The Regents of the University of California

COMMITTEE ON FINANCE
November 20, 1997

The Committee on Finance met on the above date at Sunset Commons, Los Angeles campus.

Members present: Regents Atkinson, Bagley, Brophy, Bustamante, Connerly, Davis, Johnson, Khachigian, Levin, McClymond, Sayles, and Wilson; Advisory Members Miura and Willmon

In attendance: Regents Clark, Davies, Gonzales, Leach, Montoya, Nakashima, Ochoa, Parsky, Preuss, and Soderquist, Faculty Representatives Dorr and Weiss, Secretary Trivette, General Counsel Holst, Assistant Treasurer Stanton, Provost King, Senior Vice President Kennedy, Vice Presidents Darling, Gomes, Gurtner, and Hopper, Chancellors Berdahl, Carnesale, Debas, Dynes, Greenwood, Orbach, Vanderhoef, and Yang, Executive Vice Chancellor Golub representing Chancellor Wilkening, and Recording Secretary Nietfeld

The meeting convened at 4:05 p.m. with Committee Chair Brophy presiding.

1. **CONSENT AGENDA**

Amendment of the Budget for Capital Improvements and the Capital Improvement Program

The President recommended that the Committee concur with the recommendation of the Committee on Grounds and Buildings that the 1997-98 Budget for Capital Improvements and the 1997-2000 Capital Improvement Program be amended to include San Diego: A. Gilman Drive Parking Structure.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

2. **DOMESTIC PARTNER BENEFITS**

The President recommended that he be authorized, consistent with his existing authority, to extend health care benefits to long-term, committed, same-sex domestic partners of UC employees and to issue systemwide guidelines to expand eligibility categories for campus student family housing programs which would permit occupancy by same-sex domestic partners, with first priority given to married students with children.

Senior Vice President Kennedy informed the Committee that the first presentation on domestic partner benefits would be given by the University of California Student Association, and he called upon Ms. Kami Chisolm, a UCSA board member from the Santa Cruz campus, for her remarks. Ms. Chisolm stated that her presentation would be focused on the issue of student housing, noting that the demand to extend availability to same-sex domestic partners emanates from the students themselves. She recalled that when Assistant Vice President Galligani reported on this matter at the July meeting, it was found that six of the University's eight comparison institutions have policies that do not limit married student housing to married students. The primary focus is on students with children. Ms. Chisolm observed that the Fair Employment and Housing Act, §12995.b, stipulates that the University might provide "separate housing accommodations reserved primarily for married students or for students with minor dependents who reside with them." This provision allows flexibility in providing accommodations for student families. Ms. Chisolm pointed out that student demographics are changing and will continue to change, which underscores the necessity for chancellors to retain their authority over the needs of their local campus communities. At the Berkeley campus, for example, there has been a sharp increase in the number of single-parent households, the majority of which are headed by women. She suggested that it would not be fair to give priority to married students without children over same-sex domestic partners with children. Ms. Chisolm noted that many prestigious institutions offer family student housing to domestic partners and suggested that the University of California will need to do so in order to remain competitive for the best graduate students. She believed that irrational prejudices were at the root of most of the opposition to same-sex couples in student housing. Lesbian and gay students, faculty, and staff already live in University housing. In a survey on the Santa Cruz campus, more than 15 percent of those sampled identified themselves as lesbian, gay, or bisexual. She urged the Regents to allow the chancellors to continue to have authority over their campus housing policies.

Senior Vice President Kennedy recalled that items dealing with domestic partner benefits were presented to the Committee on Finance at the July and September 1997 meetings. At the July meeting, the discussion focused on competitiveness issues regarding faculty and staff recruitment, health care benefit options and associated costs, retirement benefit options and costs, and student family housing issues. Following this general discussion, the President was asked to consider the views expressed at that meeting, consult with his colleagues, and develop appropriate plans to extend benefits to the domestic partners of current employees.

The President reported at the September meeting that he had considered costs to the University, University retirement policies, and administrative operational issues before determining it would be appropriate, using his delegated authority, to extend health care benefits to same-sex domestic partners and to issue systemwide guidelines for expanded eligibility categories for campus student family housing programs.

Following discussion by the Committee on Finance, Regent del Junco noted that any Regent may request that an item be placed on The Regents' agenda. In response to a request from the Governor, Regent del Junco placed the domestic partners item on the November agenda for a Regental vote. As a result, the President did not act to implement the domestic partners benefits discussed at the September meeting.

Within the University community, there is widespread support for offering domestic partner benefits. The University of California has not been in step with a national trend in both public and private institutions toward offering such benefits. The lack of domestic partner benefits has affected the University's ability to recruit and retain the most qualified faculty, staff, and graduate students. Today, six of the University's comparison eight universities offer health benefits to same-sex domestic partners in the belief those benefits help strengthen their competitive stance, improve institutional morale, and promote diversity in the workplace.

After consultation, the President concluded that offering health care benefits to same-sex, committed partners would strengthen the ability of the University of California to compete for faculty and staff without incurring significant costs. Benefits would be available to retirees and would make the children of same-sex domestic partners eligible for health care benefits. The University cannot accurately predict the number of individuals who would elect these benefits. However, based on the experience of other institutions and businesses, the estimated cost of providing medical, dental, and vision care to same-sex domestic partners at the University of California would range from $1.9 million to approximately $5.6 million. Generally, the same fund source covers an employee's salary and benefits costs. The State General Fund budget pays the approximately 38 percent employer's benefit for State-supported UC faculty and staff. UC Medical Center revenue pays the employer's benefit expense. Support for funding the cost for retiree health benefits comes from a payroll tax charged against all fund sources. Such costs are included in the estimated range of expenses noted above.

Senior Vice President Kennedy recalled that at the July and September meetings the Regents were informed that there is widespread support for expanding the eligibility categories for student family housing programs. Systemwide guidelines would continue the current policy of granting first priority to married students with children.

To be eligible for domestic partner health benefits, certain requirements would need to be fulfilled. These requirements still are being developed but are likely to include the following. The first requirement would be to meet the University's definition of a domestic partner: an unmarried partner of the same sex as the University employee who is eligible for benefits. Both partners must be at least 18 years of age, not married to any other person and not committed to any other domestic partner, living together in a long-term relationship of an indefinite duration with an exclusive mutual commitment similar to that of a marriage, and agreement by the partners to be financially responsible for each other's well-being and for each other's debts to third parties. The second requirement would be to sign and file an affidavit with the University declaring the conditions stated above are met and that the employee and domestic partner have shared a common residence for at least twelve consecutive months. The third requirement would be to supply documentation of mutual financial support such as copies of joint home ownership or lease, common bank accounts, credit cards, or investments. A copy of the draft affidavit was mailed to all Regents with the agenda packet.

Assistant Vice President Galligani commented that while the issues of health benefits and student housing are united by the issue of domestic partners, they are quite separate issues. Extension of health benefits is a systemwide issue, while authority to administer student family housing programs is vested with the chancellors as part of their campus administrative responsibilities under Standing Order 100.6. This authority includes establishing eligibility criteria for the occupancy of student family housing units.

Issuing systemwide guidelines for eligibility categories for campus student family housing programs would allow the individual chancellors discretion and flexibility to determine housing eligibility at their campuses. Mr. Galligani pointed out that these guidelines would not require chancellors to offer student housing to same-sex domestic partners. Under the guidelines, students with children would continue to be guaranteed first priority for student housing.

There is widespread support among students, faculty, and staff to broaden the eligibility categories for student family housing. The need for the continued fiscal viability of student family housing programs, competition with other universities for the most qualified students, and concern for the morale and well-being of UC students all play roles in this support.

Recently, there have been changes in the make-up of the student community and fluctuations in local campus housing markets. This is reflected in the increasing numbers of requests for assignments in student family housing units by students in other shared-living arrangements — undergraduate, graduate, and professional students living with domestic partners, or with blood relatives, often a parent, brother, or sister. Presently, six of the nine campuses cannot fill their married student housing with married couples and students with children.

General Counsel Holst noted that he had not intended to speak to the legal aspects of this matter today but that, because of the considerable attention to the recent case decided by the State Labor Commissioner involving the City of Oakland with respect to entitlement of opposite-sex domestic partners to health benefits when the City had made such benefits available to same-sex domestic partners, he believed that some comments were in order. He recalled that in his July 1997 letter to the Regents he had suggested that there might be such a challenge by a group composed of opposite-sex domestic partners. The Oakland decision is not binding on the University, but it does raise substantially the visibility of the issue of opposite-sex domestic partners in relation to health benefits for same-sex domestic partners. It also illustrates the lack of significant legal precedent in this area, and therefore the unpredictability of results. If The Regents should choose to extend health benefits to same-sex domestic partners in the action today and tomorrow, he would suggest that consideration be given to a somewhat broader eligible group; that is, competent adults over the age of 18 in a long-term, committed domestic relationship who are precluded from marriage because

they are of the same sex or incapable under California law of a valid marriage because of a family relationship. In that way, the eligible individuals would all be in the category of individuals incapable of marriage under California law, by contrast to opposite-sex domestic partners, who are eligible to marry. This slight expansion of the eligible group may be potentially more defensible in the event of a legal challenge.
President Atkinson indicated that the changes proposed by the General Counsel conform with his original intentions and asked that he be permitted to substitute the following for his original recommendation:

(1) The President be authorized, consistent with his existing authority, to extend health care benefits to University of California employees who are competent adults over the age of 18 in a long-term, committed, domestic relationship who are precluded from marriage because they are of the same sex or are incapable under California law of a valid marriage because of family relationship.

(2) The housing benefit issue be referred to the Office of the President, which should establish, for the Regents' consideration, fundamental principles for acceptance by exception of unmarried students into housing that is normally reserved for married students and/or families. The President should report his findings back to the Board for action.

General Counsel Holst confirmed for Regent Davies that the notice requirements have been met with respect to the language in the amended recommendation.

(At this point Committee Vice Chair Johnson assumed the Chair.)

Regent Brophy moved that the President's recommendation be split into two parts.

(At this point Committee Chair Brophy resumed the Chair.)

The motion was duly seconded and passed, Regents Atkinson, Bagley, Brophy, Johnson, Khachigian, Levin, and Sayles voting "aye" (7), and Regents Bustamante, Connerly, Davis, McClymond and Wilson voting "no" (5).

At Regent Brophy's request, Chancellor Vanderhoef commented on the proposal with respect to married student housing, noting that the issue was more complicated than it may appear. The Davis campus is one of the six campuses where the supply of married student housing exceeds demand, a trend which began in 1993-94 and led to a 20 percent vacancy rate in 1996-97. Under the student housing policy of the University of California, the campus is required either to charge the shortfall, which would have amounted to $467,000, to the remaining tenants, or to recruit students into the vacant married student housing. Chancellor Vanderhoef reported that he decided to start recruiting unmarried students into these apartments rather than raise rates for current tenants. Adoption of a same-sex domestic partner housing policy raises the question of whether the campus will be required to ask present non-married occupants to declare that they are not gay or lesbian. He suggested that the issue requires further consideration by the President and the chancellors before moving forward in this area. If the Board does not approve the President's recommendation, this would suggest that the campuses would no longer be permitted to recruit same-sex students to reside in married student housing, resulting in a rent increase of $1,000 per married student family per year.

General Counsel Holst confirmed for Regent Leach that failure to approve the proposal would result in a continuation of the status quo.

The Committee then turned to discussion of paragraph (1) of the President's recommendation. Regent Connerly moved that the Committee approve the recommendation. The motion was seconded.

Governor Wilson moved as a substitute motion that the President be directed not to proceed with his recommended proposition. The motion was seconded.

Governor Wilson stated that, while he commended the General Counsel on attempting to protect his client by modifying the President's original recommendation, he did not believe that it would change the fact that the Regents are conferring a benefit on same-sex partners that will be denied to opposite-sex domestic partners. The only difference between the original and the present recommendation is the addition of the phrase "...who are incapable under California law of a valid marriage because of family relationship." The Governor suggested that the question before the Regents is not whether or not gays or lesbians are entitled to live with one another, nor is the issue whether or not a gay or lesbian faculty or staff member is entitled to health care benefits. The issue is whether or not the University intends to treat a relationship which is less than marriage as the equivalent of marriage. Governor Wilson suggested that there is a critical distinction between the University of California and private institutions. As stated in the State Constitution, the University of California is a "public trust." As such, the University of California has an obligation to uphold the institution of marriage. He noted that people are concerned that there not be a denial of medical care to those who need it. Domestic partners who are not covered by the University will not be without health care coverage because most domestic partners of UC employees will obtain coverage through their own employment. In a worse-case scenario, these partners will be eligible for Medi-Cal. The Governor observed that the conferral of health benefits on same-sex domestic partners may have the unintended legal consequence of requiring the University to offer them also to opposite-sex domestic partners. While there is not a great deal of legal opinion on this matter, General Counsel Holst has noted that the results of approving the recommendation are unpredictable. Governor Wilson referred to a letter from Acting Assistant Professor Yoo, Boalt Hall School of Law, which commented on the Labor Commissioner's decision in the case of <u>Ayyoub v. City of Oakland</u>. Professor Yoo suggested that the Labor Commission applied the law correctly in that case and that, as a result, the attempt to extend benefits only to same-sex partners puts the University in the position of deciding whether to offer benefits to all unmarried partners or to none. The Governor noted that Professor Yoo's legal judgment is that the policy as written would be illegal under California law because it violates California Labor Code §1102.1. This is because "...the only reason why heterosexual domestic partners cannot receive health benefits is because of their sexual orientation... Under the proposal, the only way for heterosexual domestic partners to receive health benefits from the University is to become legally married. ... For heterosexual domestic partners of UC employees to receive health benefits, they must accept these legal obligations imposed by marriage, while homosexual domestic partners of UC employees need not under this proposal. This clearly constitutes discrimination and differential treatment on the basis of sexual orientation. Directly relevant is a decision by the Labor Commissioner of the State of California in Ayyoub v. City of Oakland. ... it is in my legal judgment a correct application of the plain text of Section 1102.1." The Governor explained that §1102.1 bars discrimination on the basis of sexual orientation, although it does allow the State to reserve special benefit to those who are married. He believed that the University faces the risk of being compelled to offer health benefits to unmarried heterosexual partners, which is not what the President or the Regents intend. Such a decision would be viewed as devaluing marriage. Governor Wilson pointed out that the decision made by the Board of Regents will be viewed as a precedent by others, including the California State University, the community college system, and throughout State government. He suggested that the Board should not spotlight the University of California as a role model for devaluing the marriage and the family. He urged the Regents to not make a serious mistake but rather that they instruct the President not to proceed with his proposal.

Regent Connerly observed that the argument put forward by Professor Yoo that providing benefits to same-sex domestic partners would be discriminatory was the basis for the decision reached by the court in Hawaii when it found that barring people from marrying on the basis of their sexual orientation was discriminatory. With respect to the institution of marriage, Regent Connerly submitted that while he supports that institution, there are certain values that transcend the institution of marriage, including the values of equality, individual liberty, and the right to pursue happiness. He is proud to be a Californian, because the people of California embrace the principle of treating people equally and respecting their differences. Central to the word "diversity" is tolerance. Regent Connerly pointed out that the University has thousands of employees who are gay and asked whether the message that they should be receiving is that their rights are not as sacred to the Regents as others. He pointed out that the Regents would not support motions to end the hiring of homosexual employees or to paying them less and asked how the denial of basic medical care to their committed partners was any different. He urged the Committee to defeat the substitute motion in recognition of the fact that the University of California is committed to nondiscrimination on the basis of sexual orientation.

General Counsel Holst confirmed for Regent Sayles that a heterosexual couple meeting all of the criteria would be denied benefits. Regent Sayles believed that adoption of the

President's recommendation would correct discrimination by creating more discrimination. He suggested that adoption of the measure would put the University at risk.

Regent Davis recalled that the proposal was first discussed by the Committee in July, at which time it was determined that the President had the authority to act administratively and that he would report his recommendation to the Committee at the September meeting. At that time, most of the Regents seemed to believe that the President was on the right path with respect to domestic partner benefits. Regent Davis suggested that the Regents have a fiduciary responsibility to keep the University of California competitive. He believed that to approve the President's motion would not devalue the institution of marriage nor would it represent the Board's endorsement of a particular lifestyle. He pointed out that the Governor had drawn a distinction between public and private institutions; the Cities of Sacramento and San Diego and the Counties of Los Angeles and San Mateo have accorded domestic partnership benefits to their employees. Regent Davis recalled that when the Regents were debating the abolition of affirmative action, the University presented a united front in urging the Board not to do so. He asked that in this instance the Board respect the recommendations of the faculty, students, and staff.

Governor Wilson pointed out that the City of Oakland is a public agency that has been successfully sued over its domestic partners policy. With respect to marriage, he noted that it is well established in California law that the State is so interested in protecting the institutions of marriage and the family that denial of statutory benefits on the basis of marital status does not violate the fundamental rights of others. He stressed that no one is being discriminated against because of sexual orientation. The University of California has for many years afforded benefits to the spouses and dependents of married faculty and staff which it has not conferred upon unmarried personnel. It does so because society values marriage as a special institution. If the Board approves the President's recommendation, it runs the risk of successful litigation by opposite-sex domestic partners.

Regent Bagley commented that Governor Wilson had cited the risk of litigation as a reason not to support the President's recommendation. The same risk was taken in July 1995, and the University is suffering the consequences.

Faculty Representative Weiss recalled that the Academic Senate as early as 1991 had noted inequity in the benefits available to certain individuals in the University community. The Senate has reaffirmed the need for domestic partner benefits annually since that time. Professor Weiss stated that she was disheartened to see the issue become a political one and to see legal complexities being raised in order to dismiss the validity of the proposal. She stressed that the Regents' decision will ultimately reflect to the public the values that the University places upon inclusiveness, equity, and fairness, and she urged the Committee to support the President's proposal.

Regent Johnson observed that while the academic world supports the granting of domestic partner benefits, there is a large segment of the general public who cannot conceive that the University would support alternative lifestyles. She suggested that the legal implications are not a subterfuge but represent a real threat. She stated her intention to support the substitute motion.

Regent Levin viewed the issue as one of equality, parity, and inclusiveness. She pointed out that the University does not expect less of its gay, lesbian, and transgender employees, and they should not expect less from the University.

Regent Sayles stressed that the decision before the Committee was not about same-sex issues. He was concerned that couples in a committed relationship who were of the opposite sex would not be treated fairly.

Regent Clark observed that constitutionally the University of California is not the same type of entity as Harvard, Yale, or Michigan; rather, it is a branch of State government pursuant to Article IX, Section 9 of the State Constitution. He believed that, as such, the University did not have the right to create benefits that are not accorded to the other three branches of State government.

Regent Davies agreed that the Regents are dealing with a public trust and that their overriding duty is not to put the University at risk. The University at present is legally discriminating on the basis of marital status. The Regents are being asked to adopt a policy that discriminates on the basis of sexual orientation.

Regent Davis pointed out that the matter under consideration is the conferral of health benefits on the dependents of employees whom they cannot marry. He suggested the need for the Regents to acknowledge that its competitor institutions have realized that they must offer these benefits in order to maintain their premiere position. He believed that it would be a greater risk not to take this step, which would result in lost faculty and declining morale.

Regent McClymond agreed that as employers the Regents need to make wise employment decisions. While to take action would involve risk, she had not known the Board of Regents to be afraid of taking risks. Regent McClymond believed that if the Regents take action to approve the proposal, they will not be devaluing marriage. Rather, they will take action to treat everyone equally and with respect.

Regent Nakashima related that he was raised with certain values which are difficult to forget. He suggested that past civilizations had fallen because there was a moral breakdown and wondered whether the same was occurring with respect to Western civilization. He believed that the domestic partner issue raised questions with respect to community property law in the State of California.

Regent Leach pointed out that the University of California offers an employee benefit package; he doubted that prospective employees made employment decisions based on any one part of that package. He suggested that the administration had failed to provide the Regents with data comparing the University's benefits package with those of comparison institutions. He did not agree that a failure to adopt the proposal would result in the loss of competitiveness.

Regent Khachigian related that she had discussed the issue with gay friends who had educated her on many issues and that consequently she supported the President's recommendation, although with some amount of trepidation due to potential legal problems.

Regent Connerly stated that if Regent Sayles were to move to extend domestic partner benefits to all unmarried couples, he would second that motion. He suggested that when society sets a standard, in this case that of marriage, then the Regents have an obligation to mitigate that standard so that it does not visit harm upon other people.

Secretary Trivette presented a sample of letters that were received concerning domestic partner benefits.

(For speakers' comments, see the minutes of the November 20, 1997 meeting of the Committee of the Whole.)

The substitute motion was put to a vote and failed, Regents Johnson, Sayles, and Wilson voting "aye" (3), and Regents Atkinson, Bagley, Brophy, Bustamante, Connerly, Davis, Khachigian, Levin, and McClymond voting "no" (9).

The Committee then voted to approve paragraph (1) of the President's recommendation and present it to the Board, Regents Atkinson, Bagley, Brophy, Bustamante, Connerly, Davis, Khachigian, Levin, and McClymond voting "aye," (9), and Regents Johnson, Sayles, and Wilson voting "no" (3).

The Committee then voted to approve paragraph (2) of the President's recommendation and present it to the Board, Regents Atkinson, Bagley, Brophy, Bustamante, Connerly, Davis, Johnson, Khachigian, Levin, McClymond, Sayles, and Wilson voting "aye" (12).

3. AMENDMENT OF THE BUDGET FOR CAPITAL IMPROVEMENTS AND THE CAPITAL IMPROVEMENT PROGRAM, TOM BRADLEY INTERNATIONAL CENTER FOR STUDENTS AND SCHOLARS, LOS ANGELES CAMPUS

The President recommended that the Committee concur with the recommendation of the Committee on Grounds and Buildings that the Budget for Capital Improvements and the Capital Improvement Program be amended as follows:

From: Los Angeles: A. Tom Bradley International Center for Students and Scholars -- preliminary plans, working drawings, construction, and equipment -- $10,520,000 to be funded from gift funds ($4,723,000), external financing ($4,533,000), and prepaid rent ($1,264,000).

To: Los Angeles: A. Tom Bradley International Center for Students and Scholars -- preliminary plans, working drawings, construction, and equipment -- $13,994,000 to be funded from gift funds ($2,136,000), external financing ($8,410,000), University of California Housing System Net Revenue Funds ($2,184,000), and prepaid rent ($1,264,000).

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

4. **AMENDMENT OF EXTERNAL FINANCING FOR TOM BRADLEY INTERNATIONAL CENTER FOR STUDENTS AND SCHOLARS, LOS ANGELES CAMPUS**

The President recommended that the financing action approved by The Regents in November 1994 with respect to financing for the Tom Bradley International Center for Students and Scholars be amended as shown below, with the understanding that all other actions approved in November 1994 in connection with said project remain unchanged:

deletions shown by strikeout, additions by shading

* * *

(1) Funding for the Tom Bradley International Center for Students and Scholars project, Los Angeles campus, estimated at ~~$10,520,000~~ $13,994,000, be approved as follows:

Fund Source	Amount		
Prepaid Rent*	$ 1,264,000		
Gift funds*		~~4,723,000~~	$ 2,136,000
External Financing		~~4,533,000~~	8,410,000
University of California Housing System Net Revenue Fund			2,184,000
Total		~~$10,520,000~~	$13,994,000

*International Student Center portion of gifts is considered as additional prepaid rent when pledges are received.

(2) The Treasurer be authorized to obtain financing not to exceed ~~$7,918,000~~ $8,410,000 to finance the cost of construction of the Tom Bradley International Center for Students and Scholars project, Los Angeles campus, subject to the following conditions:

~~a. With regard to $350,000 of the financing, prior to the award of a construction contract for said project, adequate and appropriate sources of gift funds, and, if the gift funds necessary are insufficient, the Los Angeles campus' share of the University Opportunity Fund for repayment of any amount to be drawn down against the standby loan commitment, shall be confirmed by the President, in consultation with the Treasurer;~~

~~b~~a. With regard to ~~$3,035,000~~ $3,877,000 of the financing, repayment of the debt shall be from the Los Angeles campus' share of the University Opportunity Fund to be held in the Office of the President in amounts sufficient to pay debt service on the proposed financing;

~~c~~b. With regard to $4,533,000 of the financing, as long as the debt is outstanding, University of California Housing System fees for the Los Angeles campus shall be established at levels sufficient to meet all requirements of the University of California Housing System Revenue Bond Indenture and to provide excess net revenues sufficient to pay the debt service and related requirements of the proposed financing;

~~d~~c. Interest only, based on the amount drawn down, shall be paid on the outstanding balance during the construction period; and

~~e~~d. The general credit of The Regents shall not be pledged.

* * *

The Committee was reminded that the Tom Bradley International Center for Students and Scholars will house the offices and programs of the International Student Center (ISC) and the Office of International Students and Scholars (OISS), selected programs for University of California Housing System (UCHS) residents, and the campus' catering operations and conference facilities. The project has been under construction since December 1994 and is nearing completion. In November 1994, The Regents approved the project at a total cost of $10,520,000, to be funded from external financing ($4,533,000), prepaid rent ($1,264,000), and gifts ($4,723,000). At this time, the campus is requesting Regental approval of an increase to the Tom Bradley International Center for Students and Scholars project of $3,474,000, or 33 percent.

Budget Augmentation

The cost increases to the Tom Bradley International Center for Students and Scholars totaling $3,474,000 are due to increased construction costs ($3,151,000) related to new conference facilities, unanticipated site conditions, and structural steel costs; increased fees ($173,000); and escalation and surge costs ($150,000).

Increased Scope and Construction Related Costs ($3,151,000):
Conference Facilities ($1,348,000)-- Since 1994, conference facilities on the campus have been in great demand. Following the success of Covel Commons (formerly Sunset Commons), Housing Administration and ISC agreed that developing conference facilities within the Bradley Center would benefit both the international center and the campus. Meeting rooms were redesigned to accommodate conference and meeting functions. Additional space includes conference pre-function areas next to the largest meeting room, additional circulation space for catering, loading dock relocation, a new projection room, and an enlarged International Café. Scope changes to the project also include related audio-visual, telecommunications, and building systems requirements. The scope of the conference facilities increased the square footage by 4,514 gsf, for a revised total of 44,290 gsf.

Unanticipated Site Conditions ($1,180,000)--Site conditions discovered during construction included inadequate soils requiring foundation redesign, subsurface water which necessitated additional excavation and shoring, and previously undocumented piping and utilities, requiring relocation and hazardous material removal.

Structural Steel Cost Increases ($623,000)--The structural steel supply was constricted during construction due to a steel supplier that stopped production, resulting in increased prices for structure and decking. In addition, the steel connections were redesigned to incorporate revised design criteria for moment frame steel bracing in the wake of the 1994 Northridge earthquake. Increased manufacturing costs were incurred as a result.

Increased Fees ($173,000):
Additional fees resulted from planned and unanticipated project redesign, additional project management, and re-bidding of the concrete and steel portions of the project.

Escalation and surge costs ($150,000):
Escalation and costs increased as a result of extensions to the original project schedule.
Delays were due to the previously noted project redesign and unanticipated site and market conditions. Schedule delays also resulted in additional rent paid by ISC for off-campus space.

Gift Funds

A capital fundraising campaign with a target of $4,723,000 (not including proceeds from the ISC building sale) was established by the campus as part of the funding package for the

Bradley International Center building project. Gift funds of $2,136,000 have been received in cash to date. Receipt of any additional gifts would reduce the campus portion of the external financing.

Financial Feasibility

As originally approved, $4,533,000 will be funded from external financing to be repaid from housing system fees for the Los Angeles campus. Based on a debt of $4,533,000 amortized over 27 years at 7 percent interest, the average annual debt service is estimated at $378,000. The campus portion of the debt would be repaid from the Los Angeles campus share of the University Opportunity Fund. Based on a debt of $3,877,000 amortized over 27 years at 7 percent interest, the average annual debt service is estimated at $323,000.

[For speakers' comments, see the November 20, 1997 minutes of the Committee of the Whole.]

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

5. **EXTERNAL FINANCING FOR GILMAN DRIVE PARKING STRUCTURE AND CAMPUS SERVICES COMPLEX, PHASE 2, SAN DIEGO CAMPUS**

The President recommended that, subject to approval by The Regents of the amendment of the Budget for Capital Improvement Programs to include the Gilman Parking Structure:

A. Funding for the Gilman Drive Parking Structure and the Campus Services Complex, Phase 2, San Diego campus, be approved as follows:

External financing	$20,041,000
Auxiliary and Plant Services Reserves	593,000
Total	$20,634,000

B. The Treasurer be authorized to obtain external financing not to exceed $20,041,000 to finance the Gilman Drive Parking Structure and the Campus Services Complex, Phase 2, San Diego campus, subject to the following conditions:

(1) Interest only, based on the amount drawn down, shall be paid on the outstanding balance during the construction period;

(2) As long as the debt is outstanding, parking fees for the San Diego campus Parking System shall be established at levels which, together with other related income, will be sufficient to provide excess net revenues to pay the

operating costs of the facility, to pay the debt service, and to meet the related requirements of the proposed financing; and

(3) The general credit of The Regents shall not be pledged.

C. The Officers of The Regents are authorized to provide certification that interest paid by The Regents is exempt from federal income taxation under existing law.

D. The Officers of The Regents be authorized to execute all documents necessary in connection with the above.

The Committee was informed that the San Diego campus has proposed that The Regents approve the Gilman Drive Parking Structure at a total cost of $14,979,000 to be funded from external financing and the Campus Service Complex, Phase 2, to be funded from external financing ($5,062,000) and Auxiliary and Plant Services reserves ($593,000).

Since 1990, construction of new buildings and realignment of San Diego campus roads and pedestrian walkways in central campus areas have displaced 2,015 parking spaces. Future capital improvement projects, through 2000-01, are projected to displace an additional 1,035 parking spaces, reducing the total campus spaces from 7,057 to 6,022. At present there are 7,057 spaces. Current demand exceeds the availability of parking spaces.

The San Diego campus has managed to serve the parking needs of its growing population by dividing its main campus parking supply into two zones, central and remote. The central zone contains parking within reasonable walking distance to virtually all major campus facilities. About a decade ago, when the central parking supply became inadequate to serve UCSD's growing population, the campus began to develop temporary surface parking in remote areas, on land slated for future development. Because the remote zone is too distant from major campus facilities to make walking viable, UCSD runs an extensive shuttle system that connects these outlying parking lots to the central campus. Approximately 27 percent of campus parking inventory is now located in remote areas. In order to cope with current and future demand, the campus can no longer rely on remote parking alone, including expansion of its costly shuttle system.

The Gilman Drive Parking Structure (structure) will be the San Diego campus' first parking structure. It will accommodate 870 parking spaces and provide pedestrian-oriented storefront operations at the ground level. The site for the structure is at the boundary of the San Diego campus' University Center area, which is at the geographical heart of the central campus. The site is currently occupied by old, one-story wood buildings that are used as physical plant services shops and a central garage repair and fueling facility, uses that are incompatible with this active campus hub area. The project includes demolition and replacement of these older buildings. A related capital improvement project, Campus Services Complex (CSC), Phase 2, will relocate the central garage, refueling station, and shops to the CSC. The project also requires demolition of the existing Eleanor Roosevelt College (ERC) resident dean's house and a small laundry/office building, which would be replaced near the ERC student housing area.

The San Diego campus has developed detailed program and site analyses which support construction of the parking structure. UCSD currently oversells parking permits compared to the number of parking spaces available. In the 1996-97 academic year, the oversell factor was 16 percent for faculty permits, 13 percent for staff permits, and 23 percent for student permits. The utilization rate for permit parking for UCSD is 107 percent. The campus operates a highly successful transportation alternatives program in which 40 percent of daily commuters enter the campus via a rideshare. However, based on the approved San Diego enrollment plan, the campus will face a severe parking shortage by 1999-2000. Between 1995-96 and 2005-06, the campus population is projected to increase from 24,600 to 31,200, an increase of 27 percent.

In addition to accommodating parking demand throughout the campus by providing central and remote parking, the campus must also consider demand and supply in its eight central campus areas. Campus Transportation and Parking Services data show that of the eight central areas, the highest demand throughout the day and into the evening hours is in the University Center area. By 8:00 a.m., faculty, student, and staff parking occupancy is 100 percent. Competition for parking in the University Center area has significantly grown and faculty and staff working in the area must often park at distant locations. The proposed site for the structure also provides the campus community and visitors safe and convenient pedestrian access to key destination facilities.

Project Description

The Gilman Drive Parking Structure will consist of a six-level parking garage of approximately 870 parking spaces with at least two elevators. A storefront area is proposed to be incorporated into the ground level of the structure to house various campus services units and a branch of the University and State Employees Credit Union. The Credit Union would lease its space from the campus.

The project also includes the following elements:

- Demolition to clear the site and relocation of utilities buried under the proposed site
- Construction of new facilities to replace the two student housing support facilities to be demolished to clear the site for the proposed project
- Related access improvements, including vehicular and pedestrian access improvements, which also include some minor demolition of existing facilities.

Campus Services Complex, Phase 2: The site selected for the structure is occupied in part by existing facilities containing programs that must be relocated to new facilities. The CSC, Phase 2 involves construction of new facilities to accommodate most of the displaced programs. The new buildings to be constructed at the CSC, Phase 2 will house physical plant shops and the central garage and fueling station for a total of 24,330 asf.

The portion of the CSC, Phase 2 project cost related to expansion space for the central garage and physical plant shops is being paid with auxiliary and plant services reserves. Parking revenues will repay the debt associated with the replacement space for the CSC, Phase 2 operations and the parking structure. Because of the time required for construction of replacement facilities for units in space to be demolished, CSC, Phase 2 would begin in December 1997, with the structure anticipated to open in fall 2000.

Financial Feasibility

The cost of the structure is estimated at $14,979,000 and the cost of CSC, Phase 2 is estimated at $5,655,000, for a total cost of $20,634,000. It is proposed that the projects be funded from a combination of external financing and auxiliary and plant services reserves. Based on a total debt of $20,041,000 amortized over 27 years at 7 percent interest, the estimated average annual debt service is approximately $1,672,000 ,and annual operating expenses are estimated to be $6,369,000 in the structure's first full year of operation, for a total annual expense of $8,041,000. The debt would be paid from San Diego campus parking fees and related income.

In order to ensure sufficient income for this and other obligations, the monthly fees for each category of parking permit would be increased incrementally between the years 1998-99 and 2002-02 for faculty, staff, and students. The rates are within the rates approved by the San Diego Transportation Policy Committee.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

6. **INCREMENTAL FUNDING OF FIXED PRICE CONSTRUCTION SUBCONTRACT, LAWRENCE LIVERMORE NATIONAL LABORATORY**

The President recommended that, as an exception to Standing Order 100.4(dd)(1) and (8), and subject to appropriate University pre-bid concurrence and to approval by the Department of Energy, the Lawrence Livermore National Laboratory be authorized to solicit and execute an incrementally funded, fixed-price construction subcontract for the remodel of Building 451 at LLNL to accommodate the future installation of the ASCI Blue Pacific high-performance computing system, as authorized in connection with work done under the University's management and operating contract for LLNL, when the total value of the individual subcontracts would exceed the amount appropriated for project work.

The Committee was informed that the Lawrence Livermore National Laboratory has a research and development subcontract with IBM Corporation to produce a leading-edge, high-performance computing system. The system, known as ASCI Blue Pacific, is a vital part of the Department of Energy's high-priority Accelerated Strategic Computing Initiative (ASCI), which supports the Stockpile Stewardship Management Program (SSMP). The subcontract is for the remodel of Building 451 at LLNL to house the installation of the ASCI Blue Pacific system.

The Laboratory has proposed awarding an incrementally funded subcontract to obtain cost savings during the two-year construction of the approximately $8 million ASCI Blue Pacific Installation. This method of contracting, which avoids restraints imposed by the one-year duration of Congressional appropriations, has been used previously at the DOE laboratories and does not pose a substantial risk to The Regents.

Incremental funding of fixed-price construction contracts allows an agency to enter into a contract to have a facility built over several years for a fixed total price but limits the agency's obligation at any one time to the amount of funds currently available and allotted to the contract. The contractor promises to complete construction for a fixed price only if the agency provides the full amount of the requisite funding, in increments, over the term of the contract. The agency is not obligated to reimburse the contractor if available funds are exhausted. The special conditions of the contract spell out in detail the method of funding and the manner in which work may be adjusted, suspended, or terminated in the event later appropriations are reduced or eliminated. The LLNL construction subcontract would also remain subject to existing pre-bid University review procedures, including approval as to legal form by the Office of General Counsel.

Subcontracts using incremental funding and which are terminated before contract completion due to non-appropriation of funds cannot be considered completely risk free. Although they provide for termination if funds are curtailed, an absolute limitation on the University's potential liability cannot be assured. The risk to The Regents, however, is mitigated by DOE's contractual obligation to indemnify the University provided that indemnification obligation is sufficiently funded by reserve contingency funds or by the availability to DOE of appropriated funds that can be applied to the LLNL contract. The University's contract with the Department of Energy provides that the University shall be reimbursed "[F]or liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to [the limitation of funds found in] Clause 3.4, Obligation of Funds."

Incremental funding is routinely used by federal agencies for construction contracting, and the national laboratories have adopted the practice in the past decade. The principal advantage is the opportunity to award a construction contract over fiscal year boundaries, avoiding the artificial parceling of the project into multiple contracts. Such a contract allows the introduction of cost saving methods and other economies associated with continuous performance.

DOE's contractual assurances regarding indemnification significantly reduce the risk of any financial exposure for the University. In addition, sufficient amounts would be maintained by LLNL as reserve contingency funds over the fiscal year period to cover in all material respects contractor termination costs in the event of non-appropriation.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

7. **APPROVAL OF 1998-99 BUDGET FOR CURRENT OPERATIONS AND FOR CAPITAL IMPROVEMENTS**

A. The President recommended that the expenditure plan included in the 1998-99 Budget for Current Operations be approved as presented in the document titled **1998-99 Budget for Current Operations** dated October 1997 and as modified at the October 16, 1997 meeting.

B. The President recommended that the Committee concur with the recommendation of the Committee on Grounds and Buildings that the 1998-99 Budget for Capital Improvements be approved as presented in the document titled **1998-99 Budget for Capital Improvements**.

Associate Vice President Hershman recalled that the **1998-99 Budget for Current Operations** was discussed in detail at the joint meeting of the Committees on Finance and Grounds and Buildings on October 16, 1997. The expenditure plan as presented in the document was modified based on the Governor's signing of AB 1571, which augmented the University's 1997-98 State-funded budget by $2.5 million. As a result, the $12 million undesignated cut included in the University's 1997-98 budget was reduced to $9.5 million, reducing by $2.5 million the funding the University will seek to restore in 1998-99.

The Governor also signed AB 1318, which provides for a five percent reduction in general student fees for undergraduate resident students and appropriates the funding to offset the revenue loss that results. As a result, the University's funding plan includes an increase of an additional $22 million in State general funds and a corresponding decrease in student fee income. There is no impact on the University's proposed expenditure plan. A second provision of AB 1318 was a two-year freeze on fees for California students enrolled in graduate and professional degree programs.

The University's 1998-99 budget plan was developed on the basis of the four-year compact with higher education, which has been supported by the Governor and the Legislature, and seeks an increase totaling $132.5 million in State general funds, which represents a

6.3 percent increase. The $132.5 million includes the revenue equivalent to a four percent increase in the base budget, plus revenue equivalent to what would have been generated by a ten percent increase in general student fees (net of financial aid), plus the restoration of the $9.5 million undesignated cut.

The goal of the University's 1998-99 budget plan is to maintain fiscal stability and, consistent with the compact, seek funds to accommodate budgeted enrollment growth of 2,000 students; provide for faculty and staff merit salary increases; cover inflation, including cost-of-living salary adjustments for employees; provide a 2.5 percent parity adjustment for faculty as the final step in a multi-year plan to restore competitive faculty salaries by 1998-99; continue previous initiatives to support the operation and maintenance of the University's physical plant; ensure that students continue to have access to state-of-the-art instructional technology; and expand the Industry-University Cooperative Research Program. Funding for two new initiatives is included in the 1998-99 budget plan. The first involves the development of a California Digital Library, and the second addresses the use of long-term external financing to increase substantially the number of deferred maintenance and facilities renewal projects that can be undertaken.

Mr. Hershman pointed out that the University is over-enrolled in 1997-98 by 4,000 students. The University has indicated to the Department of Finance the need to fund this over-enrollment in 1998-99.

The budget plan also includes a $10 million budget reduction, representing the final of four $10 million reductions called for in the four-year compact that are to be addressed through productivity improvements.

The Governor's Budget will be released in early January. A presentation will be made at the January meeting regarding proposals in the Governor's 1998-99 Budget as they relate to the University's budget. At that same time, any modifications to the 1998-99 budget plan will be presented along with any recommendations with respect to changes in student fees. It is anticipated that The Regents will be asked to approve a $400 (4.5 percent) increase in nonresident tuition as presented in the 1998-99 Budget for Current Operations. As discussed with the Committee in October, it is also anticipated that The Regents will be asked to reduce the systemwide general fees for undergraduate resident students by five percent.

The University's capital budget request totals $150.9 million and is consistent with the Governor's four-year compact with higher education, which provides funding of about $150 million a year. Funds to equip three projects for which construction has already been approved by the State total $2.2 million. Funding for the remaining 23 major capital improvement projects totals $148.7 million. Fourteen of the 23 would be funded for construction, and only nine projects are limited to funding for design.

The 1998-99 budget gives priority to seismic and life-safety projects, renewal, and essential infrastructure. Eleven of the 23 major project funding requests involve seismic corrections, and an additional three address other life-safety and code improvements. Renewal of existing facilities is the focus of two projects, while infrastructure renewal or expansion of capacity is the focus of four. Three others are proposed in response to unmet programmatic needs.

Seismic safety continues to be an urgent priority of the University. Great strides have been taken in correcting seismic life-safety deficiencies in recent years. Over 60 percent of University buildings that had been rated seismically “Poor” or “Very Poor” have now received structural correction or are in progress. Until now, the University had anticipated that correction of all “Poor” and “Very Poor” buildings would be completed or at least started by the year 2000 if funding levels were maintained. However, new knowledge from the Northridge and Kobe earthquakes has led the University to initiate a new review of selected buildings. The studies are still under way, but it is already clear that a number of additional buildings, primarily at the Berkeley campus because of the proximity of the Hayward Fault, will require seismic correction. This will be discussed further in a separate item.

Looking forward, additional funding is needed if the University is to maintain the usefulness of its existing physical plant through the renewal and modernization of campus buildings and infrastructure, complete the correction of seismically hazardous buildings, and address the capacity needs of a new wave of student enrollment growth beginning in the academic year 1999-2000. This growth will expand the population of existing campuses to the limits of their capacity and adds urgency to the development of a new campus being planned in the San Joaquin Valley. The State funding proposed in the 1998-99 capital budget totals $150 million, in accordance with the last year of the Governor’s compact. The five-year capital plans included in the budget document show a program that increases to $175 million in 1999-2000, $200 million the following year, $230 million the fourth year, and $250 million by 2002-03.

This five-year program was prepared before the Berkeley campus discovered the magnitude of seismic hazard it faces. Over the coming months, the campus will develop a detailed plan for the work needed to address those seismic life-safety needs and investigate every option for funding. The University faces a major problem in meeting the funding requirements of completing the seismic corrections program, maintaining the value and usefulness of the existing investment in its campus physical plant, and meeting its obligations under the Master Plan to provide access to education for the growing numbers of California high school graduates.

Funding for this budget and that of the following year is dependent upon passage by the voters of a new general obligation bond measure on the 1998 ballot. Early in 1998 the Governor and the Legislature must act on a measure to place a general obligation bond issue on the 1998 election ballot to finance this 1998-99 capital outlay request. The bond measure will also support the capital budget for the following year and perhaps subsequent years as well. The size of this bond measure, and the support it receives from the people of California, are of urgent importance to the University and its students.

In response to a question from Regent Montoya, Associate Vice President Hershman stated that the view of the University is that the California Digital Library will be of value to all of the citizens of the State. The project is being undertaken in cooperation with the California State University, the community colleges, and the State Library. With respect to the virtual university, its major value will be in relation to the University's extension program, benefiting people who are already employed by offering them courses. The budget includes a request for start-up funding for the virtual university to help develop courses. Neither initiative will ease the problems of over-enrollment. The administration has forecast an increase of 45,000 students between now and 2010; significant resources will be required to meet that major growth.

Regent Soderquist expressed concern about the reduction in revenue for the professional schools, who have budgeted based upon the assumption of a fee increase. Mr. Hershman stated that, due to the action by the Legislature and the Governor, there would be no fee increase for the next two years. After that time, the University could return to its original plan of raising professional fees to be in line with comparable institutions.

Regent Bustamante apologized to the Regents and to the University for the failure to enact AB 1415, which would have represented a stabilized funding source for the University. Although the Legislature failed to obtain the Governor's signature on AB 1415, this will not deter the efforts of those who believe that the University deserves a higher profile. The industries that saved the State from the recession have a strong reliance on the UC system, which supplies the creativity that these companies need to ensure their survival in the future. If California does not do that, these industries will find another state or country that will. The Speaker stated his intention to introduce another version of AB 1415 in 1998 as well as a bond issue which will have substantial support for higher education. He believed that the State should not be considering a tenth campus for the University but rather many new campuses; if the leadership of the State is unable to support this view, then it may be necessary to take a measure directly to the voters.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

The meeting adjourned at 5:45 p.m.

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The Committee reconvened at 10:35 a.m. on Friday, November 21, 1997, with Committee Chair Brophy presiding.

Members present: Regents Atkinson, Bagley, Brophy, Bustamante, Connerly, Davis, Johnson, Khachigian, Lee, Levin, McClymond, Sayles, and Wilson; Advisory Members Miura and Willmon

In attendance: Regents Chandler, Clark, Davies, Eastin, Gonzales, Hotchkis, Leach, Montoya, Nakashima, Ochoa, Parsky, Preuss, and Soderquist, Faculty Representatives Dorr and Weiss, Secretary Trivette, General Counsel Holst, Assistant Treasurer Stanton, Provost King, Senior Vice President Kennedy, Vice Presidents Darling, Gomes, Gurtner, and Hopper, Chancellors Carnesale, Debas, Dynes, Greenwood, Orbach, Vanderhoef, and Yang, Executive Vice Chancellor Golub representing Chancellor Wilkening, and Recording Secretary Nietfeld

8. **PROPOSED AMENDMENT OF STANDING ORDER 101.2(A) -- COMPENSATION**

The President recommended that, following service of appropriate notice, The Regents approve the following amendment of Standing Order 101.2(a) to give the President the authority to approve above-scale academic salaries for Law, Business/Management/Engineering, and Regular Fiscal Year faculty in proportion to the amount allowable for Regular Academic Year faculty above-scale salaries, adjusted annually.

deletions shown by strikeout, additions by shading

STANDING ORDER 101.

FACULTY MEMBERS AND OTHER EMPLOYEES OF THE UNIVERSITY

* * *

101.2 Compensation.

(a) Rate of compensation and subsequent changes in rate of compensation shall be determined by the Board upon recommendation of the President of the University or upon recommendation of the Secretary, Treasurer, or General Counsel of The Regents in their respective areas of responsibility through the Committee on Finance for:

(1) A Regents' Professor at a salary rate above the approved range, and a faculty member, including a University Professor, at an exceptional-above-scale salary rate ~~of $150,000 or more (academic year or fiscal year)~~. An exceptional-above-scale salary rate is defined as a salary rate that exceeds the maximum salary step of the applicable academic salary scale, as adjusted from time to time, by more than the percent difference between the maximum salary step of the Regular Ladder-Faculty Academic Year salary scale and the compensation approval level. The compensation approval level is defined as the dollar limit on the President's authority to approve salaries ($156,100). The compensation approval level shall be indexed annually in accordance with the Consumer Price Index, said percent increase to be reported annually to the Board;

* * *

Provost King recalled that the President has the authority under Standing Order 101.2(a) to approve faculty academic or fiscal-year salaries up to $156,100. This compensation approval level or threshold for Regental approval is 47 percent higher than the top step of the Regular Faculty Academic Year salary scale. Amendment of the Standing Order would enable the President to approve academic salaries up to 47 percent above scale for all academic appointees eligible for above-scale salaries, adjusted annually by the percentage difference between the maximum salary step of the Regular Faculty Academic Year salary scale and the then-current threshold. The current threshold is high enough to accommodate most academic salaries. In the professional schools, however, the threshold is too low to accommodate critical recruitment and retention of the very best faculty. The President is seeking a new calculation of the threshold to accommodate the majority of these cases and intends to redelegate this authority to the Chancellors. The Regents will retain the authority for review and approval of a new category, the exceptional-above-scale salaries.

Provost King recalled that at the March 1996 meeting The Regents approved an amendment to Standing Order 101.2(a) -- Compensation, which granted the President the authority to approve annual salaries up to a threshold of $150,000. The threshold, which is indexed annually in accordance with the California Consumer Price Index, is $156,100, effective November 1, 1997.

Since annual adjustment of the threshold was introduced in March 1996, it has had a disproportionate effect on the President's authority to approve above-scale salaries for academic salary scales. This year, for example, the maximum, on-scale Regular Faculty Academic Year salary rate is $106,300, or 47 percent below $156,100. The maximum Business/Management/Engineering Academic Year salary rate is $117,200, or 33 percent below $156,100. The maximum Law salary rate is $132,300, or 18 percent below $156,100. The market conditions for Business/Management/Engineering and for Law have outgrown this threshold. As a result, the threshold is out of date with current market conditions for these salary scales.

One case in point is the UCLA campus. Over the past year, the campus has encountered six failed recruitments because of low salary offers--three in management, two in law, and one in mathematics. In addition, six outstanding UCLA faculty were lost to other institutions because of higher salary offers--three in management, one in public health, one in philosophy, and one in education. Similar situations are cited by the Haas School of Business and the Boalt Hall School of Law at Berkeley. University of California campuses compete with other research universities for top candidates for faculty positions. While other research universities can make or match salary offers rapidly, UC campuses must often await Regental approval. They need to be able to act rapidly or they are at a competitive disadvantage.

Since annual adjustment of the threshold was adopted in March 1996, six above-scale academic salary requests have come before the Board, and all were approved. Four of these salaries were within the range of approval that is being proposed herein.

In response to a question from Regent Leach, Provost King stated that for Business/Management/Engineering, the threshold will be $168,900 and for Law $194,100

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

9. **REPORT ON REVIEW OF RISK MANAGEMENT**

Associate Vice President Broome recalled that in November 1997 she outlined for the Regents the 1997 systemwide objectives for the risk management function. It was her intention to describe the status of those objectives, following which Ms. Hillery Trippe, Director of Risk Management, would discuss future plans.

Ms. Broome briefly described the major components of the risk management program. A more detailed explanation was included in the **Annual Report on Insurance and Self-Insurance Programs** which was forwarded to the Regents in October.

The Office of Risk Management performs the following functions: protects the University from unanticipated loss, reduces loss exposure, administers insurance and self-insured programs, and manages claims and litigation in consultation with the Office of General Counsel. The Risk Management Program is a function within the Office of the Senior Vice President—Business and Finance and reports directly to the Associate Vice President--Business and Finance. General Counsel Holst and the attorneys in the Office of the General Counsel provide legal support, including consultation and litigation participation for the University's self-insured program.

The Office of Risk Management currently administers three major self-insurance programs that cover claims and legal liabilities of the University and its employees. The self-insured programs are the workers' compensation program, the medical malpractice liability program, and the general and automobile liability program. The University also purchases insurance to cover certain unexpected or catastrophic losses, including excess liability and excess property coverage and various other property insurance coverages, as well as aviation and marine insurance.

The University's self-insured programs are self-contained business units. For fiscal 1997, the total costs of the risk management program, which included claims, settlements, litigation, and administration, were $127.1 million. The following is a breakdown of the cost components for the insurance program:

- the largest program, workers' compensation, accounts for $55.5 million or approximately 44 percent of total costs;

- the medical malpractice program is $37.2 million or 29.3 percent of costs;

- the employment practices liability program is $15 million or 11.8 percent;

- the general liability program is $10 million or 7.9 percent,

- the automobile liability program is $3.1 million or 2.4 percent;

Except for the increase in the cost of employment claims, program costs have remained relatively stable for the past two to three years.

Associate Vice President Broome reported on fiscal 1997 objectives. During the past year, the focus was on reviewing the quality of the operations, evaluating Third Party Administrator (TPA) costs, evaluating the claims management system, reviewing insurance costs and the adequacy of coverage, and reviewing the organizational structure.

In assessing the quality and cost of the operation, the administration used benchmarking information and conducted independent audits of the University's programs. For the workers' compensation program, the University's experience was compared to other educational groups in California. It is achieving good claim results compared to other entities.

For the medical malpractice program, the University Health System Consortium, which is a non-profit group of teaching hospitals throughout the U.S., provided benchmarking information which permitted comparison of the University's experience with that of a comparable multiple-hospital system. The University compared quite favorably.

Development of benchmarking information on employment claims is currently under way. This is a difficult area to benchmark because employment claims are generally treated confidentially. In addition, the growth in employment claims is relatively recent, and historical information is not always available.

To help to assess the quality of TPA services, the administration conducted claim audits using external consultants for both the workers' compensation program and the medical malpractice program. The audit results were positive in both cases. The University Health System Consortium performed the audit on the medical malpractice program. The audit concluded that the University's claims were well managed. The consultants reviewing the workers' compensation program reached the same conclusion.

Additionally, at the request of the University, the TPA's independent audit firm conducted a control compliance review to ensure that the TPA's internal control policies and procedures are adequate and operating effectively. No exceptions were noted. These control compliance reviews will be an ongoing part of the program. There were also thorough reviews of the third party administrators' costs of each program.

Based on the results of the review of the workers' compensation program, the University negotiated expense and structural changes in the program which decreased costs by over 17 percent, or $2.3 million annually. The service structure of this program will be reviewed on an ongoing basis in order to identify any further efficiencies.

Ms. Broome reported that the University's TPA service agreement for medical malpractice expired this year. Competitive proposals for TPA services were solicited from all major providers through a Request for Proposal (RFP) process that involved hospital risk management, internal audit representatives, and the Office of the General Counsel. The RFP process was designed to allow the University maximum flexibility in considering alternatives and negotiating with competitors. As a result of the RFP, the University retained the claims management services provided by Professional Risk Management, the existing provider, but with an annual decrease of over $2 million, or 36 percent, in service fees. Additionally, the new contract provides an incentive for the reduction of claim expenses, which consist primarily of legal fees. The total annual combined savings in TPA services for both the workers' compensation and medical malpractice programs is in excess of $4.3 million per year, or over 20 percent of the costs of TPA administration.

During the past year the Office of Risk Management developed new funding and cost allocation methodologies focused on cost control. For the medical malpractice program, it developed and implemented a new cost allocation methodology which identifies the factors which drive costs. In the long term this will result in lower program costs overall. The Office has also developed and is in the process of implementing a similar model for the general and automobile liability program. There was also a major review of the University's insured programs. The University's major excess liability and property policies were renewed in July 1997. Working with the broker, the University sought competitive proposals on the major insurance policies. Building on favorable market conditions and the University's excellent loss history, the policies were renewed with a 36 percent decrease in premiums, which amounted to an annual savings of $2.2 million. This reduced the University's annual insurance premiums to $3.9 million.

Brokerage fees were reduced by 53 percent for fiscal 1997. This reduction was attributed to negotiating structural changes in the delivery of broker services. In addition, based upon an extensive RFP process this fall, broker fees for fiscal 1998 will continue at approximately the same level.

Director Trippe discussed the initiatives that Risk Management at the Office of the President will be working on in 1998. Certain of these areas are the outgrowth of the consulting project undertaken to assess Risk Management's needs with respect to a computerized claims management information system. Other issues have been identified by Risk Management as areas where increased efforts will reduce University losses or assist with containing the cost of these losses.

One of Risk Management's main focuses was the question of whether the University should continue to develop its own proprietary claims management software system or purchase a commercially available "off-the-shelf" product. It is estimated that the purchase of a new system will cost $1.5 million less than finishing and upgrading the proprietary system. In addition to savings, a commercial product will be more functional and provide a more useful tool for risk management analysis as well as "portability." This will give the University greater flexibility in selecting TPAs. Accurate and easily accessible information is essential to risk analysis at all levels. Risk analysis is the foundation for the design and implementation of loss prevention and loss reduction programs. For example, this year Risk Management has been working with Dr. Joe Tupin and the Clinical Policy Review Team as they assess the risk management function and malpractice experience at each medical center. The Clinical Policy Review Team has identified the need for more focused and more easily accessible information on malpractice claims so that the medical centers can identify problem areas. One of the criteria that will be used in selecting a new system will be the type and quality of information that can be provided to the medical schools and medical centers on the medical malpractice program. The new system will also be designed to accommodate the system issues raised by the year 2000.

Selecting and implementing a new risk management and claims management software system will be a major project for Risk Management during the upcoming year. The new system must function for all three self-insured programs and must serve the needs of the third-party administrator, campus, and medical center risk management personnel. It will also require a degree of customization. Because of these factors, 12 to 18 months will be required for completion of the project. This project is widely supported by campuses, laboratories, and medical centers. Risk Management will work closely with risk managers at the locations in identifying their needs.

Ms. Trippe commented that one of the basic principles of risk management is the use of loss prevention programs to reduce an organization's exposure and cost of claims and liabilities. In risk management, loss prevention is defined as any intentional management action directed at the prevention, reduction, or elimination of loss. During the upcoming year, the Office of Risk Management will emphasize loss prevention programs and provide assistance to the campuses, laboratories, and medical centers in this area. The general liability program will be one of the main focuses of loss prevention efforts. Based on the recent rise in employment claims in the general liability program, the Office of Risk Management will be working with the campuses on developing and implementing training programs which will address ways in which discrimination, harassment, and similar claims can be avoided.

A second area of focus will be developing and implementing strategies for controlling costs for outside attorneys in the self-insured programs. Currently, Risk Management and the Office of the General Counsel are working with an outside consulting firm which has been retained to review specific cases and law firms in the general liability program to identify ways that costs can be reduced without compromising the quality of University representation.

In the workers' compensation area, Risk Management will be focusing on the way in which workers' compensation disability benefits interact with disability benefits paid through other programs. Workers' compensation will also be implementing the commitment made this year to support campus vocational rehabilitation programs.

The final goal for the upcoming year will be to evaluate the organizational structure and determine how the Office of the President Risk Management can work better with campus risk management offices. Risk Management will continue to work closely with the Office of the General Counsel on the self-insured programs and fully supports the Office of the General Counsel's plan to add additional attorney resources for the self-insured programs.

Ms. Trippe stated that she would anticipate continued improvements and cost saving, although perhaps not as dramatic, and program enhancements into the future.

Regent Clark suggested that the improvements reported by Director Trippe should be weighed against how poorly the Office of Risk Management had been managed in the past and how much money had been wasted. The situation surfaced as the result of a $1 million defalcation. During the course of the investigation, it was determined that the Office of Risk Management was not subjected to a routine audit by the Internal Auditor.

Regent Clark then raised the following series of questions pertaining to the **Annual Report on Insurance and Self-Insurance Programs**, some of which were addressed by Director Trippe in her report to the Committee:

- The report states that the University's broker "...aggressively sought competitive proposals on the University's major insurance policies." The policies "...were renewed with a 36% decrease in premium, which amounts to a savings of $2,200,772." Regent Clark asked whether these were annual savings. Director Trippe responded that the savings were on an annual basis.

- The report also states that there was a 17.3 percent reduction in the cost of TPA services. Regent Clark asked whether this was an annual savings. Associate Vice President Broome confirmed that the savings were annual.

- There is a reference to a 36 percent decrease in the service fee of Professional Risk Management, one of the University's TPAs, but no dollar amount is associated with this decrease, nor does the report indicate the length of the contract. Ms. Broome reported that it represents an annual decrease of $2.2 million and that the contract is for a period of three years.

- What does it mean that the University will share in the cost of reduction for legal fees and other expenses? Ms. Trippe explained that this applies to the use of outside attorneys for the professional medical malpractice program. As part of the contract negotiations, a clause was included which provides for the sharing of ten percent of any savings that are achieved in legal fees with the Third Party Administrator as an incentive to work towards reducing legal costs.

Regent Clark referred to the following statement in the annual report: “We are reviewing ways in which the cost of employment claims can be reduced, particularly the cost for attorney fees related to the defense of these claims,” and asked whether or not this should be handled by the Office of the General Counsel. Mr. Holst explained that the retention of outside counsel is funded through the Office of Risk Management. Although the Office of the General Counsel has assumed a larger role in the selection and assignment of outside counsel, the funding is within the self-insurance program, and those who are responsible for that program have the primary responsibility for all costs associated with the program. He confirmed for Regent Clark that only the General Counsel has the authority to retain outside counsel for the University. Regent Clark suggested that this fact was not made clear in the annual report.

Regent Clark suggested that future annual reports provide more detail in order to avoid similar questions being raised. He believed that the negative effect of a lack of competitive bidding in the past could be seen in the savings that had been achieved.

The meeting adjourned at 11:10 a.m.

Attest:

Secretary