UNIVERSITY OF CALIFORNIA ACADEMIC SENATE

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

Chair, Academic Council and Assembly of the Academic Senate
Telephone: (510) 987-0711
Fax: (510) 763-0309
Email: Michael.Brown@ucop.edu

Faculty Representative to the Board of Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

January 2, 2008

ROBERT C. DYNES, PRESIDENT
WYATT R. HUME, PROVOST AND CHIEF OPERATING OFFICER

Re: Analysis and Recommendation to Support the Draft "Agreement on Terms for Transfer of Assets from UCRP to LLNS Plan and Continued Administration and Obligation Related to LLNL Portion of UCRP"

Dear Bob and Rory:

On behalf of the Academic Council, please find the University Committee on Faculty Welfare-Task Force on Investment and Retirement (UCFW-TFIR) Analysis and Recommendation to Support the Draft "Agreement on Terms for Transfer of Assets from UCRP to LLNS Plan and Continued Administration and Obligation Related to LLNL Portion of UCRP". This UCFW-TFIR document was unanimously endorsed by the Academic Council at its December 19, 2007 meeting.

Because this is an important issue not only to the Academic Council but also to The Regents, I respectfully request that this memorandum be shared with The Regents and any other individuals whom you may deem appropriate in time for its consideration at the January Regents' meeting.

Sincerely yours,

Michael

Michael T. Brown, Chair
Academic Council

Copy: Academic Council
María Bertero-Barceló, Senate Executive Director

Encl: 1

UNIVERSITY OF CALIFORNIA

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

UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
James Chalfant, Chair
jim@primal.ucdavis.edu

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

TO: Michael Brown, Academic Council Chair
FROM: James Chalfant, University Committee on Faculty Welfare (UCFW) Chair
DATE: December 14, 2007
RE: UCFW-TFIR Analysis and Recommendation to Support the Draft "Agreement on Terms for Transfer of Assets from UCRP to LLNS Plan and Continued Administration and Obligation Related to LLNL Portion of UCRP"

I. Summary

The Draft Transfer Agreement for Lawrence Livermore National Laboratory (LLNL) follows almost exactly the terms of the Transfer Agreement for Los Alamos National Laboratory (LANL). The Academic Council supported the LANL agreement at its February 28, 2007 meeting. The only substantial difference in the terms for LLNL is that the Department of Energy (DoE) has asked to leave $75,000,000 in UCRP, in addition to the amount required under the LANL formula and the longstanding contract between UC and the DoE. The additional $75,000,000 is intended to pre-fund contributions that DoE would likely have had to make to UCRP over the next few years. This change in the formula slightly increases UCRP's overall funded status in the short run, but it makes no difference in the long run, compared to the funding status that would have existed had the same formula used at LANL been applied. Thus, this change in the formula is entirely innocuous.

II. Background

LLNL employees who were UCRP members were divided into two groups as of midnight following September 30, 2007, the date and time at which the previous contract between the UC and the DoE for management of the Lab expired, and Lawrence Livermore National Security, LLC, (LLNS) took over management of the Lab:

- LLNL employees who retired from UC, became disabled, or elected inactive status under UCRP on or before September 30, 2007 (the "retained segment group")[1]
- LLNL employees who went to work for (LLNS) after September 30, 2007 and elected to transfer their UCRP benefits to the new LLNS defined benefit plan (the "transfer group")

[1] Many members of this group have continued to work at LLNL as LLNS employees but do not earn further service credit at either UC or LLNL towards a defined benefit plan; as LLNS employees they are covered by a defined contribution plan for earnings commencing October 1, 2007.

For many years, UCRP has separately tracked the contributions made by and on behalf of LLNL employees, the earnings on those contributions, and the payments made to retirees and beneficiaries, thereby tracking the market value of assets associated with LLNL employees, retirees, and beneficiaries. This separate tracking was called for under the contract with DoE. A transfer of those assets to another entity, such as LLNS, will not change or compromise the pension benefits promised to other UC employees or retirees.

The market value, as of midnight following September 30, 2007, of UCRP assets associated with both groups of LLNL employees who were members of UCRP for service through September 30, 2007, was approximately $5.601 billion. Of this amount, approximately $3.780 billion is allocated to the retained segment group and will be retained in UCRP under the terms of the longstanding contract with DoE; the additional $75 million to pre-fund future DoE contributions brings the retained amount to $3.855 billion. The remaining $1.745 billion ($1.820 billion less $75 million) will be transferred to the LLNS defined benefit plan (LLNS Plan) in exchange for extinguishing UCRP liabilities to pay benefits to the transfer group.

Under the management contract that expired on September 30, 2007, DoE was obligated to make up any shortfall in UCRP assets needed to meet liabilities to LLNL employees who elected to remain in UCRP, for covered service through September 30, 2007.

Representatives of UC and of DoE have negotiated a draft agreement to implement the separation of UCRP assets and liabilities made necessary by expiration of the prior contract on September 30, 2007, which was presented to TFIR and UCFW for review on December 6 and 14, 2007.

III. Analysis

The Draft Agreement covers

- the transfer of assets and liabilities related to LLNL employees who chose to continue working at LLNL and participate in the LLNS defined benefit plan (the transfer group);
- the retention of assets and liabilities for the group of LLNL employees and their beneficiaries who retired from UC or elected inactive status within UCRP on or before September 30, 2007 (the retained segment);
- adjustments to amounts to be transferred to the LLNS plan and to be retained in UCRP for the total return earned by the UCRP portfolio from September 30, 2007, through the date of the transfer, buybacks for UCRP service credit[2], allocable expenses, and distributions made to beneficiaries or alternate payees prior to final transfer of assets and liabilities to the LLNS plan;
- the obligation of DoE to provide funds necessary to maintain funding for the retained segment at 100%;

[2] If a LLNL employee had a leave prior to September 30, 2007, s/he has a right under certain conditions to buy back the service credit that was lost due to the leave. The buyback increases the AAL of the plan, and increases the plan assets by the amount the employee pays in.

- the return to DoE of remaining assets, if any, in the retained segment following the death of the last beneficiary; and
- rights and limitations with respect to making future decisions affecting benefits payable from retained segment UCRP assets.

UCFW and TFIR support the Draft Agreement for the following reasons:

1. Pension benefits for UC employees and retirees will not be affected.

The agreement does not change or compromise the pension benefits of current UC employees, former UC employees who have elected inactive status, or current UC retirees and their beneficiaries. Their benefits will be paid according to the terms of UCRP, which remain unchanged.

2. The funded status of the non-LANL non-LLNL segment within UCRP will not be negatively affected.

The agreement provides for separate actuarial evaluations of the retained segment, and provides a specific timetable and amounts to be contributed by DoE in the event that the retained segment falls below 100% funding, by Actuarial Value of Assets (AVA). AVA is calculated by smoothing investment gains and losses over a five year period. Thus, high returns attained in a good year immediately raise Market Value of Assets (MVA), but are reflected in AVA over a five year period. Although the LLNL retained segment will initially be fully funded by MVA, funding levels based on AVA will require contributions by DoE on behalf of those in the LLNL retained segment, while UC and current UC employees continue to enjoy a contribution holiday. [3]Neither the transfer of assets to the LLNS defined-benefit plan, nor the retention of assets for the retained segment, will negatively affect the funded status of the portion of UCRP outside the LANL and LLNL retained segments, nor hasten the time when contributions to UCRP by UC and UC employees will be required.

3. The value of assets and liabilities associated with benefits accrued by LLNL UCRP members prior to October 1, 2007 was determined by using the same actuarial assumptions and methods established by The Regents for all UCRP members.

No favoritism was shown to LLNL employees, to LLNS, or to DoE in calculating the amount of UCRP assets associated with their employment.

4. The calculation and identification of assets to be transferred to LLNS protects remaining UCRP members.

The amount of assets that will be transferred to LLNS for employees who elected to transfer their UCRP benefits to the LLNS plan (the transfer group) was calculated so that the market value of the remaining assets within the retained segment exactly equals the actuarial accrued liability for

[3] Because the market value fully reflects a higher rate of return for UCRP during the most recent year than earlier years that are still part of the moving average, it can already be predicted that the next valuation based on AVA will require such a contribution.

the retained segment. The transfer will be made in kind so that approximately 4% of each of UCRP's holdings will be transferred.[4]

5. UCRP will be relieved of any liability to pay benefits to the transfer group[5]

In exchange for transferring assets from UCRP to the LLNS plan, UCRP will be relieved of any liability for the individuals who elected to transfer to the LLNS defined-benefit plan.

6. For the retained segment of LLNL employees, UCRP will retain assets that exactly match, in market value as of the close of business on September 30, 2007, the accrued actuarial liability for those employees and retirees as of close of business on September 30, 2007.

The retained segment,[6] their spouses, domestic partners, and contingent annuitants remain in UCRP. The agreement provides that, as of close of business on September 30, 2007, the market value of the assets retained within UCRP that were derived from contributions made by or on behalf of LLNL employees will exactly match UCRP's AAL for the retained segment. This means that, if investment earnings within UCRP and mortality within the retained segment match UCRP's actuarial assumptions, the last monthly payment to the last surviving member of the retained segment will just exhaust the assets supporting the benefits to the LLNL retained segment, without drawing on assets contributed by or on behalf of non-LLNL employees. As is also the case for the LANL retained segment, if there is a shortfall in the LLNL retained segment, DoE is required to make sufficient contributions to cover it, protecting non-LLNL and non-LANL employees and retirees. Conversely, if assets remain in the retained segment when the last of the beneficiaries in the retained segment dies, UCRP will be required to transfer the excess to DoE.

7. If UCRP funding for the retained segment falls below 100%, DoE is required to provide funds necessary to return to 100% funding.

The agreement protects UCRP and its non-LLNL members. The agreement provides a specific mechanism by which DoE will be required to make up any funding shortfall in the event that investment returns or mortality experience vary from the actuarial assumptions. If in any given year, the Actuarial Value of Assets supporting the retained segment is less than 100% of the AAL for the retained segment, DoE will immediately begin to make level payments to fully amortize the shortfall over a seven year period. Thus, neither UCRP nor its non-LLNL members are at risk in the event of a funding shortfall arising in the retained segment.

DoE is obliged to maintain 100% funding for the retained segment whether or not contributions are being made to keep the rest of UCRP at fully funded status.

---

[4] A few assets, like private equity investments, cannot be transferred. A slightly higher proportion of the publicly traded part of the portfolio will be transferred to account for the value of non-transferable assets. Because the non-transferable assets have in the past outperformed the publicly-traded assets, UCRP should not be negatively affected by the transfer.

[5] These are LLNL employees who elected not to remain in UCRP by transferring their service credit to the LLNS defined-benefit plan as of October 1, 2007.

[6] These are LLNL employees who remained in UCRP by retiring from UC, or who became disabled or elected inactive status under UCRP, on or before September 30, 2007.

8. The agreement protects the members of the retained segment.

DoE has clearly acknowledged its responsibility for the benefits due to the retained segment and has committed to a specific funding mechanism in the event of a shortfall; this provides assurance to the retained segment that their benefits will be paid in full. DoE does retain the right, however, to approve or disapprove of *ad hoc* COLAs that go beyond the contractually guaranteed COLAs in UCRP. If DoE were to decline to approve an *ad hoc* COLA instituted by UCRP for non-LLNL, non-LANL members of UCRP, only the members in those retained segments (former LLNL and LANL employees) would be affected.

9. The agreement protects DoE.

Any assets remaining to support the retained segment, after the last member of the retained segment dies, will be returned to DoE. In addition, DoE approval is required for ad hoc adjustments to the benefits of retained segment members or beneficiaries, and for changes to UCRP that would differentially impact the retained segment.

10. The formula that determines the amount to be transferred has been in the LANL and LLNL contracts between UC and DoE for approximately 20 years.

Under this longstanding contract, the market value of the assets to be retained within UCRP, for both the LANL and LLNL retained segments, was required to equal the AAL for the retained segment. As of May 31, 2006, the market value of assets within the LANL portion of UCRP was less than 100% of the actuarial accrued liability for the LANL portion, so the LANL transfer slightly enhanced the overall funded status of UCRP. Because of strong investment returns in the 2006-07 fiscal year, the market value of assets within the LLNL portion of UCRP, as of September 30, 2007, was more than 100% of the actuarial accrued liability for the LLNL portion, so the LLNL transfer slightly reduces the overall funded status of UCRP. However, because contributions are determined separately for the two retained segments and the balance of UCRP, this will not hasten the date at which contributions are needed on behalf of those outside the two retained segments. Indeed, although both the LANL and LLNL retained segments are fully funded as determined by the Market Value of Assets, DoE is obligated to make contributions now as determined by the Actuarial Value of Assets attributable to the retained segments, despite the fact that contributions are not being made on behalf of the balance of UCRP members. DoE's obligation to fund, on a specific schedule, any shortfall in the two retained segments guarantees that neither employer nor employee contributions on behalf of the balance of UCRP members will be diverted to provide benefits to those in the retained segment.

IV. Recommendation

UCFW and TFIR recommend that the Academic Council support the Draft Agreement. They also recommend that the Academic Council take steps to inform the faculty of the terms of the agreement and to allay any concerns that non-LLNL UCRP members may have been shortchanged or otherwise treated unfairly in the transfer of UCRP assets to the LLNS plan.

Copy: UCFW
TFIR
Maria Bertero-Barcelo, Executive Director, Academic Senate