. The President's authority, defined by existing policies and by historical precedents, is sufficient. (49 votes in favor; 3 votes opposed)

3) The faculty of the San Diego Division of the Academic Senate opposes any budget policies that would preclude the legitimate use of federal funds to cover cuts in state funding. We oppose such policies as incompatible with retention and enhancement of current (let alone future) levels of federal expenditures and with retention and enhancement of the benefits that accrue to the University and to the State of California from indirect cost recovery. (40 votes in favor; 1 opposed)

Sincerely,



Daniel J. Donoghue, Chair
Academic Senate, San Diego Division

cc: W. Hodgkiss

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May 21, 2009

Mary Croughan, PhD
Chair, Academic Senate
University of California Office of the President
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Oakland, CA 94106

Re: Review of the Proposed Amendment to Standing Order 100.4 – Duties of the President and Draft Furlough/Salary Reduction Guidelines

Dear Chair Croughan:

In the San Francisco Division of the Academic Senate, the Coordinating Committee, the Committee on Academic Personnel, the Committee on Academic Planning and Budget and the Committee on Faculty Welfare reviewed the Proposed Amendment to Standing Order 100.4 – Duties of the President and Draft Furlough/Salary Reduction Guidelines, distributed on April 27, 2009. Their concerns focused on the following issues, further elaborated below.

- **Extramural Funding including Federal Stimulus Funding**
- **Furlough versus Salary Cut and Implementation**
- **Consultation with Campus Constituencies, including the Academic Senate**
- **Allowing Each Campus to Decide**
- **Definition of a Financial Emergency and its Endpoint**
- **Further Study Advised**

Extramural Funding including Federal Stimulus Funding
The issue of extramural funding must be considered and resolved in the proposed policy. The goal of any response to reductions in state funding is clearly to save resources equivalent to these cuts. Since more than 85% of the faculty on the UCSF campus receive their salaries from non-state funds, any salary cuts and/or furloughs that are not limited solely to state funds must be carefully considered. It does not make sense to reduce salaries through direct cuts or furloughs if such reductions will not save anything in state funds. They should only be implemented if they actually mitigate the budget shortfall. One suggestion has been that to the extent that faculty members in the In Residence, Clinical X and Health Sciences series draw a portion of their salaries from state funds, that fraction should be subject to appropriate reduction.

While a provision is made to consult with CEOs of Health Centers, there does not seem to be any consideration of faculty and staff who are supported by extramural funding (non State). UC could potentially worsen a fiscal crisis if individuals who are being paid by extramural sources are furloughed or have salary cuts. It is not clear that unexpended salary funds in extramural accounts

can be retained by UC, particularly if the furloughs and salary cuts reduce productivity of these activities. In addition extramural funds pay for health insurance and other benefits in proportion to salary and effort; the consequences of the proposed actions on funding of these benefits should be considered.

There are important legal considerations regarding state vs. non-state sources of support. Agreements with industry and federal government sources of research support (ranging from clinical trials to basic discovery projects) are contracts and are signed off by the Dean. Therefore, a reduction of effort on these contracts constitutes default on good faith fulfillment of the objectives of the contract by the University. Furthermore, if the faculty are fully funded through the contract, furloughs would act to diminish the success of these projects and might prejudice future negotiations with industry. In spite of a "fairness doctrine", the fact that the investigators in question have been able to attract full funding must be considered. To the extent that a proportion of the investigator's salary comes from state sources, that fraction could be reduced proportionately.

Furthermore, as the Federal Government has been pouring stimulus funding into new and existing grants, and UC should determine how they might respond to having California furlough or cut the salaries of people who benefit from the Federal stimulus funding.

Furlough versus Salary Cut and Implementation
While neither furloughs nor salary cuts are desired at UCSF, the faculty expressed a preference for furloughs based on the understanding that they are more easily reversed than salary cuts. UCSF faculty clinical and academic responsibilities may preclude most UCSF faculty from taking time off, however with a furlough faculty and staff may be able to benefit from the time off. Faculty may be able to benefit from the time off to engage in professional activities that could compensate for the loss of income incurred by the furlough. Furthermore Salary cuts are not favored because they would have cause a greater detriment to benefits and retirement income.

Regarding the implementation of furloughs or salary cuts, the faculty made the following suggestions:

- Campuses should make contingency plans to insure that furloughs and or salary cuts do not impair clinical care, result in loss of vital research or interfere with other essential activities. Where training and expertise exist and in the case of need, clinical faculty should be able to assume duties in essential clinical services in place of furloughs.

- To address issues of fairness, the type of “work” that can and cannot be furloughed should be categorized.

- Faculty salary sources and work are not always aligned. For example, teaching, committee service and administrative responsibilities are not always compensated, even when “essential”. (e.g. Quality assurance committees in the medical center, clinical teaching on the ward services, academic senate committees). Thus, there is the concern that furloughs might affect revenue-generating activity (e.g. those linked to professional fees) in order to preserve other essential mission-related activities, resulting in a loss of income.

- The effect that furloughs might have on essential teaching, particularly in intensive two-to-three year programs, and how this will affect students’ time to completion must be considered.
- The policy of re-hiring retirees (recently revised as of January 2009) and the financial impact of the continued employment of many retirees. The policy on furloughs for non-retired faculty should not be instituted while retirees are still on call-back. Perhaps the re-employment policy should be revised to state that employment can be suspended immediately in the case of a financial emergency. Non-retired faculty would have the option to assume the responsibilities of the retiree in lieu of furlough.
- CAP is concerned about how merits and promotions of faculty will be handled in the event of a “financial emergency.” If they will continue to be funded in a normal manner, there is no problem. If not, however, CAP must continue to perform its responsibilities in this regard and there must be written assurances that all merits and promotions made during the course of such an emergency declaration must be funded at its conclusion.

- There should be a provision to “hold harmless” faculty so service credit, retirement, insurance coverage and benefits will not be adversely affected if proposed furlough or salary reduction policies are enacted.

- Furloughs should not limit the days or hours that faculty can gain access to labs and offices.

Consultation with Campus Constituencies, including the Academic Senate
On page 2, Section A.1. the policy needs to define what circumstances will prevent the President or Chancellor from consulting with the Academic Senate and how this condition will be rectified in expedient fashion. It is important that this not be viewed as complete without Senate consultation.

On page 2, Section A.2. the policy should define the “appropriate non-represented staff and non-Senate academic employees”. Since these are not organized bodies, President should articulate how s/he will guarantee that all individuals in these groups will be provided with the ability to provide input through consultation.

Allowing Each Campus to Decide
Individual UC campuses must be given flexibility to deal with reductions in state funds caused by the President’s declaration of a financial emergency. No “one size fits all” solution exists for all UC campuses.

Definition of a Financial Emergency and its Endpoint
Any request from a campus Chancellor for a declaration of financial emergency (section III) should comply with the Higher Education Employer Employee Relations Act and should require consultation with the academic senate of that campus similar to section III A, and where applicable, consultation with the Medical Center Director.

On page 1.III. of the document a specific time line should be defined for review of whether the salary reductions or furloughs should continue or be reversed. A decision should be made at each of these junctures, documented in writing and disseminated to the campus community with an explanation if necessary. The reduction in salary should continue for no longer than is absolutely necessary. There should be no impact of either of these maneuvers on the calculation of base salary for the retirement system. Reversal of the furlough policy should have a defined time period for compliance (employees may plan based on anticipated furlough dates – there should be an opportunity to substitute vacation time for furlough dates if reversal occurs).

Further Study Advised
In order to optimally formulate policy, the UCOP should conduct simulations for varied scenarios, that assessed the cost savings versus losses for furlough and salary cut policies with various mixes of clinical revenue, extramural funding and State funding.. Faculty recommend that UCOP compile and analyze literature about the impacts of furloughs and salary cuts, particularly with regard to clinical care, teaching, research, public perceptions, campus/faculty morale, etc.. Furthermore, if one of these scenarios are implemented, faculty encourage UCOP to monitor the outcomes to foster proactive, well-informed changes to the policies as needed.

The negative effect furlough or pay cut policies may have on non-State revenues as well as on academic and clinical accreditation requirements should be evaluated carefully before enacting them. The potential impact of furloughs on research productivity, compliance with contracts and/or granting agency requirements, and the ability of the faculty to obtain future contracts and grants must also be considered.

Should you have questions or need more information, please contact me at dgardner@diabetes.ucsf.edu.

Sincerely,

David Gardner, MD
Chair, UCSF Academic Senate

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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UNIVERSITY COMMITTEE ON AFFIRMATIVE ACTION AND DIVERSITY (UCAAD)
Francis Lu, M.D., Chair
francislu@sfdph.org

ACADEMIC SENATE
University of California
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Oakland, California 94607-5200

May 22, 2009

MARY CROUGHAN, CHAIR
ACADEMIC COUNCIL

Re: Proposed Amendment to Standing Order 100.4 – Duties of the President

Dear Chair Croughan:

I am writing to provide input to you and the Academic Council from UCAAD stemming from our discussions before May 19. In short, UCAAD has very serious concerns.

First, a "state of emergency" for a long-developing financial crisis seems strange to UCAAD. It is not like an earthquake or other unforeseen catastrophe; we find the conflation of natural disasters and human-made ones unsupportable. There ought to be time to anticipate budgetary shortfalls. Calling it an "emergency" seems to give the President the unilateral power -- permanently, not just during the present downturn -- to go ahead without any input at all (if the President deems that "circumstances" prevent consultation) or to engage merely in pro forma consultation. Appropriate consultations with the Academic Senate in accord with the established principles of shared governance are essential; the lack of such consultations fundamentally changes the character of the university.

Second, UCAAD does not see any mechanism for determining when the emergency is over. There are no parameters in the proposed draft for how long such a state of emergency should last, or at what point economic conditions would warrant either its initiation or its termination. In other words, this is a wide open invitation to unchecked presidential power of declaration, implementation and sanctions with no institutional safeguards for long established principles of academic freedom, federal and regental mandates for affirmative action, and many other procedural safeguards for the hiring, promotion and retention of faculty, the establishment and disestablishment of departments and programs, and binding legal agreements with unions affecting tens of thousands of university employees.

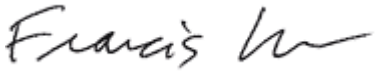
On the other hand, if the authority were temporary --say 6 months, and renewable only with the approval of other bodies -- we would be much more comfortable. Even if immediate salary cuts or furloughs are necessary for the time being, UCAAD believes that it should be temporary authority for some limited duration rather than permanent authority.

Furthermore, with regard to furloughs: how would these be determined? And for what duration? If furloughs are for greater than 50% time faculty and staff lose benefits. Are administrators and managers also subject to furloughs? What happens to accruing retirement benefits while on furlough? If salaries are to be cut will it be for all university employees equally or might there be a graduated cut based on those with higher salaries bearing a higher percentage?

Third, UCAAD is greatly concerned about the particular vulnerability of people of color and women to both programmatic cuts and individual lay-offs and furloughs. These groups tend to be lecturers rather than Senate faculty, and/or proportionally tend to be those without tenure or with the least seniority. An overwhelming majority of staff are women. Gains made in the last 15 years or so in the hiring and retention of women and people of color faculty could be seriously and tragically compromised. In this regard we are particularly concerned that furloughs in particularly vulnerable departments, because they are small, or because they are in non-traditional or inter-disciplinary fields, could in effect disestablish them without following any of the established protocols.

Please contact me at (415) 608-3707 or francislumd@aol.com if you have any questions. Many thanks.

Sincerely,



Francis Lu, M.D.
Chair, UCAAD

Copy: Martha Winnacker, Executive Director

UNIVERSITY OF CALIFORNIA

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May 21, 2009

MARY CROUGHAN, CHAIR
ACADEMIC COUNCIL

Re: FURLOUGH AND SALARY CUT GUIDELINES

Dear Mary,

UCAP reviewed the proposed new Standing Order of the Regents and the proposed implementing guidelines during its meeting on May 12, 2009. Committee members offered the following suggestions:

- Redundant language in the guidelines makes them difficult to read and should be removed.
- Clear language should state what the president will do after the declaration of a grave emergency and a timeline for those actions, including a sunset clause or fixed term to end such an emergency declaration and a process to extend it if needed.
- The process for the president's consultation with the Senate should be more specific and should not be limited to consultation with the Systemwide Senate Chair. In particular, consultation with the divisional Senate chairs should be specifically required.
- Management of financial emergencies and natural disasters should be addressed in separate documents.

Sincerely,

Steven Plaxe, Chair
UCAP

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May 26, 2009

MARY CROUGHAN, CHAIR
ACADEMIC SENATE

RE: FURLOUGH AND SALARY CUT GUIDELINES

Dear Mary,

As part of the systemwide review of the draft documents on furloughs and salary cuts distributed to the Senate Committee and Division Chairs on April 27, 2009, the members of the University Committee on Computing and Communication respond as follows:

The proposed new Standing Order of The Regents and implementing guidelines do not differentiate fiscal emergency from other emergencies. Different resources (human and technology) are needed in different kinds of emergencies and this should be made clear.

Neither the Standing Order nor the guidelines go far enough regarding usage of communication technology. For example, UCOP can use communication technology to provide opportunities for faculty to become more directly involved in the decision making process. Another potential application for communication technology would be for faculty to get more information about what actions other campuses are taking to address the financial issues.

With regard to the section "Expected Consultation Prior to a Declaration of Financial Emergency," several paragraphs begin with "unless circumstances prevent it". Given the array of communication technologies available, what circumstances could possibly prevent the President from consulting with the Academic Senate on each campus? We suggest deleting the clause "unless circumstances prevent it". We also suggest removing the word "appropriate" in the discussion of communication with divisional chairs and committees. The word "appropriate" has the potential to create inappropriate gaps regarding which faculty do and do not receive communication in a timely manner.

If the Regents intend to declare a state of financial emergency, then at this point (the intention to do so) should be communicated immediately on a systemwide level to the faculty using appropriate communication technology. The time between the intention to declare a state of financial emergency and the actual declaration of such should be no less than one academic quarter to allow faculty, staff and students time to make adjustments. This time value is one condition that distinguishes a financial emergency from an earthquake, as just one example.

Regarding "Systemwide Guidelines and Parameters" we request addition of guidelines to ensure prompt and thorough systemwide distribution of information through communication technologies.

Regarding appointment of a strategic planning committee or task force for the campus, we request that

Deans be included in the list of campus leadership members.

In addition to the above comments UCCC would like to comment on strategies related to furloughs and teaching. However, we realize this is not necessarily within the scope of our committee. We request additional time so that UCCC can consult with Committee on Educational Policy and the Committee on Research Policy to tie in communication and computing issues. One issue that UCCC would discuss with these committees is distance education technologies that may assist faculty in reducing hours spent teaching and may provide flexibility in the location from which teaching is performed.

Sincerely,

Lisa Naugle, Chair
UCCC

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May 22, 2009

MARY CROUGHAN, CHAIR
ACADEMIC COUNCIL

Re: AMENDMENT TO STANDING ORDER 100.4

Dear Mary,

In its meeting of May 4 UCEP discussed the proposed amendments to Regents Standing Order 100.4 regarding the institution of furloughs and salary reductions. Though the members of UCEP expressed willingness to share a proportional burden for actions required during severe budgetary crises, we identified several important issues that need further consideration, because the way they are handled have the potential to severely impact the educational mission of this 10-campus university.

Policy 100.4 states no expected duration for furlough or wage reduction interventions nor any plan for exceeding some expected maximum duration. Specifically, Section 100.4(3) simply states that *The Plan* must specify 'the expected duration of the Declaration or provisions for renewal,' UCEP members feel this passage lacks specificity and should include a maximum duration of implementation and a requirement that any continuation of the plan beyond that duration be explicitly justified anew.

In the Guidelines it is stipulated that *The Plan* must establish: 'How The Plan will be implemented in a fair and compassionate way to the entire University workforce.' With the exception of UC Santa Cruz faculty members, the Senate members are the only UC group without a bargaining unit. Thus, it may be difficult for the Regents to balance the demands of organized labor and not disproportionately distribute the burden of fiscal reductions to Senate members.

The report also does not specify whether employees working under extramurally funded grants will be treated the same as those whose compensation depends on State funding. Some members pointed out that many who depend on 'soft money' provided by grants are in a higher-risk environment than those paid by State funds. Also, if furloughs are required, it is unclear whether the University will be in violation of their contracts with Sponsors by reducing an investigators ability to complete a project, even where money is available. Thus, the policy begs the question: "Is it fair to impose the same furlough and salary reduction on those who are on unguaranteed, 'soft money' positions as those who hold positions with more stable funding?" This is not to say that employees on external grants should be exempt from reduced remuneration, but the entailed issues are complex and any policy will need to be carefully justified.

The policy does not prioritize whether furloughs or salary reduction will be selected as a method to address the budgetary shortfall or how this will affect Senate members. Nonetheless, unlike other work groups and titles, Senate membership bears equal burden for either furlough or salary reduction proposals. Both actions

have similar impacts; specifically, research must be completed, grants fulfilled, and courses planned. For faculty, “days without pay” are equivalent to salary reduction because these activities go on regardless. Senate members ***are*** different when compared to clerical and professional staff members. An additional day off is never truly a day away from duties.

In summary, the proposed policy neglects many difficult and challenging problems that deserve attention and planning. UCEP is concerned about the negative and the direct impact the actions described in the memo could have on our mission to deliver high quality, cutting edge.

Sincerely,

Stephen R. McLean, Chair
UCEP

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May 20, 2009

MARY CROUGHAN, CHAIR
ACADEMIC SENATE

RE: Proposed Furlough and Salary Cut Guidelines

Dear Mary,

At its May 8 meeting, UCFW discussed at length the proposed new Standing Order of The Regents and the partnered Implementation Guidelines for furloughs and salary cuts. From that discussion arose a number of concerns with the proposed Standing Order itself as well as with the Guidelines which accompany it. Those issues upon which we focused most of our discussion and derived the greatest consensus are enumerated below.

1. Safeguard Benefits: When consideration is given to any plan for salary reductions or furloughs, such a plan must be guided by the principle that UCRP retirement benefits will not be adversely affected. Both service credit and HAPC should be held the same as they would have been in the absence of the furlough or pay cut, as is currently the case with the START program. This is essential for employee morale, and for avoiding the creation of perverse incentives for and against retirement that could cost UC much more than any money saved by reducing HAPC or service credit during the furlough. The mechanism by which this goal will be achieved must be clearly articulated. Similarly, health and welfare benefits must be continuous during any furlough period and not affected by pay cuts.

2. Natural vs. Financial Crises: The needs of campuses and the system are very different in a time of natural disaster or a fiscal crisis. To illustrate, the two situations differ in the time frame over which they develop and in which a response must be implemented; in the activities which will be affected (e.g., classes are likely to be cancelled in a natural disaster, but not in a financial emergency); and in the ability of other campuses or the Office of the President to offer aid to the campus experiencing the crisis. We strongly favor removing natural disasters from this document; they should be the subject of an entirely separate policy that focuses first on the restoration of the University's instructional and research function, and only secondarily on how to address the financial consequences of the natural disaster. The removal of natural disasters from this document would allow the removal of Paragraph (5); natural disasters are unpredictable and may require action on very short notice, but financial crises by their nature develop more slowly and the University's response should not be allowed to circumvent the consultation process.

Since the Guidelines accompanying SOR100.4(xx) are only for financial crises, we do not see the purpose of qualifying the expected consultation with the escape phrase "Unless circumstances prevent it". If circumstances can indeed be envisioned in which a financial crisis would be so sudden and unanticipated in its onset that the consultation outlined in this section would be precluded, then perhaps a disclaiming paragraph elsewhere in the Guidelines giving examples of situations in which the expected consultation might not be possible would suffice to cover this exigency. Beginning each of the two paragraphs in Section III.A. and in Section IV. with the vague "Unless circumstances prevent it…" does not engender confidence that the intentions following the phrase are serious.

3. Limited Duration: There should be sunset provisions for both the overall implementation Guidelines and for each instance of implementation of furloughs or salary cuts. These provisions should be clearly stated within the Guidelines. We suggest that the Guidelines themselves be reviewed every two years to determine whether they are sufficiently clear, fair, and effective. While the Guidelines call for the specification of the duration of a Declaration or Financial Emergency, we believe it is equally important that each instance of implementation of furloughs and/or pay cuts have a built in ending date not more than one year from the initial date, and that the review of the effectiveness of the implementation and any decision to renew it should involve the same consultation process as that for the initial implementation.

4. Similar Treatment for All Employees: We support the references in the Guidelines to fairness and compassion in developing a furlough and/or salary reduction plan. We believe that campuses and the system are best served if all employees are treated similarly. For example, salary reductions or furloughs should be applied as much as possible without regard to funding source. If some employees have furloughs and others have salary reductions (see below), the effect on take home pay should be approximately the same, on a percentage basis.

We are very concerned with the precedent of pay cuts or furloughs for faculty on some campuses and not others because this has the potential to further erode the integrity of the common faculty salary scale. But we recognize the immense complexity of attempting to treat all employees alike and could not reach a consensus on how best to resolve these complications.

In keeping with our belief in the principle of treating all employees identically, to the extent possible, we believe that it is important that faculty who are furloughed or have pay cuts not be in a position to simply undo this by, for example, tapping into extramural funds. Allowing such behavior creates inequities across disciplines and between faculty and staff. It may also create the potential for challenge by granting agencies if the funds used are not accompanied by the appropriate shift in percent time and effort from teaching to research.

5. Define "other part of the University System": This term in Paragraph (1) of SOR 100.4(xx) left undefined, could be construed to mean, for example, applying to a medical school only or to everything but a medical school; or it could mean small non-clinical School, a College, or a Department. Clarification of meaning is required before it can be determined whether this phrase is appropriate or not.

6. Furloughs for Faculty Create Insurmountable Barriers: The legitimate application of the concept of furlough (non-duty, non-pay status) for faculty is fraught with complexity and incongruities that will likely be insurmountable. This is due to the different nature of the relationship between the University and its staff employees and with its faculty. The University is defined by its faculty, its students and the relationship between them. Unless the activities

involved in this relationship are curtailed, faculty cannot unilaterally be removed from them. Additionally, the scholarly activities and clinical duties (among others) of faculty preclude the imposition of furloughs. Therefore, although it may be argued that it is desirable to treat all employee groups the same, in fact it is impossible to do so and maintain anything like normal function of the campus or university. Therefore, unless it is expected that faculty will indeed carry out their duties while on furlough (in our view, a legally indefensible position for the University) salary reduction will be necessary to save money from this segment of the workforce. However, if salary reductions are reflected in HAPC, the cost will fall very disproportionately on those close to retirement, and will result in large and perverse incentives to change retirement behavior. Consequently, we reiterate urgently the point in Paragraph 1 above: that retirement and other benefits must not be adversely affected by a pay cut or furlough.

If the conditions in Paragraph 1 above are not completely met, that is, if HAPC is not fully protected in the case of a salary cut, then the furlough is the preferable action for faculty. The overriding priority is to protect the individual's retirement from harm thereby avoiding providing incentives for inappropriately early or inappropriately deferred retirement. The attendant damage to the University of providing such incentives are known all too well from the University's experiments with early retirement plans a decade and a half ago.

7. Other solutions: In Section IV, there is a list of items that must be considered prior to proposing to impose furloughs or salary reductions. This list should include other salary-related measures such as START, etc.

8. Current Consultation Process: Finally we note that the current consultation process, on a subject of enormous importance to the University and its employees, is abbreviated in the extreme. We also note that many important details of implementation of any furlough and/or salary reduction plan have yet to be determined (Section IV.A). Therefore we recommend that consultation with the Academic Senate Committees and Divisions be continuous during further development and refinement of any implementation plans.

UCFW appreciates the opportunity to comment on this exceedingly important document and looks forward to further close consultation on it in the coming weeks and months.

Sincerely,

Helen L Henry

Helen Henry, UCFW Chair

Copy: UCFW
Martha Winnacker, Executive Director, Academic Senate

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May 22, 2009

MARY CROUGHAN, CHAIR
ACADEMIC COUNCIL

Re: Proposed Amendment to Standing Order 100.4 – Duties of the President

Dear Mary,

UCPB has reviewed the proposed new Regential Standing Order governing the establishment of Presidential authority for furloughs or pay cuts, in the event of emergency situations. While the committee agrees very strongly that a policy is needed *for emergencies*, and welcomes the opportunity to participate in the planning for such circumstances before they might occur, we cannot recommend in favor of approving this policy. Moreover, we cannot support the policy as a mechanism to address budget problems that have been foreseeable for some time; there has been and remains ample time for thorough consultation using our current processes.

UCPB approved the attached statement for transmittal to the Academic Council for its consideration in drafting the Academic Senate's response to the President. We detail a number of specific concerns, which center on four main areas.

First, the policy represents an attempt to deal with extreme budgetary circumstances and emergencies such as natural disasters with the same measures, authority, and processes for consultation, review, and approval. The short time-frame for at least some of the responses that a natural disaster might require, for example, call for different degrees of Presidential autonomy than does a budgetary crisis foreseen for many months. The faculty's shared governance responsibilities, similarly, need to be organized in a way that makes the appropriate trade-offs between full consultation and deliberation, such as a budget problem calls for, and timely responses to deal with an emergency situation, where such consultation and deliberation may not be appropriate or even be possible.

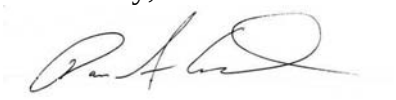
Second, the policy seems overly broad. One could imagine the temporary suspension or modification of any number of policies based on an emergency declaration, but this Standing Order does not articulate a standard for documenting the need for such changes, exactly how the changes address that need, and the conditions for monitoring the emergency and ultimately returning to normal conditions.

Third, and specific to the case of budgetary crises, the document seems to assume an affirmative answer to the question of whether furloughs or pay cuts for faculty are an appropriate means by which UC should respond to inadequate state funding. UCPB, however, does not consider that question to be closed; we have not, in fact, been consulted yet about the many details that would govern furloughs or pay cuts. We note that whether or not this authority is appropriately delegated to the President depends crucially on the details. The Senate must be engaged in that discussion before a policy is adopted, rather than providing authority and ironing out details later.

Finally, implicit in this policy is a substantial shift from a culture in which UC acts as one university with ten campuses to a new set of relationships where a single campus could have an emergency that does not affect the others. The possibility of targeting certain groups of faculty – whether by campus, funding source, or other characteristic – raises serious and fundamental questions about the appropriate degree of centralization versus campus autonomy for the UC system. The adoption of this Standing Order will answer these questions by default, without the lengthy analysis and debate they deserve.

To conclude, UCPB strongly supports the goal of establishing procedures to be followed, in the event of an emergency situation. Remedying this gap in our existing policies is prudent and welcome. We look forward to participating in deliberations and full consideration of a more narrowly constructed policy, one that deals solely with emergency situations. We also look forward to working cooperatively and constructively with the administration, under our shared-governance responsibilities, to consider any feasible responses to our current budget problems. UCPB urges that we shift our attention to those needs, and do so within our existing review and consultation processes. Mixing the need for a new emergency policy with the need for creative approaches to the budget results only in complications and confusion, as short-term responses appropriate for emergencies address different priorities than the ones we have endorsed for budget decisions: sustaining UC's excellence in its teaching, research, and public service missions. Most important, therefore, UCPB reiterates that we oppose using furloughs or pay cuts to deal with our budget problems.

Sincerely,



Patricia Conrad
UCPB Chair

cc: UCPB
Martha Winnacker, Senate Executive Director

Encl.

University Committee on Planning and Budget
Comments on Proposed Amendment to Regents' Standing Order 100.4
Duties of the President

UCPB has reviewed the proposed new Regential Standing Order governing the establishment of Presidential authority for furloughs or pay cuts, in the event of emergency situations. In our view, the proposed policy is not ready for adoption. A number of specific concerns are enumerated below. The main ones center on four main points:

(1) the policy represents an attempt to deal with extreme budgetary circumstances and emergencies such as natural disasters with the same measures, authority, and processes for consultation, review, and approval. UCPB sees a number of differences between budget problems and emergencies, and recommends that new policy focus on the latter. Our existing policies and procedures for review and consultation seem adequate for the former.

(2) the policy seems overly broad. It is not limited to furloughs or pay cuts following an emergency situation, but indicates that the President could be empowered to change other policies, with an emergency as the justification. At a minimum, there should be criteria to indicate why other policies might be involved, and the justification for taking emergency measures that affect those policies.

(3) specific to the case of budgetary crises, the document seems to assume an affirmative answer to the question of whether furloughs or pay cuts for faculty are an appropriate means by which UC should respond to inadequate state funding. The principles approved recently by UCPB explicitly state that we oppose furloughs or pay cuts to balance UC's budget, and that remains the committee's view.

(4) the policy raises a number of concerns regarding the extent to which UC remains one university with ten campuses, with one standard of excellence. The principles approved by UCPB call for funding comparable units equally, a standard that could be abandoned under an emergency declaration justified by this policy. The risk is particularly great to the extent that the policy permits using the budget as a justification to cut funding for certain programs on individual campuses.

These concerns are in many instances implicit in the policy, not specific provisions to which we can object or offer alternate wording. Hence, while UCPB was able to determine reasons why this policy is not ready for Regental action, it is not possible to reach satisfactory resolutions of these fundamental questions in the same time period. On the contrary, UCPB feels that this document has provided an opportunity for UC to engage such questions, and that the policy should not be adopted until that debate is complete.

Specific Concerns

1. Emergency vs. Extreme

While our budget problems are serious, they have been on the horizon for months, if not years, and may not be comparable to a flu pandemic, a natural disaster, or terrorist incident. It is not clear how the same policy could apply both to these emergencies and to budget problems that may be "extreme" but are not emergencies in the same sense.

By equating "emergency" and "extreme" circumstances, and similarly, equating those that are external to the budget process (but having potentially serious budget implications) with those that originate in the budget process itself, the policy ignores important differences that should occur in the consultation and planning processes—both their extent and the appropriate time frame.

2. An Overly Broad Policy

The policy as drafted threatens to circumvent the normal review process that has served us well for many years. The policy is not restricted to furloughs/pay cuts but suggests that the President can also suspend other policies. Can the President suspend UC's contributions to the cost of employees' health-care coverage? Because such possibilities are not explicitly excluded from the purview, the policy gives too much power to the President, including the risk that the Office of the President may act to protect its own priorities over those of faculty, staff, and students.

There should be an explicit link between the emergency declaration and the steps taken, on the one hand, and the goal behind these steps, on the other hand. There should be a benchmark against which the success of the emergency actions are judged, including review and consultation with the Senate at regular intervals, to determine if the steps are working and if they remain necessary. In particular, the justification for the steps taken, and a specific goal for which the President is accountable, should be stated. It should be made very clear, before any emergency actions are taken, how the equivalent of "mission creep" will be avoided—the goals of the emergency measures cannot keep changing to extend the duration of the declared emergency.

3. Operational Considerations

(a) If the mandated consultation with a division or the system-wide Senate does not lead to faculty endorsement of the plan, then will the President be able to act unilaterally, citing emergency powers? How exactly will divisional or systemwide Senate committees and leadership be involved in drafting implementation procedures? Without some formal role in the approval process, no amount of consultation at the time of a declared emergency will protect the faculty from being used to balance the budget, with salary cuts preserving the administration's priorities.

For true emergencies, there may not be the opportunity to consult the Senate, let alone time for a formal process where a faculty vote must be taken. However, it is not clear why the Senate should support giving the President this power when the emergency is instead a budgetary one.

(b) The policy leaves open the duration of the emergency. What protection does the Senate have against emergency procedures becoming permanent? There should be explicit language that defines the timeframe of the duration of cuts and restoration. What is the mechanism for declaring the emergency to be over, and what is the Senate's role during the emergency and in declaring it to have ended? Although this is just one of many problems with the policy as drafted, UCPB recommends that any emergency powers or decisions made with that justification be short-lived; for instance, it could be stipulated that no more than 30 days shall elapse before the President must consult both The Regents and the Academic Council concerning the continuation of any emergency measures.

(c) A statement about how to declare an end to the crisis must address the issue of restoration; whether the prior salary structure is to be fully restored will be a critical issue to faculty and staff.

(d) Numerous questions remain unaddressed or unclear in the draft policy. They range from questions about implementation to the aftermath of the furloughs: how furlough days will be determined (presumably not on "teaching" days); whether faculty may "moonlight" during a furlough, substitute grant income for base salary and/or use vacation as a substitute; implications for UCRP service credit; and implications for post-emergency salaries and benefits.

The policy seeks to prevent other compensation from substituting for the furlough or pay cut. How would this be enforceable? Can faculty be prevented from paying themselves from grants, unless the funding agency prohibits it? Will the policy affect faculty who are entirely on external funds that are specifically appropriated for their salary based on their percentage of effort? Can endowed chairs be prevented from diverting the funds they control to make up for furloughs or salary cuts?

The fact that these questions remain unanswered, even after months of discussion of the alternatives of either furloughs or pay cuts, demonstrates the prematurity of this policy. Before giving broad powers to the President over furloughs or pay cuts, their nature should be defined more precisely.

Consideration also needs to be given to the signals a furlough policy would send to the state, before using it to address a foreseeable, structural budget crisis. If we declare an emergency to furlough faculty and the state sees no adverse effects, how can we possibly expect to make any progress in our longer-term effort to preserve UC's public nature by restoring state funding? For furloughs to cause any pain, on the other hand, they would have to affect the teaching mission. The Senate needs to be consulted about how instruction and degree-granting could continue unaffected while faculty are being furloughed or while UC's commitment to their salaries is not met. In the absence of such consultation, this policy should not be adopted.

Put most simply, this policy communicates a simple message to the state: if you continue to cut our budget, we will cut faculty pay. It is not clear why UC faculty should support sending such a message to a state government that appears very content with that outcome.

(e) The policy refers to a "deficiency in available financial resources." Implicit in "available" is

some notion of liquidity, and equivalently, some notion of the time-frame involved. What is the definition of "available"? Presumably selling assets is not included, but this might be an appropriate response to a predictable, sustained shortfall in the budget. At the very least, that option, which should have been on the table for the past year, should not inadvertently be taken off the table now.

Similarly, fee increases, an obvious response to budgetary pressures, seem to be outside this policy. If the intent of this policy is to pertain only to short-term budget shortfalls and to prevent consideration of longer-term solutions such as fee increases, that needs to be stated.

4. One UC or Ten?

The policy implicitly conveys a view that UC is ten universities, not one. For one campus to face an emergency and a subset of UC faculty to receive furloughs or salary reductions in response, while business goes on as usual at the other campuses, strikes at the heart of our concept of UC as one university with ten campuses. Inversely, when the emergency is declared at the systemwide level, the policy's specific reference to individual campuses suggests that Presidential action could result in campus stratification. We should take great care to ensure that the response to an emergency does not implicitly or explicitly declare, for instance, that certain campuses will have a different salary scale or that funding inequities will be introduced or exacerbated.

This policy thus raises fundamental questions for the UC system that should not be rushed through in a short review period. Its implicit endorsement of autonomy for individual campuses has implications far beyond responding to budgetary crises or real emergencies. If the aim of the policy is to allow individual campuses to cope in their own ways with the current budget problems, and if that is ultimately considered the best route to take, it may not be how UC should address true emergency situations.

The preservation of UC as one system without tiers or stratification remains Senate policy and has many virtues. There are also arguments in favor of greater autonomy, at least for budget crises. For instance, the medical centers or other units that rely less on state funding will justifiably question any across-the-board cuts in response to a state fiscal crisis. It is important that these questions be debated before this policy is approved, to avoid unintentionally legislating answers to these important questions. Before that debate is resolved, it is important to separate autonomy in how campuses deal with budget problems from implicitly concluding that each campus is also on its own following a natural disaster.

5. Who is Affected?

Beyond references to public safety, the policy provides no guidance as to how affected categories of employees will be determined. Will all faculty be considered one category, or could all faculty with Agricultural Experiment Station appointments, for example, be furloughed in the event of a targeted cut in AES funds? Are any medical centers exempt because of clinical responsibilities, or might only clinical income be exempt? We risk creating several classes of faculty if we contemplate identifying certain groups for differential treatment. This should be addressed before empowering the President to target certain groups of faculty.

6. What is "Fair and Compassionate"?

At one point, the policy states that "The Plan will be implemented in a fair and compassionate way to the entire University workforce," yet earlier, it states that the President will have the authority to furlough or reduce salary for "*some* or all categories of University employees" (emphasis added). These two statements are tough to reconcile. There is nothing fair or compassionate about pay cuts for faculty who chose an offer from a UC campus over one from another employer, based on expectations about future earnings that may now be rendered irrelevant.

7. Teaching and Research

The policy is largely silent on the implications for teaching and research. For the non-financial kinds of emergencies, there needs to be a clear delineation between the decisions the Senate makes—pertaining to instruction and curriculum, and the awarding of degrees—and what the administration can decide with its emergency powers. Implications for research are also largely ignored. If UC has committed a certain percentage of a faculty member's time to a project funded by an outside agency, can it unilaterally reduce that faculty member's percentage effort via furlough, or UC's contribution to the project's cost, via a pay cut? If there are changes in effort and/or the use of external funds due to these actions, what are the legal and contractual obligations of the principal investigators and their campuses to the funding agencies?

Most important, the policy makes no statement about preserving UC's excellence. To the greatest extent possible, responses to either budget problems or emergency situations should not erode UC's excellence. The policy should explicitly state that when the emergency ends, the administration is committed to rectifying any compromises of UC's excellence that a crisis made necessary.

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May 20, 2009

MARY CROUGHAN, CHAIR
ACADEMIC COUNCIL

RE: Proposed Guidelines for Furloughs and Salary Cuts

Dear Mary,

At its May 11, 2009, teleconference, the University Committee on Research Policy (UCORP) discussed the proposed guidelines for furloughs and salary cuts. Some members have asked for additional materials to consult in order to further develop meaningful feedback, but we recognize that the tight time frame of review precludes this. Nevertheless, we have several concerns and recommendations.

- Faculty furloughs are unworkable. Further iterations need to be more cognizant of the demands on faculty time and how unrealistic faculty furloughs actually are. In addition to health sciences faculty, many researchers have time-sensitive experiments and deadlines which cannot be deferred due to furlough. Failure to meet external deadlines or to produce top-quality research due to furloughs would only further disadvantage individual researchers and the University.

- Salary cuts have cascading negative impacts. One concern regarding salary reductions is that summer salary amounts (e.g. from grants) often are computed from base salaries. To the extent that base salaries are reduced, grant revenue will also diminish due to reduced summer salary amounts, and consequently overhead and indirect cost recovery will also be affected due to the reductions. Thus, the short-term cost savings of any cuts must be weighed carefully against extramural implications.

- Greater Senate consultation is needed. After an emergency has been declared, the list of Senate committees to be consulted should be broadened to include education and research policy committees, graduate councils, and others, perhaps those who have a seat on Council.

- Physical and fiscal emergency policies should be separate. Further, the fiscal emergency policy should not include interim presidential or chancellorial authority provisions. While such measures are clearly needed in rapidly emerging physical crises (earthquakes, fires, tsunami), their necessity is less clear for fiscal emergencies which develop over time.

- Unacceptable responses to the crisis must also be listed. For example, recharging salary differentials to grants or the additional use of off-scale salaries to fill key positions must be

eliminated from consideration. So too should cuts to retirement or health benefits be peremptorily discounted. Failure to draw the line means it will be crossed.

- A more deliberative approach is needed. This crisis has been at our doorstep since mid-to-late 2008, and contingency planning should have begun long ago. Expediting this review risks the generation of a myopic and/or incomplete policy which will be inadequate to meet the needs of the University.

  Indeed, UCORP notes with alarm the increasing frequency with which shortened reviews are being afforded the Senate. Understanding the uniqueness of the situation at hand does not ameliorate our concern that, in many ways, Senate consultation has suffered this year. We are not convinced that once the immediate crisis is past that a return to the status quo ante is certain. We will be more vigilant moving forward, and we encourage you to exhort others to do the same.

We look forward to working with you further on this important matter.

Sincerely,

James Carey, Chair
UCORP

cc: UCORP
Martha Winnacker, Executive Director, Systemwide Academic Senate

Dear Martha:

Thank you for sending UCP&T the two drafted documents on Emergency Furlough and Salary Reductions Policies for a systemwide review. Members of the Committee have since conducted thorough discussions among the individual CP&T's and with their colleagues on various campuses. We collected thus far written feedbacks from 7 different campuses; UC Berkeley, UCSF, UCLA, UC Davis, UCSC, UCSB, and UCI. There is a near consensus on this issue for more thorough discussions, involvement of the faculty of all campuses for decision makings and the need for more control of this new policy by the university community. I was originally thinking about paraphrasing these comments for you, but subsequently changed my mind, because I consider all the expressed thoughts in there are too precious to be left out. I am thus presenting the feedback to you in its entirety.

As our Committee considers the issue of utmost importance for the future of UC, we urge you to present these feedbacks to the Academic Senate and the UCOP and ask that they be seriously considered and included in any potential decision making on the policies in the future. Thank you.

Sincerely,

C. C. Wang, Ph.D.
Chair, UCP&T

C.C.

Thank you. I've reviewed the attachments and the embedded hyperlinks, and have had a few short discussions with colleagues regarding the content. What we've been presented is a draft "implementation" plan adding "furloughs" to the emergency measures allowable under SO 100.4(xx) (Duties of the President), the essence of the proposed "amendment." The good news is that the plan calls for a significant consultation and review process, both divisional and systemwide, so this would not be the last we'll hear of a plan to enact furloughs if and when the declaration of a fiscal emergency is issued.

There is that loophole clause, quoted here in CAPS...

"The Guidelines also describe a detailed consultation and review process to be followed such that, UNLESS CIRCUMSTANCES PREVENT IT, any implementation plan that is presented for action will have been reviewed and commented upon by the systemwide and/or divisional Academic Senate and appropriate committees, as well as by staff and non-Senate academic representatives."

...but the likelihood of any rash attempts to push through an executive order in the absence of faculty consultation during this precarious time is extremely low. The Senate can and should be proactive in assuming that the furlough is coming, and should sustain a continuing task force to study the implementation of the proposed furlough.

It is also important to note the contours of the proposed salary reduction, that is, a "furlough." There are other methods of salary reduction, but they would likely erode the baseline salaries on which retirement compensation is based, no matter how well the State might recover fiscally in future. Furloughs do NOT do that; the salary base is protected, making furloughs the least offensive methodology.

That's the best I can offer as the May 26th deadline looms, with e-grades coming due...

Best wishes,

-Ron

Ronald Gronsky
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Dear CC,

I tend to concur with Ron Gronsky that we will continue to hear about Furlough in fiscal emergency. No one is certain if and when this will occur and how it can be applied equitably to a spectrum of faculty who are not state-funded. On May 4 Mark Yudof met with UCSF Divisional Senate leadership and had a detailed discussion about this isuue. My read is that furlough is the least evil among the options facing the faculty in the current finacial crisis. Personally, I think it is inevitable and hopefully never recur.
Girish
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Dear Professor Wang:

I have circulated the document.

Here are the 3 replies I have received thus far. I have not identified the senders.

Best,
Mike Lofchie (UCLA)

1. Mike, this looks like an unprecedented power grab and carries dangers of violating academic freedom: in essence, the President can "furlough"
not only UC at large, but any particular campus OR UNIT. I.e., if Sociology does something unpopular, he can yield to pressure to "furlough" all its faculty (and nobody else).

2. As I think about it, I can even imagine it becoming an issue against a particular campus. Suppose UCLA tenures, or declines to fire, some faculty member who has made himself/herself the focus of public outrage.
The UC President can then (even behind the scenes) threaten to "furlough" that campus's faculty if the desired outcome is not achieved
-- or, worse, the radio shockjocks can mount a campaign to use that lever.

3.Hi Mike,

1. There should be a "sunset clause" in the authorization amendment.
2. There must be no discrimination as between the represented and the non-represented.

Dear C.C.,

I've read through the attachments and have also talked to several colleagues in the medical arena. Some thoughts based on medical aspects:

1) This is a serious issue that needs a clear understanding of the possible sequelae before any furloughs and/or salary reductions are instituted. For example clarification regarding possible Federal law exempting teachers and physicians from federal overtime provisions needs to be made. In light of this,can faculty be furloughed?

2)I am told that the CA State Dept. of personnel administration has opined that management employees of the state (not teachers or
physicians) who are furloughed revert to an hourly pay equivalent, and are then subject to payment for overtime hours worked during the pay period that the furlough occurred. If this is true, the case is more complex than at first glance.
3)It would be lovely to clarify the issues above, as to their accuracy and applicability to our current context.
Best regards,
Andrew Chan (UC Davis)

From: Catherine M. Soussloff
Chair, UC Santa Cruz Privilege and Tenure Vice-Chair UC P & T May 18, 2009

Response to Proposal for Changes to SO 100.4

We express our grave concern regarding two issues. First, the outstanding lack of rationale given for the changes to SO 100.4, including but not limited to a wanton lack of analysis of the many complex issues and facts mentioned therein. Second, the fact that there was no consultation on this matter with the UCSC P & T and Academic Senate prior to the presentation of this matter to the Regents as part of their May 2009 meeting. We regard this disturbing lack of consultation on the campus and system-wide level to be in violation of the very Standing Order 100.4 which the amendment seeks to augment and change.
Standing Order 100.4.c Duties of the President of the University gives the President the authority "to appoint, determine compensation, promote, demote, and dismiss University employees, except as otherwise provided in the Bylaws and Standing Orders…" However, "Before recommending or taking action that would affect personnel under the administrative jurisdiction of Chancellors, Executive Vice Presidents, Senior Vice Presidents [etc.]…the President shall consult with or consider recommendations of the appropriate Officer. When such action relates to a Professor, Associate Professor, or an equivalent position [etc.] …the Chancellor shall consult with a properly constituted advisory committee of the Academic Senate." In addition, no advisory committee of the Academic Senate has been formed, meaning that no consultation has taken place regarding the powers of the President in SO 100.4.c. Therefore, P & T finds that the forwarding of an amendment of SO 100.4 to the Regents prior to the implementation of the procedures given in SO 100.4 to be against the rights of the Senate faculty and the Chancellor as stated there.

Our concerns also extend to the suspension of the Rights of Privilege and Tenure as suggested in the wording of the amendment to SO 100.4 and the implementation document. A power to supersede the Rights of Privilege and Tenure guaranteed to the Academic Senate faculty is given in the amendment to SO 100.4 because any one or all procedures stipulated in the APM are suspended by that document according to the decision of the President and the Chair of the Regents. In addition, and disturbing because it indicates no desire in the document to maintain the Rights of Privilege and Tenure of the faculty, there is no timeline indicated for the emergency powers of the President once assumed. This scandalous omission goes to the very heart of what the committee understands as essential to our protections under the APM and its procedures for fairness and transparency. It also goes against the meaning of Shared Governance because the very body possibly affected by the amendment to SO 100.4 would have no assurance of a resumption of their Rights of Privilege and Tenure, the terms of their employment, and of the procedures by which these are guaranteed. The UC faculty has held these jointly agreed upon policies and procedures dear for XX years. To negate them now and in such an undeliberative way appears to us as disrespectful of the faculty and of the significance of these documents and their meaning for the mission and quality of the University as a whole.

In earlier research this year P & T ascertained that the Regents have the authority to make policy and to decide faculty salaries. The UC President can be delegated by the Regents to carry out their decision on salaries and he can delegate that authority to the individual campuses.
The system wide Academic Personnel Manual (APM) gives authority to the campus Executive Vice Chancellors (EVC) to decide on off-scale increments and augmentation in any salary changes. This is the scenario that occurred in October 2007 with the salary augmentations, for a

recent example. We find that no more authority is necessary for the President regarding faculty salaries and employment. No justification can be adduced in the documents submitted with the proposed amendment.
However, dire consequences could ensue from the enactment of the proposed amendment and its implementation scenarios. We identify these
as: 1) the lowering of the reputation of the University of California;
2) the reduction of the morale of the faculty, staff, and students; 3) possible lawsuits regarding the contractual and employment rights of the faculty, resulting in economic liabilities for the University and the individual campuses at a time of strapped resources; 4) the erosion of the principles and spirit of Shared Governance.

Finally, the wording of the proposed amendment expresses the possibility of the imposition of furloughs. We note that there are no precedents for this action in the history of UC. While we do not recommend them, P & T notes that there are other methods of actual salary reduction. One such method was enacted in the 1993 pay cuts and these were upheld against challenges in Court, see http://www.perb.ca.gov/decisionbank/pdfs/1055H.pdf. Salary cuts would likely affect the base salary, impacting benefits and compensation.
While furloughs do not affect the salary base, P & T believes that they would have extremely grave consequences in regard to equity in the professorial ranks. Those faculty in fields who are able to use external grants for summer salaries in order to make up for the loss of salary due to furlough, would be able to maintain their economic stability, while others who are in fields, such as Arts, Humanities, and some Social Sciences, which cannot be funded externally in this way will be disadvantaged and put in a different employment situation than their colleagues. In other words, this would cultivate a culture of “the haves and the have nots.” We note that there are no guidelines in the proposed amendment and it implementation document regarding the effects and outcome of furloughs.

This last point goes to our first paragraph above where we state that the proposed amendment to SO 100.4 evidences a total and disturbing lack of analysis of the economic, labor, APM procedures, and Shared Governance issues involved in its institution as policy. With the exception of one member, P & T recommends that the UC and UCSC Academic Senate strongly resist the passage of this document by the Regents. We recommend that a delegation of Academic Senate members be present at the July meeting of the Regents in order to present the many compelling arguments against the amendment to SO 100.4.

Thank you, C.C., for orchestrating responses to this serious matter. My travel schedule precluded my contributing to it, but I have read the materials you've sent and concur completely with the your response.

I have particular concerns about the possibility of campuses or individual departments being singled out, cut from the herd, and punished via the new policy. In the context of reinvigorated outside attacks on faculty academic freedom in the classroom, all policy that allows inequitable treatment is of great concern.

I look forward to further discussion of these issues. Best, Sarah (UCSB)

Dear C.C.

The Irvine CPT discussed the proposed policies and concurs with the comments expressed by other campuses. If the proposed policy is to be implemented, we would like to stress the importance of a "sunset clause"
in the authorization amendment. Some committee members expressed concern as to how well such a clause would work in practice. When the "temporary" provision or operating rule expires, the administration is more or less the same in its personnel, but in the mean time there has probably been a near complete turnover in the faculty committees, perhaps with little collective memory of the original circumstances and concerns. We are concerned that there may be a tendency to extend the provision.

Maria Pantelia
(on behalf of UCI CPT)

Professor of Classics
Thesaurus Linguae Graecae Director
UC Irvine

As for my opinion (C.C. Wang), I would agree that furlough is probably the least evil among the other options facing us today. It is probably inevitable in view of the voting outcome from last Tuesday. But many issues involved must be thoroughly clarified prior to its implementation. Academic Senate has to be heavily involved in its daily operation.