

**ENSURING FULL EQUALITY IN BENEFITS FOR**

**UC EMPLOYEES WITH DOMESTIC PARTNERS**

**UNIVERSITY COMMITTEE ON FACULTY WELFARE**

**ACADEMIC SENATE**

**UNIVERSITY OF CALIFORNIA**

**JUNE 11, 1999**

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## Recommendations:

UCFW recommends that the Academic Council reaffirm its position that the University should

- Provide health insurance benefits to opposite-sex domestic partners of University employees
- Provide pension benefits to employees and their domestic partners on the same basis as it provides them to employees and their spouses.

## Summary of the Current Situation:

Employees with domestic partners (DPs), whether of the same or opposite sex, have a pressing need to ensure that their partners have adequate health insurance and that they are provided for in retirement. In this respect, the needs of employees with domestic partners are the same as those of married employees.

In November 1997, the Regents of the University of California approved the extension of University health benefits<sup>1</sup> to Same-Sex Domestic Partners (SSDPs) of employees, as well as to certain Adult Dependent Relatives<sup>2</sup> (ADRs) of employees. In order to qualify for health benefits, SSDPs must be involved in a long-term relationship of mutual support and caring, and must assume serious mutual financial obligations for each other's welfare.

As of May 1999, approximately 730 SSDPs have been enrolled; approximately 15 children or grandchildren of SSDPs have also been signed up. Under IRS regulations, the University contribution to the cost of health insurance for the DP is considered taxable income to the employee unless the DP meets the rather stringent requirements to be a tax dependent of the employee.

The Regents' action implemented a portion of recommendations of the Academic Council dating back to 1994. The Academic Council had recommended providing health benefits to Opposite-Sex Domestic Partners (OSDPs) as well as SSDPs of employees. Furthermore, it had recommended providing the same pension benefits

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<sup>1</sup> Medical, dental and vision care insurance were included.

<sup>2</sup> Generally, tax dependents of the employee who were too closely related to the employee to be eligible to marry the employee under California law.

to both same- and opposite-sex Domestic Partners (DPs) as are currently provided to spouses.

UCFW recommends that the Academic Council reaffirm its position that the University should

- Provide health insurance benefits to opposite-sex domestic partners of University employees
- Provide pension benefits to employees and their domestic partners on the same basis as it provides them to employees and their spouses

#### Definition of Domestic Partner:

In this document, we propose extending health and pension benefits to domestic partners who satisfy the following criteria:<sup>3</sup>

- Each is the other's sole domestic partner and intends to remain so indefinitely. The partners are in a relationship of mutual support, caring, and commitment. They are financially interdependent.
- Neither partner is legally married, and they are not related by blood to a degree of closeness which would prohibit legal marriage in the State of California.
- They are at least 18 years of age and have the capacity to enter into a contract.
- They have resided together for at least 6 months and intend to reside together indefinitely.
- It has been at least 6 months since either of the partners has submitted the appropriate form notifying UC of the termination of a previous Affidavit of Domestic Partnership or Adult Dependent Relative Relationship.

Financial interdependence is demonstrated by submitting at least three of the following items:

- joint mortgage or joint tenancy on a residential lease;
- joint bank account;
- joint liabilities, i.e. credit cards or car loans;
- joint ownership of significant property; e.g., cars;

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<sup>3</sup> These are exactly the criteria that SSDPs must currently satisfy in order to qualify for UC health benefits, except that SSDPs must in addition be of the same sex.

- durable property or health care powers of attorney;
- wills, life insurance policies or retirement annuities naming each other as primary beneficiaries; or
- written agreements or contracts regarding the relationship showing mutual support obligations or joint ownership of assets acquired during the relationship.

### University of California Nondiscrimination Policy:

The University of California declares, in probably hundreds of public documents, its commitment not to discriminate on the basis of sexual orientation or marital status. The Regents' action in extending health benefits to SSDPs was an important step in implementing this policy.

However, the continued denial of health benefits to OSDPs, and the denial of equal pension benefits to all employees with DPs, is a glaring omission. If the University's nondiscrimination policy means anything, it must mean the provision of equal benefits to employees who are similarly situated. For five years, the Academic Council has urged the University to live up to the spirit of its nondiscrimination policy and provide the same benefits to employees with domestic partners that it provides to employees with spouses. It is time for the University to complete the actions begun in November 1997, and fully implement its nondiscrimination policy.

### Summary of Current Treatment of Domestic Partners in the University of California Retirement System (UCRS):

Currently, UCRS provides more favorable treatment to employees with spouses than it provides to employees with DPs in four respects:

1. UCRS provides a free continuation benefit<sup>4</sup> to the spouse of a retiree; if the retiree dies before the spouse, the spouse continues to receive the continuation benefit for the rest of his or her life. If an employee wishes to provide the same

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<sup>4</sup> For employees coordinated with Social Security, the free spousal continuation benefit is 25% of the employee's pension; for employees not coordinated with Social Security, the free spousal continuation benefit is 50%.

continuation benefit to a DP, the employee must pay for it by accepting a reduced pension.<sup>5</sup> In a typical example, a retiree with a spouse would receive a pension 7.9% higher than a retiree with a DP. If the spouse or DP were significantly younger than the retiree, the discrepancy would be greater.

2. If an employee with a spouse dies prior to retirement, but while “eligible to retire<sup>6</sup>,” the spouse receives very favorable treatment. The spouse receives a pension as if the employee had retired, elected to provide a 100% continuation benefit to the spouse, and then died. By contrast, the DP of an employee in this situation receives only a return of the employee’s contributions (of which there have been none since November 1, 1990), plus interest at 6%; in most cases, this will amount to less than one year’s worth of the pension a spouse would receive.
3. If an employee dies prior to becoming eligible to retire, an “eligible spouse” is entitled to certain salary continuation benefits. By contrast, the DP of an employee would receive only a return of the employee’s contributions, plus interest.
4. SSDPs of active employees and retirees are currently eligible for health benefits. SSDPs may continue these benefits after the death of the employee or retiree, but only if they receive a continuation or survivor pension benefit from UCRS. In the event an employee dies before retirement, there is no way currently for an SSDP to receive a monthly pension benefit from UCRS, and hence the SSDP always loses health coverage if the employee dies before retirement. If an employee is contemplating retirement, the only way the employee can assure his/her SSDP lifetime health coverage is to accept a

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<sup>5</sup> Although public pension plans, including UCRS, are not governed by the federal Employment Retirement Income Security Act (ERISA), UCRS nevertheless has adopted a number of provisions of ERISA. Specifically, UCRS provides a continuation benefit of at least 50% of the employee’s pension after the death of the employee unless the spouse waives this in writing. ERISA authorizes ERISA-regulated plans to make an actuarial reduction in the employee’s pension to compensate for this spousal continuation benefit. UCRS provides a continuation benefit to spouses (50% for employees not coordinated with Social Security, 25% for employees coordinated with Social Security) without making this actuarial adjustment.

<sup>6</sup> Generally, an employee is “eligible to retire” if the employee is at least age 50 and has at least 5 years of service credit.

reduced pension in order to obtain a continuation benefit. In both situations, spouses receive free continuation and survivor benefits, ensuring lifetime health coverage.

In the next four subsections, we elaborate on how UCRS handles each of these four situations.

### *1. Free Continuation Benefit to Spouses of Retirees:*

UCRS allows each retiree to designate *any other individual* as a contingent annuitant; the designation is made at the time of retirement and is irrevocable.<sup>7</sup> In the event that the employee died before the contingent annuitant, the contingent annuitant would receive a specified percentage of the employee's pension until the contingent annuitant died. An employee with a DP is free to name the DP as contingent annuitant.

Following the lead of ERISA, for married retirees, UCRS provides at least a 50% continuation to the spouse unless the spouse waives the continuation benefit in writing. ERISA specifically authorizes ERISA-regulated plans to make an actuarial reduction in the retiree's pension to compensate for this spousal continuation benefit. UCRS voluntarily provides a spousal continuation benefit *for free* to married retirees. For employees who are not coordinated with Social Security, UCRS provides a free 50% continuation benefit; for employees who are coordinated with Social Security, UCRS provides a free 25% continuation benefit.<sup>8</sup>

If an employee designates a DP as contingent annuitant at retirement, UCRS *does* make an actuarial reduction in the employee's pension. Four examples from the UCRS summary plan descriptions make clear the magnitude of the difference.

The examples consider a employee who is 60 years old with 20 years of service, and whose spouse or domestic partner is also 60 years old. It is assumed that the employee's highest average paid compensation (HAPC) is \$4133 per month if the

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<sup>7</sup> This follows the provisions of ERISA for ERISA-regulated plans.

<sup>8</sup> Thus, unless the spouse consents in writing, a married retiree who is coordinated with Social Security must accept an actuarial reduction in pension to raise the continuation benefit from the free 25% level to the 50% level.

employee is coordinated with Social Security, and \$4000 per month if the employee is not coordinated with Social Security; in both cases, this would lead to a basic retirement income of \$1928 per month if the employee did not elect to provide any continuation benefit. The following table shows what the employee's pension would be if the employee wanted to ensure a 100% continuation to a spouse or domestic partner<sup>9</sup>:

Without Social Security		With Social Security	
Spouse	Domestic Partner	Spouse	Domestic Partner
\$1,795	\$1,663	\$1,729	\$1,663

In the case without Social Security, the pension of the employee with a spouse is 7.9% higher than the pension of the employee with a DP. The disparity would be substantially greater if the spouse or domestic partner were significantly younger than the employee.

## *2. Employees Who Die While Eligible to Retire:*

An employee is eligible to retire if he or she is at least 50 years old and has at least five years of service credit.<sup>10</sup> If a married employee who is eligible to retire dies, the spouse receives a pension computed as if the employee had retired, chosen a 100% continuation benefit for the spouse, and then died. If an employee who is eligible to retire dies, and that employee has a DP, the DP receives only a return of the employee's contributions, plus interest; no pension is paid, and the DP receives no benefit from the University's contributions to UCRS on behalf of the employee.

Once again, we consider a employee who is 60 years old with 20 years of service, and whose spouse or domestic partner is also 60 years old. It is assumed that the

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<sup>9</sup>*University of California Retirement Plan Summary Plan Description (for Members with Social Security)*, July 1997, Examples 5 and 7 (pages 39-40); and *University of California Retirement Plan Summary Plan Description (for Members without Social Security)*, November 1997, Examples 4 and 6 (pages 37-38).

<sup>10</sup> Employees who were UCRP members prior to July 1, 1989 are also eligible to retire if they are at least 62 years of age, regardless of service credit.

employee’s highest average paid compensation (HAPC) is \$4133 per month if the employee is coordinated with Social Security, and \$4000 per month if the employee is not coordinated with Social Security. If the employee dies while eligible to retire, the following monthly pensions would be payable for the lifetime of the surviving spouse and domestic partner:

Without Social Security		With Social Security	
Spouse	Domestic Partner	Spouse	Domestic Partner
\$1,795	\$0	\$1,729	\$0

*3. Employees Who Die Before Becoming Eligible to Retire:*

In the event that an employee dies before retirement and has an “eligible spouse”<sup>11</sup> or other “eligible dependent,” the dependent receives a survivor income amounting to 25% of the employee's final salary, whether or not the employee has Social Security; a domestic partner receives nothing. If the employee does not have Social Security, the survivor income can be up to 50% of the employee's final salary if the employee had more than one eligible survivor.

Stepchildren of the employee [i.e. children of the spouse] are considered eligible children if they meet the other eligibility criteria; however, children of a domestic partner are not considered stepchildren and are thus not eligible for the survivor benefit unless the employee has taken steps formally to adopt them. While it is sometimes possible for an individual to adopt the children of his or her domestic partner, the process is at best cumbersome and at worst impossible. Thus, even if a lesbian employee and her domestic partner had made a joint decision that the partner would conceive a child, and they raised it jointly, it is unlikely that the employee would have established a legal adoptive arrangement. Equalizing the benefit would require broadening the definition of “eligible child” to include the children of the domestic partner along with stepchildren.

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<sup>11</sup> An eligible spouse is a person who was the employee’s spouse at least one year before the member’s death, and who is either (1) responsible for the care of an “eligible child” of the employee, (2) disabled, or (3) at least 60 years of age.



#### *4. The Link Between UCRS Benefits and Annuitant Health Benefits:*

When an employee or retiree dies, the spouse is eligible to receive lifetime health benefits provided that the spouse continues to receive monthly UCRS continuation or survivor benefits. These benefits are provided automatically, and at no cost, to virtually all spouses who survive the employee; consequently, spouses are eligible to receive lifetime health benefits.

The Regents' action extended health benefits to SSDPs of employees and retirees. These benefits may also be continued after the death of the employee or retiree, but only if the SSDP continues to receive monthly continuation or survivor benefits from UCRS.

However, there is no way for the SSDP to receive survivor benefits if the employee dies before retirement. As noted above, while a spouse in most cases automatically receives a survivor benefit, even a DP who is the employee's UCRS beneficiary receives only a refund of the employee's contributions; since no monthly survivor benefit is paid, the DP loses eligibility for health benefits on the death of the employee.

When a retiree dies, the retiree's SSDP is eligible to continue health benefits, but only if the SSDP receives a monthly UCRS continuation benefit. Since the spouse of the retiree is eligible for a free continuation benefit, without a reduction in the employee's salary, virtually all spouses of retirees will qualify for lifetime health benefits. But in order to assure an SSDP lifetime health benefits, a retiree must accept a reduced pension. Because, as discussed below, the treatment of DPs for the purposes of gift and estate tax is less favorable than the treatment of spouses, it may be undesirable for DPs to accept reduced pensions in order to provide each other with reciprocal continuation benefits. Accordingly, many employees with DPs contemplating retirement will be forced to choose between incurring a substantial estate tax liability and leaving the DP without health benefits after the employee's death. Even in cases in which the estate tax considerations are not relevant, the employee still must accept a reduced pension in order to provide lifetime health benefits to an SSDP, when these benefits are provided for free to a spouse.

Thus, equalizing UCRS pension benefits to DPs is a prerequisite to fully equalizing health benefits to DPs.

### Tax Considerations in DP Pension Benefits:

Because spouses are entitled to an unlimited deduction for gift and estate tax purposes, there are no adverse tax consequences to designating a spouse to receive either the free continuation benefit or a continuation benefit “paid for” by an employee deciding at the time of retirement to accept a reduced pension.

However, DPs are not entitled to the same gift and estate tax deduction. The actuarial present value of an annuity that continues to a DP after the death of an employee is included in the taxable estate of the employee. Thus the actuarial present value at the time of the death of the employee of any free continuation benefit provided to a DP would be included in the taxable estate. Since the designation of a contingent annuitant is irrevocable at the time of the employee’s retirement, it appears that the actuarial present value of the contingent annuity provided to anyone other than the spouse would be considered a taxable gift at the time of designation, requiring the filing of a gift tax return in the likely event that the value exceeded \$10,000.<sup>12</sup> In particular, a joint decision by DPs that both would accept reduced pensions in order to provide a continuation benefit for whichever partner survived the other would be very unwise in many circumstances. For this reason, at the time employees designate a DP to receive either survivor or contingent annuitant benefits, they should be warned of possible gift and estate tax considerations, and strongly encouraged to consult a qualified tax adviser.

Because of the less favorable gift and estate tax treatment afforded to DPs, the changes we are recommending provide a lesser benefit to employees with DPs than is provided to employees with spouses. We feel that it is not UC’s responsibility to make up for the inequitable treatment of DPs under the tax laws; that responsibility lies with Congress. In the same way, it would not be appropriate for UC to impose any requirements on employees with DPs that federal law imposes only on employees with spouses. In particular, it would not be appropriate for UC to require

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<sup>12</sup> In particular, a gift tax return would have to be filed and the value of the contingent annuity would be included in the employee’s taxable estate, even if the employee outlived the contingent annuitant and thus the contingent annuitant ultimately received no benefits from the annuity.

that employees with DPs provide at least a 50% continuation benefit to their DPs unless the DP waived that right, as is the case for employees with spouses.

### Equalization of Pension Benefits:

The procedures used by UC to enroll SSDPs for health benefits provide a good model for enrollment of DPs for pension benefits. The employee and his/her DP should be required to submit an affidavit and documentation attesting to their financial interdependence using the same criteria that are used for qualification for health benefits.<sup>13</sup>

However, the provision of pension benefits presents a complication that does not arise in the case of health benefits. Many DPs of UC employees have adequate health insurance on their own, typically through employment. Because there are adverse tax consequences to enrolling the DP in UC health insurance, the employee and DP may decide not to enroll the partner, secure in the knowledge that the DP can be enrolled in a subsequent open enrollment should s/he lose his/her employment-based health insurance. Similarly, when an employee retires, the employee and DP can make an informed decision on whether to designate the DP for a continuation benefit and how large the continuation benefit should be, based on the financial status of the employee and DP and considerations of income tax and gift and estate tax.

However, a key component of UCRS is survivor benefits in the event an employee dies before retirement. The death may come suddenly and without warning, preventing the enrollment of the spouse; even if there is advance warning of the impending death, many employees might not realize that enrollment is required to ensure that the spouse receives survivor benefits. For these reasons, UCRS provides benefits to spouses and certain other dependents of employees who die before retirement, without requiring any prior enrollment.

The same problems apply to employees with DPs. In addition, many employees are confused about the effect of designating a DP or other person as their UCRS beneficiary, believing that doing so provides the DP with the same benefits provided

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<sup>13</sup> Of course, the requirement that the partner be of the same sex would need to be dropped to allow coverage of OSDPs.

to a spouse. As noted above, the benefits provided to the non-spouse beneficiary of an employee who dies prior to retirement are much less than those provided to a spouse. For these reasons, a procedure needs to be developed to provide pension benefits to DPs of employees who die prior to retirement without requiring prior enrolment.

In order to provide parallel survivor coverage, we recommend that DPs of employees who die prior to retirement qualify for UCRS coverage on the same basis as spouses provided they meet one or both of the following criteria:

- The employee and DP have filed an affidavit with UCRS documenting the domestic partnership and the employee and DP still meet the enrollment criteria as of the date of the employee's death. The affidavit should ideally be part of the same form used to designate a UCRS beneficiary. If a separate form is used, the beneficiary designation form needs to be revised to alert employees who have DPs that designation of the DP as the UCRS beneficiary is not sufficient to ensure full benefits to the DP, and directing the employee to the DP enrollment form. In order to ensure widespread notification of current employees with DPs, a special enrollment form should be mailed to all employees notifying them of the opportunity to enroll a DP for survivor benefits. In order to ensure widespread notification of employees who acquire DPs in the future, the annual open enrollment material materials sent to all employees should contain information about enrolling DPs for survivor benefits. As noted above, the enrollment forms should warn the employee and his/her DP of the potential for adverse gift and estate tax consequences and strongly encourage them to consult a qualified tax adviser.
- At the time of the employee's death, the DP is enrolled as the employee's DP in one or more insurance programs (health, dental or vision) provided by UC. There should be a procedure for the DP to renounce his/her claim to the survivor benefit, in the event of adverse gift and estate tax consequences.

As is currently the case with health benefits, children of the spouse of the employee and children of the DP of the employee should be treated as if they were children of the employee.

## Termination of Domestic Partnerships:

When a married couple obtains a divorce in California, the California divorce court issues an order dividing the parties' community property, as well as establishing alimony and child support, if any. Pension rights earned by a spouse during the term of the marriage are ordinarily community property; the court's judgment specifies how these pension rights should be divided. A copy of the judgment is served on the UCRS administration, which follows the instructions with regard to the division of UCRS benefits. Following UCRS, we shall refer to the judgment as a Qualified Domestic Relations Order (QDRO).<sup>14</sup>

However, pension rights need not be part of the community property. Before marriage, couples in California may sign a premarital agreement modifying or eliminating community property rights. Moreover, even if pension rights are treated as community property, the QDRO will not necessarily partition these pension rights, if an equal division of the aggregate community property can be made without doing so. Thus, some divorces result in the partition of UCRS pension rights, while other divorces do not.

Just as some marriages end in divorce, some domestic partnerships are terminated. California domestic partners are free to assume mutual obligations of support (analogous to alimony) or of joint ownership of property acquired during the partnership (analogous to community property). Under the *Marvin* decision, these obligations are enforceable by the California courts. In particular, a court could order the division of UCRS pension rights earned during the partnership. In such a situation, a court order dividing the pension entitlement would be served on the UCRS administration, in exactly the same way as a QDRO is currently served. If domestic partners had not assumed such a community property obligation, or if the property division did not require partition of pension rights, then no court order would be served on the UCRS administration. Thus, some domestic partnership terminations will result in the partition of UCRS pension rights, while other terminations will not.

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<sup>14</sup> QDRO is a term in ERISA. Since UCRS is not regulated under ERISA, the court's order is not technically a QDRO. However, the UCRS Summary Plan Descriptions refer to these orders as QDROs, and we follow UCRS here.

In most marriages, community property provisions apply; in a minority of marriages, community property obligations are waived by a premarital agreement. In most domestic partnerships, community property provisions do not apply; in a minority of domestic partnerships, community property obligations are established by a *Marvin* contract. QDRO's resulting from divorces will be much more numerous than *Marvin* orders resulting from the termination of domestic partnerships; however, the two situations which prevail with regard to pension rights in divorces also prevail with regard to pension rights in domestic partnership terminations.

### Pension Benefits for ADRs:

At the time the Regents adopted health insurance benefits for SSDPs, they also adopted health insurance benefits for certain ADRs. Approximately 46% of the cost of the program to provide health benefits to SSDPs and ADRs is attributable to the inclusion of ADRs. Because ADRs could include children or even grandchildren of employees, and the cost of providing survivor and continuation benefits is considerably larger if the recipient is much younger than the employee, it is quite possible that the providing pension benefits to ADRs would be much more expensive than providing pension benefits to SSDPs. It is even possible that providing pension benefits to ADRs would be more expensive than providing them to all DPs. For this reason, we recommend against providing a free continuation benefit to ADRs as a class. This would not preclude providing survivor income to children of employees who die prior to retirement if those children are eligible under the current criteria. These criteria are relatively restrictive, but are sufficiently broad to provide survivor income in most of the cases of compelling need.<sup>15</sup> On the other hand, the current criteria exclude all grandchildren and those children who cannot demonstrate compelling need; since routinely providing this coverage to children and grandchildren would likely be very expensive, we feel that limiting the benefit to a small number of demonstrable hardship cases is justifiable and appropriate.

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<sup>15</sup> For example, if a child becomes disabled prior to age 18, and received at least 50% support from the employee for one year prior to the employee's death, disability or retirement (whichever occurred first), the child would be eligible to receive the survivor continuation benefit after the death of the employee and his/her spouse.

As noted above, we also recommend that children of the spouse or DP of the employee be eligible for survivor benefits on the same basis as children of the employee.

#### Cost Estimates for Equalizing Pension Benefits:

At the request of UCOP, Towers Perrin estimated in 1997 the cost of alternative policies for equalizing UCRS pension benefits. They found that equalizing benefits to SSDPs only would raise the normal cost of providing UCRS benefits by 0.29—0.57%.<sup>16</sup> They found that equalizing benefits to all DPs, both same- and opposite-sex, would raise the normal cost by 0.57% —1.00%.<sup>17</sup> Because UCRS has a large actuarial surplus, no employer or employee contributions have been made to fund the Defined Benefit Plan since November 1, 1990. For the foreseeable future, equalizing pension benefits to employees with DPs would not require any increase in plan contributions from the University or its employees.

There would also be a one-time increase in the liabilities of the plan of from 36.7—73.5 million dollars for SSDPs, and from 73.5—122.5 million dollars for both same- and opposite-sex DPs. These costs represent benefits attributable to past service. Since UCRS currently has a surplus of \$14.1 billion<sup>18</sup>, the one-time cost estimates range from 0.26% to 0.87% of the surplus.

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<sup>16</sup> Normal cost of funding the UCRP defined benefit plan is 13.98% of pay. Towers Perrin estimated that normal cost would rise to 14.02—14.06% of pay, an increase of 1.9—3.8 million dollars per year.

<sup>17</sup> Towers Perrin estimated that normal cost would rise from 13.98% of pay to 14.06—14.12% of pay, an increase of 3.8—6.6 million dollars per year.

<sup>18</sup> *University of California Retirement System Annual Report, Year Ended June 30, 1998*. As of June 30, 1998, the fair market value (FMV) of UCRS Defined Benefit Plan assets was \$34.7 billion, exceeding the Actuarial Accrued Liability (AAL) of \$20.6 billion by \$14.1 billion; FMV was 168.4% of AAL. UCRS also values assets by a more conservative method called Adjusted Market Value Method (AMVM) that takes capital gains into account over a period of several years. Even by this more conservative standard, assets (measured by AMVM) exceeded liabilities (measured by AAL) by \$6.5 billion; AMVM amounted to 131.6% of AAL. The continued strong performance of the stock market in the 1998-99 fiscal year to date suggests that the surplus is now even greater. Moreover, as the capital

## The Competitive Rationale for Equalizing Pension Benefits for Employees with DPs:

Most American universities provide a defined contribution plan, in which the employer and employee make set contributions; the investment performance determines the size of the pension the employee receives at retirement.<sup>19</sup> In defined contribution plans, federal law guarantees a retiring employee the right to designate any other individual to receive a continuation benefit if the employee dies before the individual; the employee pays for this continuation benefit by accepting an actuarial reduction in the amount of the pension. The amount of the actuarial reduction depends on the ages of the employee and the designated individual. All designated individuals are treated equally, without regard to any marital relationship to the employee. Thus, most American universities do not discriminate between spouses and domestic partners when it comes to pension benefits.

UCOP reported to the Regents in 1997 that four of the eight comparison universities—Stanford, Harvard, SUNY Buffalo and MIT—provide domestic partner pension benefits. That information is incomplete. The pension plans at Michigan and Yale are defined contribution plans, with TIAA/CREF as a vendor. TIAA-CREF confirms that any other individual, including a domestic partner, can be enrolled for continuation benefits on exactly the same basis as a spouse. Thus, *six* of the eight comparison universities treat spouses and DPs identically. Virginia allows faculty to opt out of the Virginia Retirement System and instead have university and employee contributions go into a defined contribution plan for which TIAA/CREF is a vendor. Illinois allows employees to opt out of their “Traditional Benefit Package” plan (a Defined Benefit Plan) and enroll instead in their “Self-Managed Plan,” a Defined Contribution Plan which treats spouses and DPs identically. Thus, six of the eight comparison universities treat spouses and DPs identically, and the remaining two comparison universities offer employees

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gains of the last several years are fully reflected in AMVM, the surplus will rise unless the market declines sharply.

<sup>19</sup>These are typically provided by Teachers’ Insurance and Annuity Association—College Retirement Equities Fund (TIAA—CREF).



the choice of at least one pension plan which provides pension benefits to DPs on the same basis as spouses.

The City and County of San Francisco, one of the few employers which used to discriminate in favor of spouses in its defined benefit pension plan in much the same way as UC, adopted a charter amendment by vote of the people in November 1994 equalizing pension benefits.

#### Cost Estimates for Providing Health Benefits to Opposite-Sex Domestic Partners:

In 1997, UCOP estimated that providing health benefits to SSDPs alone would result in annual costs of \$1.2-4.9 million, while providing health benefits to both SSDPs and OSDPs would result in annual costs of \$9.9-19.8 million. The actual cost of providing health benefits to SSDPs is now approximately \$990,000 annually. This gives good reason to hope that the cost of providing benefits to both OSDPs and SSDPs will be at or below the bottom of the estimate range, or less than \$10 million annually. If this is the case, the incremental cost of providing coverage to OSDPs should be about \$9 million or less annually. Notice also that this would indicate that 90% of the cost would be attributed to OSDPs, at the upper end of the range of plausibility; if, more plausibly, 80% of the cost were attributable to OSDPs, this would indicate a total cost of \$5 million, and an incremental cost of \$4 million. Thus, there is reason to hope that the incremental cost of providing health benefits to OSDPs would be substantially less than \$9 million annually.

#### The Competitive Rationale for Providing Health Benefits for OSDPs:

In order to recruit and retain outstanding faculty and staff, the University of California must provide a competitive package of salary and benefits. Today, a competitive package necessarily includes benefits for the domestic partners of employees.

While the lack of opposite-sex domestic partner coverage poses difficulties in both recruiting and retaining faculty, it is on the recruitment side that these difficulties are particularly acute. In a domestic partnership, responsibility for medical costs that are not covered by insurance places the employee at considerable financial risk if the partner does not have health insurance. Virtually all scholars accepting faculty positions at UC must relocate, typically from out of state. Accordingly, the

spouse or domestic partner must leave his/her current employment, with the resulting loss of health insurance coverage. A spouse can obtain coverage from UC. An opposite-sex domestic partner, however, may well be unable to obtain health insurance coverage<sup>20</sup> on any terms until he or she obtains employment in California. Even then, the job may not provide health insurance, or the insurance provided may contain pre-existing conditions exclusions. Thus, in many cases, the domestic partner will not have access to adequate health insurance *at any price*. This poses a severe impediment to recruiting faculty with opposite-sex domestic partners, even faculty currently at institutions that do *not* provide opposite-sex domestic partner health benefits.

For most staff positions, the relevant competition is not universities nationwide but California employers, especially those in the public sector. A large number of these competing employers currently provide health insurance to the opposite-sex domestic partners of their employees. California public entities providing opposite-sex domestic partner health insurance include the Bay Area Rapid Transit District (BART), City of Berkeley, City of Oakland, City of Los Angeles, County of Los Angeles, Los Angeles Police Department, Los Angeles Unified School District, City of San Diego, City and County of San Francisco, City of Santa Cruz, and the City of West Hollywood. It is particularly noteworthy that many of the public employers just mentioned contain, or are near, five UC campuses: UCB, UCLA, UCSC, UCSD, and UCSF. Thus, many UC employees currently have alternative public sector employment options which provide health insurance coverage to both opposite-sex and same-sex domestic partners. If UC does not meet this competition, it will face increasing difficulty in recruiting and retaining outstanding nonacademic staff employees.

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<sup>20</sup>The partner could exercise his/her COBRA rights to continue coverage of his/her existing insurance, at his/her own expense. However, this would be of little benefit if, as is increasingly likely, the partner is enrolled in a Health Maintenance Organization (HMO) or Preferred Provider Organization (PPO), since HMOs and PPOs provide coverage through geographically limited networks of doctors and hospitals.

## Statewide DP Registry:

In late May, both the California Assembly and Senate passed bills establishing statewide DP registries. Assembly Bill 26 was passed by the Assembly on May 27, and is currently pending in the Senate. It provides for a statewide registry of (both opposite-sex and same-sex) DPs, establishes hospital visitation rights, and requires health insurers to offer domestic partner coverage if requested by any employer. Senate Bill 75 was passed the Senate on May 25 and is currently pending in the Assembly. It provides for a statewide registry of (both opposite-sex and same-sex) DPs, establishes hospital visitation rights, and amends state law on conservatorship and inheritance to recognize domestic partnerships. The definitions of domestic partnership are slightly different in the two bills. Assuming a statewide DP registry is established, it would likely be preferable to base both health insurance enrolment and pension eligibility exclusively on registered DP status, in the same way that marriage is used. In particular, UC could require that a DP registration certificate be submitted in the same situations in which UC requires married individuals to submit a marriage certificate. In this situation, there would be no reason for UC to require that DPs execute a UC-provided affidavit of domestic partnership to qualify for either health or pension benefits. However, the informational material for UCRS would need to specify clearly that one must be legally married or a *registered* DP in order to qualify for the full benefits. In particular, the designation of beneficiary form would have to clearly indicate that the employee's beneficiary receives substantially smaller benefits than those provided to the employee's spouse or *registered* DP.

Both bills permit OSDPs as well as SSDPs to register. If such a registry is established by the state, it strengthens the argument for including OSDPs in UC's benefit plans in the same way that SSDPs are currently covered.