The Regents of the University of California

COMMITTEE ON FINANCE
July 14, 2004

The Committee on Finance met on the above date at UCSF–Laurel Heights, San Francisco.

Members present: Regents Blum, Connerly, Dynes, Hopkinson, Kozberg, Lee, Lozano, Ornellas, Parsky, and Sayles; Advisory members Juline, Rominger, and Pitts

In attendance: Regents Anderson, Johnson, Lansing, Marcus, Montoya, Novack, and Wachter, Faculty Representative Blumenthal, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost Greenwood, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Doby, Drake, Gomes, and Hershman, Chancellors Berdahl, Bishop, Carnesale, Cicerone, Córdova, Tomlinson-Keasey, Vanderhoef, and Yang, Acting Chancellor Chemers, and Recording Secretary Bryan

The meeting convened at 11:50 a.m. with Committee Chair Blum presiding.

1. **READING OF NOTICE OF MEETING**

For the record, it was confirmed that notice was given in compliance with the Bylaws and Standing Orders for a Special Meeting of the Committee, for this date and time, for the purpose of taking action on item 702, *Process for Reviewing Significant Issues of Legal and Financial Exposure and for Communicating Pertinent Information to The Regents*.

2. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of May 19, 2004 were approved.

3. **APPROVAL OF UNIVERSITY OF CALIFORNIA 2004-05 FINAL BUDGET AND DISCUSSION OF 2005-06 BUDGET**

A. The President recommended that the University of California 2004-05 budget plan for State and UC General Funds and student fee revenue be approved, consistent with the final Budget Act approved by the Legislature and the Governor and adjusted by priorities previously approved by The Regents.

B. The President recommended that the expenditure plan for all other fund sources included in the 2004-05 Budget for Current Operations be approved.

The President's recommendations were withdrawn because no State Budget had been approved.

Vice President Hershman recalled that at the May meeting he had summarized the proposed 2004-05 budget plan, which was consistent with the 2004-05 Budget for Current Operations published in November 2003 as well as proposals made by the Governor in his January budget and May revision, and that The Regents had approved student fee increases associated with this plan but had not acted on the overall budget plan.

Vice President Hershman noted that, although the State's revenue position had improved somewhat as the economy had picked up, much of its funding plan relies on one-time solutions. Some details of the State's allocations to the University remain under negotiation. By Constitutional amendment, beginning in 2005-06 the State must have balanced budgets. Cuts will be necessary in order to accomplish that goal in the face of a continuing structural gap in the budget of about $7 billion. It was in consideration of the inevitability of future budget cuts that the University strived to reach an agreement with the Governor in order to protect its financial position to the extent possible.

With respect to the University's 2005-06 budget, Mr. Hershman reported that a general 3 percent increase is planned that will help to support salaries and employee health benefits and to address other non-salary price increases. Enrollment growth of 5,000 students will be proposed. Plans are being developed for the short term and out to 2010, by which time it is envisioned that the targets met will be consistent with a plan that was presented to the Regents in 1999. He recalled that the Governor had agreed to allow the University to keep the revenue from student fees and to not be subjected to further budget cuts for the next three years. The University will use some of the fee money to cover inflation and other cost increases. Mr. Hershman believed that it is essential to ensure that there are funds available, from whatever is available from the State and the student fees, for maintenance of new space. He reported that all chancellors will submit proposals to present to the Regents a plan for the use of fee revenue from professional schools.

Mr. Hershman recalled that the University has the option under the compact with the Governor to ask for new initiatives and one-time money. One initiative under consideration relates to graduate education. He recalled also that there is an agreement in the compact for the University's capital program to continue being funded at past levels. The University will propose phased funding under each campus' five-year plan.

Mr. Hershman noted that the University had done well with respect to receiving federal funds, particularly for research. The federal government has provided strong support for the National Institutes of Health, from which the University has been receiving large increases over the last few years. The federal fiscal situation this year, however, is precarious. There is some concern that the University may be offered research funds sufficient only to cover inflation. He noted, however, that even though the total pot of money may not be growing, the University is very competitive for the money that is available.

Finally, Mr. Hershman commented on the importance of private money, which, after increasing significantly for a period of years, had finally topped over $1 billion annually. It has slowed the last few years, but he believed that as the economy strengthens, gifts will increase once more. It is clear that the University cannot depend solely on State funds. Efforts to increase federal and private money need to remain strong.

Regent Johnson asked how many of the 7,500 students who were redirected to community college had been offered access to the University. Mr. Hershman responded that UC Santa Cruz and UC Davis had admitted about 1,800 of them. About 5,700 remain who were eligible but were not admitted. Of these, about 1,300 accepted the option of guaranteed transfer from community college.

Regent Connerly acknowledged Regent Hopkinson for initiating reforms in the University's budget process during her term as Committee Chair. Although he believed that many of the long-term reforms that will be considered by the Regents are imbedded in the compact with the Governor, which he supported, he noted that the compact locks the University into some significant structural reforms. He urged all Regents to reexamine the compact with this in mind.

Regent Lozano was hopeful that those students who were eligible but not admitted would gain access to the University. She was concerned about funding levels for outreach in the compact, noting that the academic preparation programs will be determined each year as part of an annual budget negotiation. She asked whether funding for outreach falls under the compact as part of a long-term solution. Mr. Hershman reported that the issue was still under negotiation with the State. The compact commits the University to provide at least $12 million annually of reallocated funds and states that any funds beyond that will be negotiated by the Governor and Legislature as part of the budget. Another issue under negotiation is the level of financial aid. Under the compact, it has been left to the Regents to choose a level from a range of 20 percent to 33 percent. President Dynes noted that, although the level of financial aid has been reduced for 2004-05, under the compact the Regents will be determining the level of financial aid, which traditionally has been 33 percent of student fees.

Regent Montoya asked when it was planned for all the campuses to offer summer instruction. Mr. Hershman responded that all the campuses have summer programs, but the State funds only four of them. The agreement in the compact is that, consistent with the University's long-range planning, the State will fund all of the campuses, phased over the next two years.

Regent Kozberg asked about the status of the Cal Grant program. Mr. Hershman recalled that originally the Governor's budget did not provide funding for Cal Grants to cover student fee increases. In the May revision, the Governor reversed that decision. The University is hoping that Cal Grant funding will match the fee increases, as has been the State's policy.

Regent Sayles supported the compact. Recalling that Mr. Hershman had made reference to the State's structural problems, he asked about the likelihood that the compact will be upheld in the short term. Mr. Hershman reported that the University had been assured by people who make priority budget decisions in Sacramento that it will be honored. Regent Blum emphasized that if the compact with the previous administration had been legally binding, the University would have $1.5 billion coming to it. He observed that the compact with the current governor is no more legally enforceable than the previous one was. Given the huge demands on the State, the University has a fundamentally unreliable partner in the State of California. One of the problems to be dealt with long term is that, while the University wants to continue working with the Legislature to get all the funding possible, the University needs to become less financially dependent on the State.

Regent Montoya asked whether an excess units fee was still being planned. She believed that the business world pressures students to choose multiple majors. Mr. Hershman responded that the University declined to implement an excess unit fee on such short notice and disputed the amount of money an excess units fee would generate. He believed that in the future the Regents should consider adopting a policy on the matter. Regent Marcus expressed strong opposition to charging for excess units.

Regent Anderson had understood that the income ceiling to be eligible for a Cal Grant was going to be lowered and that for 2004-05 the compact proposes a 20 percent return to aid. She was concerned that the lowest-income students will be burdened disproportionately if the income ceiling is lowered and return-to-aid remains at 20 percent. Mr. Hershman believed the income ceiling was still subject to negotiation. He recalled that the University had departed from its historic policy on financial aid the previous year by expanding grant support to include students whose parents were in the $60,000 to $90,000 income bracket. He believed that action would need to be reversed in order to assure that there is adequate financial aid for the lowest income students. It should be possible to return to more normal financial aid policies in the future.

Regent Johnson expressed her dismay that the University would not be able to offer middle-income students any financial resources. Mr. Hershman confirmed that the needs of lower-income students would be given priority.

At the invitation of President Dynes, Mr. Matt Kaczmarek, Chair of the University of California Student Association, presented farewell remarks in which he reviewed briefly the accomplishments of UCSA during the past year and provided some long-term perspectives on the budget and changes to eligibility. He reported that UCSA believes that in order for the economy and society of California to flourish, all students must have a right to higher education that is affordable and of high quality and that students must have a powerful role in holding the institution accountable for its product. During the year, the organization realized its goals of building student electoral power through the defeat of Proposition 54 and reestablishing a respected presence in Sacramento. He recalled that in one media event to raise their visibility, students jogged over 1,100 laps around the Capitol 24 hours a day for 11 days, gathering television coverage in every major market. UCSA also increased the role of students in University policy making.

Attention to this area resulted in participation in the admissions and eligibility study group and the credit card marketing policy work group, and in affecting the development of Regental budget principles and priorities. In addition to its process-oriented goals, UCSA focused its resources on campaigns to support education rather than incarceration, to protect higher education and outreach in the State budget, and to propose sustainability policies within the University. He recalled that it had been a challenging but successful year. He urged the Regents to look for positive, forward-thinking solutions to the issues in society that the University needs to address, and to find innovative methods of expanding access to a University education.

Faculty Representative Pitts thanked Mr. Kaczmarek for his service, noting that the Academic Senate involves students in many of its activities, including the eligibility discussions with the Board of Admissions and Relations with Schools. He anticipated that students would continue to participate in these deliberations. Regents Kozberg, Johnson, and Lozano commented on Mr. Kaczmarek's contributions, including his participation on the Eligibility Task Force and his campaign to increase access. Regent Blum noted that the activities of students related to advocacy were an inspiration to alumni.

Secretary Trivette drew attention to a report of communications received pertaining to this item.

The Committee recessed at 1:00 p.m.

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The Committee reconvened at 2:10 p.m.

4. **PROPOSED CONTINUATION OF LIFE-SAFETY FEE, BERKELEY CAMPUS**

The President recommended that the life-safety portion of the mandatory Berkeley Campus Fee be extended through Spring Semester 2005 at the current level of $63 per student per year.

It was recalled that the Berkeley campus Student Center Fee was established in 1955 and in 1968, following a student referendum, was incorporated along with other student fees into a new fee named the Berkeley Campus Fee. In July 1992, to address life-safety needs, The Regents approved an increase in the fee of $31.50 per student per semester, effective from spring 1993 through spring 1996. Consistent with University policy, the approved increase did not require a student referendum; subsequently, The Regents approved extensions of the life-safety portion of the fee through spring 2004 to address additional health and safety projects. The life-safety portion of the Berkeley Campus Fee has funded needed seismic and other life-safety improvements in student services facilities ineligible, in whole or in part, for State-funded maintenance. The life-safety portion of the fee is the Berkeley campus' primary fund source to address the safety needs of student services facilities. The total annual Berkeley Campus Fee is $197.50, of which $63.00 is for life-safety.

Revenue from the life-safety portion of the Berkeley Campus Fee was originally allocated to fund projects identified by a committee comprised of students and staff. A portion of the funds was targeted for the campus Seismic Action Plan for Facilities Enhancement and Renewal program, following a reevaluation of the campus' seismic needs in summer 1997. Since its inception, approximately $16 million in fee revenue, net of financial aid, has been collected by the campus. Of that amount, approximately $12 million has been expended or committed to fund seismic analyses and repairs, HVAC repairs, elevator replacements, fire alarms and sprinklers, demolition and hazard removal, security-related expenses, and resurfacing. Following the September 11, 2001 terrorist attacks, The Regents also approved use of the fee for some campus security projects. Approximately $4 million in fee revenue, net of financial aid, is being held in reserve to address additional campus needs. With the additional revenue generated by the one-year extension, the campus will have accumulated a sufficient amount of fee revenue to fund the majority of the following projects:

- Anthony Hall – replace fire alarm system
- 2111 Banway – seismic correction, step 1
- Haas Clubhouse – seismic remediation
- MLK Student Union – seismic remediation
- Rec Sports Facility – replace fire alarm system

In keeping with Berkeley campus practice, it is proposed that $21.10 of the per-semester fee support life-safety projects and $10.40 be directed to student financial aid. Extension of the fee will not result in an increase in total student fees. It is estimated that extension of the fee will generate $2 million per year, of which $660,000 will be used for financial aid purposes.

During the last six months, the campus has undertaken two efforts that relate to life-safety issues. First, a new committee has been charged with improving student services facilities, including several buildings that are rated seismically poor. The work of the committee is expected to proceed over the next several years, and it is anticipated that major seismic work for student services buildings will require student referenda to approve funding. Second, a new Life-Safety Committee has been constituted to address seismic and non-seismic life-safety issues in fee-funded facilities. During the 2004-2005 academic year, the committee will reassess student services facilities to compile a comprehensive list of life-safety projects, prioritize the life-safety project list, and recommend the duration and amount of the life-safety fee following spring 2005. The committee will operate for the duration of the life-safety portion of the Berkeley Campus

Fee to review project budgets, assign priorities to projects, and ensure that the uses of revenue from the life-safety fee conform to University and campus guidelines.

It is anticipated that the campus will return to The Regents next year to request an extension of the life-safety portion of the Berkeley Campus Fee at an appropriate fee level. Below is a list of projects that the campus anticipates will require funding after this one-year extension of the life-safety portion of the Berkeley Campus Fee has ended. The list is not in priority order, and additional items are likely to be added during the course of the year as the committee completes its survey of needs. Some of the facility needs listed below may require student referenda, while others could be funded from this life-safety fee:

- 2111 Banway – seismic correction, step 2
- 2515 Channing – seismic correction
- Edwards Track – seismic correction
- Eshleman Hall – seismic correction

The request for extension of the fee is in accord with the University's Policy on Campus-Based Student Fees, which states:

93.0 Exceptions to Referenda Requirements

> An increase in compulsory campus-based fees does not require a student referendum when any of the following circumstances apply:
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> * * *
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> 93.20 The Chancellor determines that an increase is necessary for the health and safety of students such as the maintenance of the safety of a building or facility that is funded wholly or in part by student fees. Safety issues are those which are potentially dangerous such as risk of fire, asbestos, earthquakes, or structural deficits. For buildings or facilities with multiple uses, the costs to students for funding safety-related or health-related maintenance should be based, whenever possible, on the proportion of current student use of the facility. A portion of the revenue from these fees may be set aside for financial aid purposes.

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

5. **AMENDMENT OF STANDING ORDER 100.4(nn) – DUTIES OF THE PRESIDENT OF THE UNIVERSITY: AUTHORITY OF THE PRESIDENT FOR EXTERNAL FINANCING**

The President recommended that:

A. Service of notice be waived.

B. Standing Order 100.4(nn) be amended, as indicated in the attachment, concerning the President's duties as manager of all external financing for the University.

It was recalled that at the March 2002 meeting, Bylaw 21.4 was amended to change the duties of the Treasurer with respect to authority for external financing. The action transferred responsibility for external financing to the President under Standing Order 100.4(nn); however, the language incorporating the responsibilities of the President for external financing did not reflect all the duties of the President as manager of external debt, such as refinancing of debt, as was the case when the Treasurer was responsible for external financing. The University's bond counsel requested the amendment to the President's authority as quickly as possible in order to clarify the authority of the President and to reflect the activities of external financing which have been undertaken under the President's authority since March 2002. These have included not only borrowing for new construction and acquisitions but also refinancing of various projects to reduce the interest cost.

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

6. **REPORT ON COMMUNICATIONS BETWEEN STAFF AND THE BOARD OF REGENTS, INCLUDING THE FEASIBILITY OF A STAFF REPRESENTATIVE TO THE BOARD**

Senior Vice President Mullinix recalled that at its January 2003 meeting, the Special Committee on Regents' Procedures had requested that a report be prepared which analyzes the nature and effectiveness of communications between the staff of the University of California and The Regents, and includes, as an option to improve communications, the feasibility of establishing the position of Staff Representative to The Regents. The report, which was mailed to all Regents in advance of the meeting, responds to that request and addresses current and suggested means of communication. In addition, the report contains an historical perspective and current analysis of the proposal to have a staff member participate at the table at Regents meetings.

The report suggests that such a position may be more appropriately called Staff Advisor, but it does not make a recommendation on the establishment of the position. Information contained in the report suggests that the Regents may wish to consider at least the following options:

- The advisability of establishing a non-voting position of Staff Advisor to The Regents

- Providing staff with enhanced means of communication with The Regents

- Continuing with the current process of communications but giving additional attention to providing opportunities for staff input on relevant issues coming before The Regents

The Executive Summary of the report provides the major findings and suggestions on improving communications between staff and the Regents and presents the benefits and potential obstacles to the establishment of the position of Staff Advisor to the Board.

There exist several opportunities for staff to communicate with the Regents, including use of the public comment period at Regents meetings, direct written communications, and the use of a new feature that allows staff to send email to President Dynes, called "Dynes' Desk." In addition, the Chair and Vice Chair of the Council of UC Staff Assemblies (CUCSA) attend Regents meetings and have the opportunity to speak with Regents informally at these meetings and at CUCSA meetings, which individual Regents often attend. CUCSA also presents to the Board each July an annual report of its activities and issues of interest to staff.

While these means of communication are valued, they are viewed as having varying degrees of effectiveness. Following are additional options for improving communications between staff and the Board of Regents, noting that staff access to the Board must be aligned with the University's obligations under the Higher Education Employer Employee Relations Act (HEERA).

- The Office of the President could develop a process for staff to communicate in writing to the Regents, with the comments organized in a format useful to the Board. These summaries would focus on issues that are the most important and most relevant to Regents' discussions.

- The administration could solicit feedback from staff and advisory groups and either report the findings to The Regents or invite certain staff members to speak at Regents' meetings on specific issues. This opportunity exists for advisory groups, upon request, but the administration could be more proactive in soliciting such feedback and ensuring that the staff perspective is heard.

- Employee surveys, questionnaires, and focus groups are often used in order to gather staff views on issues that may come before the Board. The results of these methods could be reported more explicitly to The Regents when agenda items are presented.

- The administration could work with supervisors to see that staff receive reasonable access to release time in order to speak during the public comment period at Regents meetings.

As detailed in the report, the proposal to establish the position of Staff Advisor or Delegate to the Board has come before The Regents at least once before, in 1997. The current report reviews the issues and concerns raised at that time, many of which are still valid, and presents a current view of the benefits and potential obstacles that would need to be overcome to establish the position. The report also addresses the items raised in the January 2003 Regents' meeting.

The main benefits of having a Staff Advisor to The Regents are as follows:

- To acknowledge that staff is an important and recognized partner in the University, along with faculty and students.

- To assure that the Board hears the staff perspective directly on issues of importance to employees, including issues that do not directly affect staff members, such as capital projects and fee increases.

- To gain the knowledge and experience of staff, who are in the forefront of local operations and can provide input on how to make policies and programs more successful.

The concerns and potential obstacles include the following:

- Regents' interactions with a Staff Advisor must not violate the various prohibitions under HEERA, including the prohibitions against direct dealing between management and employees.

- Because of the significant concerns about the risks of direct dealing with an exclusively represented employee, the Office of the General Counsel indicates that any such appointed person should not be represented exclusively in a bargaining unit.

- It would be important to ensure that the role of the Staff Advisor would not interfere with the unions' exclusive right to represent those employees in exclusively represented positions.

- The role of a Staff Advisor would necessarily be different from that of the Faculty Representatives, though both are employees of the University, since faculty have a shared governance role that is uniquely protected under HEERA.

- If the Staff Advisor were to be a voting member of the Board, the California Constitution would need to be amended.

- The Constitution identifies those who may serve as members of the Board of Regents and thereby participate in the deliberative process of the University. Consideration must be given to the intent and spirit of the Constitution as to who may be added to participate in the deliberations of The Regents.

- The selection process for a Staff Advisor would need to be developed carefully in consideration of the concerns and issues under HEERA raised in the report.

At the invitation of President Dynes, Mr. David Bell, Chair of the Council of UC Staff Assemblies, which has been working with the Office of the President on this issue, commented on the benefit of having a formal advisor representing staff. He noted that CUCSA's goal is to see that the University is an inclusive body that seeks input and demonstrates a strong sense of trust in all of its major constituents. That goal has been met with respect to the faculty and students. Mr. Bell acknowledged the challenges to making a staff appointment to the Board possible but observed that they are not insurmountable. CUCSA is not concerned with the title of the staff advisor, does not seek a specific role in the selection process, and has no unyielding interest in securing the position for one of its own; rather, it wants the hard work, dedication, intellect, and commitment of the staff to the quality of the University to be acknowledged in a meaningful way, to have an equal voice, and to be formalized.

Regent Hopkinson agreed that the Regents would benefit from additional input from staff, but she questioned how someone who represented all staff could be chosen. Her inclination was to make the position a non-voting one and to restrict the representative to open session participation. Regent Johnson agreed that there should be representation from employees and that it should be instituted in some form as quickly as possible.

Regent Lozano noted that it would be necessary to establish a charter for any staff-driven body that would select a representative to the Board. She and Regent Hopkinson believed that any representative selected should represent all staff, including those with union representation.

Regent Connerly recalled that the question of staff representation on the Board had been brought up many times. He believed that the University is a unique public institution because the Constitution establishes that its governance is to be shared with all segments of the University community. He noted that the staff was the only segment not sharing in this governance. The Regents must decide whether they would benefit from having a staff representative and, if so, determine how to structure such a role. He suggested that a staff advisor be tried initially for a specific period, after which the Regents could reevaluate the situation. Any staff advisor could likely be excluded from any closed session involving collective bargaining. He was hopeful that at the next meeting the President would present a proposal.

Regent Lee did not support the idea of having a staff advisor. He believed that the President, chancellors, and managers should schedule time regularly for communicating with staff. He stressed that the University's governance was set up originally so as to ensure that the quality of the institution was protected. Establishing a staff advisor could open the door for other constituencies to expect representation.

Regent Anderson agreed that communication with staff was important. She believed it should be institutionalized through the establishment of a staff advisor to the Regents. She acknowledged the practical and legal issues to be resolved and suggested that some parameters be determined so as to allow a staff advisor to participate on the Board.

Regent Kozberg believed that there should be more representative statements from staff; that staff be given a greater voice, rather than a formal position, at the table.

Regent Lansing believed that most Regents would like to pursue the idea of having a staff representative at the table as a non-voting member.

Regent Parsky asked whether there were other groups within the University that might be seeking similar recognition. Mr. Mullinix responded that the staff advisor would be presumed to represent the entire staff, although workers represented by unions would have to be consulted about this approach. He was doubtful that an election, for instance, would produce the results the Regents were anticipating, because heavily represented groups that put forth a candidate would be advantaged.

Committee Chair Blum noted that the subject would be discussed again at a future meeting, at which time a set of proposals would be suggested.

7. **PROPOSAL TO WAIVE BYLAW 8.1–COMPENSATION OF REGENTS, TO PERMIT A UNIVERSITY EMPLOYEE TO SERVE AS ALUMNI REGENT DURING THE 2006-07 YEAR**

Regent Ornellas recommended that at the September 2004 meeting Bylaw 8.1 be waived to allow Mr. Nadesan Permaul, President of the California Alumni Association (CAA), UC Berkeley Director of Transportation, and Lecturer in Rhetoric and Political Science, to serve as an alumni Regent in 2006-2007. His term would include service as an alumni Regent-designate in 2005-2006.

It was recalled that Regents Bylaw 8.1, Compensation of Regents, states that, "No Regent shall receive salary or other compensation for services as a Regent, nor shall any Regent other than the President of the University be eligible for appointment to any position in connection with the University for which a salary or other compensation is paid, provided, however, that the student Regent shall not be deemed ineligible for part-time compensated University employment." The California Alumni Association was not aware of this provision when it confirmed Mr. Permaul as President of the CAA, a position from which he would assume the title of alumni Regent-designate in 2005-06 and alumni Regent in 2006-07. Upon being made aware of the Regents' provision, the California Alumni Association discussed this unique situation with the Senior Vice President–University Affairs and his staff. The CAA noted that it was unaware of the Bylaw provision, as it does not appear in The Regents' Policy on Support Groups, Campus Foundations, and Alumni Associations, upon which the Alumni Association Directors rely to guide the activities of the Associations. Regent Ornellas emphasized that the CAA will take that Bylaw into account when determining the individual to serve as the 2008-2009 alumni Regent.

The California Alumni Association's procedure is to name its immediate past president to the position of alumni Regent. It takes years of service on the association board to gain sufficient orientation to become an effective alumni Regent. Because Mr. Permaul's training in that regard would be lost were he unable to serve, Regent Ornellas requested the waiver of this Bylaw provision on a one-time basis. He emphasized that the situation was unique and that the request was to suspend the Bylaw only for Mr. Permaul's one-year term.

Regent Montoya recalled that former Regent Bodine had been a University employee. Senior Vice President Darling explained that Ms. Bodine was actually an employee of the State Department, which was compensating her while she was on leave, during which time she took a temporary teaching position as a diplomat in residence on the Santa Barbara campus.

8. **UPDATE ON SEARCH FOR MASTER RECORD KEEPER AND REVIEW OF INVESTMENT OPTIONS FOR UC'S DEFINED CONTRIBUTION PLANS**

Senior Vice President Mullinix recalled that early in 2004, the University of California Human Resources and Benefits Office and the Office of the Treasurer solicited bids from firms to provide record keeping and investment education services for a proposed 457(b) plan, with possible further application to the Tax-Deferred 403(b) Plan (403(b) Plan) and the Defined Contribution Plan (DC Plan), collectively referred to as UC's defined contribution plans. In May 2004, the Regents gave the President the authority to establish and maintain a 457(b) plan, with implementation contingent on the successful completion of this competitive bid. The second phase of this project will be a search and selection process for vendors to provide externally-managed investment options for the University's defined contribution plans within a core fund menu.

Project Goals

- Expand retirement savings opportunities through the implementation of a tax-deferred 457(b) plan.

- Explore the feasibility of upgrading UC's administrative services and investment education services for a new 457(b) Plan and defined contribution plans through the use of a master record keeper.

- Review and update the investment offerings provided through UC's defined contribution plans.

- Review the fiduciary oversight of UC's defined contribution plans in the investment and administration areas and recommend changes as appropriate.

Record Keeper Search and Establishment of 457(b) Plan

The primary goal of the bid has been to determine the economic feasibility of implementing a 457(b) plan through an external record keeper. The bid also explored the feasibility of shifting administration of the existing DC and 403(b) Plans to a master record keeper.

The bid process was designed to attract proposals from qualified firms with experience administering large, defined contribution plans, with particular emphasis on experience with public plans. The bid proposals were reviewed and scored and the references were checked. Following interviews by the steering committee and other key University administrators, finalists were identified and site visits were conducted by representatives of the steering committee and the project work group.

The bidding firms have been evaluated on a number of criteria–notably long-term suitability, service level, and cost. The bidding firms have indicated that it would be possible to implement a 457(b) plan before the end of 2004. Contract negotiations will need to be completed quickly in order to meet that date. It appears to be feasible economically to transform the current administrative structure of UC's defined contribution plans into a new model operated by a single, centralized master record keeper, with potential for improved service levels for participants, primarily due to the extensive technology investments of the external bidders.

Application of Master Record Keeper Concept to DC and 403(b) Plans

UC's defined contribution plans are currently administered by separate entities:

- The six UC funds managed by the Office of the Treasurer are administered by HR/Benefits staff in the Office of the President, with State Street Bank & Trust Company as custodian.
- Fidelity Investments and the Calvert Group each administers its own mutual funds as part of an integrated service arrangement, which includes investment management, record keeping, and participant services.

The feasibility of moving from the existing services arrangement toward a single, external record keeper that can handle all administrative functions of UC's defined contribution plans continues to be explored. The master record keeper would bring together participant information across all of UC's defined contribution plans, regardless of the investment fund in which the participant's money is invested. The master record keeper structure also would facilitate open disclosure of the components of administrative costs, so that, for example, fees for administrative services would be reported separately from costs for other components such as investment management and financial education fees.

This project does not involve any review of the administration of the University's defined benefit pension plan.

Review of Investment Offerings

The second phase of the project will support fiduciary oversight responsibilities by conducting a search and selection process for vendors to provide externally-managed investment options within a core fund menu. Internally-managed investment choices provided through the Treasurer's Office would continue to be offered to participants. A number of focus groups have provided feedback from the UC community, and the project work group has consulted with the University Committee on Faculty Welfare's Task Force on Investments and Retirement to define the asset classes that will make up the new core fund menu. A recommendation regarding updating the process for the selection and oversight of investment choices and the appropriate administrative structure will be presented to the Committee on Finance and the Committee on Investments at a future meeting. Once the core fund menu is defined, the steering committee plans to propose that the Office of the Treasurer screen, evaluate, and recommend fund managers. The selection of funds would be based on criteria including, but not limited to, long-range performance, suitability, and fees. The internally-managed fund choices, along with any new core fund choices, may be provided through the master record keeper across all of UC's defined contribution plans. The Treasurer's Office would be responsible for monitoring investment performance of the core funds. The new structure would be implemented as soon as administratively feasible. The evaluation and selection of core funds are being overseen by the project steering committee.

Next Steps

Amendments to UC's defined contribution plans that will be necessary to support the new master record keeper proposal and core fund menu will be provided at a future meeting. The steering committee plans to recommend amendments that would delegate responsibility for ongoing oversight of plan administration functions, including the master record-keeping process, as well as responsibility for an updated process for the selection and oversight of investment choices. The University will take appropriate action concerning proposed changes that may trigger notice, consultation, and meeting and conferring obligations under the Higher Education Employer-Employee Relations Act.

9. **REPORT ON NEW LITIGATION**

General Counsel Holst presented his **Report on New Litigation**. By this reference, the report is made a part of the official record of the meeting.

10. **PROCESS FOR REVIEWING SIGNIFICANT ISSUES OF LEGAL AND FINANCIAL EXPOSURE AND FOR COMMUNICATING PERTINENT INFORMATION TO THE REGENTS**

The President and the General Counsel recommended adoption of the following concerning the development of procedures for communicating pertinent information to The Regents concerning issues of significant legal exposure, including non-compliance with Regents' policies:

A. The General Counsel, University Auditor, and Senior Vice President for Business and Finance will develop procedures for clarifying and improving the process within the University for promptly identifying significant issues in complying with financial, legal, and Regental policies.

B. The President, Senior Vice Presidents, General Counsel, and University Auditor will meet at least quarterly to identify and review significant issues involving compliance with financial, legal, and Regental policies and to assure that appropriate action is being taken to address these issues.

C. At least quarterly, the General Counsel, University Auditor, Senior Vice President for Business and Finance, and other appropriate senior administrators will meet with the Chairman of the Board, the Chairs of the Committees on Finance and Audit, and other appropriate Regents to review financial, legal, and Regental policy compliance issues that have or might have a significant impact on the University.

D. The General Counsel, University Auditor, Senior Vice President for Business and Finance, and other appropriate Officers of the University will inform the Chairman and/or the appropriate Committee Chairs in a timely manner about financial, legal, and Regental policy compliance issues that may have a significant impact on the University and should receive their immediate attention.

E. The General Counsel, University Auditor, Senior Vice President for Business and Finance, and Vice President–Financial Management will work with the Committee on Audit to assure that the process and policy changes adopted by the Committee are fully implemented.

General Counsel Holst recalled that this proposal results from the discussion of RE-46, *Process for Assuring Compliance with State and Federal Laws*, at the May 2004 meeting and related consideration by the Office of the President and General Counsel of appropriate implementation of Sarbanes-Oxley Act principles relevant to a non-profit institution such as the University.

The increased public and Regental focus on adequate disclosure in a timely manner as to issues with a significant potential impact on the University has resulted in a review of processes for identifying and reporting on these issues. An organization with hundreds of thousands of faculty, staff, and students and multi-billion dollar expenditures cannot realistically report to its board every legal and financial problem, but issues of potentially significant impact should be reported. The administration and the General Counsel wish to provide The Regents with an understanding of legal, financial, and Regental policy control processes and an awareness of substantial issues in complying with the law and these policies.

Consideration of these issues in connection with RE-46 has coincided with the administration's continuing consideration of application of relevant aspects of the Sarbanes-Oxley Act, which was intended to address primarily problems in financial information disclosure with respect to public for-profit corporations. While the Act does not, for the most part, apply directly to not-for-profit corporations such as the University of California, the Committee on Audit, in consultation with the Senior Vice President for Business and Finance, the Vice President for Financial Management, and the University Auditor, engaged an independent external consultant, Protiviti, to examine University audit policy and procedures. As part of that process, Protiviti also reviewed the provisions of Sarbanes-Oxley and other selected corporate governance reform measures and made a number of "best practices" recommendations for The Regents to consider. The Committee discussed those recommendations with the external auditor, the University Auditor, and management, subsequently adopting a number of new policies and procedures to improve financial accountability. One of these new policies was the adoption of a new and expanded "charter" for the Committee, as recently approved by The Regents. Another new policy required more formal and explicit certification of the accuracy and completeness of financial information.

A number of long-established practices have been implemented over time to provide The Regents with timely and meaningful information concerning significant risk issues. In keeping with good financial practices, for instance, for many years the President, Senior Vice President for Business and Finance, and the Vice President for Financial Management have signed representation letters to The Regents' external auditors attesting that, to the best of their knowledge, the University's financial statements present fairly, in all material respects, the University's financial position and operating results in conformity with accounting principles generally applicable in the United States. Similar letters have been required in recent years from the campus vice chancellors of administration and controllers regarding the financial conditions and operations of the campuses. In addition, annually the General Counsel provides the external auditors with a detailed description of pending claims within categories of significance identified by the auditors.

Effective in fiscal year 2003-04, the University has adopted the additional step of having each chancellor sign a campus management letter representing that, to the best of his or her knowledge and belief, the campus financial information used in the University's financial statements presents fairly, in all material respects, the campus financial position, operating results, and cash flows, in conformity with accounting principles generally accepted in the United States. In addition, campus management will require representations, in addition to the chancellor's, from senior campus officials with responsibility for key financial areas, such as grants and contracts, philanthropy, and financial aid. Management has prepared periodic reports on the implementation of the changes identified by the Audit Committee.

It is important to ensure that the University has in place adequate procedures for reporting not only financial issues but also significant legal issues and failures to comply with Regental policies that may be identified through audits, disclosures, or the normal course of business. The General Counsel, the University Auditor, and The Regents' external auditor, as well as The Regents' Investment Consultant and Actuary, all have direct reporting responsibilities to The Regents and already provide regular written and oral reports on significant issues. There are also informal procedures for notifying the Chairman of the Committee on Audit of items of significant concern, which are normally examined by the University Auditor, and other appropriate notifications for significant litigation issues under the purview of the General Counsel. Occasionally, interim written reports on significant financial, management, or legal issues are sent to all Regents. The proposed procedures will formalize certain of these practices and provide a regular schedule for consideration of key issues.

Regent Johnson stressed the need to keep all Regents, not just a select few, informed about important issues.

Senior Vice President Darling reported that Regent Moores had indicated his desire to have a written certification from all chancellors that they were in compliance with all laws and all policies of the University.

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 3:00 p.m.

Attest:

Secretary

ATTACHMENT

Deletions shown by strikeout, additions by underlining

STANDING ORDER 100.4(nn)

100.4 Duties of the President of the University

* * *

(nn) The President shall be the manager of all external financing of the Corporation. The President is authorized to ~~provide for~~ obtain external financing for amounts up to and including $10 million for the planning, construction, acquisition, equipping, and improvement of projects. The President is also authorized to ~~provide for~~ obtain external financing for amounts in excess of $10 million up to and including $20 million, provided that concurrence is obtained from the Chairman of the Board and the Chairman of the Committee on Finance, and also provided that all actions taken to obtain external financing for amounts in excess of $10 million up to and including$20 million ~~under this authority~~ be reported at the next following meeting of the Board. External financing in excess of $20 million requires Board ~~consideration~~ approval. The President~~, in general, shall be the manager of all external financing of the Corporation and, except as otherwise provided in the Bylaws and Standing Orders, subject to control and direction of the Board and its Committee on Finance, which may include provisions~~ have the authority to (1) negotiate for and obtain interim financing for any external financing, (2) design, issue, and sell revenue bonds or other types of external financing, (3) issue variable rate or fixed rate debt, and execute interest rate swaps to convert fixed or variable rate debt, if desired, into variable or fixed rate debt, respectively, (4) refinance existing external financing for the purpose of realizing lower interest expense, provided that the President's authority to issue such refinancing shall not be limited in amount, (5) provide for reserve funds and for the payment of costs of issuance of such ~~projects~~ external financing, (6) perform all acts reasonably necessary in connection with the foregoing, and (7) execute all documents in connection with the foregoing, provided that the general credit of The Regents shall not be pledged for the issuance of any form of external financing.