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OFFICE OF THE PRESIDENT

Robert C. Dynes
President

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JAN 26 2004

ACADEMIC COUNCIL

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January 23, 2004

ACADEMIC COUNCIL CHAIR PITTS

Dear Larry:

I was pleased to receive your letter of December 5 transmitting a copy of the Academic Council's Resolution on "SUTI: Recommendations Regarding Sensitive But Unclassified Technical Information," which was adopted by the Council last November. I share the deep concern expressed in both your letter and the Resolution regarding the troubling and apparently increasing practice by some federal agencies of inserting publication restrictions into sponsored awards for unclassified research that is deemed "sensitive" based on national security concerns.

The University has long endorsed the principle that where national security requires control over federally-funded research, classification is the appropriate mechanism for exerting such control. That principle is embodied in National Security Decision Directive 189, as quoted in the Academic Council's resolution. I wholeheartedly agree that it is important for the University to continue to urge federal policy makers to consistently apply NSDD 189 and to maintain clear distinctions between "classified" and "unclassified" research rather than imposing controls on a new inconsistently defined category of "sensitive" research. I am committed to ensuring that the University of California continues to advocate the importance of freedom of research, and that we continue to urge federal agencies not to impose restrictive award clauses that could undermine the open research environment that has been so important to fostering good science in this country.

UC is working diligently to get this message to public officials. Vice Provost for Research Larry Coleman met recently with representatives of the White House Office of Science and Technology Policy to urge them to help federal agencies recognize that science and the public interest are best served if they refrain from imposing unnecessary publication restrictions on unclassified research. Vice Provost Coleman also met with representatives of the Association of American Universities, the Council on Governmental Relations, and the National Association of State Universities and Land Grant Colleges to discuss joint efforts to influence federal policy in this area. The University has been working and will continue to work with others in the higher education research community on this important issue.

Academic Council Chair Pitts

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As you may know, the University is in the process of revising its longstanding publication policy, which provides that normally a contract is unacceptable to the University if it limits the freedom to publish and disseminate results. The revision will clarify that exceptions to the policy based on national security concerns require approval by the UC President, regardless of whether an award containing a publication restriction is classified or unclassified. Since the publication policy is the policy most directly relevant to acceptance of classified awards, this pending policy revision may be of interest to you, particularly in light of the Academic Council's statement that the University should treat awards containing publication restrictions as if they were awards for classified research.

Finally, in addition to expressing concern about publication restrictions, the Academic Council Resolution cites concern about federal law imposing citizenship and other background restrictions on who may have research access to certain "Select Agents." I, too, am troubled by the deleterious effect such restrictions may have on the ability to maintain a free and open research environment. When the new federal Select Agent rules were promulgated, the University worked with others in the higher education research community to raise concerns about the access restrictions. Nonetheless, as you know, the final law and regulations do impose restrictions based on citizenship and other background characteristics (prohibiting access to Select Agents by citizens of certain listed countries and by people with dishonorable discharges from the military, illegal drug users, and the mentally ill, among others). The University of California is obligated to comply with the law inasmuch as our researchers work with materials that appear on the list of materials classified by the law as Select Agents. Unlike the case of publication restrictions imposed by federal research sponsors as a condition of award (which may be susceptible to negotiation), the Select Agent access restrictions apply by force of law, regardless of the funding source. The Select Agent law and regulations are still fairly new; as campuses gain experience with implementing the law, we will consider whether there are ways to help minimize the impact on the open research environment.

I appreciate the spotlight the Academic Council has placed on the important academic freedom concerns raised by proposed and actual federal restrictions relating to "sensitive but unclassified" research. It is critical for the University to be vigilant about protecting academic freedom and promoting an open research environment. I look forward to continuing to work with the Academic Council on this important issue.

Sincerely,



Robert C. Dynes

cc: Provost King
Senior Vice President Darling
Vice Provost Coleman
Assistant Vice President Sudduth