The Regents of the University of California

COMMITTEE ON FINANCE
March 17, 2005

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

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

In attendance: Regents Anderson, Johnson, Lansing, Marcus, Novack, Pattiz, and Ruiz, Regent-designate Rosenthal, Faculty Representative Brunk, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost Greenwood, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Gomes, Gurtner, and Hershman, Chancellors Birgeneau, Carnesale, Cicerone, Denton, Fox, Vanderhoef, and Yang, Laboratory Director Anastasio, and Recording Secretary Bryan

The meeting convened at 11:00 a.m. with Committee Chair Blum presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of January 20, 2005 were approved.

2. **CONSENT AGENDA**

A. ***Amendment of the Budget for Capital Improvements and the Capital Improvement Program, and Increase to External Financing for Campus Parking Structure 3, Santa Barbara Campus***

The President recommended that, subject to the concurrence of the Committee on Grounds and Buildings, the Committee recommend that:

(1) The Budget for Capital Improvements and the Capital Improvement Program for the subject project be amended as follows:

From: Santa Barbara: Campus Parking Structure 3 – preliminary plans, working drawings, construction, and equipment – $20,250,00 to be funded from external financing ($16,750,000) and Parking Reserves ($3,500,000).

To: Santa Barbara: Campus Parking Structure 3 – preliminary plans, working drawings, construction, and equipment –

$22,289,000 to be funded from external financing ($18,789,000) and Parking Reserves ($3,500,000).

(2) The Committee recommend that external financing be obtained not to exceed $18,789,000 to finance the Campus Parking Structure 3 project, subject to the following conditions:

a. Interest only, based on the amount drawn down, shall be paid on the outstanding balance during the construction period.

b. As long as the debt is outstanding, parking fees at the Santa Barbara campus will generate sufficient net revenues to pay debt service and to meet the related requirements of debt financing.

c. The general credit of The Regents shall not be pledged.

(3) The Officers of The Regents be authorized to provide certification to the lender that interest paid by The Regents in excluded from gross income for purposes of federal income taxation under existing law.

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

B. ***Amendment of the Budget for Capital Improvements and the Capital Improvement Program, and Approval of External Financing for C.V. Starr East Asian Library, Berkeley Campus***

The President recommended that, subject to the concurrence of the Committee on Grounds and Buildings, the Committee recommend that:

(1) The budget for the C. V. Starr East Asian Library be amended as follows:

From: Berkeley: <u>C. V. Starr East Asian Library</u> – study, preliminary plans, working drawings, construction, and equipment – $39,675,000, to be funded from gift funds.

To: Berkeley: <u>C. V. Starr East Asian Library</u> – study, preliminary plans, working drawings, construction, and equipment – $46,400,000, to be funded from gift funds ($37,400,000) and external financing ($9,000,000).

(2) The Committee recommend that:

Deletions shown by strikeout, additions by underlining

(a) External financing be obtained in an amount not to exceed $9,000,000 to finance the C. V. Starr East Asian Library project, subject to the following conditions:

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

(ii.) Repayment of the debt shall be from the Berkeley campus' share of the University Opportunity Fund; and

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

(3) The President be authorized to obtain standby financing not to exceed ~~$13,900,000~~ $3,600,000, and interim financing not to exceed ~~$13,900,000~~ $6,300,000, for a total of ~~$19,800,000~~ $9,900,000, prior to awarding a construction contract for any gift funds not received by that time and subject to the following conditions:

a. Interest only, based on the amount drawn down, shall be paid on the outstanding balance during the construction period.

b. Repayment of any financing shall be from gift funds and, in the event such gift funds are insufficient, from the Berkeley campus' share of the University Opportunity Fund.

c. The general credit of The Regents shall not be pledged.

(4) The Officers of The Regents be authorized to provide certification to the lender that interest paid by The Regents is excluded from gross income for purposes of federal income taxation under existing law.

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

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

3. UPDATE ON PROPOSED FEDERAL BUDGET FOR FISCAL YEAR 2006 AND UPDATE ON THE 2005-06 STATE BUDGET

Vice President Hershman and Senior Vice President Darling provided an update on the impact on the University of the proposed federal budget for fiscal year 2006 and the issues facing the University with respect to the proposed 2005-06 State budget, and discussed the University's advocacy efforts related to the budget.

Vice President Hershman reported that, although all issues had been covered, Senate hearings on the University's State budget had focused on enrollment, which the Legislative Analyst believes the University has overestimated; on student fees, which the Legislative Analyst would like increased in future years until they cover 40 percent of the cost of education; and on financial aid, particularly return to aid, which the Legislative Analyst does not support. University administrators explained why the budget submitted by the University represents the minimum amounts needed. The University intends to reexamine its marginal cost formula for funding new students with a view toward adjusting it to include maintenance of new space and a more reasonable faculty salary number. The effort continues on evaluating student academic preparation programs with the Department of Finance, the Legislative Analyst, and Legislative Committee consultants in an effort to obtain more funding. No decisions are expected until after the May Revision. Overall, Mr. Hershman believed discussions with Legislators had gone well. Many seemed sympathetic towards the University's needs.

Mr. Hershman turned to the federal budget for the University, which in 2003-04 was $8.5 billion. Federal funding is provided for research, student financial aid, Medicare, and Medi-Cal. Excluding the Department of Energy laboratories and financial aid, federal funding for the campuses is $3.7 billion per year. Analyzing State funds similarly, combining basic State General Funds, Cal Grant money for student financial aid, capital outlay money, grant money from State agencies for research grants, and money from Medi-Cal results in total State funding of about $4 billion. Combining State and federal money, including the DOE laboratories, shows how heavily the University depends upon governmental support; two-thirds of the money the University has in its budget comes from State and federal sources.

Mr. Hershman noted that federal funds provide 57 percent of the University's research money. Seventy-five percent of that comes from the National Institutes of Health and the National Science Foundation. Research dollars from the federal government have grown by about 10 percent per year for many years. UC faculty do extremely well in winning federal research grants. Given federal budget problems, however, those increases will not likely continue. In analyzing the sources of funds for student financial aid, he reported that the federal government funds scholarships, grants, and fellowships at almost $1 billion for undergraduate and graduate professional students. In addition to the grant money, significant loan money is provided. Finally, the federal budget provides support for the University's medical centers in the form of Medicare and Medi-Cal, a portion of which is also State-funded. Together, these sources provide over 40 percent of medical center revenue.

Senior Vice President Darling elaborated on the situation faced by the University with respect to federal funding, which has been very positive over the past 14 years. During that time, student loan funds to the University have increased by 333 percent, student grant funds by 175 percent, research funds by 160 percent, Medicare and Medi-Cal funds by 138 percent, and Department of Energy laboratory funds by 81 percent. He did not believe the University should expect such increases to continue. He noted that in 2000, the federal budget had a surplus of $236 billion. This year President Bush is estimating a deficit of $427 billion. The President and Congress agree that the deficit needs to be brought under control; however, the President's budget for 2006 does not include any cost associated with Social Security reform or military operations in Iraq and Afghanistan. Those costs will add to the deficit. To address the imbalance between revenues and expenditures, the President has announced a plan to reduce the deficit by half by 2009. The House and Senate support an accelerated approach. As the President and Congress have stated they are not going to increase taxes, the only alternative is to cut spending.

Mr. Darling noted that the federal budget is composed of various components. Mandatory spending, comprising about 62 percent of the federal budget, includes Social Security, Medicaid, Medicare, and interest on the debt. It is unlikely that spending can be reduced significantly. When the President has made modest efforts to do so, he has been rebuffed by Congress. As mentioned, defense spending, which represents about 20 percent of the budget, is also unlikely to decrease, as the country's many commitments abroad have not been factored into the budget. It is likely that the domestic discretionary portion of the budget, about 16 percent, will bear most of the burden of federal budget cuts. That is the portion from which the University derives almost all of its federal funding.

Mr. Darling observed that domestic discretionary spending is being squeezed out by both increases in mandatory spending and increasing interest on the national debt, making the pool of funding from which the University must draw ever smaller. He highlighted the President's research and development budget, which includes the agencies from which the University receives most of its funding. The National Institutes of Health, which has had a strong growth period, next year will get only .5 percent budget increase. The National Science Foundation will receive a 1.4 percent increase, but that follows a 2 percent cut last year. Defense, science, and technology will receive a 21 percent reduction; agriculture a 15 percent reduction; and the National Oceanographic and Atmospheric Administration an 11 percent reduction. Transportation and homeland security will grow stronger, although not significantly. Education funding is scheduled for its first real decrease in the past ten years. The President's budget eliminates all funding for Perkins Loans, which for UC will have a dramatic impact. Last year 22,000 students, mostly low income, received Perkins Loans of $41 million. This will cause difficulties in a time when student fees are being increased. Second, the federal equivalent of academic preparation programs, known as Gear Up, Talent Search, and Upward Bound, are proposed to be eliminated, cutting about $17 million from UC funding. With that plus cuts in State funding, these programs are seriously threatened. Last, although the Pell Grant maximum award is scheduled to increase by $100, a positive development considering that one-third of UC's students qualify, that will not offset the loss of the Perkins Loan funds. Medicare and Medi-Cal funding are crucial for the University's medical centers. The President plans no reduction in the Medicare budget, which last year for UC was almost $800 million, representing 24 percent of its hospital revenues, but Medicaid and Medi-Cal are expected to be cut by $60 billion over ten years. UC is a recipient of just under $300 million of those funds. The cuts cannot fail to have a negative impact. Title VII Health Profession funding, which trains a diverse, culturally competent healthcare workforce, is being proposed for near elimination, resulting in almost $16 million being unavailable to help the University train workers in healthcare in needy communities.

Turning to the national laboratories, Mr. Darling reported that the Office of Science, which funds both Lawrence Berkeley National Laboratory and most physical sciences research on the campuses, is scheduled for a 3.8 percent reduction in the next fiscal year, which will hurt funding from DOE. Even though the National Nuclear Security Administration, which funds Lawrence Livermore National Laboratory and Los Alamos National Laboratory, is scheduled for a 2.5 percent increase, the same Congressional committee that has jurisdiction over these funds has control over defense programs and other programs that will likely be increased by Congress, so the University may not get even that level of increase.

In concluding his remarks, Mr. Darling noted that some tax proposals that are being considered in Congress could have serious adverse consequences for the University and its employees and students. He mentioned four out of a long list. The first was modification of the Social Security tax exemption for students. Although under current law both are exempt, it is proposed that the University and its part-time student employees would be required to pay Social Security taxes on any income over $920 per year. Second, a proposed repeal of the exclusion for university tuition benefits could hurt graduate students. Under current law, tuition and fee waivers provided to employees such as research and teaching assistants are not taxable to those students. The proposal would eliminate those waivers. Third, it is proposed that donations of real property may no longer deduct the fair market value; they could deduct only their cost basis in the land. If this passes, it would have an ongoing impact of up to $20 million in donations per year. He pointed out that if this provision had been in effect earlier, it is unlikely the Catellus Corporation would have been willing to donate $100 million worth of land in Mission Bay to the San Francisco campus. Last, it is proposed to repeal the pick up rules for employee contributions to public retirement plans. This would eliminate the pretax treatment of employee contributions to defined contribution retirement plans, which would have serious consequences for University employees and pension reform. Unlike the State, where the Governor has a much stronger hand in the final budget, Congress has power over the federal budget. In past years Congress has been generous in raising the budget above the President's request, but this year it will be less accommodating. This will likely be one of the most challenging years the University will face with respect to federal funding. Given all these challenges, UC is working actively in Washington and has strong bipartisan support there, but the deficit will present an obstacle even to the California leadership's ability to help in Congress.

Regent Pattiz noted that these are just proposals. Senior Vice President Darling observed that, although each item will likely be adjusted, the outcome will not be positive. Vice President Hershman added that neither is this just a one-year issue.

Regent-designate Rosenthal asked about how the University presents its priorities to Congressional representatives. Mr. Darling responded that the University has presented as its highest priorities federal research funding, Medicare and Medicaid funding, student financial aid, and support for the national laboratories.

Regent Kozberg asked to see statistics showing a breakdown of discretionary funding so that it is evident what types of programs compete with the University. She also requested a comparison between the State's and the federal government's ability to fund discretionary programs. Mr. Darling responded that in both cases less than 15 percent of the budget is at the discretion of the Governor and the Legislature or the President and Congress.

In response to a question asked by Regent Anderson, Mr. Darling reported that the University has always relied on students to support the lobbying effort in Washington. Its Federal Governmental Relations Office is involved closely in those activities.

4. STATUS OF PROPOSED LEGISLATION AND STATE INITIATIVES ON GOVERNMENTAL PLANS

Senior Vice Presidents Darling and Mullinix discussed the various legislative and State initiatives that are intended to amend the retirement and benefit programs for all newly hired State employees.

Senior Vice President Darling reported that three public pension reform proposals have been introduced into the Legislature and one as an initiative for the ballot. Assembly Member Richman has introduced Constitutional Amendments ACA5 and ACAX1; both would close the defined benefit plans and require public employers, including the University of California, to enroll employees hired after July 1, 2007 in defined contribution programs only. ACAX1 and an initiative sponsored by the Jarvis Taxpayers Association have the same basic provisions and have been endorsed by Governor Schwarzenegger. Both would permit current employees to shift their funding from defined benefit programs into the defined contribution programs; however, ACA5 would cap employer contributions to these defined contribution programs. A cap amount has not been established. The Jarvis amendment has in place a cap of 3 percent for employer contributions of an employee's base salary; however, if an employee chose to match those, the employer contribution could increase to 6 percent. For fire fighters, police, and other safety employees, higher levels of employer contributions would be permitted. The Governor is supporting a signature-gathering drive for the Jarvis initiative as well as other initiatives. Before those may appear on the ballot, one initiative must qualify. At that point, the Governor may call for a special election, which would likely be November 8 but in any event no sooner than 148 days after it is called. The Constitutional amendments would require, in addition to voter approval, two-thirds approval by the Legislature and then being put on the ballot for the statewide electorate. If this happens, June 13, 148 days before a November election, would be the deadline for qualifying any initiatives for the ballot. In order to do that, about 600,000 signatures are needed. June 30 would be the deadline for qualifying any additional initiatives that might go on the ballot for November 8.

Senior Vice President Mullinix spoke briefly about the University's responses in Sacramento. The Senate Budget and Fiscal Review Subcommittee convened an informational hearing on February 15 to review the budget implications of the Governor's pension reform proposals. Associate Vice President Boyette testified at that hearing. Her testimony provided an overview of UCRS and highlighted the success of the University's defined benefits plans to attract, retain, and retire faculty members. She emphasized the University's need for flexibility to design a plan sufficient to compete for the best faculty and staff and cited the current funding status of 118 percent of liabilities. On March 2, the University sent a letter of concern to Assembly Member Richman citing the University's concerns with any proposal that would deprive UC of the flexibility to design adequate compensation packages for faculty and staff and by extension threaten California's economic competitiveness. Two weeks ago, the Assembly Public Sector Legislative Committee, formed specifically to hear certain of the Governor's special session introductions, convened to hear testimony on ACAX1. At the request of the Speaker's Office, Chairman Parsky testified on behalf of the University before the Committee. He made the same points as the March 2 letter and Ms. Boyette's testimony; ACAX1 deprives UC of the flexibility to design adequate compensation packages for its employees; California's economic competitiveness will suffer if it cannot retain the nation's best and brightest faculty; and the University's defined benefits plan demonstrates that such plans can been successfully implemented. Chairman Parsky indicated that the University could not support the proposal in its current form but stated his commitment to work with all interested parties to develop a mutually agreeable solution. There have been informal conversations with Legislative staff and the Governor's Office as well as the proponents of the initiatives, in the hope that they may be modified.

Committee Chair Blum asked whether, inasmuch as UC is supposed to be an independent institution, any initiative that passed would be legal. General Counsel Holst responded that assuming it is a Constitutional amendment, the answer is yes. It would require both Legislative action and then a vote of the people. There have been other Constitutional amendments that have been adopted at various times in the University's history which have taken precedence over the full powers of organization and government granted in Article 9, Sec. IX of the California Constitution. Chairman Parsky added that the staff has been working extensively with the various interested parties to come up with a solution.

Regent Lozano commented that Chairman Parsky's testimony on behalf of the University had been excellent. The guiding principles he described are those that are shared by all Regents. Committee Chair Blum concurred.

[For speakers' comments, refer to the minutes of the March 17, 2005 meeting of the Committee of the Whole.]

5. **UPDATE ON STRATEGIC SOURCING**

It was recalled that Strategic Sourcing is a process designed to maximize the purchasing power of large, decentralized organizations by consolidating and leveraging common purchases. The primary objective is significant cost reductions without sacrificing quality or service. There are two primary Strategic Sourcing programs under way at the University. One addresses non-information technology (IT) related purchases and the other addresses specific IT products and services.

The non-IT Strategic Sourcing initiative was launched in July 2003. Originally piloted in 1996, with success at UCLA, the Strategic Sourcing model is being implemented throughout the University system. In addition to developing the infrastructure (people and technology) necessary to implement and sustain Strategic Sourcing, seven sourcing initiatives have been launched that address $400 million in purchasing activity.

Vice President Broome and Executive Director of Strategic Sourcing Stuart Davis provided an update on the University's progress on the strategic sourcing initiative.

Vice President Broome reported that among the new contracts that had been executed was a purchasing card agreement with U.S. Bank. Unlike the card it replaced, the new card is being used systemwide, including at the laboratories and the medical centers. The University received a one-time signing bonus of $1.5 million related to volume targets. This agreement on a present value basis would increase incentives by over $2.4 million over a five-year period, but it is expected to exceed that target because transactions are increasing. Not only are there larger incentive payments under the agreement, it is estimated that about $34 million per year in soft costs will be saved simply by using the card. To date, there have been approximately 30,000 transactions more than for the old card, representing a savings of $2.5 million. She noted that controls were greatly improved with the new agreement.

Ms. Broome reported that there was a new contract in place for office products, on which the University spends about $22 million annually. The systemwide contract is estimated to save about $3.5 million annually of these costs. Five campuses have implemented the contract; the five remaining campuses will implement it by fall 2005. She reported further that the University is in the final stages of securing a contract for general supplies of scientific products, on which it spends about $60 million per year. Two vendors have been selected in order to provide the complement of supplies that the campuses and medical centers need and to increase competition with a view toward securing more favorable prices. A savings of from $3.5 million to $5.5 million is estimated for the first year, and of $11 million to $21 million over five years. An agreement is being finalized also for office equipment, on which about $28 million is spent per year. Again, two suppliers are involved. Work has begun on contracts for travel, scientific supplies, event and conference planning, and bottled water.

Committee Chair Blum asked how much could be saved by implementing a travel program. Ms. Broome responded that the amount would be difficult to predict. It is an area in which getting employee compliance is challenging.

6. **AMENDMENT OF THE UNIVERSITY OF CALIFORNIA DEFINED CONTRIBUTION PLANS RELATED TO THE REVIEW OF FIDUCIARY OVERSIGHT, PARTICIPANT-DIRECTED INVESTMENT OPTIONS, AND ADMINISTRATIVE SERVICES**

The President recommended that the defined contribution plans be amended as reflected on the attachments, effective July 1, 2005, or as soon thereafter as administratively possible, to clarify the fiduciary oversight structures and processes, reflect a new investment structure for participants, update and expand participant services made possible by the capabilities of the new record-keeping platform, provide for a supplement in lieu of the Severance Pay Plan benefit, and delegate implementation of these amendments to the President.

The Committee was informed that UC Human Resources and Benefits and the Office of the Treasurer are working together on a long-range, multi-phased project that involves a review of fiduciary oversight, administrative services, and the investment structure and investment offerings available to participants in the University's defined contribution plans – the Tax-Deferred 403(b) Plan (403(b) Plan), the Defined Contribution Plan (DC Plan), and the 457(b) Deferred Compensation Plan (457(b) Plan) (collectively, the Plans) – and the Senior Management Severance Pay Plan (SPP). A steering committee led by Senior Vice President Mullinix and including Associate Vice President Boyette, Treasurer Russ, and a representative from the Office of the General Counsel has guided the project to ensure that appropriate fiduciary oversight and due diligence processes are in place and being followed. A number of focus groups have provided feedback from the UC community, and the steering committee continues to consult with key stakeholders, including the University Committee on Faculty Welfare's Task Force on Investments and Retirement. The process also has included reviews by external legal counsel and independent consultants with expertise in plan administration and benefit plan investments.

Major project achievements in 2004 included the creation of the 457(b) Plan and the selection of Fidelity Investments Institutional Operations Company to serve as master record keeper for the plans. The next project milestone is July 2005, the target date to move administration of the 403(b) Plan and the DC Plan to the new record-keeping platform and to offer a revised investment structure. By year end 2005, it is anticipated that the SPP program will have begun the transition to the Plans so that the supplement provided in lieu of SPP benefits can be administered on the new record-keeping platform. The 457(b) Plan is on the Fidelity platform that will be expanded to perform record-keeping services for the other plans.

Fiduciary Oversight

Based on consultation with the Office of the General Counsel and an independent review by external counsel Orrick, Herrington & Sutcliffe, LLP, the President proposes to amend the Plans to clarify the distinction between primary fiduciary responsibility for investment and administrative functions and secondary fiduciary responsibility, which encompasses ongoing monitoring of the performance of those with primary fiduciary responsibility. Primary authority for investment functions, including the selection and monitoring of asset classes and investment options, is assigned to the Treasurer. Primary authority for administrative functions is assigned to the Associate Vice President–Human Resources and Benefits. The Regents and the respective Regents' Committees retain broad oversight responsibility for those who have been allocated primary responsibility for the investment and administrative functions of the Plans.

It is intended that an advisory committee similar to the steering committee that has guided this project will continue to meet regularly to address the overlap between the investment and administrative functions. The committee will include representatives from the Office of the Treasurer, the Division of Business and Finance, the Office of the General Counsel, and external consultants as appropriate. It is proposed also that the Plans be amended to remove specific references to advisory groups not included in the fiduciary oversight structure. Consultation with the appropriate Academic Senate committees and other University constituent groups will continue as in the past. Attachment 1 illustrates the proposed fiduciary oversight structure.

Further, as part of the clarification of the fiduciaries' roles, it is proposed that specific provisions governing the trust that is part of the DC Plan be incorporated in the plan document, similarly to the trust provisions in the 457(b) Plan. The 403(b) Plan does not include a trust because of statutory limits on the types of investments permitted.

Review of Investment Options

A goal of the project is to create an investment structure that will allow participants to create investment portfolios by allocating their assets to prudently selected and monitored investment options within a suitable range of asset classes. It is intended that the investment structure be consistent across the Plans and serve as the basis for participant communication and financial education efforts. Through the new master record keeper, participants will be able to view and manage their Plan investments on a single platform, and it will be possible to offer online financial planning and asset allocation tools.

The Treasurer will develop and implement criteria for selecting appropriate asset classes and specific investment options (Core Funds) within those classes for the Plans after consultation with the new advisory committee and the appropriate constituent groups in the University community. The Treasurer will create and implement a process to monitor and evaluate the Plans' investment structure and the Core Funds, and, based on such periodic evaluations, the Treasurer will make changes to either the asset classes or Core Funds. The Treasurer may choose to use a consultant to support the process. Periodic performance reports will be provided to the Committee on Investments and the Investment Advisory Committee.

In selecting the Core Funds for the Plans, the Office of the Treasurer proposes to follow a process similar to that established for the external manager search for the actively managed equity portion of the University of California Retirement Plan and General Endowment Pool portfolio. An outline of this process was presented to the Committee on Investments and the Investment Advisory Committee in February 2005 for discussion. As in the process previously approved, the Treasurer's Office will use quantitative and qualitative assessments. The Treasurer will be responsible for the selection of Core Fund managers, and a consultant will affirm the decisions. Attachment 2 illustrates the proposed process for evaluating and selecting Core Fund managers for the Plans.

Participant Services

Additional changes to the Plans being proposed to support the new administrative platform and investment options include the following:

- Amendments to reflect a new investment structure for the Plans' participants.

- Amendments to reflect the change from monthly to daily valuation of the six UC funds, which will improve participants' ability to perform transactions such as fund transfers, loans, and distributions. Related provisions to prevent short-term or other excessive trading into and out of funds will also be proposed.

- Amendments to expand the type and variety of plan features available to participants that take advantage of the new platform's capabilities, including more flexible rollover arrangements, more flexible repayment options for 403(b) Plan loans, and loans and beneficiary accounts under the 457(b) Plan.

- Amendments to facilitate administration of timing restrictions consistent with Internal Revenue Code guidelines, including a six-month suspension of elective deferrals following a hardship distribution from the 403(b) Plan and following an unforeseeable emergency withdrawal from the 457(b) Plan.

- Amendments to facilitate the required distribution of Plan accounts of former UC employees with a balance of less than $2,000 and to establish a forfeiture/reinstatement account for unclaimed Plan accounts of missing participants to the extent supported by cost and fiduciary considerations.

Provide In Lieu Supplement under the Plans

The SPP was established by action of The Regents in 1990 to provide a benefit for senior managers at separation from service. Over the years, the SPP has been managed at the local level due in part to the limited capacity of the systemwide computer programs. With the move to a master record-keeping platform, it is possible to amend the SPP and the Plans as necessary to provide a supplement in lieu of the SPP benefit through the Plans, consistent with the limits of the Internal Revenue Code and as mandated by changes in the law applicable to deferred compensation plans. These amendments would involve no change in the benefit level provided to participants under the SPP.

Implementation

It is proposed that the President be granted authority to amend the plans as described above, effective July 1, 2005, or as soon thereafter as administratively possible. The Human Resources and Benefits Department and the Office of the Treasurer are joining to transfer day-to-day administrative functions to the external record keeper after July 1, 2005. In the final stage of this long-term project, a review of the financial education and advice components of the Plans and a provider search and selection process will follow the transition to the master record-keeping platform. It is anticipated that certain of the new services proposed will be made available to plan participants after the review of financial education services is complete. Plan participants will receive ample notice of changes to investment options and administrative services. 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.

Senior Vice President Mullinix noted that in the public comment period it was asked whether there were any additional funds being directed to employees through this plan. He reported that there would be no changes, including to the severance pay plan. The existing funds the University provides, or the employee's own funds in some cases, will be redirected to different investment vehicles. As noted in previous presentations on the subject, the changes are being made in order to improve the overall fiduciary oversight of the plan.

At the request of Regent Hopkinson, the chart on Attachment 1 was amended to indicate that the Investment Advisory Committee and the Treasurer report directly to The Regents.

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

[For speaker's remarks, refer to the March 16, 2005 minutes of the Committee of the Whole.]

7. **SUSPENSION OF BYLAW 8.1 PROHIBITING THE COMPENSATION OF REGENTS, TO PERMIT A UNIVERSITY EMPLOYEE TO SERVE AS ALUMNI REGENT DURING THE YEARS 2005-07**

Regent Ornellas recommended that the provisions of Bylaw 8.1 be suspended for the limited purpose of allowing Mr. Nadesan Permaul to serve as alumni Regent-designate during 2005-06 and as alumni Regent during 2006-07.

It was recalled that 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 (CAA) was not aware of this provision when it confirmed Nadesan Permaul, UC Berkeley Director of Transportation and Lecturer in Rhetoric and Political Science, 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 Senior Vice President Darling 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. 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 for selecting its alumni Regent is to name its immediate past president to the position of alumni Regent. It takes years of service on the association board to become oriented sufficiently 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 consideration of the suspension of this Bylaw provision on a one-time basis.

The Board has suspended the provisions of Bylaw 8.1 once in the past, for a year in 1977, in order to permit an appointed Regent to continue service as a campus lecturer.

Regent Ornellas observed that there are four alumni Regent seats on the Board. Alumni-Regents serve one year as non-voting Regents-designate and one year as a voting Regents. The State Constitution provides that the President and Vice President of the Alumni Associations of the University (AAUC) serve as voting Regents while the AAUC Secretary and Treasurer, by Regental policy, serve as designates. The AAUC bylaws rotate the four officers' seats among the nine campus alumni associations according to a schedule adopted the 1970s. Under that rotation, the Berkeley and Los Angeles alumni associations, the two oldest and largest alumni membership organizations among the nine campuses, are allocated two of the four officers' positions on a continuous basis, and the other two seats are rotated among the other seven alumni associations according to a set schedule. The AAUC bylaws were amended last year to alter the system in various respects, but the amendments do not affect the continuous presence of the two older campus representatives until 2022. In the 1990s, both the Cal and UCLA alumni associations changed their procedures to assign the AAUC officer and ex officio Regent duties to their immediate past presidents. Prior to that time, the Regents' duties were performed by the sitting presidents of each of the two associations. In the early days of the University, the constitution called for the president of the alumni association to sit on the Board of Regents, which meant the president of the Berkeley alumni association, as that was the only campus. As the membership roles and the time demands of the association presidencies increased, it became more difficult for one person to fulfill both the presidency of a large alumni association and the Regents' seat simultaneously, so the duties were divided between the sitting president and the immediate past president of the two largest associations. When one is elected to serve as president of either the California Alumni Association or the UCLA alumni association, one is on track to become an officer of the AAUC and an ex officio Regent three years later. Because of the size of the Cal alumni association, it takes several years to advance to the presidency.

When Mr. Nadesan Permaul stood for election in 2003, no one involved in that process was cognizant of the substance of Bylaw 8.1. The focus then was on the independence of the alumni association from the Berkeley campus, a matter of major historical significance for Berkeley and unique among the campus alumni associations. Alone among the campuses, the employees of the California Alumni Association, including its executive director, are hired and compensated solely by the Association, with no financial contribution or supervision from the University or the campus. Because there was concern that the independence of the Association might be adversely affected if a campus employee were elected to lead the organization, inquiries were made of then-Chancellor Berdahl, who gave his assurance that the Association's independence would be respected if Mr. Permaul were to be elected.

Regent Ornellas believed that there is some question whether Bylaw 8.1 would apply to the situation where a permanent employee is chosen by an independent process to serve as an ex officio member of the Board in a seat created by the State Constitution. Putting aside the legalities, the question posed by Bylaw 8.1 is whether Mr. Permaul can continue in a compensated position with the University on July 1 when he becomes entitled by virtue of his years of dedicated volunteer service and the AAUC bylaws to assume the position of AAUC Secretary and Regent-designate, or whether the Regents will vote to suspend the Bylaw as it may apply to him. The arguments against suspending the bylaw are few but significant. One is that suspending the Bylaw for Mr. Permaul would create a precedent. Regent Ornellas pointed out that this notion is not supported by history. Another argument is that the employment environment surrounding a UC employee who is serving as a Regent could be compromised, adversely affecting his relationships with his superiors. Chancellor Birgeneau has indicated that he does not believe Mr. Permaul's performance as a manager on the Berkeley campus would be adversely affected. Still another argument is that the relationship between the alumni-Regent and the chancellor from the campus he represents might be altered adversely if the Alumni-Regent were simultaneously the chancellor's subordinate. Again, Chancellor Birgeneau has confirmed that such would not be the case.

Regent Ornellas emphasized that a suspension of the bylaws for purposes such as this should be undertaken only on a case-by-case basis. He noted that the Regents often state that they value the alumni, and the constitution underscores the importance of alumni by establishing two voting seats for alumni representatives who are chosen by a process independent of the Board. Of the seven ex officio seats, only one, the President of the University, is subject to the direct control of the Board. The others are selected through other means – through a vote of the electorate or through the membership of independent alumni associations. He reported that in the last year Mr. Permaul and the California Alumni Association were instrumental in creating a very successful alumni advocacy program. He believed that Mr. Permaul, who served on the search committees for two chancellors, would bring a wealth of knowledge and dedication to the Board.

Regent Hopkinson commented that, while she respected the individual, she believed that the policy was created for a specific reason and that making case-by-case exceptions was unwise. She believed that the intent was to have outside independent oversight.

Regent Kozberg was troubled by having to oppose the recommendation, but she stated that she believed the bylaw was a good one and that she was not compelled to vote for its suspension. She expressed concern about possible conflicts of interest for the individual involved.

Regent Lansing concurred. She believed that past exceptions may not have been advisable. She, too, was concerned that, despite a person's integrity, conflicts of interest could arise.

Upon being duly seconded, the motion failed, Regent Ornellas voting "aye."

8. REPORT OF THE GENERAL COUNSEL

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.

The meeting adjourned at 12:00 noon.

Attest:

Secretary