UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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Assembly of the Academic Senate, Academic Council
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

July 23, 2004

ROBERT C. DYNES
PRESIDENT

Re: Report on Problematic Restrictive Clauses in Contracts, Grants and Gifts for Research and Resolution on Restrictions on Research Funding Sources

Dear Bob:

In fulfillment of a charge issued by last year's Academic Council, the University Committee on Research Policy (UCORP) has, over the course of the 2003-04 year, been investigating the type and nature of restrictions attached to research awards, and the university's policies and practices regarding such restrictions. The committee recently completed a report of its findings and recommendations, which was brought before the Academic Council at its July 21 meeting. In addition to the report itself, UCORP also submitted to Council a "Resolution on Restrictions on Research Funding Sources." By a majority vote, the Academic Council adopted both the report and the resolution.

The findings of UCORP's report are based on data gathered from Vice Chancellors of Research, campus contracts and grants offices, and development offices, and on interviews with faculty and consultations with the UCOP's Office of Research and the Office of Research Administration. We are happy to say that as its foremost outcome, the report found UC policies and practices adequate to the threats posed by problematic restrictions on research awards, and that those polices are being carefully applied. The report also includes a family of recommendations for improving communication with the Senate, revising the *Contract and Grant Manual* for greater clarity, and establishing processes that safeguard academic freedom. For specifics, I refer you to the enclosed report and its executive summary where these recommendations are detailed.

The "Resolution on Restrictions on Research Funding Sources" responds to actions within the university that would place restrictions on "tobacco funding," but is not exclusive to that one source or issue. UCORP and the Academic Council believe that it is an infraction of academic freedom for a majority opinion regarding the source of funding to bar any faculty member from accepting research funding that is otherwise in compliance with university policy. Moreover, we assert that a subgroup of the faculty of the University cannot legitimately assume authority for funding policy. The resolution is in no way meant to disallow or undercut faculty opinion as expressed in a vote or through other means.

Both the report and the resolution were brought up at the June meeting of the Council on Research, where some interest was voiced in their being made available soon. I therefore respectfully submit them for your consideration with the request that they be forwarded to the Chancellors and Vice Chancellors of Research for further dissemination to interested campus agencies and offices.

Sincerely,

Lawrence Pitts, Chair
Academic Council

Enclosures: 1. Academic Council Resolution on Restrictions on Research Funding Sources
2. Report on Problematic Restrictive Clauses in Contracts, Grants and Gifts for Research

cc: Academic Council
M.R.C. Greenwood, Provost and Senior Vice President, Academic Affairs
Lawrence Coleman, Vice Provost for Research

Resolution of the Academic Council
Restrictions on Research Funding Sources

Submitted by the University Committee on Research Policy;
Adopted by the Academic Council July 21, 2004

Whereas, Freedom of inquiry is a fundamental principle of the University of California; and

Whereas, The University of California faculty code of conduct requires that "[Professors] respect and defend the free inquiry of associates"; and

Whereas, The University of California policy on academic freedom requires that scholarship be judged solely by reference to professional standards, and that researchers "must form their point of view by applying professional standards of inquiry rather than by succumbing to external and illegitimate incentives such as monetary gain or political coercion"; and

Whereas, The University of California has existing policies that encourage the highest ethical standards in the conduct of research, require disclosure of conflicts of interest, guarantee the freedom of publication, and prevent misuse of the University's name; and

Whereas, Restrictions on accepting research funding from particular sources on the basis of moral or political judgments about the fund source or the propriety of the research, or because of speculations about how the research results might be used, interfere with an individual faculty member's freedom to define and carry out a research program; and

Whereas, No Committee, Faculty, or Division of the Academic Senate of the University of California has the plenary authority either to set aside the principles of academic freedom or to establish policies on the acceptance of research funding; now, therefore, be it

Resolved, That the principles of academic freedom and the policies of the University of California require that individual faculty members be free to accept or refuse research support from any source, consistent with their individual judgment and conscience and with University policy. Therefore, no unit of the University should be directed (by faculty vote or administrative decision) to refuse to process, accept, or administer a research award based on the source of the funds; and no special encumbrances should be placed on a faculty member's ability to solicit or accept awards based on the source of the funds.

UNIVERSITY OF CALIFORNIA ACADEMIC COUNCIL

REPORT OF THE UNIVERSITY COMMITTEE ON RESEARCH POLICY

PROBLEMATIC RESTRICTIVE CLAUSES IN CONTRACTS, GRANTS AND GIFTS FOR RESEARCH

July 9, 2004

ADOPTED BY THE ACADEMIC COUNCIL
July 21, 2004

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EXECUTIVE SUMMARY

Research at the University of California was recognized in a 1970 Regents' resolution as "an indispensable part of the educational process" that makes a "vital contribution to the defense of the United States; the social and community needs of the State of California, and its people; and the health and well-being of all mankind." The academic freedom of the faculty and the constitutional autonomy of the University—the ability to decide what research is done, how it is done, who does it, and how the results are published—are crucial to the quality and credibility of its research, shielding against both real and perceived political pressure and financial influence.

Increasingly, UC and other institutions are being faced with new research funding requirements and restrictions that could compromise their research missions. These new "strings" include, for example, government regulations related to national security and terrorism that limit which staff can work in certain research areas, or that require pre-publication review of research results; attempts by foundations to add "anti-bigotry" language to grant awards; and, from within, votes by the faculty of particular departments and schools to ban funding from the tobacco industry. In 2003, the Academic Council charged the University Committee on Research Policy (UCORP) to take a broad look at these research restrictions, to evaluate how changes in the external and internal environment are affecting the University, to understand how the Senate has been involved in consultation with the Administration to meet these new challenges, particularly in areas where academic freedom may be threatened, and to make recommendations on how policy might be clarified or changed.

We have consulted widely with research and gift administrators at the Office of the President and on the campuses, and with campus Committees on Research. What we have found is encouraging. Except for restrictions associated with national security and with tobacco industry funding, we have not identified areas where new, problematic restrictions proposed by research sponsors have become common. Where problematic restrictions are widespread, particularly in the post-9/11 introductions of prepublication review clauses and citizenship requirements, the Administration has acted in an exemplary fashion, working on its own and with consortia of other research universities to educate policymakers about the value of academic freedom and openness when possible and rejecting external funding when negotiation and education fails. We believe that the Administration is in broad agreement with the Academic Council's recent Resolution on SUTI: Recommendations Regarding Sensitive but Unclassified Technical Information.

UCORP is more troubled by recent attempts by various groups within the University to ban research funding from companies associated with the tobacco industry. While sympathetic with many of the arguments made by proponents of these bans, we believe that they are in the end an unacceptable infringement on academic freedom and a dangerous precedent. Furthermore, we believe no committee of the Senate has policy-making authority that would allow it to restrict

acceptable fund sources. We have unanimously approved a separate resolution on such restrictions, which is also attached to this report.

UCORP makes the following specific recommendations:

- In the interest of academic freedom, institutional autonomy, and the public good, the University must continue to resist problematic research funding restrictions that are in violation of University policies and principles. The Administration should continue to work with government agencies, on its own and through groups such as the AAU, to resist the blurring of the line between classified and unclassified research. The University should be prepared to publicly explain its principled opposition to governmental, corporate, and foundation restrictions that interfere with its institutional autonomy and academic freedom.
- The Academic Senate should be informed by the Administration about new types of research restrictions as they arise and should be consulted in the University's decisions to accept or reject these strings, particularly when decisions will have significant impact on the academic freedom of Senate members. The Senate should also be regularly updated on the progress towards dealing with any new or existing constraints on research.
- As a matter of systemwide concern, the Academic Council should undertake the adoption of a policy to explicitly protect the freedom of faculty members to pursue research areas of their choice and accept research awards from any source, and to clarify that a majority vote of the faculty to restrict research areas or funding sources must not be allowed to override academic freedom.
- There is a need for a systemwide effort to reexamine the *Contract and Grant Manual* for revisions and clarifications. A separate explanatory supplement to the manual, aimed at the faculty and other researchers, would be useful in explaining some of the reasons underlying rules that might seem unnecessary or arcane to a principal investigator.
- Because restrictions on research are often in conflict with academic freedom, it is important that the Divisions, the systemwide Senate, and the Administration establish clear review processes that allow a faculty member a path to appeal a decision by the Administration not to accept particular award language. A system allowing routine "exceptions to policy" is not recommended (except when, as with classified research, the President finds that such an exception is necessary to protect the public interest). However, interpretation of policy will likely continue to be problematic as new examples of problematic restrictive language emerge.
- The UC and campus development offices should be made aware of the concerns that exist regarding problematic research strings and that the policies and principles guiding the University's decisions to accept or reject strings on research grants also apply to gifts awarded to the University

REPORT OF THE UNIVERSITY COMMITTEE ON RESEARCH POLICY

PROBLEMATIC RESTRICTIVE CLAUSES IN CONTRACTS, GRANTS, AND GIFTS FOR RESEARCH

I. INTRODUCTION

Research is a vital component of the overall mission of the University of California. In a 1970 Resolution on Research, the Regents acknowledged the importance of research and its role in the teaching and public service missions of the University. The resolution asserts that research performed by UC faculty is "an indispensable part of the educational process" and makes a "vital contribution to the defense of the United States; the social and community needs of the State of California, and its people; and the health and well-being of all mankind."[1] Increasingly, however, UC and other institutions are being faced with research funding requirements and restrictions that could compromise the research mission of the University.

In response to concerns that arose during the Academic Senate's examination of issues with contracts and grants containing "sensitive but unclassified technical information (SUTI)" language and bans on tobacco funding, the Academic Council issued a charge to the University Committee on Research Policy (UCORP) to broadly review research-funding policies at UC (Appendix A). In response to this charge, UCORP consulted with the faculty and administration, both at the systemwide and campus levels, to identify appropriate and problematic restrictions and requirements (i.e., strings) occurring in contracts and grants for research, as well as the various policies and principles that are currently used to guide the University's decisions to accept or reject these conditions.

II. UC POLICIES AND PRINCIPLES

A. Fundamental Principles: Academic Freedom and Autonomy

The research, teaching, and public service missions of an institution of higher education rest on two fundamental principles: the academic freedom of the faculty and the autonomy of the institution. The University of California is governed by a Board of Regents, which under Article IX, Section 9 of the California Constitution has "full powers of organization and governance" subject only to very specific areas of legislative control. This constitutional autonomy of the University protects the institution's ability to make academic decisions without state or other external interference. The U.S. Supreme Court first recognized an institution's autonomy in academic decisions in the 1957 concurring opinion for *Sweezy v. New Hampshire*:

> It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment, and creation. It is an atmosphere in which there prevail "the four essential freedoms" of a university – to determine for itself on academic grounds who

[1] "Regents Resolution on Research. " *Contract and Grant Manual*, 1-120. 17 Jul 1970. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap01.html#1-120>

may teach, what may be taught, how it shall be taught, and who may be admitted to study.[2]

It is this institutional autonomy that allows the University to protect the academic freedom of its faculty. In an amicus brief filed in *Princeton University v. Schmid*, the AAUP noted that "any direct governmental infringement of the freedom of teaching, learning, and investigation, is an assault upon the autonomy of institutions dedicated to academic freedom…. Freedom of the university is required at certain points in order to protect freedom in the university."[3] Academic freedom enables the University "to advance knowledge and to transmit it effectively to its students and to the public" by protecting the "freedom of inquiry and research, freedom of teaching, and freedom of expression and publication."[4] By protecting the University and its faculty from external interference, institutional autonomy also helps ensure that the research conducted in the University is focused on the public interest as opposed to a sponsor's interests.

B. Policies for Research Awards

The principles of institutional autonomy and academic freedom are the underpinnings of numerous policies restricting and defining conduct of research in the University. The language of these policies provides the initial basis for conduct of research at the University—essentially defining the scope and providing the framework and justification for all research. In a practical sense, these policies define the balance between individual freedom and the defense of other principles. UC's *Contract and Grant Manual*, which is a collection of Regental and Presidential statements, policy memos, and other documents, sets forth systemwide policies for the solicitation, acceptance and administration of awards from extramural sponsors. It is the duty of the research administration officers on each campus to interpret this manual and apply its policies to sponsored project award agreements. This independence grants the campuses the flexibility to agree to specific terms, based on the circumstances of the research, that protect the University's principles while addressing, as well as possible, the needs of the sponsor and principal investigator.

Some of the fundamental guiding policies for research awards outlined in the UC *Contract and Grant Manual* and other institutional resources include:

<u>Publication</u>
The freedom to publish and disseminate research results is a major criterion for determining whether a sponsored project award will be accepted. Normally a contract or grant is unacceptable if it limits this freedom by: assigning to the sponsor ownership of the results; assigning to the sponsor the final decision of what may be published; or placing an unreasonably long or

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[2] *Sweezy v New Hampshire*, 354 U.S. 234 (1957). U.S. Government Printing Office <http://www.access.gpo.gov/su_docs/supcrt/index.html>

[3] Euben, Donna. "Academic Freedom of Individual Professors and Higher Education Institutions: The Current Legal Landscape." May 2002. AAUP <http://www.aaup.org/Com-a/aeuben.HTM>

[4] "Academic Freedom." *General University Policy Regarding Academic Appointees*, APM-010. 29 Sep 2003. UC <http://www.ucop.edu/acadadv/acadpers/apm/apm-010.pdf>

unlimited delay in the publication and dissemination of the results.[5] Various exceptions to these rules are allowed only under certain circumstances.

Classified Research

Although a contract or grant for research to be conducted on a UC campus is unacceptable to the University if it limits the freedom to publish or disseminate results,[6] the federal government has recognized that in certain research areas the public interest precludes open publication; research in these areas is deemed "classified." UC faculty can conduct classified research at off-campus sites, including the UC-managed Los Alamos and Lawrence Livermore National Labs and an off-campus facility of the Scripps Institution of Oceanography. In addition, UC policy permits the UC President to grant an exception to policy to allow classified research to be conducted on a campus, for research that involves vital national security interests and that cannot readily be conducted at the off-campus sites, when the special expertise of UC personnel is required. To the best of our knowledge, no such exceptions have ever been made.

Intellectual Property

Regulations and restrictions related to patent policy involve protection of the University's intellectual property, as well as that of individual faculty and students, and define the balance between the two. Simultaneously, they defend the University's rights within the industrial community, and are a large part of any collaboration or grant contract with an industrial partner. UC's responsibility to manage in the public interest the intellectual property derived from federal research funding was established by Congress in 1980 through the Bayh-Dole Act.[7] The intellectual property policies have been recently reviewed and clarified in "Guidance for Faculty and other Academic Employees on Issues Related to Intellectual Property and Consulting" by the UC Technology Transfer Advisory Committee.[8]

Nondiscrimination

In accordance with state and federal regulations the University maintains a nondiscrimination policy. This policy prohibits discrimination against an individual on the basis of a number of personal factors (e.g., race, gender, ethnicity, age).[9] These prohibitions against discrimination also apply to the selection of participants in research projects.

Private Gifts for Research

The University has identified a number of characteristics to be used to distinguish between whether monies awarded by private donors should be classified and processed as gifts or as

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[5] "Publication Policy and Guidelines on Rights to Results of Extramural Projects or Programs." *Contract and Grant Manual*, 1-400. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap01.html#1-400>

[6] Ibid.

[7] "The Bayh-Dole Act: A Guide to the Law and Implementing Regulations." Oct 1999. Council on Governmental Relations <http://www.cogr.edu/docs/Bayh_Dole.pdf> or <http://www.ucop.edu/ott/bayh.html>

[8] "Guidance for Faculty and Other Academic Employees on Issues Related to Intellectual Property and Consulting." 3 Mar 2003. UC Office of Technology Transfer <http://www.ucop.edu/ott/pdf/consult.pdf>

[9] "Nondiscrimination/Affirmative Action." *Contract and Grant Manual*, chap. 14. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap14.html>

grants.[10] In general, private awards that contain special contractual requirements, terms allowing the revoking of funds, or special requirements and conditions that direct the research project should be classified as research grants rather than gifts. Regardless of whether an award is designated as a gift or grant, it is subject to the research review process and the administrative rules and procedures that apply to all University funds.

Solicitation and Acceptance of Funding

The right to solicit funding for research is strictly controlled by current University policy. Awards are made to the corporation known as "The Regents of the University of California," not to an individual researcher, and therefore any commitments accepted under awards are the commitments of the corporation.[11] The Standing Orders of the Regents authorize the President to solicit and accept or execute research proposals and awards, with stated exceptions.[12] The President has delegated this authority to the Senior Vice President–Business and Finance, Vice President–Agriculture and Natural Resources, the Director of Federal Governmental Relations, Chancellors, and Laboratory Directors who have, in turn, delegated their authority, with varying levels and limitations, to the appropriate Vice Chancellors, Deans, Directors, and Contract and Grant Officers.[13] The right to accept grants is similarly controlled.[14]

III. TYPES OF RESTRICTIONS AND REQUIREMENTS

UCORP has identified several different types of restrictions and requirements (strings) occurring in contracts and grants for research and categorized them according to their source and area of impact. Strings are not solely a sponsor-imposed phenomenon, but may also be mandated by law or University policy. UCORP has identified two external and one internal source of research restrictions and requirements:

- Government. Federal and state laws and regulations.
- Sponsor. Contractual terms imposed by sponsors, including corporate, foundation, and government agency sponsors.
- University. Administrative policies that originate within and are exclusive to the institution.

[10] "Distinguishing Between Private Gifts and Grants for Research." *Contract and Grant Manual*, 9-500. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap09.html#9-500> and "Is it a Gift or a Private Grant?" *Development Policy and Administration Manual*, chap. III – Gift Administration Policy. UC <http://www.ucop.edu/ucophome/policies/devpol/dpa3d.html>

[11] "Corporate Status." *Contract and Grant Manual*, 13-200. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap13.html - 13-200>

[12] "Duties of the President of the University." *Standing Orders of the Regents*, 100-4. UC Regents http://www.universityofcalifornia.edu/regents/bylaws/so1004.html

[13] "Solicitation Authority." *Contract and Grant Manual*, 2-200. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap02.html#2-200>

[14] "Authority to Accept Awards." *Contract and Grant Manual*, 2-610. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap02.html#2-610>

As shown in Table 1, research constraints from these three sources can impact scholars, research, and the university in different areas.

- Conduct of Research. Provisions that seek to limit the way in which the research is conducted.
- Research Results. Provisions that seek to limit the content, release, or ownership of research results.
- Behavior of the Institution. Provisions that seek to limit the activities and behavior of the institution and investigators.

TABLE 1. TYPES OF RESEARCH STRINGS BY SOURCE AND IMPACT

Sources		Conduct of Research	Research Results	Behavior of Institution
EXTERNAL	**Government**	▪ Drug free workplace ▪ Select agent rules ▪ Citizenship restrictions ▪ Human subjects ▪ Animal welfare and use ▪ Environmental health and safety ▪ Records retention ▪ Embargoed countries	▪ Classification ▪ ITAR, EAR and other export controls ▪ Digital Millennium Copyright Act (DMCA)	▪ Classification ▪ Restricted materials (e.g., special nuclear material, illegal drugs) ▪ Obscenity laws (e.g., Indiana & Kinsey Inst)
	Sponsor	▪ Research to be carried out by designated personnel ▪ Right of audit ▪ Confidentiality and trade secrets ▪ Affirmative action ▪ Citizenship restrictions ▪ Background checks or prior approval of staff ▪ Indemnification and liability	▪ Prepublication review/restriction ▪ Patent rights ▪ Copyright ▪ Ownership of results ▪ Non-disclosure of Sponsor's proprietary data ▪ Sensitive but Unclassified Technical Information (SUTI)	▪ Ban on institutional funding by tobacco companies ▪ Ban on funding from sponsor's competitors ▪ Endowed chairs with donor appointment controls ▪ Restricted archive or collection access
INTERNAL	**University**	▪ Conflict of interest ▪ Treatment of students ▪ Treatment of human subjects ▪ Animal welfare and use ▪ Payment of overhead costs ▪ Ownership of notebooks ▪ Right to submit proposals ▪ Non-discrimination	▪ Patent rights ▪ Right of publication ▪ Use of University name in advertising	▪ Refusal of funding sources ▪ Limitations on defense related research ▪ Refusal of purely commercial research ▪ Institutional review boards

Note: This table contains selected representative examples of research strings, some of only historical importance. It should not be considered a comprehensive list.

It is important to emphasize that many special provisions and terms in research contracts and grants are not particularly troublesome to the University or the faculty. For example, it is a standard requirement in many contracts and grants for there to be a prepublication review period, a request that is consistent with UC policy as long as the terms do not "give the sponsoring agency the right to prevent, for an unreasonable or unlimited time, the release for publication in the open literature, or the release in some other manner, of the results of the work performed."[15] Limited delays in publication are also commonly accepted in multi-site research projects for data coordination and review purposes. Many restrictions protect the public interest, the University, and the investigator. The University has established environmental health and safety policies and procedures that dictate the ways in which certain types of research (e.g., research that utilizes carcinogenic, etiologic or radioactive agents) can be conducted.[16] These policies and procedures exist to ensure the University's compliance with applicable laws and regulations and to maintain a safe environment for students, faculty, staff, and others. Likewise, a number of conditions apply to the conduct of research projects that use human or animal subjects.[17]

These types of provisions in contracts and grants are generally considered reasonable and consistent with UC policy. Although they result in "restrictions," they also uphold principles that lie behind numerous rights available to the public and academic community. There are other constraints on research, however, that are considered troublesome and in opposition to accepted policies and principles. For the purposes of its examination of research "strings," UCORP has focused its attention on these problematic constraints that sponsors and others, both within the university and without, have sought to impose.

A. Externally-Imposed Problematic Strings

Sponsor-imposed strings impact university research in a variety of different ways. These terms can appear in every stage of the sponsored project awards process, from language in the Requests for Proposals and proposal application forms, to clauses in award documents. The following sections provide examples of common sponsor-imposed restrictions and requirements on the conduct of research, the ownership and publication rights of research results, and the behavior of the institution. The University's decisions to reject or accept these constraints are guided by various established policies and principles, as described above.

<u>Conduct of Research</u>

Citizenship restrictions, background check requirements, and conditions permitting the sponsor's approval of research staff are examples of sponsor-imposed provisions on the conduct of research that are increasingly appearing in award language. These provisions erode the University's autonomy, which protects the institution from external interference and influence in the performance of its fundamental missions. Permitting a sponsor to manipulate a study's

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[15] "Presidential Policy Statement on Restrictions on Rights to Publish or Disseminate Information Resulting from Work Under Sponsored Projects." *Contract and Grant Manual*, 1-420. 3 Aug 1970. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap01.html#1-420>

[16] "Environmental Health and Safety." *Contract and Grant Manual*, chap. 3. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap03.html>

[17] "Protection of Research Subjects." *Contract and Grant Manual*, chap. 18. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap18.html>

protocols is a clear threat to both the quality and credibility of a research program. But even external interference with the University's ability to assign the most appropriate and best qualified personnel to a project, can detract from the quality of the research. In 1988, the Council of Chancellors sustained the following rationale for opposing citizenship requirements for participation in sponsored projects: "It is expected that University researchers will be selected for participation on projects on the basis of merit and ability to contribute to the research project…. To allow an external sponsor to dictate irrelevant criteria, such as the requirement that employees be U.S. citizens, which are unrelated to research objectives, interferes with the quality of research."[18] Besides this basic principle that research abilities should be the determining factor for selecting an individual to participate in a project, it is also a violation of federal and state laws, as is outlined in UC's "Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment,"[19] to engage in discrimination against any person on the basis of race, national origin, citizenship, or a variety of other personal factors.

Many sponsors may not realize that it is a violation of UC policy as well as federal and state laws and regulations for the University to release citizenship, nationality or country of origin information to any entity other than the U.S. Citizenship and Immigration Services (formerly the INS), the Department of Labor, or except when otherwise required by law. UC's newly published Contract and Grant Operating Guidance Memo No. 04-02 outlines these applicable laws and policies and provides guidelines for how to respond to sponsor requests for citizenship information.[20] Requirements for background checks also involve the release of personal information (e.g., birth date, citizenship, home address, social security number, income tax withholding) that is protected under the Federal Privacy Act[21] and the California Information Practices Act.[22] As outlined in UC Business and Finance Bulletin RMP-8, "Legal Requirements on Privacy of and Access to Information," the University cannot disclose any personal information "in a manner that would link the information disclosed to the individual to whom it pertains" unless it meets the conditions of disclosure under the state and federal laws.[23]

Research Results

When the University accepts contract terms that control its ownership of and right to publish research results, it grants a sponsor the ability to interfere with the University's fundamental mission "to discover knowledge and to disseminate it to its students and to society at large."[24]

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[18] "Acceptance of Funds Restricted to U.S. Citizens." Contract and Grant Operating and Guidance Memo, No. 90-03. 12 Feb 1990. UC Research Administration Office <http://www.ucop.edu/raohome/cgmemos/90-03.html>

[19] "Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment." 1 Jan 2004. UC <http://www.ucop.edu/ucophome/coordrev/policy/12-18-03NondiscriminationEmployment-academic-staff.pdf>

[20] "Provision of Information on Citizenship, Visa Status, Nationality or Country of Origin: Federal and State Law and Regulation," Contract and Grant Operating Guidance Memo, No. 04-02. 19 Apr 2004. UC Research Administration Office <http://www.ucop.edu/raohome/cgmemos/04-02.htm>

[21] *Privacy Act of 1974*, 5 U.S.C. § 552a. U.S. Department of Justice <http://www.usdoj.gov/foia/privstat.htm>

[22] *Information Practices Act of 1977*, California Civil Code, secs. 1798-1798.78. California Department of Consumer Affairs <http://www.privacy.ca.gov/code/ipa.htm>

[23] "Legal Requirements on Privacy of and Access to Information." Business and Finance Bulletin RMP-8. 1 Jul 1992. UC <http://www.ucop.edu/ucophome/policies/bfb/rmp8.html>

[24] "Academic Freedom." *General University Policy Regarding Academic Appointees*, APM-010. 29 Sep 2003. UC <http://www.ucop.edu/acadadv/acadpers/apm/apm-010.pdf>

The experience of one faculty member, UCSF Professor Betty Dong, illustrates the complications that can arise from accepting publication restrictions. In 1988, a pharmaceutical company offered to sponsor a research project in which Dong would compare generic thyroid medications to the company's brand name counterpart. The contract agreed to by the University allowed the company to authorize publication of the research results. Dong's subsequent research findings indicated that the generic drugs were bioequivalent and could be substituted for the brand name drug, a result that was potentially unprofitable for the company. For six years the sponsor blocked any efforts by Dong to publish the study until finally, under pressure from the Food and Drug Administration and others, the sponsor agreed to allow publication. As a result of Dong's ordeal, State Senator Quentin Kopp sponsored Senate Concurrent Resolution (SCR) No. 66, which was adopted by the legislature in 1996 and calls on California's colleges and universities to refuse "gag" clauses in postsecondary academic research.[25]

As documented in a recent report of a joint Association of American Universities (AAU) and Council on Governmental Relations (COGR) task force, federal agencies are increasingly including controls on the dissemination of research results in their sponsored contracts and grants.[26] For example, some sponsors are demanding the right to review research findings with the option to bar publication of results that are deemed to involve sensitive information, even when the information is not classified. These terms are contrary to various federal policies on "fundamental research" (defined as "basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community..."). National Security Decision Directive 189 (NSDD 189) prohibits federal agencies from posing restrictions on the conduct of or reporting of the results from unclassified fundamental research.[27] Projects in which publication restrictions are allowed, whether sponsored by the government or industry, are also excluded from the safe-harbor provision for fundamental research under federal export control regulations; therefore, a researcher could be required to obtain an export license before sharing "technical data" with a foreign national, either inside or outside of the U.S.[28] Violation of these export control regulations can result in serious civil and criminal penalties for the researcher and the University.

Behavior of the Institution

Foundations and corporate sponsors are increasingly seeking to influence the behavior of the institutions and researchers they sponsor through research awards, including both gifts and grants. Some have sought to prohibit the University and its scholars from receiving funds from particular sources. For example, a research contract may include a clause that constrains the principal investigator from receiving funding from other sponsors to conduct similar research.

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[25] "Postsecondary education: academic research: "gag" clauses." 1995-96 sess., S.C.R. 66. California Legislative Counsel <ftp://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_0051-0100/scr_66_bill_960911_chaptered.html>

[26] "Report of the AAU/COGR Task Force on Restrictions on Research Awards: Troublesome Clauses." 8 Apr 2004. AAU <http://www.aau.edu/research/Rpt4.8.04.pdf>

[27] "National Policy on the Transfer of Scientific, Technical and Engineering Information," National Security Decision Directive 189. 21 Sep 1985. Federation of American Scientists <http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm>

[28] For more information on federal export control regulations, see "Sending Items or Conducting Research Abroad? Important Notice on Federal Licensing Requirements." *The Senate Source*. April 2004. UC Academic Senate <http://www.universityofcalifornia.edu/senate/news/source/source2_4app.pdf>

Similarly, provisions in a sponsored research award may restrict the grantee organization, including all of its researchers, from accepting funding from sources in conflict with the sponsor's objectives (e.g., award clauses from anti-tobacco foundations that restrict the institution from accepting funding from tobacco-related companies). These provisions impede academic freedom by effectively limiting a researcher's ability to seek various avenues of funding and pursue certain research topics, and they limit the University's autonomy.

Other sponsor-imposed conditions seek to limit the behavior of the institution and its affiliations with entities or individuals that engage in certain types of activities. Recently one foundation began adding new language to their standard grant agreement that states, "By countersigning this grant letter, you agree that your organization will not promote or engage in violence, terrorism, bigotry or the destruction of any state, nor will it make sub-grants to any entity that engages in these activities." According to the memorandum from the foundation explaining this new grant policy, "This prohibition applies to all of the organization's funds, not just those provided through a grant from [the foundation]." A similar clause from another foundation states that grant recipients must not "directly or indirectly engage in, promote or support other organizations or individuals who engage in or promote terrorist activity." These anti-terrorism clauses are also likely to occur in gift agreements from these foundations. Although on their face such clauses may seem acceptable, the interpretation and application of sponsor-imposed conditions such as these can interfere with the University's commitment to uphold and preserve the principles of academic freedom, which include "freedom of inquiry and research, freedom of teaching, and freedom of expression and publication."[29] Particularly troublesome is the question of how words such as bigotry are defined, and who will define them.

B. Controls Imposed from Within

Because of its Constitutional autonomy, the University itself defines appropriate research topics, types of research, and many aspects of the way in which the research is carried. Research controls originating from within the University generally fall into one of the following categories:

- University policies developed around basic principles of a public research institution.
- University policies developed in response to laws (federal or state).
- Self-imposed restrictions.

Principles of a Public Research Institution

Most frequently, internal strings based on the fundamental principles of the University have the practical effect of leading the University to reject contracts, grants or gifts that violate these principles and cannot be renegotiated. As an example, the University will not accept an award with a prepublication approval clause, even if the principal investigator is personally willing to accept the clause. This undoubtedly can be a limitation on an individual's ability to conduct a chosen research program, but the defense of the principle in question is for the greater public good and that of the faculty as a whole. Similarly, except in very limited situations, University

[29] "Academic Freedom." *General University Policy Regarding Academic Appointees*, APM-010. 29 Sep 2003. UC <http://www.ucop.edu/acadadv/acadpers/apm/apm-010.pdf>

policy bars use of the University's facilities to perform research of a purely commercial nature or routine tasks of a commonplace type that can be done by industrial or governmental labs; as stated by President Sproul in 1958, service to outside organizations is justified only if "it gives the individual experience and knowledge of value to his teaching or research; it is suitable research through which the individual may make worthy contributions to knowledge; or it is appropriate public service."[30]

The University also imposes strings in order to maintain the integrity of the institution, its reputation, and the credibility of its research results. One example is policy related to conflict of interest. This is most often thought of in monetary terms, and is addressed as such in the *Contract and Grant Manual*, as well as additional policy statements (such as Business and Finance Bulletin G-39, "Conflict of Interest Policy and Compendium of Specialized University Policies, Guidelines, and Regulations Related to Conflict of Interest"[31]). However, conflicts of interest can also arise based on, for example, scientific interest or political principles. Financial conflicts of interest are addressed through required disclosure of interests submitted before any contract is accepted. Less tangible conflicts of interest are not currently addressed as specifically, but are covered under the more general guidelines for faculty conduct: "Faculty may not engage in any activity that places them in a conflict of interest between their official University activities and any other interests or obligations."[32]

Compliance with Federal Regulations

A large portion of UC policies affecting the conduct of research relate to complying with regulations in federal and state law, as well as with assurances required by federal and state agencies to be submitted with grant proposals. The details of these regulations are variable over time, and between agencies. The UC *Contract and Grant Manual* discusses these regulations and includes a list of regulations frequently cited in contracts and grants.[33]

Examples of internal strings that the University has created to defend the ability to conduct research openly within the constraints of the law include:

- Classified Research. The University has addressed the conflict between academic freedom and national security by declining to perform any research on the main campuses that qualifies as classified (see page 5).
- Export Control. The existing policies governing the types of research appropriate for being conducted under the auspices of the University serve the dual purpose of ensuring that the research falls under the exception to export control regulations that is granted to "fundamental research" and published material (see page 10).

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[30] "University Regulation Series No. 4 – Special Services to Individuals and Organizations." 23 Jun 1958. UC Presidential Policies <http://www.ucop.edu/ucophome/coordrev/policy/regulation4.html>

[31] "Conflict of Interest Policy and Compendium of Specialized University Policies, Guidelines, and Regulations Related to Conflict of Interest." *Business and Finance Bulletin G-39.* 18 Jun 2002. UC <http://www.ucop.edu/ucophome/policies/bfb/g39.pdf>

[32] "Guidelines on University-Industry Relations." *Contract and Grant Manual*, 1-340. UC Research Administration Office <http://www.ucop.edu/raohome/cgmanual/chap01.html#1-340>

[33] "Federal Laws and Regulations Applicable to Federally-Sponsored Research Grants." *Contract and Grant Manual*, 2-F10. UC Research Administration Office http://www.ucop.edu/raohome/cgmanual/chap02.html#2-F10

- Institutional Review Boards. To assure that research is conducted in compliance with federal, state and University policies and regulations, proposals for research that include human subjects or the use of animals must first be reviewed and approved by a campus's Human Subjects Institutional Review Board or Animal Research Committee.

Other Self-Imposed Restrictions

There has been a recent trend nationally for faculty in medical schools and in schools of public health to establish departmental or school policy restricting the acceptance of research funding from tobacco industry and tobacco industry affiliated sources. These restrictive policies are self-imposed by faculty vote and vary in language; some go so far as to specify prohibited funding sources by name. The explicit motivation for these resolutions is the well-established public health liability associated with tobacco use and the well-documented history of tobacco industry manipulation of research findings to suit its own agenda. These resolutions are also responsive to the constraints that external fund sources, specifically the American Legacy Foundation, have attempted to impose on recipients of their funding. At the time of this writing, within the University of California system the UC Berkeley School of Public Health, the UCSF Comprehensive Cancer Center, and the UC San Diego Department of Family and Preventive Medicine have passed resolutions restricting funding from tobacco industry sources. A UCSF petition to the Chancellor requesting a tobacco funding prohibition generated a nearly split vote, and the UCSF School of Nursing is currently considering a resolution of its own.

Because these self-imposed restrictions are considered by UCORP to be antithetical to freedom of inquiry and other aspects of academic freedom, in June 2004 UCORP developed and unanimously supported the following resolution (see Appendix C for the complete resolution):

> *Resolved*, That the principles of academic freedom and the policies of the University of California require that individual faculty members be free to accept or refuse research support from any source, consistent with their individual judgment and conscience and with University policy. Therefore, no unit of the University should be directed (by faculty vote or administrative decision) to refuse to process, accept, or administer a research award based on the source of the funds; and no special encumbrances should be placed on a faculty member's ability to solicit or accept awards based on the source of the funds.

We emphasize that UCORP's concerns in this area are with attempts by faculty to establish policies on acceptable funding sources that would limit the academic freedom of their colleagues. We strongly support the right of individual faculty members and groups of faculty to make public statements of principle and to individually pledge not to participate in particular research fields or to accept funding from particular sources.

IV. CURRENT CLIMATE

To inform this report, UCORP formally requested information from the Vice Chancellors for Research (VCRs) and Divisional Senate Committees on Research (CORs) in order to evaluate the current climate for sponsored project awards at UC (Appendix B). The committee also conferred at length with our consultants from the UCOP Office of Research, Vice Provost Lawrence Coleman and Director Ellen Auriti, as well as a panel of invited guests: David Mears,

Director, Research Administration Office (UCOP); Barbara Yoder, Research Administrator–Policy Development, Research Administration Office (UCOP); Joyce Freedman, Assistant Vice Chancellor, Research Administration and Compliance (Berkeley); Brad Barber, Assistant Vice President, Institutional Advancement (UCOP); and Geoff O'Neill, University Counsel (UCOP). In addition, UCORP members met informally with their campus research administration officers and faculty members to discuss the issues and obtain further firsthand information about problematic research strings occurring in contracts and grants. The responses generated as a result of the committee's queries confirm that restrictive clauses and requirements are not a new phenomenon in contract and grant awards. The information and responses obtained also indicate that there has been an increase in certain types of strings in recent years, namely in areas related to homeland security and risk management.

Homeland Security

Campuses reported that homeland security concerns in the post-9/11 era resulted in a significant increase in the number of federally sponsored awards containing restrictive clauses, usually Sensitive but Unclassified Technical Information (SUTI) language and prohibitions on hiring foreign nationals. Contracts and grants offices have found that even though federal agency officials and members of the current Administration have reaffirmed[34] the important distinctions between classified and unclassified research outlined in NSDD 189, in practice, lower-level federal contract officers often include these terms in award language for fundamental research. In addition to the federal agencies, campuses reported that industry sponsors with federal awards also have been including similar problematic restrictive clauses in subcontracts to the University.

Risk Management

Corporate sponsors are increasingly demanding privileged rights when negotiating research contracts with the University. Common requests involve ownership rights of inventions resulting from sponsored research, exclusive or royalty-free licensing arrangements, and constraints preventing the principal investigator from accepting funding from federal agencies or other private sponsors for similar work. One campus noted a correlation between the state of the economy and certain types of contractual requests from corporate sponsors. When the economy took a downturn, companies more aggressively pursued contract terms that would effectively lower their financial risks (e.g., fixing the price of patent licenses resulting from the research; setting funding termination options if the research does not progress as anticipated or the results are not what they anticipated). Several campuses also reported that industry sponsors were increasingly including provisions in their contracts that limit their liability for any intentional or negligent acts related to the conduct or results of the sponsored research, such as suits following from a research finding that a product design was flawed.

UC Responses

UC's research administration officers invest a considerable amount of time negotiating problematic language out of award agreements—a process that can create significant time delays for a research project. These efforts to negotiate acceptable award language have generally been successful; however, when a resolution cannot be reached, the University has chosen to walk

[34] Condoleeza Rice, National Security Advisor, to Harold Brown, Co-Chairman, Center for Strategic & International Studies. 1 Nov 2001. AAU <http://www.aau.edu/research/Rice11.1.01.html>

away from the contract. Recently one UC campus declined two awards totaling nearly $500,000 after two months of unsuccessful negotiations with the corporate sponsor to eliminate publication and citizenship restrictions from the contract terms. Another campus reported having unsuccessful deliberations with the administration and general counsel of a federal agency to remove an award provision that granted the agency the right to review and approve research papers prior to publication. The University also declined the annual renewal of a foundation-sponsored research grant totaling $500,000 because it contained language constraining any UC faculty member, not just the principal investigator, from accepting funding from tobacco-affiliated companies. At this time, negotiations are continuing with several foundations that have inserted anti-terrorism and anti-bigotry language in grant awards that the University believes is unacceptable.

The Academic Senate and UC leadership have worked aggressively, often in conjunction with other universities and organizations, to resist pressures to permit problematic restrictive clauses in sponsored awards. On November 24, 2003 the Academic Council adopted the "Academic Council Resolution on SUTI: Recommendations Regarding Sensitive but Unclassified Technical Information," a resolution which was originally conceived and drafted by UCORP. This three-part resolution calls on:

1. The UC President to express to the public, to policy-making and advisory bodies, and to elected officials, the importance of freedom of research and the importance of clarity in policies on classified research;
2. The University to renegotiate any sponsored research awards that include requirements such as prepublication review for sensitive but unclassified information, or that forbid access to research activities or research results by any University of California student or employee for reasons of citizenship, national origin, or ancestry; and
3. The University to treat research awards containing prepublication review by federal agencies, or restrictions on research personnel or publication of research results in the open literature, as if they were for classified research, and should accept such awards only under the existing University policies governing classified research.[35]

The University administration has been supportive of the Academic Council's SUTI recommendations. In a letter responding to the resolution, UC President Robert Dynes expressed his commitment to fight against restrictive award clauses that undermine the University's open research environment.[36] In continuing efforts to advocate for the removal of troublesome contract clauses from research awards, Vice Provost for Research Lawrence Coleman and other members of the UC leadership actively voice concerns about research constraints in their communications with officials from federal agencies, foundations and other sponsors.

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[35] "Academic Council Resolution on SUTI: Recommendations Regarding Sensitive but Unclassified Technical Information." 24 Nov 2003. UC Academic Senate <http://www.universityofcalifornia.edu/senate/committees/ucorp/suti_resolution.pdf>

[36] Robert Dynes, University of California President, to Lawrence Pitts, Academic Council Chair. 23 Jan 2004. UC Academic Senate <http://www.universityofcalifornia.edu/senate/committees/ucorp/suti_presresponse.pdf>

V. NATIONAL RESPONSES

The University of California is not alone in its efforts to examine and respond to concerns about research funding strings. In 2002 an MIT *ad hoc* Faculty Committee on Access to and Disclosure of Scientific Information, led by former Air Force Secretary and Professor Sheila Widnall, issued a widely distributed report "In the Public Interest."[37] Concerns about restrictions on the conduct and results of research prompted the Presidents of the National Academies to issue a joint statement citing the need for "an appropriate balance between scientific openness and restrictions."[38] Similar concerns also led the House Committee on Science to convene a hearing, at which Provost (then UCSC Chancellor) MRC Greenwood testified on "Conducting Research During the War on Terrorism: Balancing Openness and Security."[39] Recently, a joint Association of American Universities (AAU) and Council on Governmental Relations (COGR) Task Force on Restrictions on Research Awards and Troublesome Research Clauses transmitted its final report and recommendations to John Marburger, Director of the Office of Science and Technology Policy (OSTP).[40] This task force identified troublesome research clauses through solicitation of examples from 20 public and private institutions, including UCB and UCSD. COGR, in conjunction with MIT, is also currently maintaining a list of contract clauses reported by universities that contain restrictions on information release and foreign nationals.[41]

After some university administrations and faculty senates had elected to ban acceptance of research funds from tobacco-affiliated sponsors, the AAUP's Committee A issued a statement, "Academic Freedom and Rejection of Research Funds from Tobacco Corporations," to warn against the dangers of universities objecting to funding agencies because of their "offensive corporate behavior." Similar to the resolution authored by UCORP (page 13), Committee A argued that:

> Denying a faculty member the opportunity to receive research funding for such reasons would curtail that individual's academic freedom no less than if the university acted directly to halt research that it considers unpalatable. Also inconsistent with academic freedom …is a policy under which a funding agency conditions acceptance of its money on the university's rejecting funds from tobacco corporations.[42]

In response to the new anti-terrorism clauses that were added to some foundations' standard award agreements, the provosts of nine universities – Chicago, Columbia, Cornell, Harvard,

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[37] "In the Public Interest: Report of the Ad Hoc Faculty Committee on Access to and Disclosure of Scientific Information." 12 Jun 2002. MIT <http://web.mit.edu/faculty/reports/publicinterest.pdf>

[38] Alberts, Bruce, William Wulf, and Harvey Fineberg. *Statement on Science and Security in an Age of Terrorism*. 18 Oct 2002. National Academies <http://www4.nationalacademies.org/news.nsf/isbn/s10182002b?OpenDocument>

[39] House Committee on Science, *Hearing on Conducting Research During the War on Terrorism: Balancing Openness and Security*, 107th Cong., 2nd sess., 10 Oct 2002. <http://www.house.gov/science/hearings/full02/>

[40] "Report of the AAU/COGR Task Force on Restrictions on Research Awards: Troublesome Clauses." 8 Apr 2004. AAU <http://www.aau.edu/research/Rpt4.8.04.pdf>

[41] Powell, Paul, Julie Norris, and Robert Hardy. "Selected Troublesome/Unacceptable Clauses Related to Information Release and Foreign Nationals." MIT<http://web.mit.edu/osp/www/Troublesome Clauses4.doc>

[42] "Academic Freedom and Rejection of Research Funds from Tobacco Corporations." *Report of Committee A 2002-03*. AAUP <http://www.aaup.org/Com-a/a03am.htm>

MIT, Pennsylvania, Princeton, Stanford and Yale – recently cosigned letters to two organizations to challenge these new policies.[43] Similar to UC's ongoing negotiations with foundations that insert anti-terrorism language into awards (see page 11), the letters expressed concerns that the new anti-terrorism policies would infringe upon academic freedom and because of their vagueness, could be interpreted broadly to include political or cultural activities on the campuses, such as partisan lectures or exhibits.

VI. CONCLUSIONS AND RECOMMENDATIONS

UCORP commends the Administration for their efforts to maintain the University's open research environment. UCORP believes that the basic policies and practices currently in place are essentially correct and that they empower the Administration to protect the fundamental principles and mission of the University.

There are a few areas that will require continued attention. One is citizenship. Official University policy that bars discrimination on the basis of citizenship is clear, but heightened post-9/11 scrutiny of foreign nationals is pressing against this policy in various ways. There are already some inconsistencies in the application of University policy. For example, citing the government's human resource development needs, the University does allow student and postdoctoral fellowship and traineeship support from programs limited to U.S. citizens. The relationship of the University and the UC National Laboratories also introduces the potential for citizenship-related difficulties arising in collaborative lab-campus research and educational partnerships.

Citizenship can be particularly problematic in research on so-called select chemical and biological agents and, potentially, in sensitive but unclassified research. The University has not yet established a uniform policy on select-agent research. Some campuses have no such research currently, and have not established any policy. UCB has explicitly acted to bar such research from campus. The Academic Council has recommended that research awards with restrictions on research personnel, including select agent research, be treated as classified research and barred from the campuses, but this is not yet University policy.

UCORP recommends the following actions:

- In the interest of freedom, institutional autonomy, and the public good, the University must continue to resist problematic research funding restrictions that are in violation of University policies and principles. The Administration should continue to work with government agencies, on its own and through groups such as the AAU, to resist the blurring of the line between classified and unclassified research. The University should be prepared to publicly explain its principled opposition to governmental, corporate, and foundation restrictions that interfere with its institutional autonomy and academic freedom.

[43] Stout, Erin. "University Provosts ask 2 Big Foundations to Rethink Antiterrorism Provisions in Grants." *The Chronicle of Higher Education*. 5 May 2004. <http://chronicle.com/prm/daily/2004/05/2004050501n.htm>

- The Academic Senate should be informed by the Administration about new types of research restrictions as they arise and should be consulted in the University's decisions to accept or reject these strings, particularly when decisions will have significant impact on the academic freedom of Senate members. The Senate should also be regularly updated on the progress towards dealing with any new or existing constraints on research.
- As a matter of systemwide concern, the Academic Council should undertake the adoption of a policy to explicitly protect the freedom of faculty members to pursue research areas of their choice and accept research awards from any source, and to clarify that a majority vote of the faculty to restrict research areas or funding sources must not be allowed to override academic freedom.
- There is a need for a systemwide effort to reexamine the *Contract and Grant Manual* for revisions and clarifications. A separate explanatory supplement to the manual, aimed at the faculty and other researchers, would be useful in explaining some of the reasons underlying rules that might seem unnecessary or arcane to a principal investigator.
- Because restrictions on research are often in conflict with academic freedom, it is important that the Divisions, the systemwide Senate, and the Administration establish clear review processes that allow a faculty member a path to appeal a decision by the Administration not to accept particular award language. A system allowing routine "exceptions to policy" is not recommended (except when, as with classified research, the President finds that such an exception is necessary to protect the public interest). However, interpretation of policy will likely continue to be problematic as new examples of problematic restrictive language emerge.
- The UC and campus development offices should be made aware of the concerns that exist regarding problematic research strings and that the policies and principles guiding the University's decisions to accept or reject strings on research grants also apply to gifts awarded to the University.

APPENDIX A. UCORP Research Funding Strings Charge

Office of the Chair
Telephone: (510) 987-0711
Fax: (510) 763-0309
Email: gayle.binion@ucop.edu

Assembly of the Academic Senate, Academic Council
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

July 21, 2003

To: Darrell Long, UCORP Chair
From: Gayle Binion, Academic Council Chair
Re: Research Funding

Dear Darrell:

As you have probably heard from Jan Ingham, the issue of banning tobacco funding at UC was brought up and discussed briefly at last month's Council meeting. The outcome was to commit the review of UC's stance on this matter to UCORP, along with a broader charge to review research-funding policies at UC. While the matter that has given rise to the questions concerning research funding has been "tobacco money" in myriad contexts, so many related questions, not specific to tobacco, have been asked that a thorough Senate review would be advisable. I do understand that UCORP has a subcommittee interested in undertaking this important task.

As you and Jan know from previous emails on the subject, some of the questions UCORP might explore are the following:

1. How are decisions made on each campus with respect to interpreting the grant/contracting "rules"?
2. Where/how is the Academic Senate consulted?
3. When are rules "waived" and by whom? Are there patterns of "waiver"? Are these written or codified? When can waivers be done at the campus level vs. systemwide, and how is this decided?
4. What are the "default" basic rules on restrictions within grants: What are the "categories" (e.g. pre-publication review, eschewing other funding sources, etc.)?
5. Where is there a lack of clarity in "the rules?" Should the manuals be revised? Should decision-making processes be revisited?
6. Should UC allow units to eschew funds from particular sources? If so, what level of unit and under what circumstances? How should academic freedom questions enter this arena?
7. Where are the problems with respect to maintaining top-quality, credible research at UC that relate to funding? Where is conflict of interest a problem or potentially a problem.... Are there new policies that ought to be considered by the Senate/administration?

I know that this may be a rather daunting list of questions.

Please let me know if you have any questions on this.

Thanks so much.

cc: Academic Council
Kimberly Peterson, Committee Analyst

APPENDIX B. UCORP Letter to Vice Chancellors for Research

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTA CRUZ

UNIVERSITY COMMITTEE ON RESEARCH POLICY (UCORP)
Janis Ingham, Chair
jcingham@speech.ucsb.edu

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

March 16, 2004

VICE CHANCELLORS FOR RESEARCH

Re: Research Strings Information Request

Dear Vice Chancellors for Research:
At the request of the Academic Council, the University Committee on Research Policy (UCORP) has established a subcommittee to consider the general question of "strings" attached to research contracts and grants. The request was motivated by recent discussions over restrictive language requiring prepublication review for "sensitive but unclassified" information, and certain restrictions in some corporate and foundation grants for tobacco and pharmaceutical research, but our intent is to study the problem more broadly.

By their nature, strings tie the investigator, other researchers, or the University in some way, restricting academic freedom. Some strings are required for conformance with the law (equal opportunity, drug free workplace, etc.). Some satisfy the wishes of the funding agency (e.g., right of first refusal for patent licenses). In a few cases, faculty have sought to impose strings on themselves and their colleagues (e.g., barring research funding from tobacco companies). But the academic freedom questions are complex. Just as strings limit freedom, barring a faculty member from accepting strings in grants and contracts can be a limitation on the freedom to effectively carry out research of his or her choice.

Our question is whether we can find a set of general principles that are useful for the administration and the Senate to consider when weighing the harm that comes with accepting restrictive language in grants and contracts against the harm that comes from rejecting research funding. Such principles would be useful to both the administration and the Senate when considering policies and amendments to the Contract and Grant Manual, and for clarifying the circumstances when exceptions to policy might be considered (since it is already clear that there will not always be a bright line between acceptable and unacceptable language).

Through individual cases that have come to UCORP and the Academic Council, we have some understanding of the problems in certain research areas. We would like to broaden our discussion, to get a better idea of how the existing C&G Manual is working on the campuses. We would appreciate hearing from you on two points in particular:

1) Have you noticed existing problem areas, in either policy or practice? We are particularly interested in policies that are not well defined, or areas in which exceptions to policy have become common.

2) Are there any emerging patterns in proposed contract language, especially where the language is becoming more problematic (e.g., with prepublication review or citizenship clauses)?

Enclosed with this letter is an example of the type of information we are assembling and a suggested template for your response. To be most useful to us, replies should be sent by April 9th to the UCORP Committee Analyst:

Kimberly Peterson, UCORP Analyst
Systemwide Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200
Phone: (510) 987-9466
Fax: (510) 763-0309
Email: Kimberly.Peterson@ucop.edu

Thank you for your assistance.

Sincerely,

Janis Ingham, Chair
UCORP

Encl: 2
cc: Lawrence Pitts, Academic Senate Chair
Maria Bertero-Barcelo, Academic Senate Executive Director

EXAMPLE

[Excerpt from Association of American Universities (AAU) Report, "Problematic Research Clauses and University Responses," June 2003]

Institution: University of Minnesota

Federal Agency Involved: DOD – Ballistic Missile Defense Program

Other Institutions or Companies Involved: Battelle Memorial Institute

Type of Problem: Combination publication restriction and foreign national

Amount Involved: $40,000 **Contract, Subcontract or Grant:** Subcontract

Problematic Language: "The Government Sponsor recognizes the University Researcher's desire to publish results per University policy…However, this desire to publish does not abrogate the Government's responsibility to protect sensitive or critical technology…The Government Sponsor will assess the submitted material for public release and provide the Researcher with the appropriate distribution statement required within 45 days. The distribution statement depends on inclusion of…sensitive technical information… The Government Sponsor will give due consideration to other reasons for limiting release. Both the University and the Sponsor will negotiation agreements, on a case-by-case basis, to allow dissemination of results consistent with the needs of the Government's interest and the Researcher's desires."

University Policy: Publication restrictions, in general, violate the University of Minnesota Regents Policy on Research Secrecy. Under this language, the right to publish the results of fundamental research without restriction becomes a mere "desire," and publication clearly would yield to any "responsibility" a government censor might feel to block a release. In negotiations attempting to revise this language, Battelle personnel freely characterized the government's power as a right to censorship.

Background: The University was already involved with a research project funded by the Ballistic Missile Defense Agency (BMDA), for which Battelle was the prime contractor. The principal researcher was a non-resident graduate student (national of Mexico, but whose career goal is to become a US astronaut). In spring 2001, the university received a letter authorizing up to an additional $40,000 of work to be done while the subcontract for the second phase was being finalized. In July 2001, however, Battelle forwarded publication language which was more restrictive than the previous contract's language and which violated the University's Research Secrecy Policy.

Action Taken by University: The University responded to this language by immediately ceasing all work under the contract. Efforts to negotiate an acceptable version under which work could resume dragged on for many months and were not successful. Thus, one outcome was termination of important work prior to completion, although the University finally did receive payment for the work done. However, the case was not resolved until September 2002, approximately 1.5 years after the work had begun.

Impact: If the university had accepted restrictions on publication, the work would not longer have qualified as fundamental research and it would have been subject to ITAR. As a result, the university concluded that it would have been illegal for the graduate student to have continued with her own research, and perhaps to have been doing the research in the first place. Also, discontinuation of this research meant the graduate student could not pursue this work as a thesis project.

TEMPLATE

UCORP Research Restrictions Survey of UC Campuses, March 2004	
UC Campus:	
Sponsor:	
Type of Problem:	
Amount Involved:	
Contract, Subcontract or Grant:	
Problematic Language:	
University Policy:	
Background:	
Action Taken by University:	
Impact:	

APPENDIX C. UCORP Resolution, Restrictions on Research Funding Sources

Resolution of the University Committee on Research Policy
Restrictions on Research Funding Sources
July 2, 2004

Whereas, Freedom of inquiry is a fundamental principle of the University of California; and

Whereas, The University of California faculty code of conduct requires that "[Professors] respect and defend the free inquiry of associates"; and

Whereas, The University of California policy on academic freedom requires that scholarship be judged solely by reference to professional standards, and that researchers "must form their point of view by applying professional standards of inquiry rather than by succumbing to external and illegitimate incentives such as monetary gain or political coercion"; and

Whereas, The University of California has existing policies that encourage the highest ethical standards in the conduct of research, require disclosure of conflicts of interest, guarantee the freedom of publication, and prevent misuse of the University's name; and

Whereas, Restrictions on accepting research funding from particular sources on the basis of moral or political judgments about the fund source or the propriety of the research, or because of speculations about how the research results might be used, interfere with an individual faculty member's freedom to define and carry out a research program; and

Whereas, No Committee, Faculty, or Division of the Academic Senate of the University of California has the plenary authority either to set aside the principles of academic freedom or to establish policies on the acceptance of research funding; now, therefore, be it

Resolved, That the principles of academic freedom and the policies of the University of California require that individual faculty members be free to accept or refuse research support from any source, consistent with their individual judgment and conscience and with University policy. Therefore, no unit of the University should be directed (by faculty vote or administrative decision) to refuse to process, accept, or administer a research award based on the source of the funds; and no special encumbrances should be placed on a faculty member's ability to solicit or accept awards based on the source of the funds.

APPENDIX D. Membership of the University Committee on Research Policy, 2003-04

Janis Ingham, *Chair*
Speech & Hearing Science
University of California, Santa Barbara

Max Neiman, *Vice Chair*
Political Science
University of California, Riverside

Stephen Thorsett, S*trings Subcommittee Chair*
Astronomy & Astrophysics
University of California, Santa Cruz

George Sensabaugh
Public Health
University of California, Berkeley

James Murray
Animal Science
University of California, Davis

Walter Fitch
Ecology & Evolutionary Biology
University of California, Irvine

Hans Schollhammer
Anderson School of Management
University of California, Los Angeles

Roland Winston
Natural Sciences
University of California, Merced

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