

Office of the President

TO MEMBERS OF THE NATIONAL LABORATORIES COMMITTEE:

ACTION ITEM

For Meeting of July 17, 2019

ALLOCATION OF TRIAD NATIONAL SECURITY, LLC AND LAWRENCE LIVERMORE NATIONAL SECURITY, LLC FEE INCOME TO BE EXPENDED IN FISCAL YEAR 2019-20

EXECUTIVE SUMMARY

The University has an ownership interest in two limited liability companies (LLCs) that currently hold contracts to operate a Department of Energy/National Nuclear Security Administration National Laboratory: Triad National Security, LLC (Triad) for Los Alamos National Laboratory, and Lawrence Livermore National Security, LLC (LLNS) for Lawrence Livermore National Laboratory.

Triad's fiscal year coincides with the federal fiscal year and LLNS's fiscal year coincides with the calendar year. The net fee income earned by the University in the respective LLC 2019 fiscal years is currently projected to be \$22.5 million. The President of the University recommends that an allocation of this fee income be expended in the University's fiscal year 2019-20 as summarized below:

Estimated Funds Available

Estimated Net Fee Income for Triad/LLNS FY 2019	\$22.5	M
Total Funds Available	\$22.5	M

Recommended Allocation

A. Non-Reimbursable Compensation	\$ 1.2	M
B. UCOP Oversight	\$ 5.8	M
C. LLNS/LANS Post-Contract Contingency Fund	\$ 0.9	M
D. LLC Fee Contingency Fund	\$ 0	M
E. UC Laboratory Fees Research Program	\$10.0	M
F. Livermore Lab Foundation	\$ 0	M
G. Capital & Campus Opportunity Fund	\$ 3.3	M
H. Triad Reserve Fund	\$ 0.3	M
I. Business Development	\$ 1.0	M
Total Allocation for FY 2019-20	\$ 22.5	M

RECOMMENDATION

The President of the University recommends that the National Laboratories Committee recommend to the Regents that the President be authorized to expend an estimated \$22.5 million from the University's net share of Triad National Security, LLC (Triad) and Lawrence Livermore National Security, LLC (LLNS) income earned in the respective LLC 2019 fiscal years (FY),¹ as projected by the LLCs, for the purposes and in the amounts described below:

- A. The University's contractually required share of compensation-related costs for LLC employees in UC-designated key personnel positions that are not reimbursed by the federal government under the prime contracts. Compensation for LLC employees in key personnel positions is paid by the LLCs as approved by the LLC governing boards. A portion of these compensation-related expenses are deemed non-reimbursable by the federal government. The amount of UC's contractual share of unreimbursed compensation for UC-designated key personnel positions for FY 2019-20 is estimated at \$1.2 million (\$2.2 million in FY 2018-19).
- B. An appropriation to the Office of the President's budget for federally unreimbursed costs of University oversight of its interests at LANL and LLNL, paid or accrued July 1, 2019 through June 30, 2020, including, but not limited to, an allocable share of the costs of the President's Executive Office, the Provost, the Academic Senate, Human Resources, Compliance and Audit, Financial Accounting, UC National Laboratories (UCNL), Federal Government Relations, Office of Research and Graduate Studies, Office of the General Counsel, Office of the Secretary and Chief of Staff to The Regents, Office of the President facility charges, and the University-appointed Governors on the Boards of the LLCs, in the amount of \$5.8 million for FY 2019-20 (\$5.2 million in FY 2018-19). Any unspent funds allocated for this purpose will be transferred, at the President's discretion, to the UC Laboratory Fees Research Program (paragraph E below) or one or more of the newly created reserve funds (paragraphs G and H below).
- C. An appropriation to the LLNS/LANS Post-Contract Contingency Fund (PCCF), in the amount of \$900,000 for FY 2019-20 (\$3.5 million in FY 2017-18). Any income generated by the PCCF under the University's Short Term Investment Pool (STIP) shall be reserved exclusively for the LLNS/LANS PCCF. The balance in the LANS/LLNS PCCF as of May 31, 2019 is \$13.7 million, which does not reflect the \$3.5 million allocated in FY 2018-19. The target balance for the LLNS/LANS PCCF approved by the Regents in 2013 is \$27 million, which includes more than \$8 million held as equity in the LANS and LLNS LLC accounts.
- D. The Regents previously approved a target balance for the LLC Fee Contingency Fund of \$7 million. The LLC Fee Contingency Fund is currently fully funded with a balance of

¹ The University also remains a member of Los Alamos National Security, LLC (LANS), which managed Los Alamos National Laboratory through October 31, 2018. There is a possibility that LANS will earn fee income during its 2019 fiscal year. However, due to the uncertainty regarding the timing and amount of any such income, the estimated LLC fee income presented in this Item does not include any LANS income.

\$7.76 million as of May 31, 2019. No allocation to the Fund is required for FY 2019-20. As set forth in paragraph H below, it is proposed that \$750,000 from this Fund be transferred to the newly created Triad Reserve Fund to align the balance of the LLC Fee Contingency Fund with the target balance. Funds remaining in the LLC Fee Contingency Fund will be carried over to FY 2020-21 to maintain the \$7 million target balance. Any income generated by the LLC Fee Contingency Fund under the University's STIP shall be reserved exclusively for the LLC Fee Contingency Fund.

- E. An appropriation in the amount of \$10 million for FY 2019-20 for the UC Laboratory Fees Research Program and other research relevant to the missions of the National Laboratories and the University, including the UC-National Laboratory Graduate Student Fellowship Program, subject to any reallocation up or down required after the end of LLC 2019 fiscal years as a result of reporting by the LLCs of actual net fee income earned by the University in order to meet the ongoing appropriations under paragraphs A through D above and F through I below. In the event all or part of this funding for the UC Laboratory Fees Research Program is not needed in FY 2019-20, the funding will be carried over to FY 2020-21 for the same purpose.
- F. The Regents previously approved appropriations in the amount of \$300,000 per year for FYs 2016-17 through 2018-19, with unspent funds carried forward for the same purpose, to fund an affiliation agreement between the University and the Livermore Lab Foundation. Of the \$900,000 appropriated for this purpose, \$672,000 remains unspent as of May 31, 2019. No new allocation is requested for FY 2019-20 but the unspent funds from prior appropriations may be used in FY 2019-20 to continue funding the affiliation agreement. If the remaining funds are not spent in FY 2019-20, the funding will be carried over to FY 2020-21 for the same purpose.
- G. An appropriation in the amount of \$3.3 million for FY 2019-20 for the newly created Capital and Campus Opportunity Fund (CCOF). The purpose of this new reserve fund is to set aside funds for capital projects and other special projects that would foster increased collaboration between the UC-affiliated National Laboratories and the UC campuses and medical centers. The target balance for this Fund is \$10 million by the end of FY 2021-22. Use of the CCOF on specific projects would be subject to further Regental approval.
- H. An appropriation in the amount of \$300,000 for FY 2019-20 for the newly created Triad Reserve Fund, and a transfer of \$750,000 from the LLC Fee Contingency Fund to the Triad Reserve Fund. The purpose of this new reserve fund is similar to the purpose of the LLNS/LANS PCCF: to fund residual post-contract liabilities, obligations associated with the Triad performance guarantee, and expenses related to contract re-competition. The target balance for the Triad Reserve Fund is \$10 million by the end of the ten-year anticipated length of the Triad contract.

- I. An appropriation in the amount of \$1 million for FY 2019-20 for the purpose of business development. This funding would support the University's efforts to explore and develop opportunities to participate in the management of one or more DOE National Laboratories and other Federally Funded Research and Development Centers (FFRDC) beyond the current three UC-affiliated National Laboratories. Formal bids on specific Lab or FFRDC contracts would be subject to further Regental approval. In the event all or part of this funding for Business Development is not needed in FY 2019-20, the funding will be carried over to FY 2020-21 for the same purpose.

BACKGROUND

The University has an ownership interest in two LLCs that currently hold contracts to operate a Department of Energy/National Nuclear Security Administration (DOE/NNSA) National Laboratory:

- Triad National Security LLC (Triad) for Los Alamos National Laboratory (LANL), and
- Lawrence Livermore National Security LLC (LLNS) for Lawrence Livermore National Laboratory (LLNL).

Each year, the Regents have allocated LLC income for the upcoming University fiscal year based on estimates and projections of the expected revenue for current LLC fiscal year. Triad's fiscal year corresponds with the federal fiscal year; LLNS's fiscal year corresponds with the calendar year. Therefore, the University is requesting an allocation for FY 2019-20 based on projected fee income earned by Triad and LLNS during their respective 2019 fiscal years.

The management and operation of LANL transitioned from Los Alamos National Security, LLC (LANS) to Triad on November 1, 2018. There is a possibility that the University may earn some net fee income from LANS during LANS's fiscal year 2019. However, given the current uncertainty regarding both the timing and the amount of any fee income earned by LANS during that period, the University's share of LANS fee income is excluded from the fee income projection.

The net fee income projection for the University provided by the Triad and LLNS LLCs for their respective 2019 fiscal years is estimated to be \$22.5 million (LLNS – \$13.6 million; Triad – \$8.9 million).

One of the Regents' actions in September 2006 was the *Approval of a University Procedure for Appropriating Net Fee Income Received as Owner of a Limited Liability Company Managing a Department of Energy National Laboratory*. In July 2011 the Regents approved the use of LANS and LLNS net income for research projects, including National Laboratory research projects as well as other research projects.

The allocations documented in paragraphs A through I below are submitted for approval in accordance with prior Regents' approvals.

The President has developed the following plan for the FY 2019-20 allocations:

- A. In a series of actions dating back to May 2005, the Regents have approved the payment of the University's contractual share of federally unreimbursed compensation costs for LLC employees in UC-designated key personnel positions. Unreimbursed compensation consists of those compensation costs approved by the LLC governing boards in accordance with the LLC Agreements that are not reimbursed by the federal government under the terms of the prime contracts. UC's contractual share of federally unreimbursed compensation costs for LLC employees in UC-designated key personnel positions is deducted from UC's share of fees earned by the LLCs. The estimated allocation for FY 2019-20 is \$1.2 million, as compared with \$2.2 million in FY2018-19. This amount reflects a reduction of associated expenses at LANL under Triad management.
- B. The President requests authorization to appropriate \$5.8 million to the FY 2019-20 budget of the Office of the President to cover expenses for oversight of the University's interest in the LLCs: approximately \$3.3 million for the unreimbursed costs of the UC National Laboratories office and \$2.5 million for other UC Office of the President costs incurred for LLC oversight, including, but not limited to, personnel time and effort associated with carrying out LLC-related activities of the President's Executive Office, the Provost, the Academic Senate, Ethics Compliance and Audit, Corporate Accounting, Office of the National Laboratories, Federal Government Relations, Office of Research and Graduate Studies, Office of the General Counsel, Office of the Secretary and Chief of Staff to The Regents, Office of the President facility charges, and the University-appointed Governors on the Boards of the LLCs associated with the University's ownership interest in the LLCs, and for the provision of corporate secretary services to the LLCs, all to the extent not federally reimbursed. Any portion of this \$5.8 million unspent in FY 2019-20 will be transferred, at the President's discretion, to the UC Laboratory Fees Research Program (paragraph E below) or one or more of the newly created reserve funds (paragraphs G and H below).
- C. Pursuant to the Regents' approval in September 2007, the President established a Post-Contract Contingency Fund (PCCF) associated with the LLNS and LANS contracts that will enable the University to fund potential residual liabilities to the LLNS and LANS LLCs upon termination of the contracts or to the DOE/NNSA under the University's performance guarantees. The initial LLNS/LANS PCCF funding level approved by the Regents for the LLC contracts was \$9 million, covering the seven base years of the respective LLC contracts. Since that time, the LANS contract was extended through 2018. The LLNS contract currently extends through September 30, 2023. If LLNS receives all future one-year award-term extensions, its contract can be extended through September 30, 2026.

In July 2013 the President proposed, and the Regents approved, the target for the LLNS/LANS PCCF to be increased from \$9.0 million to \$27 million to account for inflation, potentially higher closeout costs based on changing principles governing the management and oversight of these contracts by the federal government, and creation of a

reserve to allow the University to compete again for one or both of these contracts at a later point in time should the University choose to do so. The \$27 million target balance includes both money held in the reserve fund and equity held in LLNS and LANS LLC accounts. With the University's share of equity at LANS and LLNS currently exceeding \$8 million, the target for the balance of the reserve fund is approximately \$19 million. The current balance in the LLNS/LANS PCCF as of May 31, 2019 is \$13.7 million, which does not include the \$3.5 million allocated in FY 2018-19. It is proposed that the allocation to the LLNS/LANS PCCF for FY 2019-20 be \$900,000.

The PCCF is part of the University's Short Term Investment Pool (STIP). Any STIP income generated by the PCCF shall be reserved exclusively for that fund in order to build up the fund. This approach will allow the University to ensure that its income earned from LLC fees, plus any income from the STIP, are appropriately balanced with funding commitments for UCOP oversight, supplemental compensation, UC research, the reserve funds, and other commitments.

- D. Pursuant to the Regents' approval in May 2009, the President established the LLC Fee Contingency Fund (previously called Contingency for Factors Affecting Final Fee) to enable the University to meet its nondiscretionary funding commitments (i.e. UCOP oversight costs) in light of factors impacting annual fee, such as: (1) the DOE/NNSA annual ratings of each LLC's respective performance; (2) the amount of unreimbursed costs incurred by each LLC in its performance of each contract; and (3) retained earnings or other contingency funds authorized by the LLC governing boards.

The funding target for the LLC Fee Contingency Fund approved by the Regents is \$7 million. The LLC Fee Contingency Fund is currently funded at \$7.76 million as of May 31, 2019. As a result, no allocation is requested for FY 2019-20. Moreover, as set forth in paragraph H below, the President requests authorization to transfer \$750,000 from this Fund to the newly created Triad Reserve Fund to align the balance of the LLC Fee Contingency Fund with its target balance.

The LLC Fee Contingency Fund is part of the University's STIP. Any STIP income generated by the fund shall be reserved exclusively for the fund. In the event all or part of the LLC Fee Contingency Fund is not needed in FY 2019-20, that reserve will be carried over to FY 2020-21 to build up to or maintain the \$7 million funding target.

- E. The President requests an allocation in the amount of \$10 million for the UC Laboratory Fees Research Program, and other research relevant to the missions of the National Laboratories and the University managed by the Research Grants Program Office. This appropriation includes the UC-National Laboratory Graduate Student Fellowship Program, which was approved by the Regents in May 2014 and is managed by the Research Grants Program Office as part of the UC Laboratory Fees Research Program. In the event all or part of the \$10 million is not needed in FY 2019-20, that amount will be carried over to the UC Laboratory Fees Research Program for FY 2020-21.

In the event actual net fee income earned by UC in the respective LLC 2019 fiscal years is more or less than \$22.5 million, funding for UC Laboratory Fees Research Program may be adjusted accordingly, either up or down, as authorized by the President or her designee. Any unspent allocation under paragraphs A and B above may be transferred, in the President's discretion, to the UC Laboratory Fees Research Program and carried over to FY 2020-21.

- F. The Regents previously approved three appropriations in the amount of \$300,000 per year for FYs 2016-17 through 2018-19, with unspent funds carried forward for the same purpose, to fund the Livermore Lab Foundation, a 501(c)(3) California nonprofit public benefit corporation. The Livermore Lab Foundation was formed to receive support from donors and to distribute such funds to support LLNL and other scientific and educational purposes. Pursuant to her delegated authority, the President approved an affiliation agreement between University and the Livermore Lab Foundation, which will provide the funding as approved by the Regents. Pursuant to the terms and conditions of the affiliation agreement, the Livermore Lab Foundation is considered an affiliate of the University while the agreement remains in effect.

Of the \$900,000 previously appropriated for this purpose, \$672,000 remains unspent as of May 31, 2019. No new allocation is requested for FY 2019-20 but the unspent funds from prior appropriations may be used in FY 2019-20 to continue funding the affiliation agreement. If the remaining funds are not spent in FY 2019-20, the funding will be carried over to FY 2020-21 for the same purpose.

- G. The President requests an appropriation in the amount of \$3.3 million for FY 2019-20 for the newly created Capital and Campus Opportunity Fund (CCOF). The purpose of this new reserve fund is to set aside funds for capital projects and other special projects that would foster increased collaborations between the UC-affiliated National Laboratories and the UC campuses and medical centers.

One such project under consideration is the renovation of the UC-owned Hertz Hall Complex at LLNL. This facility has played a pivotal role in forging a longstanding relationship between LLNL and UC Davis in the areas of research collaborations, workforce pipeline and development, and educational programs, but now faces growing challenges of deferred maintenance and necessary repairs. The University is currently exploring options for renovating and repurposing the Hertz Hall Complex as a systemwide asset for UC-LLNL engagement as center for collaborative research and education.

Use of the CCOF funds on specific projects would be subject to further Regental approval.

In the event actual net fee income earned by UC in the respective LLC 2019 fiscal years is more or less than \$22.5 million, funding for CCOF may be adjusted accordingly, either up or down, as authorized by the President or her designee. Any unspent allocation under

paragraphs A and B above may be transferred, in the President's discretion, to the CCOF and carried over to FY 2020-21.

The CCOF is part of the University's STIP. Any STIP income generated by the fund shall be reserved exclusively for the fund. In the event all or part of the CCOF Fund is not needed in FY 2019-20, that reserve will be carried over to FY 2020-21. The target balance for this Fund is \$10 million by the end of FY 2021-22, based on projects under current consideration.

- H. An appropriation in the amount of \$300,000 for FY 2019-20 for the newly created Triad Reserve Fund, and a transfer of \$750,000 from the LLC Fee Contingency Fund to the Triad Reserve Fund. The purpose of this new reserve fund is similar to the purpose of the LLNS/LANS PCCF: to fund residual post-contract liabilities, obligations associated with the Triad performance guarantee, and expenses related to contract re-competition. The target balance for the Triad Reserve Fund is \$10 million by the end of the ten-year anticipated length of the Triad contract.

In the event actual net fee income earned by UC in the respective LLC 2019 fiscal years is more or less than \$22.5 million, funding for the Triad Reserve Fund may be adjusted accordingly, either up or down, as authorized by the President or her designee. Any unspent allocation under paragraphs A and B above may be transferred, in the President's discretion, to the Triad Reserve Fund and carried over to FY 2020-21.

The Triad Reserve Fund is part of the University's STIP. Any STIP income generated by the fund shall be reserved exclusively for the fund. In the event all or part of the Triad Reserve Fund is not needed in FY 2019-20, that reserve will be carried over to FY 2020-21.

- I. The President requests an appropriation in the amount of \$1 million for FY 2019-20 for the purpose of business development. This funding would support the University's efforts to explore and develop opportunities to participate in the management of one or more DOE National Laboratories and other Federally Funded Research and Development Centers (FFRDC) beyond the current three UC-affiliated National Laboratories. Such activities include evaluation of opportunities for alignment with the University's tripartite mission of research, education, and public service, and evaluation of potential partners. Formal bids on specific Lab or FFRDC contracts would be subject to further Regental approval. In the event all or part of this funding for business development is not needed in FY 2019-20, the funding will be carried over to FY 2020-21 for the same purpose.

Key to Acronyms

CCOF	Capital and Campus Opportunity Fund
DOE	Department of Energy
FFRDC	Federally Funded Research and Development Center
FY	Fiscal Year

LANL	Los Alamos National Laboratory
LANS	Los Alamos National Security, LLC
LLC(s)	Limited Liability Company(ies)
LLNL	Lawrence Livermore National Laboratory
LLNS	Lawrence Livermore National Security, LLC
M	Million (\$)
NNSA	National Nuclear Security Administration
PCCF	Post-Contract Contingency Fund
STIP	Short Term Investment Pool
UCNL	UC National Laboratories