Office of the President

TO MEMBERS OF THE COMMITTEE ON COMPENSATION:

ACTION ITEM

For Meeting of May 16, 2007


EXECUTIVE SUMMARY

The President recommends that the University of California Retirement Plan (UCRP) be amended to facilitate the close-out of the contract between the University of California (UC) and the Department of Energy/National Nuclear Security Administration (DOE/NNSA) for the management of the Lawrence Livermore National Laboratory (LLNL) in compliance with contractual obligations.

Previous Action:  

May 2006: The Regents approved similar UCRP amendments to facilitate the close-out of the contract between UC and the DOE/NNSA for the management of the Los Alamos National Laboratory, in compliance with contractual obligations.

July 2006: The DOE/NNSA issued the final request for proposal (RFP) for managing LLNL beginning October 1, 2007.

November 2006: The Regents authorized modifying UCRP service credit buyback payment rules so that eligible LLNL employees would not be disadvantaged by the LLNL contract close-out.

Relevant Policy:  Plan document for UCRP
Issues: Amendments to UCRP to address the following:

- Voluntary member elections to transfer UCRP accrued benefits and service credit to a successor contractor’s defined benefit plan
- Service credit for LLNL employees returning from military leave
- Retention of Capital Accumulation Payment (CAP) benefits in UCRP for transitioning UCRP members who participate in the successor contractor’s defined benefit plan
- Provide funding from UCRP to the successor contractor’s defined benefit plan at a rate sufficient to meet its cash flow requirements to cover reasonable plan-related expenses and to make distributions to participants who become entitled to benefits prior to the final transfer of UCRP assets, in accordance with current contractual obligations
RECOMMENDATION

The President recommends that the Committee on Compensation recommend to The Regents that:

(1) Effective October 1, 2007, UCRP be amended as necessary to:

   a. Allow all LLNL employees who are active UCRP members to take advantage of any of the retirement options provided for by the RFP and/or contractual obligations with the successor contractor and the DOE/NNSA. Such options include:

   - Voluntary transfer of accrued benefits and service credit under UCRP through September 30, 2007 (with the exception of the CAP benefit) to the successor contractor’s defined benefit plan, on the condition that such transferred service credit may not be re-established upon subsequent employment with UC and that such transfer extinguishes all rights to further UCRP benefits (other than the CAP benefit).

   - Retain rights to UCRP benefits, if eligible, by either retiring or electing inactive membership under UCRP.

   b. Provide the appropriate UCRP service credit for LLNL employees returning from military leave, in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), provided they begin employment with the successor contractor following their leave.

   c. Retain the CAP benefit in UCRP for LLNL members who transfer their UCRP accrued benefits and service credit to the successor contractor’s defined benefit plan and, based on Internal Revenue Service (IRS) guidance, prohibit distribution of their CAP benefits until they separate from employment with the successor contractor.

   d. Provide funding from UCRP to the successor contractor’s defined benefit plan at a rate sufficient to meet its cash flow requirements to cover reasonable plan-related expenses and to make distributions to participants who become entitled to benefits prior to the final transfer of UCRP assets, in accordance with current contractual obligations.

(2) The Plan Administrator be authorized to implement these plan amendments.
BACKGROUND

Congressional action in 2003 mandated that the DOE conduct a competition for management of any laboratory contract that had been in place for 50 years or more without competition. In accordance with this Congressional mandate, on July 14, 2006, the DOE/NNSA issued an RFP to manage LLNL effective October 1, 2007, following the expiration of UC’s current management contract on September 30, 2007.

UCRP Accrued Benefits, Associated Assets and Liabilities and Other Benefit Issues

The RFP requires that the successor contractor must sponsor a site-specific defined benefit plan that incorporates key provisions of UCRP for those LLNL employees wishing to transfer their accrued UCRP benefits (with the exception of CAP benefits) and service credit to the defined benefit plan of the successor contractor. CAP benefits should remain in UCRP, according to Internal Revenue Service guidance, until these members separate from service with the successor contractor. Employees transferring their accrued UCRP benefits and service credit to the successor contractor’s defined benefit plan would waive their rights to all UCRP benefits, except their existing CAP balances, if any.

The successor contractor must also offer a market-based retirement plan. Those eligible LLNL employees who opt to retain future rights to their accrued UCRP benefits by retiring or electing inactive membership in UCRP would participate in the successor contractor’s market-based retirement plan. Additionally, any new employees hired by the successor contractor on or after the new contract effective date would participate in its market-based retirement plan.

The RFP states that LLNL employees who retire on or before the new contract effective date will not be eligible for a guaranteed job offer from the successor contractor and will be treated as new employees if hired. For purposes of employment offers from the successor contractor, LLNL employees who elect a Lump Sum Cashout under UCRP that will be effective on or before October 1, 2007 will be considered to have made a UC retirement election.

Under provisions of USERRA, employees on military leave generally are entitled to restoration of benefits that otherwise would have accrued during the period of military leave, provided they return to employment with the employer and make up any employee contributions that would have been required during that time. LLNL employees on military leave as of September 30, 2007, will not be able to return to UC employment at LLNL. Thus, UCRP must be amended to reflect the transition to the successor contractor and provide for the appropriate benefit accruals and service crediting under UCRP through September 30, 2007, for those LLNL veterans who return to employment with the successor contractor following a military leave.

UC intends to design and distribute a comprehensive decision guide to enable LLNL employees to make informed retirement decisions. The decisions that LLNL employees make with respect to their accrued UCRP benefits and employment with the successor contractor will directly
affect the amount of liabilities and corresponding assets attributable to the LLNL segment of UCRP that will eventually be retained in or transferred out of UCRP.

UCRP assets and liabilities attributable to the benefits of LLNL employees who accept employment with the successor contractor and choose to participate in its defined benefit plan will be transferred when all necessary and appropriate regulatory approvals have been obtained, consistent with the terms of the current contract with the DOE/NNSA. The recommended amount of assets and liabilities to be transferred to the successor contractor’s defined benefit plan will be determined through discussions with the DOE/NNSA, in consultation with internal and external legal counsel, UC actuaries and faculty leadership. UC administration will come back to The Regents at a future date to discuss the methodology required by the current contract and to seek authority to transfer the final amount of assets and liabilities from UCRP to the successor contractor’s defined benefit plan.

Interim Funding for Retiring Successor Contractor Employees

It is expected that a process will need to be established for funding reasonable expenses associated with administering the successor contractor’s defined benefit plan and making payments on behalf of LLNL employees (or their eligible survivors) who become entitled to benefits under the successor contractor’s defined benefit plan prior to the final transfer of assets and liabilities from UCRP. Under its current LLNL management contract with the DOE/NNSA, UC is required to transfer assets to the successor contractor’s defined benefit plan at a rate sufficient to meet such cash flow requirements. Any funds dispensed from UCRP will be accounted for in the determination of the final amount of UCRP assets that will eventually be transferred.

Retention of CAP Benefits in UCRP

Guidance issued by the IRS indicates that there could be an issue raised by distributing CAP benefits remaining in UCRP if part of a member’s UCRP benefits (e.g., the assets and liabilities supporting retirement income) are transferred to the successor contractor’s defined benefit plan. In that instance, the member’s break in service from UC may not be deemed sufficiently complete to permit a distribution of the CAP balance until the member terminates employment with the successor contractor. Current UCRP provisions provide that, upon a member’s break in service from UC employment, the CAP benefit may remain in UCRP only if the member is vested, and therefore an inactive member of UCRP. If the member is not vested at the time of separation or elects to retire (or is approved for UCRP Disability), the CAP benefit must be distributed to the former employee or rolled over to an IRA or another employer’s plan on his or her behalf. Thus, UCRP must be amended to make retention of CAP benefits mandatory for LLNL employees who elect to participate in the successor contractor’s defined benefit plan until they terminate employment with the successor contractor.

Implementation
It is proposed that the Associate Vice President–Human Resources and Benefits, as Plan Administrator of UCRP, be delegated authority to amend UCRP as described above. If, in the course of obtaining the necessary and appropriate governmental rulings for the actions described above, it becomes necessary or desirable to make additional amendments to UCRP, the 415(m) Restoration Plan and/or the Retirement Savings Program plans to facilitate the LLNL contract close-out, interim action may be necessary. UC administration will come back to The Regents at a future meeting, following consultation with faculty leadership, the DOE/NNSA, internal and external legal counsel, and UC actuaries, to discuss the special actuarial valuation required and to request authority to transfer applicable assets and liabilities to the successor contractor’s defined benefit plan. The Regents will continue to be updated concerning the LLNL contract close-out and any interim action.

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 and UC policy.