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Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
1111 Franklin Street, 12th Floor
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June 10, 2015

**WILLIAM TUCKER, INTERIM VICE PRESIDENT
RESEARCH AND GRADUATE STUDIES**

**Re: Draft Guidelines for pilot program to accept equity for access to University facilities
or services**

Dear Bill,

As you requested, I distributed for systemwide Senate review the [draft Guidelines](#) for a pilot program that would allow the University to accept equity stakes (stock) for access to University facilities or services (AFS). Under the program, a campus could offer UC-associated individuals the use of certain UC facilities as business incubators or accelerators to help new and early stage start-up companies develop. The campus could accept equity in a company as full or partial payment in return for access to those facilities and/or services.

Ten Academic Senate divisions and four systemwide committees (UCEP, UCFW, UCORP, and UCPB) submitted comments. Senate reviewers expressed substantial concerns about the pilot program and the failure of the draft *Guidelines* to articulate a clear rationale and goals for the program. Although some reviewers pointed to several potential benefits of an equity for access program – for example, new opportunities for UC faculty and students to secure research funding, engage in entrepreneurship, and translate innovative research into useful products – the majority expressed significant concerns. These concerns included lack of alignment with the UC mission, potential effect on access to University facilities and services, financial risk, conflict of interest provisions, and absence of faculty oversight. Several divisions noted that they are not willing to move forward without major revisions.

The comments are summarized below and attached for your reference. Council strongly recommends that the authors address as many comments, concerns, and suggestions as possible before circulating the *Guidelines* for another review.

Unclear Alignment with UC Mission

Many Senate reviewers are concerned that the AFS pilot program does not align with the University's public nature and is at odds with UC's academic culture, which values the free flow of information and open access to research results. The *Guidelines* should better articulate how the program connects with the University's public teaching and research missions. It should clarify how

Guideline IV.C will be implemented—that is, how the University will evaluate a private company’s adherence to the “educational, research, and public service missions of the University,” and how the University will weigh those considerations against the potential for “financial or individual personal gain” in decisions to allow the company to use UC facilities or services in exchange for equity in the company. UCSF recommends adding a provision forbidding the use of University space for non-academic purposes and adding a new section prohibiting routine commercial tasks in University facilities.

Pressure on Resources and Space

Several reviewers expressed concerns about the potential for private companies to overburden already scarce research space and equipment, compete with indirect costs derived from faculty extramural grants, divert resources away from UC’s core research activities, and ultimately harm research productivity. They also noted that the *Guidelines* lack sufficient safeguards to ensure that faculty and students receive priority over private companies for space and resources. Although the *Guidelines* state that academic needs will take priority, they should outline how access to facilities and equipment will be managed, and how disputes will be resolved when conflicts arise.

Overly Restrictive Conflict of Interest Guidelines

Several reviewers noted that the provision banning UC employees from serving on the Board of Directors or exercising voting rights in a company in which UC has an equity interest is too restrictive. This prohibition could affect the rights of faculty, who under current University rules are allowed to hold a board seat. In addition, it could dampen entrepreneurial activity and even induce faculty to leave the University to maintain involvement in their own companies. Reviewers suggest revising this provision to exclude faculty members who are company founders.

Lack of Faculty Oversight and Role of DCMs

Many reviewers expressed concerns about the lack of a clearly articulated oversight role for faculty in the administration of the *Guidelines* and in the AFS process. While faculty do not want to get involved in the details of managing equity, they see a need for a process to identify individuals responsible for academic oversight of agreements, particularly those involving graduate students. One recommendation is to establish a systemwide advisory committee or joint group consisting of faculty and industry representatives to complement the Designated Campus Managers (DCM). Another recommendation is to require the DCM to consult regularly with the Senate and report annually on all projects for which equity has been promised or received, allowing the Senate to evaluate its effectiveness on the campus. Another is to add a provision that gives the Senate the authority to monitor the use of University facilities by the companies to ensure their needs do not interfere with existing educational and research interests or access to research equipment and facilities. Finally, the *Guidelines* should include explicit criteria for evaluating the program after the conclusion of three-year pilot; a Senate review should be part of this evaluation.

The UCSF Graduate Council also recommends the *Guidelines* address the need to protect the intellectual property rights and academic freedom of graduate students who participate in a research activity with an external party, and include a statement about the faculty’s responsibilities to graduate students. UCSF has proposed specific wording for inclusion in the *Guidelines*.

Risk, Value Assessment, and Other Financial Details

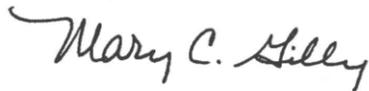
Several Senate divisions solicited comments from UC business school faculty and other UC faculty with financial and securities expertise. Many of these reviewers expressed concerns about the

approach to venture capital fundraising and equity investment reflected in the *Guidelines*, as well as the financial details of the AFS program. One criticized the approach as “unsophisticated.” Reviewers questioned the extent to which campuses have access to individuals with the expertise necessary to take on the DCM role, vet companies for risk, and determine equity values. They noted that the *Guidelines* lack clear mechanisms both to ensure that the equity offered by the company is fairly appraised and managed, and to guide the distribution of cash proceeds from the investment. Several reviewers are concerned about the specific schedule outlined in Appendix D requiring the disposition of stock along a predetermined timeline. They note that the liquidation timeline is unreasonably rigid and recommend allowing the University to hold equity stakes for a longer period to maximize return benefit. Several reviewers recommend eliminating the University’s preference for stock over warrants as an acceptable form of equity to align with industry standards.

Given the extent of concerns within the University, Council believes the *Guidelines* require a major revision. We recommend and encourage the authors to undertake this effort. Before doing so, UCOP should employ the legal and financial expertise available at UC and consult with UC business faculty. Senate division chairs have offered to provide names.

Thank you for the opportunity to review and comment.

Sincerely,

A handwritten signature in cursive script that reads "Mary C. Gilly".

Mary Gilly, Chair
Academic Council

Encl.

Cc: Academic Council
Provost Dorr
Director Streitz
Executive Director Baxter
Senate Executive Directors



May 22, 2015

MARY GILLY
Chair, Academic Council

Subject: Guidelines on accepting and managing equity in return for access to university facilities and/or services

Dear Mary,

On April 27, 2015, the Division Council (DIVCO) of the Berkeley Division discussed the draft guidelines on accepting and managing equity in return for access to university facilities and/or services, informed by commentary from our divisional committees on Academic Planning and Resource Allocation (CAPRA), and Research (COR). Our discussion underscored the specific concerns presented in the committee reports, which are appended here in their entirety.

DIVCO applauds the Office of the President for taking the initiative to develop these guidelines to facilitate acceptance of equity, or equity-like positions, for access to university facilities and services. However, we found that the document lacks sufficient clarity and context to guide decision-making in an increasingly important arena. In addition, DIVCO raised serious concerns about the role of the Office of the Chief Investment Officer. These are well described in point three of the CAPRA report.

While we believe the document represents a useful starting point, the consensus on DIVCO and the reporting committees is that campus-specific guidelines will better meet the needs of Berkeley faculty. Accordingly, we urge the Office of the President to develop a general framework (rather than a heavily prescriptive set) of guidelines that all campuses can adopt and use as a common basis from which to meet their local needs.

Sincerely,

A handwritten signature in black ink that reads "P Papadopoulos". The signature is written in a cursive style with a large, prominent initial "P".

Panos Papadopoulos
Chair, Berkeley Division of the Academic Senate
Chancellor's Professor of Mechanical Engineering

Encls. (2)

Cc: Nancy Wallace, Chair, Committee on Academic Planning and Resource Allocation
Robert Powell, Chair, Committee on Research
Diane Sprouse, Senate Analyst, committees on Academic Planning and Resource Allocation, and Research

April 22, 2015

**TO: PANOS PAPADOPOULOS, CHAIR
BERKELEY DIVISION OF THE ACADEMIC SENATE**
**SUBJECT: CAPRA Review of the *Guidelines on Accepting and Managing
Equity in Return for Access to University Facilities and/or Services***

Overall Assessment:

CAPRA is generally very supportive of the pilot program guidelines on the contractual mechanisms by which the University of California (UC) could accept equity in non-university incubators or accelerators as an element of the financial consideration for access to space and business support services for such entities. We find the guidelines to be a useful roadmap for individual UC campuses to develop new programs or to modify existing programs to take advantage of this pilot. Fostering incubator or accelerator projects on the part of UC faculty and students has the potential to greatly enhance departments' and laboratories' research funding and may be a great investment for all participants. CAPRA further believes that these guidelines should serve as a starting point for the development of stand-alone UC Berkeley guidelines that are more closely aligned with the specific needs of our campus.

CAPRA identifies the following specific concerns with the guidelines:

1) CAPRA is concerned about the limitations on faculty board representation and voting in authorized incubators and accelerators as outlined on page 9:

"D. Board Representation/Voting Rights

Employees of the University, acting in their capacity as University employees, shall not accept a position on the board of directors in a Company in which the University has an Equity interest pursuant to this program, nor shall they exercise related voting rights, but may accept and exercise observer rights on such boards. Active board participation and/or the exercise of voting rights by an individual in his or her capacity as a University employee might expose the University to unacceptably large management, conflict of interest, and public relations problems. A University employee who is an inventor of intellectual and tangible property licensed by the University to a Company may participate on the scientific advisory board of that Company, but only if such boards do not have delegated voting authority to act independently on behalf of the full board of directors."

CAPRA believes that blocking faculty members from board-level decisions if the UC takes ANY equity via this program is onerous. This provision suggests that if equity is transferred, even if the UC equity position that is transferred to obtain incubator access is small, the faculty member can no longer directly guide the company. Our concern is that, as written, this provision will induce faculty to leave the university so that they can stay involved with their own companies. Additionally, CAPRA notes that this requirement is inconsistent with current licensing policies, whereby a UC equity position that is part of a licensing agreement does not necessarily ban board membership. Therefore, CAPRA recommends that this provision should be changed to some reasonable trigger, for example, if UC owns more than 5% of equity via this program, after which UC will

constrain a faculty member's future managerial involvement in an incubator project as a means to align incentives.

2) CAPRA is concerned about the latitude given for running clinical trials by a Principal Investigator in UC space as outlined on page 9:

"F. Company-Sponsored Product Testing

A University investigator may perform clinical trials or other comparable product-testing involving human subjects for Companies in which the University holds Equity as part of an AFS transaction on the campus/Laboratory where that technology arose provided that the campus conflict of interest committee has assessed any real or perceived organizational conflict of interest in the performance of such trials or testing activities and determined Page 9 of 36 whether a management plan is required, and the relevant IRB has reviewed and approved the protocol."

The basis for this concern is the potential for conflicts of interest between the incentives of a faculty member who is running a clinical trial in UC space and the incentives when the faculty member is also an equity owner, corporate officer, and/or inventor of the technology. The experience at Berkeley has been that the Internal Review Boards (IRBs) and the Conflicts of Interest (COIs) Committees are in some cases not sufficiently knowledgeable about the merits of the technology and the extent of the conflicts of interest to adequately manage this issue. For this reason, CAPRA recommends that clearer guidelines, such as requiring an impartial third party to oversee clinical trials, should be established rather than relying on IRBs and COIs to manage potential conflicts and/or to assure that equity interests do not distort the performance and reporting of trials. As a matter of principle, it seems unwise to have the founder also serving as the sole investigator running a clinical trial.

3) CAPRA notes that the envisioned role of the Office of the Chief Investment Officer (CIO) as defined on page 14 is quite strong and is somewhat unusual by industry standards. In particular, CAPRA is concerned that this provision

"3. Any decision made by the CIO to purchase additional shares of Equity in a Company in which the University has accepted Equity as part of an AFS transaction should be evaluated in terms of the financial return to the University. Such subsequent investments should be considered and maintained separately from the original AFS-related arrangement and the resulting proceeds from such subsequent investments shall not be considered for distribution under the University Equity Policy."

is overly prohibitive because it appears to limit the original AFS (as defined on page 3, as the "...access to University facilities and/or services ("AFS") in the context of University incubators or Accelerators...") to an equity participation in the initial round of funding ONLY. CAPRA recommends that the AFS be allowed to retain the option to participate in subsequent rounds of funding, perhaps along with the CIO. Participation of the AFS in subsequent rounds will avoid dilution of the AFS's original position (however, it is important to note that for the AFS to exercise its right of participation in future rounds, it will be required to invest additional capital).

4) CAPRA also highlights concerns with provisions presented on page 15:

3. The Campus or Laboratory's subsequent use and distribution of its portion of any cash proceeds shall be handled in accordance with the schedules, formulas, and practices established by the Campus or Laboratory, and other applicable policies."

Here CAPRA strongly believes that there should be clear language related to reasonable sharing mechanisms of these cash distributions. The concern is that leaving poorly defined distribution rules may weaken the crucial role incubator proceeds should have in sustaining and enhancing departmental and laboratory on-going research productivity. CAPRA believes that it is critical to establish more clarity concerning the sharing rules of cash proceeds to the campus administration, to the incubator, and to the department and/or laboratory that initially seeded the research activity.

5) CAPRA has reservations concerning the University's stated preference for stock rather than warrants as the equity that will be accepted in exchange for incubators and/or accelerators access to university space and business support services. This provision appears on page 7.

2. The University's preference is to take Equity in the form of Stock, Units or similar securities that are fully paid for rather than Warrants or options which are a right to later purchase securities of a company at a predetermined price. Acceptance of options or Warrants may be approved on a case-specific basis by exception. At a minimum, approval for such exception will require that 1) private funding (e.g., not state funding) is available and reserved to provide cash needed to exercise such options or Warrants and 2) the options or Warrants comprise a minority portion of total financial consideration. In addition, prior arrangements would need to be made by the campus to manage the rights and interests of all involved parties in such options or Warrants.

Again, this preference is somewhat contrary to industry practice where, for example, warrants are commonly accepted in place of, or as a component of, rent. Firms often prefer to grant warrants, because they are only valuable if the firm ends up being successful. CAPRA therefore suggests that this preference for non-warrant equity be weakened or eliminated. The concern about having funding for exercise is unnecessary as long as the warrants are exercised cashlessly (i.e., a portion of the exercise proceeds is used to pay the exercise price). However, we agree that it makes sense for such warrants to be a small part of total financial consideration.

April 15, 2015

TO: PANOS PAPADOPOULOS, CHAIR
BERKELEY DIVISION OF THE ACADEMIC SENATE

Re: COR Comments on draft guidelines for pilot program to accept equity for access to university facilities or services

The Committee on Research (COR) discussed the draft guidelines for a pilot program to accept equity for access to university facilities or services at its 30 March 2015 meeting and has several comments.

1) Most broadly, the issue of accepting equity in return for access to university facilities or services would seem to be only one of several aspects of the nascent relationship between the university and entrepreneurs. Other aspects include intellectual property and licensing to mention two. Taking an integrated approach to dealing these issues as a whole rather than in a piecemeal fashion might increase the chances of creating a structure in which these entrepreneurial relationships would develop fruitfully.

2) There is some concern that provision “D,” *Board Representation and Voting Rights* (pg. 9), is too restrictive. This provision would preclude employees accepting a position on the board of directors or exercising any voting rights. One member of the committee said that this provision would be the decisive factor in preventing him or her from entering into a shared-equity relationship with the university. Avoiding conflicts of interests is, of course, crucial. But perhaps there is some way to do so with a less restrictive provision.

3) Provision C.1 states:

University acceptance of Equity for AFS shall be based upon the educational, research, and public service missions of the University over financial or individual personal gain.

This is a worthy principle, but it is much less clear what it means in practice? Taking equity in what kinds of companies would be consistent and inconsistent with this? APM 25-10.c provides examples of category I, II, and III activities. Some concrete examples of what would and would not be consistent with this provision would be useful in guiding future determinations in this regard.

4) Provision C.2 reads:

The support of new businesses affiliated with the University is in the public interest and furthers the University’s training and educational objectives. Further, University engagement with new businesses is appropriate and represents a useful contribution because the University’s engagement with industry is consistent with the University’s mission.

The first sentence could be construed as asserting that any affiliation is in the public interest. It should be revised along the following lines:

The support of new businesses affiliated with the University *shall* be in the public interest and further the University’s training and educational objectives.



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May 7, 2015

MARY GILLY, CHAIR

UC Academic Council
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Re: AFS-Equity in Return for Access to University Facilities and/or Services

The Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services were forwarded to all standing committees of the Davis Division of the Academic Senate, including school and college Faculty Executive Committees. Responses were received from the Graduate School of Management Faculty Executive Committee (GSM), Faculty Welfare Committee (FWC), Graduate Council (GC), and the Committee on Planning and Budget (CPB).

The divisional review was performed based on the understanding the University is prohibited from enabling the use of public resources for private benefit without fair consideration in return. Thus the purpose of the pilot program is for the University to explore a fair consideration return mechanism whereby the University takes equity in university affiliated startups in exchange for access to facilities allocated for private use by individual colleges and departments.

While some committees acknowledged that the concept of the initiative could potentially be a great opportunity for all parties involved, there was strong hesitation amongst respondents due to the lack of a clear policy proposal. The hesitation was exacerbated given UC Davis was listed as pilot site. The lack of policy direction from UCOP combined with a lack of a clear plan from those responsible for coordinating the UC Davis pilot project leave the Davis Division with little choice other than to indicate we are unwilling to move forward with the initiative or a pilot implementation until there is a stronger foundation for the University, and in particular UC Davis, to build upon. Given the lack of a clear policy proposal, the majority of the feedback received revolved around questions and concerns regarding the guidelines.

Concerns and Questions

GSM indicated that University funding of startups raises several potential conflicts of interest, particularly since the document makes clear that the objective accepts equity in a company will not to make money, but rather (p.7) "... shall be based upon the educational, research, and public service missions of the University over financial or individual personal gain." While this is a laudable goal, it is important that the document clarifies, or provide specifics as to how the educational, research, and public service missions of a startup will be evaluated. Within this context an immediate question is will the University allocate funding if the startup helped to recruit a top-notch faculty member, create jobs or alleviate poverty in California, but was not financially viable? A related concern was raised that the University's academic independence could be compromised with the acquisition of equity in companies. It is entirely possible that at times, the University's financial interests, linked to such equity, could conflict with its primary mission of academic freedom for faculty and students.

The uncertain valuations associated with startups create several issues that require careful consideration. Detailed commentary was provided by a faculty member in GSM with expertise in venture capital (VC): “The document is written with the assumption that equity is the common form of security to be issued as compensation for the companies’ use of university facilities and/or services. While this is a reasonable assumption for publicly traded companies, it is not the case for young start-up companies that are yet to receive a VC round of funding. Such companies often issue convertible debt or convertible note to angel and seed investors to avoid setting an equity valuation. It is difficult for the University in such cases to determine a fair value of equity for the companies.

Appendix F, Part 2 (Private Benefit), discusses several methods to come up with equity values. Using the price at which options are issued is reasonable for common stock, since options are convertible to common stock, but it is not appropriate as the price for preferred stock, since (convertible) preferred stock has different and typically higher value per share than common stock. Determining the value of preferred stock using the option exercise price requires more advanced financial modeling that takes into account the liquidation preference, participation rights, etc. features of the particular preferred stock.¹

Generally, taking common stock or convertible preferred stock in a company at “fair value” that has yet to receive VC funding is fraught with valuation challenges, which then exposes the University to various compliance issues with its obligation as a public entity. *Therefore delegating such decision-making responsibility to various campus Designated Campus managers (DCM’s) is not recommended.* (emphasis added)

Section D of IV. Equity Guidelines prohibits University employees from serving on the board of directors in a company in which the University has an equity position through this program. It seems highly likely that some of the best candidates for University incubation programs are founded by University affiliates (employees, professors, students), and the whole point of setting up such incubation programs is to contribute to the overall entrepreneurial ecosystem in the local economic region, with the University serving as one of the hubs. This rule may be motivated by the need for compliance, but this seems to handcuff the program too much and undermine its potential for success. This is a sensitive timing issue.

Perhaps one solution is to allow University affiliates to serve on the board (e.g., as the founder/CEO) for a limited period of time, so that they can keep their University positions (“day job”) while the company is still in its infancy, but require that such board members either (1) sever ties with the University (“quit the day job and dedicate themselves full time to the company”) once the company is in a more developed stage, or (2) resign from the board and play a limited role as a scientific advisor.

It seems unrealistic and too rigid to require that “No consideration shall be given to Company information uniquely available to the University through its AFS pilot”: (P. 14, top paragraph). This rule seems financially reckless for the sake of compliance and if enforced could jeopardize the interests of university stakeholders.

It was surprising to see in Appendix D that dispositions of stock have to follow a predetermined schedule (50% upon expiration of lock-ups, another 25% 6 months later, and the remaining 25% 6 months after that). This appears unreasonably rigid for the sake of compliance, and jeopardizes the interests of University stakeholders too much. One could imagine a scenario where the university will

¹ Reference: Andrew Metrick and Ayako Yasuda, 2010, *Venture Capital and the Finance of Innovation*, Hoboken, NJ: John Wiley & Sons.

be forced to leave a lot of money on the table and dispose the stock at an inopportune time, or conversely miss an opportunity to sell stock before it precipitously loses its value.

Who is the beneficiary of the stock once it is issued—does it belong to the office that runs the incubation program, the Campus at which such program is located, or the Regents? The document refers to “[Campus] portion of a cash proceeds” in Section C.3 of VI. Chief Investment Officer’s Management of Equity (p.15), but it is not clear how the various portions are allocated to different UC entities.”

Further commentary was provided by a faculty member in GSM with expertise in entrepreneurship: “Fundamentally, why is the equity exchange for accelerator space and services? Why is it not in lieu of patenting costs or licensing royalties as these are often the more burdensome constraints for new ventures (and clearly shared risk for the UC system)? Space (specifically lab space and equipment) may also be valuable, but also possibly available outside.” A similar comment voiced by a review committee was that this project is in some sense based on a theory about the needs of startups, but is there academic or other evidence that startups require these services?

The GSM faculty continues, “Moreover, business support services, particularly from administrative staff based on UC campuses, rarely has the requisite disciplinary, industry, and entrepreneurial experience to be of significant value to new ventures.

How the equity stake to be is determined (i.e. how is the nascent venture valued)? Is it anchored at the discretion of the administrative units of the technology transfer offices, and how does this office claim the ability or experience in making such determinations?

There is a significant power imbalance between researchers negotiating the license for their intellectual property and university administrators negotiating on behalf of the university. If the same individuals and offices are also negotiating for an equity stake based on space and business services, this creates an equally significant potential for conflict of interest and coercion on the part of administrators and pressure to accept unfair terms on the part of the researchers (who have no recourse without the rights to the intellectual property (IP)).

This concern is not about conflicts of interest (COI) based on personal gain, but rather “bureaucratic” gain in terms of the performance of administrative units judged on the revenue they generate from licensing and equity in conflict with the interests of the researchers as well as the interests of the new venture. I would recommend separating, on the administrative side, the valuations and negotiations of the IP licensing from the evaluations and negotiations of the space and services as well as of the value of the venture.

Related to the previous point, there is a stated preference for fully paid securities when often the seed stage investors take a convertible note that is valued by subsequent professional investors in a later investment round. Why not avoid the conflict by placing a cash value on the space and services but not the venture, and have a professional investor set the valuation in a subsequent round (with a scheduled discount).

Additionally, an arbitrary (and completely reasonable) “expectation of dilution” enables an administrator to bypass any limitations (i.e. >10%) on the equity stake it may claim as fair.

The independent auditing of these arrangements needs to be truly independent, which will be difficult as the Office of Patenting and Licensing typically reports to the Office of the Vice Chancellor

Research, which reports to the Chancellor. Moreover, the revenues generated from licensing become discretionary funding for the Chancellor.”

Final commentary from GSM came from a faculty member in with expertise in organizational theory, “The guidelines leave grey areas within which university personnel will be afforded considerable discretion. For this reason, it is suspected that problems of an unpredictable sort are bound to arise. Due to this it is believed that this program carries some risk.There was belief that a central element of the guidelines might be problematic. It seems that the requirement to calculate the value of the enterprises in question might be quite difficult, insofar as most will be start-up enterprises, the value of which generally will be highly uncertain. Thus, it seems to me that any attempt to balance the value transferred to the enterprises by the university and the value transferred to the university by the enterprises will be fraught with error. The phrase “acting in their capacity as University employees” in the first sentence of section D is unclear (page 9). Does this phrase refer to the state of mind of university employees when they serve on the board of directors of an enterprise receiving value from the University and surrendering equity to the University? More specifically, does this mean that University employees can serve on an enterprise’s board of directors, as long as they do not represent their service as provided on behalf of (or with the approval of) the University? If so, this provision seems to be entirely unenforceable.”

General Remarks

- A member of the Law School faculty indicated legal rules implicated by this program are not only complicated, but they are in some cases cumulative. Both aspects of the rules can be a problem. Take the rules concerning private use of facilities financed with tax-exempt bonds. Will the campus representative estimating private use be a bond lawyer or consulting a bond lawyer? If not, how can we be certain the estimates are sound? If so, then this might be a considerable expense. Also, to the extent that a single bond issue might be used to fund many projects on many campuses, is there a system to track the cumulative use? If so, this also seems like it could be a significant expense – assuming that the program is successful.
- There was concern that other faculty, not part of this program, would be displaced. Therefore, it is important that "access" for all faculty be protected and that the campus is conscious of any adverse effects on other faculty and their research pursuits.
- Receiving equity in a company could be risky- would it be better to just receive payment? How can we truly know which companies have less risk without enormous training and experience? The document states “Note that each participating campus and Laboratory is expected to designate a DCM who has the relevant experience with and knowledge of startup equity transactions, complex financial instruments and University policy so as to be able to develop its own procedures by ways of standard templates ...” Is such experience and knowledge available to the campuses?
- The document states “For example, University inventions should be made available for licensing to appropriate companies and should not automatically be made exclusively available to Companies in which the University has taken Equity under this pilot.” Are there exceptions to this where exclusive licenses would occur? If so, that would seem problematic.
- This following statement seems vague: “The Campus or Laboratory’s subsequent use and distribution of its portion of any cash proceeds shall be handled in accordance with the schedules, formulas, and practices established by the Campus or Laboratory.” There is no timeline or clear responsibility.

- Although the document reports that the President will analyze the program after 3 years, there are no guidelines or metrics as to what would be considered success. Again, how will real and potential cost to UC faculty be quantified and guarded against?

Again, once established properly, the proposal could produce positive outcomes. Based on the lengthy list of questions and concerns, it is clear that there is still much work to be done before the Davis Division of the Academic Senate would feel comfortable supporting a pilot program on our campus.

Sincerely,



André Knoesen, Chair
Davis Division of the Academic Senate
Professor: Electrical and Computer Engineering



UNIVERSITY COMMITTEE ON EDUCATIONAL POLICY (UCEP)
Tracy Larrabee, Chair
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May 18, 2015

**MARY GILLY, CHAIR
ACADEMIC SENATE**

RE: GUIDELINES FOR ACCEPTING EQUITY IN EXCHANGE FOR ACCESS

Dear Mary,

UCEP discussed the guidelines for accepting equity in exchange for access during its April 6th meeting. The members agreed that it is important that this program be initiated with a commitment that undergraduate education and students, in general, will not be impacted. It is essential to make certain that the best faculty continue to interact with students.

Sincerely,

A handwritten signature in black ink that reads "Tracy Larrabee".

Tracy Larrabee, Chair
UCEP



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May 14, 2015

Mary Gilly, Chair, Academic Council
1111 Franklin Street, 12th Floor
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**RE: Systemwide Review of Draft Guidelines on Accepting and Managing Equity
in Return for Access to University Facilities and/or Services**

Dear Mary:

At its May 5, 2015 meeting, the Irvine Division Senate Cabinet reviewed the *Draft Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services*. Both the Council on Research, Computing, and Libraries (CORCL) and the Council on Planning and Budget (CPB) initially reviewed the policy and identified some concerns. The concerns identified in their reviews of the draft guidelines, and supported by the Cabinet, include:

- The lack of faculty oversight in the administration of these guidelines. We recommend that faculty have a more active level of involvement at key decision points, and that the new conflict of interest rules be carefully reviewed so that they do not unintentionally reduce the entrepreneurial activity of the faculty.
- The lack of clarity on how the equity be managed and specifically how and when it can be sold. Some members recommended other strategies for optimizing the University's return, e.g. holding equity stakes for a longer period than allowed by the proposed rules.

The Irvine Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Bill" with a stylized flourish underneath.

William Molzon, Irvine Division Senate Chair

Attachments: CORCL Memo
 CPB Memo

c: Hilary Baxter, Executive Director, Academic Senate
Natalie Schonfeld, Executive Director, Academic Senate, Irvine Division

April 30, 2015

**WILLIAM MOLZON, CHAIR
ACADEMIC SENATE, IRVINE DIVISION**

**RE: Guidelines on Accepting and Managing Equity in Return for Access to University
Facilities and/or Services**

At its meeting on April 16, 2015, the Council on Research, Computing, and Libraries (CORCL) reviewed the proposed Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services.

CORCL supports the idea that the University be allowed to take equity in emerging companies in exchange for use of University resources. The Council identified several concerns with the guidelines as follows:

1. The Guidelines are not clear on how the Equity should be managed, and specifically, how and when it can be sold. This seems to be addressed in two places with two different messages as follows:

Page 13

VI. CHIEF INVESTMENT OFFICER'S MANAGEMENT OF EQUITY

General

All decisions and administrative actions concerning the management of Equity issued to the University by a Company and all subsequent corporate or other entity actions received by the DCM pertaining to the University's shareholder, membership or other interest in a Company shall be made by and at the sole discretion of the CIO.

Page 29

Appendix D

Once the securities are DTC-qualified, the OCIO will use the following "rule-based" equity disposition management model in liquidating stocks resulting from approved University Access to Facility or Service transactions.

The rules in Appendix D continue that the University is obliged to sell 50% of its equity in the Company "at the first available opportunity", and the remainder within the following year. There is a minor stipulation that the final 25% of equity may be held for "up to 5 years" before the University sells it.

2. CORCL is concerned with the very short-sighted view of how equity investments should be handled. Most early startup companies that may be offering the University some equity ownership are very young, have little or no revenue, and have a relatively low

market value. A very small number of them are likely to become huge successes, but those successes will not materialize for many years, perhaps even decades. The issue with the University disposing with all of its equity within 1 year of the "first available opportunity" is that it loses out on all the potential gains that come afterward – often 5 to 10 years later. The University should take a longer view of investment – much longer even than most Venture Capital firms, to build long-term, strong portfolios. Such a strong portfolio will significantly enhance the research potential of the University in the long term.

We would suggest something more along the lines of:

1. 100% of equity shall be held for a *minimum* of 5 years before being sold.
2. A maximum of 25% of equity may be sold 5 years after the first available opportunity.
3. Another 25% may be sold 5 years later.
4. Another 25% may be sold 5 years later.
5. The final 25% shall be sold at a maximum rate of 1% per year over the next 25 years.

The Council appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Rufus Edwards", written in a cursive style.

Rufus Edwards, Chair

c: Natalie Schonfeld, Executive Director
Wendy Chamorro, Senate Analyst
Thao Nguyen, CORCL Analyst

April 27, 2015

**WILLIAM MOLZON, CHAIR
ACADEMIC SENATE, IRVINE DIVISION****RE: Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services**

At its meetings on April 8 and April 22, 2015, the Council on Planning and Budget (CPB) reviewed the proposed systemwide Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services.

This proposal outlines policies under which the university will accept equity from (mostly start up) companies in return for giving these companies access to university facilities. For example, UCI just started an *Institute for Innovation* funded by the Beall Foundation and headed by Richard Sudek, which is a business incubator/accelerator located in the University Research Park. Companies wishing to be located in this incubator might pay their rent to the university partially in equity (company stock), rather than in cash.

While it is generally an excellent idea to make the university act in a more entrepreneurial manner by accepting equity stakes in university-related spin-off companies, the current proposal delegates most of the authority over the program to administrators with **little or no faculty oversight**. Worse, as a perhaps unintended effect of the specific wording of the new policy, it has the potential to **significantly impact faculty rights** and, ironically, **reduce faculty entrepreneurial activity**.

Lack of Faculty Oversight

The program is managed by Innovation Alliances and Services (“IAS”), a university-wide office within the Office of the President. Within this unit there are IAS Equity Approval Managers (“EAM”) who have responsibility for managing Equity approvals.

At every campus level, there is a Designated Campus Manager (“DCM”) who has delegated authority to 1) execute access to University facilities and/or services (“AFS”) agreements wherein approval to accept equity may be required, 2) ensure compliance with system-wide guidelines and policy, and 3) request formal equity acceptance approval from the Executive Director of Innovation Alliance and Services.

The document makes no mention of any faculty oversight or faculty input of any kind. The word “senate” doesn’t even appear in the draft, and faculty appear only in the role of people whose conflicts need to be managed.

(Possibly Unintended) Impact on Faculty Rights

The proposal comes with a new set of conflict of interest guidelines that are significantly more restrictive than current UC Conflict of Interest rules. In particular, the proposal reads:

Employees of the University, **acting in their capacity as University employees**, shall not accept a position on the board of directors in a Company in which the University has an Equity interest **pursuant to this program**, nor shall they exercise related voting rights, but may accept and exercise observer rights on such boards. Active board participation and/or the exercise of voting rights by an individual in his or her capacity as a University employee might expose the University to unacceptably large management, conflict of interest, and public relations problems. A University employee **who is an inventor** of intellectual and tangible property licensed by the University to a Company may participate on the scientific advisory board of that Company, but only if such boards do not have delegated voting authority to act independently on behalf of the full board of directors.

Under current university rules, board membership is an allowable faculty role. In fact, we would presume that in the vast majority of university spin-offs, **the faculty member who started the company typically holds a board seat** of the company he or she has founded, at least during the startup period. The current Conflict of Interest process has worked well and **with faculty participation**.

The proposed wording of the new policy appears to apply to all university employees, including faculty members (otherwise the reference to “inventor” wouldn’t make much sense). Hence, if the university accepts an equity stake in a company **under this program**, then faculty members (including company founders) might no longer be allowed to hold voting board seats in such a company.

We also note that the university is currently **already accepting** equity in university spin-off companies in exchange for licenses to university owned intellectual property, such as patents. There exists the real danger that in the future, the rule excluding university employees from the boards of companies in which the university holds an equity stake might be expanded to apply to all such companies, regardless of the reason why the university holds such an equity stake (not just “pursuant to this program”).

This creates a problem because university spin-off companies are typically based on intellectual property generated at the university. Licensing this IP back from the university is typically a prerequisite to starting a company. If the university has the power of insisting on licensing such IP only in return for an equity stake, and the existence of such an equity stake leads to exclusion of university employees from a company’s board, then this effectively would give university administrators the power to ban a faculty member from the board of his or her own company, without any proper appeals process. The result would most probably be a much reduced entrepreneurial activity by faculty.

Recommendations

1. The AFS process should have faculty representation at key decision points.
2. The new conflict of interest rules should be re-thought. Prohibiting faculty members from serving on the boards of their own companies is likely to severely dampen entrepreneurial activity.
3. A possible solution would be to make the conflict of interest paragraph apply only to **university administrators** acting on behalf of the university, but **not to faculty members who are founders**, who may also be university employees.
4. Alternatively, the university should take steps to ensure that these new conflict of interest rules stay limited to this program only, and are not expanded to other scenarios in which the university obtains equity in a private company, for example in exchange for intellectual property licenses. Otherwise, administrators would have undue power to remove faculty inventors off the boards of their own companies.

The Council appreciates the opportunity to comment.

On behalf of the Council,



Abel Klein, Chair

c: Natalie Schonfeld, Executive Director, Academic Senate
Thao Nguyen, CPB Analyst

May 14, 2015

Mary Gilly, Chair
Chair, UC Academic Council

Re: Draft Guidelines for Pilot Program to Accept Equity for Access to University Facilities or Services

Dear Mary,

The Executive Board of the UCLA Academic Senate discussed the Draft Guidelines for Pilot Program to Accept Equity for Access to University Facilities or Services at its meeting on April 30, 2015. The Board was informed by responses from our Committee on Library and Scholarly Communications, Councils on Research and Planning and Budget, the Faculty Executive Committee (FEC) of the College of Letters and Science, and our Undergraduate and Graduate Councils. The individual responses are available [online](#).

Though certain committees expressed their support, The Executive Board is not comfortable supporting these draft guidelines in their current form. The genesis of the pilot program is unclear, and we were not able to discern any need that this pilot program would be filling. UCLA's Office on Intellectual Property & Industry Sponsored Research (OIP-ISR) manages Westwood Technology Transfer, which facilitates faculty startups and other collaborations with industry. Also, for many years now, numerous faculty have successfully entered into Cooperative Research and Development Agreements (CRADAs) with industry. With these existing processes and policies governing the University's interactions with industry, it is not clear why a program is needed through which the system can accept equity in a company in exchange for access to University facilities and/or services. The benefits of this equity, or the shortcomings of the current system, should be detailed more thoroughly.

More specifically, the Executive Board, along with UCLA's Council on Research, Graduate Council, and the FEC of the College of Letters and Science have serious concerns about potential overuse of University facilities by private companies under these draft guidelines. There exists no safeguard to ensure that faculty and students receive priority for use of University space and other resources. At UCLA, like at most UC campuses, space for instruction and learning is at a premium, evidenced by our Undergraduate Council's continued suspension of the second laboratory General Education (GE) course.

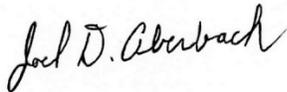
The above point speaks to our final objection to these draft guidelines. There appears to be no plan for an evaluation of the educational benefit of allowing private companies to use University facilities or services in exchange for equity in those companies. The proposal discusses evaluation of risk and touches on evaluation of financial impact for the University, but does not detail the proposals place in the educational mission of the University of California. If a startup company succeeds, it could generate valuable equity for the University. This same company, though, could take away valuable space on campus. Ground rules for situations like this are not provided in the current draft guidelines, and it is unclear who on campus or at UCOP would have decision-making

authority. The draft guidelines address potential faculty conflicts of interest but are silent on the potential conflict of interest the entire University may have under this program.

Ultimately, there exists a fundamental tension between the nature of private enterprises and the mission of our public university. Most private enterprises seek to protect against the leaking of their proprietary work, whereas the general culture of universities, especially public universities, is to promote the free flow of research results for the benefit of all. We are concerned about what restrictions might apply to the presentation of data that results from research done by companies who have provided equity in exchange for access to our facilities and services. These unexplored restrictions could have serious consequences on our teaching, academic culture, and free flow of communications. These restrictions will be amplified if the private enterprise is successful.

Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Joel D. Aberbach".

Joel D. Aberbach
Chair, Academic Senate

cc: Dan Hare, Vice Chair, Academic Council
Hilary Baxter, Executive Director, Systemwide Academic Senate
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate
Linda Mohr, Chief Administrative Officer, UCLA Academic Senate

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OFFICE OF THE ACADEMIC SENATE
JIAN-QIAO SUN, CHAIR
senatechair@ucmerced.edu

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5200 NORTH LAKE ROAD
MERCED, CA 95343
(209) 228-7930; fax (209) 228-7955

May 12, 2015

To: Mary Gilly, Chair, Systemwide Academic Senate

From: Jian-Qiao Sun, Chair, Merced Division Council

Re: Review of Proposed Guidelines on Accepting and Managing Equity Return for Access to University Facilities or Services

The Merced Division Council solicited comments from all Senate Standing and School Executive Committees on the proposed *Guidelines on Accepting and Managing Equity Return for Access to University Facilities or Services* and has received comments from the Committee on Faculty Welfare, Diversity and Academic Freedom, the Graduate Council, and the Committee on Research, appended to this memo.

We appreciate the opportunity to opine.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Sun".

Jian-Qiao Sun, Chair
Division Council

CC: Hilary Baxter, Executive Director, Systemwide Academic Senate
Division Council
FWDAF
GC
COR
Senate Office

Encl. FWDAF Memo to DivCo (3/18/15)
GC Memo to DivCo (4/29/15)
COR Memo to DivCo (5/1/15)

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON FACULTY WELFARE, DIVERSITY & ACADEMIC FREEDOM
RUDY ORTIZ, CHAIR
rortiz@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95344
(209) 228-4369; fax (209) 228-7955

March 18, 2015

To: Jian-Qiao Sun, Chair, Division Council

From: Rudy Ortiz, Chair, Committee on Faculty Welfare, Diversity, and Academic Freedom (FWDAF)

A handwritten signature in black ink, appearing to read "R. Ortiz", is positioned below the "From:" line.

Re: Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services

FWDAF endorses the guidelines for equity for access to university facilities and/or services and appreciates the opportunity to opine.

cc: FWDAF members
Division Council members
Senate office

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ACADEMIC SENATE, MERCED DIVISION
GRADUATE COUNCIL (GC)
KATHLEEN HULL, CHAIR

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95343
(209) 228-6312

April 29, 2015

To: Jian-Qiao Sun, Senate Chair

From: Kathleen Hull, Chair, Graduate Council (GC)

Re: Review of Proposed Guidelines on Accepting and Managing Equity Return

In response to the request from Division Council, Graduate Council (GC) has completed its review of the proposed revisions to the Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services. GC offers the following comments:

- The draft policy identifies the designated campus manager (DCM) as the individual with authority and responsibility for the business and financial arrangements of equity agreements. GC is concerned, however, that there is not equal clarity with respect to identifying or designating an individual or body that is responsible for academic oversight in the establishment and monitoring of such agreements. That is, GC suggests that the policy consider responsibility for academic issues—especially with respect to graduate students—in negotiation of equity agreements.
- The draft policy makes frequent reference to the responsibilities of *employees* operating under equity agreements, but GC is concerned that the policy is less clear about the rights and responsibilities of *graduate students* in such circumstances. Are graduate students (always) considered employees? What are the potential implications of work as original contributions versus the products of an employee? GC recommends that the policy stipulate the rights and responsibilities of graduate students who participate in roles other than as employees. This may include consideration of if or how former graduate students involved in a project carried out under an equity agreement may benefit from the distribution of equity (Section VI.C).
- GC understands that equity agreements may be entered into, in part, to facilitate graduate education and student success. Therefore, GC recommends that the policy make clear how intellectual property of graduate students and the rights of graduate students to publish on projects undertaken through equity agreements are to be protected.
- Since campuses vary in administrative structure, GC recommends that references to the “conflict of interest committee” be rephrased as “the office or committee with oversight of conflict of interest.”
- Finally, GC is concerned that equity agreements may decrease funding for graduate students that would be available through other types of partnership agreements. Therefore, GC suggests that this issue be considered as an element of the decision to enter into such an agreement or during negotiation of an equity agreement.

GC appreciates the opportunity to opine.

Cc: Divisional Council
Graduate Council
Academic Senate Office

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ACADEMIC SENATE, MERCED DIVISION
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DAVID C. NOELLE, CHAIR
dnoelle@ucmerced.edu

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MERCED, CA 95344
(209) 228-4369; fax (209) 228-7955

May 1, 2015

To: Jian-Qiao Sun, Chair, Division Council

From: David C. Noelle, Chair, Committee on Research (COR)

A handwritten signature in cursive script that reads "David C. Noelle".

Re: Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services

COR has reviewed the proposed guidelines on accepting and managing equity in return for access to university facilities and/or services.

COR is concerned with Part IV. C. 2. which states "The support of new businesses affiliated with the University is in the public interest and furthers the University's training and educational objectives." This section does not indicate who determines whether a given business affiliation further advances the UC's educational objectives nor is there mention of which individual or body would adjudicate any conflict of interest. Finally, COR notes that the proposed policy does not provide for Academic Senate oversight and so recommends that an annual report is submitted to the Senate each year.

COR appreciates the opportunity to opine.

cc: COR Members
DivCo Members
Senate Office



CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
UNIVERSITY OFFICE BUILDING, RM 225

JOSE WUDKA
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May 12, 2015

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

RE: Request for systemwide review of Pilot Program to Accept Equity for Access to University Facilities and Services

Executive Council reviewed the draft guidelines for the PPAEAUFS (Pilot Program to Accept Equity for Access to University Facilities and Services). There were various concerns about this program voiced both by Council and by the reviewing committees. Council generally felt that this is a proposal whose impact is difficult to gauge without detailed expertise in these financial matters, lacking these (or a thorough non-technical explanation of the program) it is difficult to provide a careful analysis. Because of this most of the concerns raised were on the general aspects of the proposal.

Among the concerns raised, Council wishes to highlight the following:

- The program does not require the companies being included to be financially viable. More specifically, the proposal does not include mechanisms for ensuring that the equity being offered by the company is fairly appraised; absent this the exchange for services is not appropriate. Any campus offering services or facilities should only consider a cash exchange even if it is at discounted rates for a company built from university-based technology or intellectual property (section IV.C.1).
- Without clear implementation procedures there are no guarantees that this program would not divert resources from the core mission of the university.
- There were strong doubts that sufficient safeguards could be created to avoid possible conflict of interest situations.
- Absence of criteria for identifying acceptable investments and acceptable risks.
- The program should include an evaluation plan, spelling-out both criteria and schedule.
- The draft does not ensure sufficient safeguards against bias and undue influence.
- There is insufficient local oversight: the DCM should be complemented by a group of faculty, extramural venture capital and industry representatives.
- There are no provisions for covering the expenses associated with creating the DCM position.
- The procedures through which the CIO would purchase shares in a program involved in this pilot appear overly complex.
- The proposal should make it abundantly clear that revenues will remain at the campus of origin

The UCR Division welcomes the opportunity to comment on this program, whose effects on the UC may be deep and permanent.

Sincerely yours,

A handwritten signature in black ink that reads 'J Wudka'.

Jose Wudka
Professor of Physics & Astronomy and Chair of the Riverside Division



ACADEMIC SENATE
Santa Barbara Division
1233 Girvetz Hall
Santa Barbara, CA 93106-3050

(805) 893-2885
<http://www.senate.ucsb.edu>

Kum-Kum Bhavnani, Chair
Deborah Karoff, Executive Director

May 18, 2015

Mary Gilly, Chair
Academic Senate

RE: Equity for Access to University Facilities-Pilot Draft Guidelines

Dear Mary,

The following groups opined on the Draft Guidelines for the Equity for Access to University Facilities Pilot Program: Council on Planning and Budget (CPB), Graduate Council (GC), Council on Research and Instructional Resources (CRIR), Council on Faculty Issues and Awards (CFIA), and the Faculty Executive Committees from the College of Engineering (COE FEC), the College of Letters and Science (L&S FEC), the Gevirtz Graduate School of Education (GGSE FEC) and the College of Creative Studies (CCS FEC). Most groups are supportive of the basic idea of the proposed Pilot Program which is to foster innovation and entrepreneurship from faculty research activity by expanding the use of university facilities in exchange for financial equity. At the same time, many groups expressed concerns about several aspects of the proposed program and suggest that the Guidelines be further revised based on Senate feedback. Groups thought that it would be helpful to know if such a project has been implemented at other private universities.

There are three other main concerns:

1. The concern that when private companies draw on campus facilities the idea of open sharing of research might be in danger, and might not be consistent with the research mission of the university. Groups recognize that UC already allows private enterprise to rent UC space and that this program would allow UC to accept equity in lieu of cash. GC says, "The University currently allows these groups to utilize facilities and services (such as the use of a cleanroom at night) for cash payments, and GC expects that similar oversight will apply in terms of transparency, conflict of interest, and use of equipment funded by state and granting agencies." CFIA expresses two perspectives, echoed by other groups: "Some members of the Council believe that this proposal strikes a good balance between managing risk and providing an effective mechanism by which these commercialization activities are enabled. However, other members of the Council are

opposed to the University partaking in activities that have traditionally been carried out by institutional investors.” CPB was skeptical that such a project would be based upon “the educational, research, and public service missions of the University over financial or individual personal gain.” They note that a statement such as this could lead to: “a wide range of interpretations” and does not explain how a public institution in partnership with private enterprise could operate effectively. The L&S FEC suggests that scientific research is usually openly shared which may run counter to the needs and interests of a private company. In general, how might conflict of interest issues be handled?

2. There was concern that there appears to be no mechanism for faculty oversight, which was noted as ironic given that it is the research of faculty that acts as the impetus for the program. CPB notes that administrators who are Designated Campus Managers and administrators from the Innovation Alliances Services office will be managing the entire program. GC says that “there is the possibility that the University may enter into agreements with businesses that participate in unforeseen ethical misconduct in the future, or do not continue to meet the University’s standards of social responsibility and respect for the public good.” The L&S FEC states that UC is a public university and academic integrity must be protected. We recommend that faculty oversight be established in the form of an advisory committee that would have faculty from different campuses on it.

3. The third main concern is that there is often little agreement on assessing the equity value of an incubator. CFIA says, “there is a considerable amount of uncertainty in assessing the value of stock from new companies as well as a great deal of potential risk.” Several groups recommended that the Investment Office be involved with assessing the costs/benefits and potential risks associated with estimating the value of equities. Other comments include questions from the COE FEC about how income derived from equity received be distributed upon collection, and how would any potential future devaluation of equity received by the university be accounted for? Finally, CPB asks “how the value of stock in the types of companies involved in this program will be determined,” and wonders what happens if revenue expectations are not realized and how deficits are to be managed. Finally, CRIR (through CLIIR) recommends that there be further exploration of the equity value of non-tangible faculty work such as online educational tools or products. Further, CFIA recommends “a thorough review” perhaps after three years, in the first instance.

CPB perhaps states it at its most succinct: “CPB appreciates the trial nature of the proposal, but without greater specification of the program, an increased role for faculty supervision and the inclusion of financial experts finds the program risky.”

Thank you for the opportunity to comment.

Sincerely,



Kum-Kum Bhavnani , Chair
UCSB Division



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Office of the Academic Senate
SANTA CRUZ DIVISION
125 CLARK KERR HALL
(831) 459 - 2086

May 15, 2015

Mary Gilly, Chair
Academic Council

Re: Review of Guidelines on Accepting and managing Equity in Return for Access to University Facilities and/or Services

Dear Mary,

The Santa Cruz Division has reviewed the proposed changes to the Guidelines for Equity in Return for Access to University Facilities and/or Services (AFS). As a point of emphasis, we are concerned about a potentially negative impact to the research environment on campus should such equity agreements become common place. It is paramount that faculty, students, and researchers all have access, and top priority for the use of research equipment and facilities. It is unclear as to whether or not this priority access could be impeded by the interests of potentially competing financial goals. While leveraging existing resources to the fullest extent is important, this demand should not supplant ongoing faculty research. This is a concern that should be well vetted, and addressed within the guidelines prior to approval.

Our Committee on Academic Freedom (CAF) raised concerns that faculty entering into these business partnerships would do well to keep in mind. The contractual agreement between a faculty member and outside corporate, business, military, or other partners is something faculty members agree to by choice, and because CAF sees some potential for these contracts to require that the faculty members surrender certain aspects of their research and/or publication rights, CAF recommends that faculty members first obtain legal advice before entering into these contracts. Should the guidelines be approved, it would be useful to provide clear expectations on what level of legal advice will be supported. Will this be managed internally, during the process of renting/leasing space? If so, will it happen at the systemwide or campus level?

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Brenneis".

Don Brenneis, Chair
Academic Senate
Santa Cruz Division

cc: Ron Glass, Chair, Committee on Academic Freedom
Judith Habicht-Mauche, Chair, Committee on Research
Dan Friedman, Chair, Committee on Planning & Budget



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May 14, 2015

Professor Mary Gilly
Chair, Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

Subject: Response to *Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services*

Dear Mary,

The draft of the *Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services (Guidelines)* was distributed to the following San Diego Divisional Committees for review on March 13, 2015: Committee on Faculty Welfare, Committee on Research, Committee on Planning and Budget, Educational Policy Committee, and Graduate Council. The Guidelines were discussed at the May 11, 2015 meeting of the Divisional Senate Council. Council's comments were focused in four main areas: access, transparency and clarity, profitability, and the University mission.

Access

Council members were concerned with who will have priority if there is competition for access to space and/or equipment. Space is scarce on the San Diego campus, as it is likely on other campuses, and it is a challenge to find adequate space for faculty and students. The *Guidelines* do not outline how access to facilities or equipment will be managed and prioritized, nor do they provide any mechanism for dispute resolution in the event a conflict arises. To avoid such conflicts, the San Diego Division requests that the *Guidelines* state clearly that academic needs for space and equipment will take priority over those of companies.

Transparency and Clarity

Concerns were expressed regarding the Designated Campus Manager (DCM). The *Guidelines* do not provide selection criteria for the DCM position, nor do they specify whether the DCM will be an academic or staff appointment. We believe these details should be addressed. Once the DCM is selected, it is unclear how this person will select program participants. The *Guidelines* don't specify a framework for selection criteria, nor do they provide any checks or

balances on the DCM's power. We would like to see more transparency and accountability tools built into the position.

Council also raised the issue of possible overlap in the area of equity management created between the new DCM position and the Office of the Chief Investment Officer. Concern was expressed that the creation of the DCM position would be an unnecessary expansion of administration for a program that could fit within the existing purview of the Chief Investment Officer.

Profitability

Council appreciated the need to minimize involvement with companies that occupy university space, and no issue was taken with the *Guideline's* requirement that equity be liquidated. However, Council believes the *Guidelines* are too rigid concerning the timeline for liquidation. As written, campuses must begin liquidating holdings at a time that may be too soon to realize maximum profits from successful companies. Council would like to see more flexibility in this area to allow campuses more discretion in determining when equity is liquidated.

University Mission

The question was raised as to how the program relates to the University's overall mission. Council understood the motivation for the program, but felt that it needs to be articulated better. It must be made clear how the program will be integrated into the University, and how its administration fits within the University's governance structure and what part, if any, will be separate.

Thank you for the opportunity to comment on these important issues.

Sincerely,



Gerry Boss, Chair
Academic Senate, San Diego Division

cc: Divisional Vice Chair Continetti
Divisional Director Rodriguez
Executive Director Baxter



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Joel Dimsdale, Chair
jdimsdale@ucsd.edu

Assembly of the Academic Senate
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Phone: (510) 987-9466
Fax: (510) 763-0309

May 20, 2015

**MARY GILLY, CHAIR
ACADEMIC COUNCIL**

RE: Draft Guidelines for Pilot Program to Accept Equity for Access to University Facilities or Services

Dear Mary,

The University Committee on Faculty Welfare (UCFW) has discussed the draft guidelines for Pilot Program to Accept Equity for Access to University Facilities or Services, and while we are sympathetic to the goals of the program, we have significant concerns with the draft. A majority of UCFW does not endorse this pilot program at this time.

First, UCFW questions the rationale for the program. It has been pitched as an investment opportunity and business best practice, but the proposal and its advocates do not expect a positive return on this investment. UCFW wonders if the program is in response to some unstated obligation or expectation, because the proposal does not articulate a clarified vision.

Many members of UCFW find the local locus of decision-making to be inappropriate. They assert that the Designated Campus Manager (DCM) is given too much authority and latitude, and are not convinced that DCMs will have the investment savvy necessary to vet applicants, if indeed future returns are a goal of the program. Nor is the majority of UCFW convinced that the DCM will be able to provide adequate managerial oversight for this type of new and emerging process. A minority of UCFW agrees that local decision-makers might be better informed on the details of local applicants and can move more nimbly and responsively in this emerging area; this group posits that pilot-program experience is needed before policy specificity can be generated.

Still, most of UCFW would prefer to see more systemwide standards for evaluating applications to ensure transparency and consistency. For example, the draft business plan for UC Ventures includes explicit requirements for consideration of an application. The Equity for Access draft, by contrast, is found by many to be quite vague.

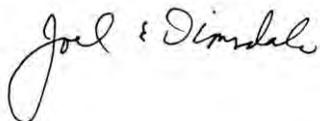
Section 4.d prohibits UC employees from being board members of companies participating in the program. Given that many participants will be UC students, faculty, and affiliated researchers, UCFW finds this prohibition potentially counterproductive. The committee agrees that there are conflict of interest issues to be articulated, but this draft handles it in a way that is not nuanced enough. If the program is targeted exclusively to external audiences, that should be made explicit.

UCFW requests a greater explanation for why warrants are not being considered for this program.

Finally, UCFW speculated that given the rapidity of movement in this area, it may be difficult to develop an ideal proposal, but we are only too aware that things are often not fixed along the way. This particular draft has significant flaws that could be problematic for UC down the road. Nonetheless, we acknowledge that there is demand for this type of program, and UC has much to offer. On the whole, before endorsing this pilot, a majority of UCFW believe that redrafting is needed; a minority would approve the pilot, noting that it is only a pilot and not a final program.

We look forward to evaluating a revised draft.

Sincerely,

A handwritten signature in cursive script that reads "Joel E. Dimsdale". The signature is written in black ink and is positioned above the printed name.

Joel E. Dimsdale, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate



UNIVERSITY COMMITTEE ON RESEARCH POLICY (UCORP)
Liane Brouillette, Chair
liane.brouillette@gmail.com

Assembly of the Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200
Phone: (510) 987-9466
Fax: (510) 763-0309

May 12, 2015

**MARY GILLY, CHAIR
ACADEMIC COUNCIL**

**RE: Guidelines on Accepting and Managing Equity in Return for Access to University Facilities
and/or Services**

Dear Mary,

The University Committee on Research Policy (UCORP) strongly endorses the intent of this initiative to create interfaces and pipelines that accelerate translation of faculty innovation into products useful to communities of practice. These guidelines pertain to programs that would provide access to university facilities or services for promising business ventures in exchange for business equity. Additionally, we offer three suggestions and point out one apparent contradiction in the guidelines.

UCORP recommends that similar accommodations be encouraged in support of innovation-driven public service ventures. One example of such support is the recent inclusion of the nonprofit Foundation for Learning Equality—the creators of KA Lite (offline Khan Academy)—in the Innovation Space of the Qualcomm Institute at UC San Diego.

In addition, when a campus accepts equity in a company as full or partial consideration for access to University facilities and/or services in the context of University incubators or accelerators, the Designated Campus Manager (DCM) should consult regularly with the Academic Senate. At a minimum, this should result in an annual report describing all active projects for which equity has been promised or received. This report should be made available to an Academic Senate body as well as to the administration. These reports should be accessible for future evaluation of the effectiveness of the incubator/accelerator program.

Also, the Academic Senate should have the power to monitor the use of University facilities by incubator and accelerator projects to make sure that their needs do not interfere with existing educational and research interests of the University regarding access to and use of research equipment and facilities.

We also noted that the Guidelines are not clear on how the Equity acquired by the University would be managed: specifically, how and when it can be sold. This seems to be addressed in two places with two different messages (on pages 13 and 29) as follows:

VI. CHIEF INVESTMENT OFFICER'S MANAGEMENT OF EQUITY

General

All decisions and administrative actions concerning the management of Equity issued to the University by a Company and all subsequent corporate or other entity actions received by the DCM pertaining to the University's shareholder, membership or other interest in a Company shall be made by and at the sole discretion of the CIO. (Page 13)

Appendix D

Once the securities are DTC-qualified, the OCIO will use the following "rule-based" equity disposition management model in liquidating stocks resulting from approved University Access to Facility or Service transactions.

The rules in Appendix D continue that the University is obliged to sell 50% of its equity in the Company "at the first available opportunity", and the remainder within the following year. There is a minor stipulation that the final 25% of equity may be held for "up to 5 years" before the University sells it. (Page 29)

Clarification of how Equity in companies would be managed by the University would be helpful.

Thank you for the opportunity to provide input.

Sincerely,



Liane Brouillette, Chair UCORP

cc: UCORP
Hilary Baxter, Executive Director, Systemwide Academic Senate



UNIVERSITY COMMITTEE ON RESEARCH POLICY (UCORP)
Liane Brouillette, Chair
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June 9, 2015

**MARY GILLY, CHAIR
ACADEMIC COUNCIL**

RE: Academic Council Draft Letter on guidelines for pilot program to accept equity for access to university facilities or services

Dear Mary,

The University Committee on Research Policy (UCORP) strongly endorses the intent of the guidelines. At the same time, we are in agreement with many of the concerns expressed in the draft letter. More detailed observations are offered below.

UCORP agrees that the *Guidelines* should better articulate how the program connects with the University's public teaching and research missions. However, there are numerous precedents for private companies partnering with the University of California. Perhaps the connection of the *Guidelines* to the University's public nature might be made more apparent if the *Guidelines* provided for innovation-driven public service ventures such as the nonprofit Foundation for Learning Equality—the creators of KA Lite (offline Khan Academy)—currently housed in the Innovation Space of the Qualcomm Institute at UC San Diego.

We also concur with the concerns expressed in the draft letter about the potential for private companies to overburden already scarce research space and equipment. Yet academic and research space is more of a scarce commodity on some campuses than on others. Therefore, this problem is perhaps best addressed through consultation between the administration and the Academic Senate on individual campuses.

The conflict of interest guidelines do seem overly restrictive in their current form given that, under current University rules, faculty are allowed to hold a board seat. Concerns about conflict of interest should be

balanced against the need to appoint members to the Board of a company in which UC has an equity interest who have the specialized knowledge needed to guide the company effectively.

Concerns about lack of faculty oversight are of pivotal importance, not just in regard to the possibility of overburdening space and equipment but also in regard to the financial and legal intricacies of hosting start-ups on campus. If relationships with companies in which UC has an equity interest are to be handled efficiently, specialized expertise in finance and law will be needed. Establishment of a system-wide faculty advisory committee would be an important step in making such expertise more readily available.

Thank you for the opportunity to provide input.

Sincerely,



Liane Brouillette, Chair UCORP

cc: UCORP
Hilary Baxter, Executive Director, Systemwide Academic Senate



UNIVERSITY COMMITTEE ON PLANNING AND BUDGET (UCPB)
L. Gary Leal, Chair
lg120@enr.ucsb.edu

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1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200
Phone: (510) 987-9466
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May 20, 2015

**MARY GILLY, CHAIR
ACADEMIC COUNCIL**

RE: Draft Guidelines for Pilot Program to Accept Equity for Access to University Facilities or Services

Dear Mary,

The University Committee on Planning and Budget (UCPB) reviewed the draft guidelines for the pilot program to accept equity for access to university facilities or services. UCPB considered the matter at its March, April and May 2015 meetings. The committee has both general and detailed technical concerns that should be addressed before the proposal moves forward.

At the most general level, the Introduction suggests that the goal of this program is to facilitate participation of UC in the “entrepreneurial and innovation ecosystem” by supporting new business creation by students, staff or faculty based, presumably, on inventions or innovations developed by researchers and inventors who are university affiliates or employees or who will benefit from close proximity to university personnel, facilities, or other services. The goal of facilitating participation seems to UCPB to be a rather vague one. However, we could find no more detailed or explicit statement of the program’s objectives. We are uncertain if the intent is to improve the financial return to the university, or if it is the more altruistic objective of buttressing the entrepreneurial atmosphere via support of students, faculty and staff as the introductory material suggests. It is stated that the pilot program will be evaluated at the end of three years by UCOP, presumably including input from the Academic Senate, though the latter is not stated explicitly. Perhaps it is not surprising, in view of the vagueness of the stated goals, that there is no mention in the proposal of the explicit criteria by which this pilot program will be judged, or a decision made to either move forward on a permanent basis or to terminate it. For a proposal that is intended to set up a pilot program, this omission is a major oversight.

UCPB also had important reservations about several detailed issues with the proposal. First, the lack of system-wide oversight of campus investment decisions is a major concern. The Office of the Chief Investment Officer (OCIO) is appropriately charged with management of campus equity investments, but is apparently not involved in the key initial investment decisions in this program. UCPB is confused by this omission, and we ask for an explanation. Currently, bodies of expertise with sufficient critical mass in valuing the financial potential of start-up companies do not reside on many of the campuses. Furthermore, system-wide review would be invaluable in managing areas exposed to potential conflict of interest and to ensure diversification.

Second, “Section D. Board Representation/ Voting Rights” caused concern in two important areas. 1) The first sentence should be clarified as to its intended meaning, and to delineate more clearly when people are (or are not) “acting in their capacity as university employees”. 2) Prohibiting an inventor/founder who is a University employee from having voting rights on a board of their own company may prevent many potential inventor/founders from pursuing access to University facilities and services. UCPB is aware that conflict of interest issues must be addressed in policies of this type, to be sure, but wholesale debarment of faculty, post-doctoral scholars, graduate student researchers, and the like from meaningful participation in this process would artificially delimit “real world” educational and teaching opportunities. UCPB believes that review of the guidelines by external counsel with expertise in such matters would alleviate many concerns.

Third, considering only the budgetary implications, UCPB worries that the timeline for liquidation of equity by UC may be both too fast and too inflexible, as outlined, for the University to gain maximum benefit. The guidelines propose liquidating 50% of the University’s stock at the first available opportunity and 25% six months later. The final 25% might be held for a maximum of 5 years and only if the manager elects to do so at the time of establishing the agreement. In many cases, the stock value can take much longer to appreciate fully. UCPB also wonders how the operating costs of the incubators are to be covered; the designated campus manager (DCM) is given wide latitude here, but a specific business plan is needed.

Finally, an option for the University to accept warrants instead of equity is absent; such an option may have benefits for both the University and a start-up company, and its omission requires justification.

UCPB looks forward to a modified proposal.

Sincerely,

L. Gary Leal, Chair
UCPB

cc: UCPB
Hilary Baxter, Executive Director, Systemwide Academic Senate

May 26, 2015

Mary Gilly, PhD, Chair
Academic Council
Systemwide Academic Senate
University of California Office of the President
1111 Franklin Street, 12th Floor
Oakland, CA 94607-52000

Re: Guidelines for Accepting and Managing Equity in Return for Access to University Facilities and/or Services

Dear Chair Gilly:

The San Francisco Division of the University of California Academic Senate has reviewed the draft *Guidelines for Accepting and Managing Equity in Return for Access to University Facilities and/or Services*. While we can appreciate the motivations (e.g., revenue generation and branding) behind this three-year pilot program of accepting equity in companies for access to University facilities and/or services and applaud the Innovation and Alliances Services unit within UCOP for paying attention to important conflict of interest issues, it lacks guidance in certain key areas. In particular, we feel that such an initiative must be balanced by the University's mission, the academic welfare of graduate students, competition for research space, and the appropriate involvement of the Academic Senate in such arrangements.

The *1989 Guidelines on University-Industry Relations*, which were rescinded by President Napolitano last year, placed emphasis on the idea that "University facilities and resources should be devoted to activities that support teaching and research and that lead to the advancement of knowledge." Indeed, Section 020 of the Academic Personnel Manual (APM), Part 2, Number 2, also limits the University "to activities which lead to the extension of knowledge or to increased effectiveness in teaching. Routine tasks of a commonplace type will not be undertaken." As the University undertakes ventures such as those jointly beneficial to industry and the university, San Francisco's Committee on Research (COR) does not want the emphasis on the UC's mission to be lost. Towards that end, we recommend that either Section F, Company-Sponsored Product Testing, be strengthened to preclude use of university space for commercial non-academic purposes, or that an entirely new section on the use of facilities be added, which would prohibit routine tasks of a commercial character.

Responsibility to students is an important principle found in both the 1989 Guidelines and the *1999 Principles Regarding Rights to Future Research Results*. However, this principle is missing from these new Guidelines. It goes without saying that extramurally sponsored research presents potential risks to student and graduate student academic

freedom. The San Francisco Graduate Council is concerned that the protection of graduate students within the context of University-industry relations is too ambiguous, and fails to address the potential risks to graduate students' academic freedom and faculty's responsibility to graduate students. In addition, the Guidelines need to include protection of students' intellectual property, as currently inscribed in APM 010: "Students are entitled to the protection of their intellectual rights, including recognition of their participation in supervised research and their research with faculty, consistent with generally accepted standards of attribution and acknowledgement in collaborative settings." Therefore, the Graduate Council recommends that a guideline encapsulating Principle 2 be inserted into these new Guidelines, which might read:

Agreements with external parties that involve student participation in a University research activity should protect students' academic freedom and intellectual property rights, which includes undue influence of the participating firm on a student's selection of a research topic for educational purposes, including safeguarding a student's ability to present the results of their research. Likewise, faculty are responsible for ensuring that close University-industry relations do not adversely impact the professor-student relationship." In addition, the San Francisco Graduate Council recommends that these Guidelines reassert the delegated authority for the academic welfare of graduate students to the Academic Senate's Divisional Graduate Councils and the Universitywide Coordinating Committee on Graduate Affairs.

The San Francisco COR is also concerned about the utilization of research space and increased competition for it as a result of these kinds of arrangements. Federal grants pay a negotiated indirect cost rate, which includes building depreciation, maintenance, general energy usage, etc. As the cost of facilities and administration expenses are typically greater than the full negotiated federally indirect cost-recovery rate, faculty conducting federally sponsored research may face increased competition for research space from faculty with privately sponsored research, who may enjoy more generous indirect cost-recovery from private industry. Although the Guidelines note that the University may permit limited private use of tax-exempt bond-financed space or equipment by a private party participating in the program (provided the Designated Campus Manager can demonstrate in advance that such private-use will not jeopardize the tax-exempt status of any bonds), we do warn against the unforeseen consequences of such research possibly pushing out PIs pursuing publicly-funded research at UCSF. Provisions for protection against such use of private space should be enacted in the guidelines, perhaps as a mandate of newly comprised campus committees.

Finally, the San Francisco Division is concerned about the involvement of the Academic Senate in determining conflict of interest on behalf of the faculty. In order for equity in a start-up company to be approved, the revised Guidelines state that a campus-designated conflict of interest committee shall review agreements and, if appropriate, recommend management plans to the DCM, who shall submit verification of this review and management plan, if any, with the request for approval to accept equity submitted to the Innovation Alliances and Services unit at UCOP. The San Francisco Division therefore recommends that each campus committee include representation from one or more Senate members.

Thank you for the opportunity to opine on these important draft Guidelines. Please feel free to contact Executive Senate Director Todd Giedt (415.476.1307; todd.giedt@ucsf.edu), or myself with any additional inquiries.

Sincerely,



Farid Chehab, PhD, 2013-15 Chair
UCSF Academic Senate
Professor, Department of Laboratory Medicine

Encl.: 2

COMMUNICATION FROM THE CHAIR OF THE GRADUATE COUNCIL

Karen Duderstadt, RN, PhD, FAAN

May 19, 2015

Farid Chehab, PhD, Chair
UCSF Academic Senate
500 Parnassus Avenue, Box 0764
San Francisco, CA 94143

Re: *Guidelines for Accepting and Managing Equity in Return for Access to University Facilities and/or Services*

Dear Chair Chehab:

The University of California San Francisco Academic Senate Graduate Council has reviewed the draft *Guidelines for Accepting and Managing Equity in Return for Access to University Facilities and/or Services*. Although the committee understands that this is only a three-year pilot program, we are concerned that important guidelines relating to the participation of graduate students in such ventures are absent – particularly faculty responsibility to graduate students. For instance, faculty responsibility to students is addressed in the 1989 Guidelines on University-Industry Relations; the 1999 Principles Regarding Rights to Future Research Results; and the draft 2013 Guidelines. While the Faculty Code of Conduct, as set forth in APM – 015, does provide some guidance in this area (e.g., protecting academic freedom, preserving standards of teaching and scholarship, and advancing the mission of the University), inherent ambiguities present within the context of extramural sponsored research require additional attention and vigilance.

Guideline 6 of the 1989 Guidelines addressed the academic freedom of students. As enumerated in the 1989 Guidelines, the following interests of students must be protected:

- to choose research topics for educational reasons;
- to be protected against the premature transmittal of research results; and
- to be advised objectively on career choices.

Moreover, the 1989 Guidelines specified that “the Academic Senate’s Divisional Graduate Councils and the Universitywide Coordinating Committee on Graduate Affairs are also responsible for making sure that closer University-industry relations do not create strains in the professor-student relationship.” Likewise, APM – 015 recognizes that “the integrity of the faculty-student relationship is the foundation of the University’s educational mission” and identifies the ethical principles that concern faculty’s professional responsibility to teaching and students, which include the avoidance of any exploitation and protection of academic freedom.

The 1999 Principles Regarding Rights to Future Research Results and the related draft 2013 Guidelines addressed academic freedom and responsibility to students. Principle 2 of the 1999 Principles addressed faculty responsibility to students to ensure that “agreements for research relationships with external parties shall respect the University’s primary commitment to the education of its students.” However, the draft 2013 Guidelines differentiated between student work that occurs within the context of coursework, which would require protection, and work within the context of student employment, which would require informed consent between faculty mentor and student.

Extramurally sponsored research presents potential risks to student and graduate student academic freedom. The Graduate Council is concerned that lack of clear guidelines relating to the protection of graduate students within the context of University-industry relations is too ambiguous, and fails to address

the potential risks to graduate students' academic freedom and faculty's responsibility to graduate students. Therefore, the Graduate Council recommends that a guideline encapsulating Principle 2 in the 1999 Principles Regarding Rights to Future Research Results be added to *Guidelines on Accepting and Managing Equity*. Such a guideline might be stated as the following:

Agreements with external parties that involve student participation in a University research activity should protect students' academic freedom, which includes undue influence of the participating firm on a student's selection of a research topic for educational purposes, including safeguarding a student's ability to present the results of their research. Likewise, faculty are responsible for ensuring that close University-industry relations do not adversely impact the professor-student relationship.

Finally, the Graduate Council also recommends that the *Guidelines on Accepting and Managing Equity* reassert the delegated authority for the academic welfare of graduate students to the Academic Senate's Divisional Graduate Councils and the Universitywide Coordinating Committee on Graduate Affairs.

Thank you for the opportunity to comment on the Guidelines for this important pilot program. If you have any questions, please do not hesitate to contact me.

Sincerely,

Karen Duderstadt, RN, PhD, FAAN, Chair
UCSF Academic Senate Graduate Council

COMMUNICATION FROM THE CHAIR OF THE COMMITTEE ON RESEARCH

Janet Myers, PhD, MPH

May 26, 2015

Farid Chehab, PhD, Chair
UCSF Academic Senate
500 Parnassus Avenue, Box 0764
San Francisco, CA 94143

Re: *Guidelines for Accepting and Managing Equity in Return for Access to University Facilities and/or Services*

Dear Chair Chehab:

The University of California San Francisco Academic Senate Committee on Research (COR) has reviewed the draft *Guidelines for Accepting and Managing Equity in Return for Access to University Facilities and/or Services*. While the COR can appreciate the motivations (e.g., revenue generation and branding) behind this three-year pilot program of accepting equity in companies for access to UCSF facilities and/or services, we feel that such an initiative must be balanced by concerns over the University's mission, competition for research space, and the appropriate involvement of the Academic Senate in such arrangements –. On the whole, the committee observes that the new Guidelines pay appropriate attention to conflict of interest issues, but do not adequately provide guidance on how these new ventures would relate to UC's mission, nor does it anticipate increased competition for valuable research space for research that supports the University's stated mission of serving "society as a center of higher learning, providing long-term societal benefits through transmitting advanced knowledge, discovering new knowledge, and functioning as an active working repository of organized knowledge."

The 1989 Guidelines on University-Industry Relations, which were rescinded by President Napolitano last year, placed emphasis on the idea that "University facilities and resources should be devoted to activities that support teaching and research and that lead to the advancement of knowledge." Indeed, Section 020 of the Academic Personnel Manual (APM), Part 2, Number 2, also limits the University "to activities which lead to the extension of knowledge or to increased effectiveness in teaching. Routine tasks of a commonplace type will not be undertaken." As the University undertakes ventures such as those jointly beneficial to industry and the university, COR members do not want the emphasis on the UC's mission to be lost. Towards that end, we recommend that either Section F, Company-Sponsored Product Testing, be strengthened to preclude use of university space for entirely commercial purposes, or that an entirely new section on the use of facilities be added, which would prohibit routine tasks of a purely commercial character.

COR is also concerned about the utilization of research space and increased competition for it as a result of these kinds of arrangements. Federal grants pay a negotiated indirect cost rate, which includes building depreciation, maintenance, general energy usage, etc. As the cost of facilities and administration expenses are typically greater than the full negotiated federally indirect cost-recovery rate, faculty conducting federally sponsored research may face increased competition for research space from faculty with privately sponsored research, who may enjoy more generous indirect cost-recovery from private industry.

Tax-exempt bonds have financed various auxiliary, administrative, academic, medical center, and research facilities of UCSF. Tax-exempt bond indentures require use of the facilities in a way which will not cause the interest on the tax-exempt bonds to be included in the gross income of the bondholders for federal tax purposes. Strict rules under the tax laws prohibit certain "private use" of space or equipment

financed with tax-exempt bonds. In specific circumstances, the University may permit limited private use of tax-exempt bond-financed space or equipment by a private party participating in the program--provided the Designated Campus Manager (DCM) can demonstrate in advance to the satisfaction of the University that such use is in compliance with rules allowing for a limited percentage of space to be set aside for private-use and that such private-use will not jeopardize the tax-exempt status of any bonds. Given this regulatory environment, we are hopeful that research ventures involving private companies will not occupy a significant portion of research space at UCSF. That said however, we do warn against the unforeseen consequences of such research possibly pushing out PIs pursuing publicly-funded research at UCSF. Provisions for protection against such use of private space should be enacted in the guidelines, perhaps as a mandate of newly comprised campus committees (see below).

Finally, the COR is concerned about the involvement of the Academic Senate in determining conflict of interest on behalf of the faculty. In order for equity in a start-up company to be approved, the revised Guidelines state that a campus-designated conflict of interest committee shall review agreements and, if appropriate, recommend management plans to the DCM, who shall submit verification of this review and management plan, if any, with the request for approval to accept equity submitted to the Innovation Alliances and Services unit at UCOP. The COR therefore recommends that each campus committee include representation from one or more Senate members.

Thank you for the opportunity to opine on the Guidelines for this important pilot program. If you have any questions on COR's comments, please let me know.

Sincerely,

Janet Myers, PhD, MPH, Chair
UCSF Academic Senate Committee on Research