

June 19, 2009

Dear Colleagues,

Yesterday, you received a request for comment from our AHR and SHR offices on a system-wide "Proposed Furlough/Salary Reduction Plan Options" with a feedback deadline of June 25, 2009 (next Thursday). As your Senate Chair, I want to provide some of the missing context that informs the request.

We are all surely aware that both UC and the state are in dire budgetary straits. Yet, state funding per student for the University of California has progressively declined for a number of years, so this year's cuts to UC could be viewed as the most severe manifestation of a long term pattern in funding for the state's research university.

But, in the context of the "reductions" and the request for expedited review, the inadequacy of our state support has long been recognized by the system-wide Senate, which has made serial recommendations on how UC could fundamentally change its budgetary models (see, for example, the recent Senate document on "Coordination of Budget Planning and UC's Future" at <http://www.universityofcalifornia.edu/senate/reports/mcyudof.ucfuture.june09.pdf> ; the 2008 "Cuts" Report of UCPB at <http://www.universityofcalifornia.edu/senate/reports/cuts.report.04.08.pdf> , and the 2006 "Futures" Report at <http://www.universityofcalifornia.edu/senate/reports/futures.report.0706.pdf>.

These documents demonstrate that the current budget emergency reflects a chronic condition to which the UC has repeatedly failed to respond. Such a systemic lack of consideration of marked changes to UC's overall funding models in the face of the ongoing decline in state support, that has led us to our getting a request on a 1-week time frame to opine on how we would like our take-home pay cut. Indeed, the Senate having played the role of the mythical Cassandra on such budgetary matters provides no solace unless we are shown that the "death-by-a-thousand-cuts (and the occasional big one)" budgetary philosophy that has been the signature of UC over much of the last decade is being fundamentally altered. I believe that it is ABSOLUTELY incumbent on the UC and its President to articulate our multi-year institutional strategy in the likely event of continuing draconian cuts to state funding. Otherwise, next year (and very likely in following years, until the budget "turns around"), we will simply be informed that whatever "reductions" that were instituted this year will either be continued or increased.

CPB Chair Gillman has already pointed out possible shortcomings and inadequacies of these policies, and I will not reiterate these. I would simply note that the lack of certainty about impacts on retirement benefits is appalling--the usage of the recurrent phrase "unless redressed by Regental action" is meaningless without an assessment of the likelihood of such actions. Moreover, you will also note that two of the three plans involve "some challenges for implementation in the payroll systems." In short, we are presented with plans that are inadequately described, and two-thirds of which may not even be able to be fully implemented.

I will mention one other sore point for our local Senate. In AVC McQuitta and AVC Peterson's transmission letter, they state that "The Plan is being developed in conformity with the Draft Amended Standing Order 100.4, Duties of the President, and Draft Presidential Furlough/Salary Reduction Guidelines that were previously distributed for comment and which will also be presented for approval at the July 2009 meeting." For your information, the Senate at UCSC opposed this Draft Standing Order in the strongest possible terms (see our letter in the attached pdf); other UC campus Senates and system-wide Senate committees found the draft Standing Order 100.4 that we saw to be somewhere between seriously and fatally flawed. But, it appears that the approval of Regents Standing Order 100.4, on Emergency Powers for the UC President, is being viewed as a fait accompli.

I hope these thoughts are of some assistance to you as you prepare your responses to the solicitation for comment.

Sincerely,

Quentin Williams, Chair
UCSC Academic Senate



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May 22, 2009

Mary Croughan, Chair
Academic Council

RE: UCSC Response to the Proposed Amendment to Standing Order 100.4

Dear Mary,

The Santa Cruz Division has reviewed the Proposed Amendment to Standing Order 100.4 and its accompanying Guidelines. We received comments from 11 of our committees, including Academic Personnel (CAP), Affirmative Action and Diversity (CAAD), Committees (CoC), Educational Policy (CEP), Faculty Welfare (CFW), Graduate Council (GC), Planning and Budget (CPB), Preparatory Education (CPE), Privilege and Tenure (P & T), Research (COR), and Teaching (COT). All committees submitted extensive and comprehensive responses, and all were united in their **strong opposition** to the Proposed Amendment. Indeed, no single item in my experience as Divisional Chair (and Vice-Chair) has attracted such strong and unanimous condemnation from ALL parties.

While our Senate fully recognizes that we are in challenging budgetary times, and that sacrifices beyond those the faculty have already made (such as non-competitive salaries, larger classes, and less support for the teaching and research missions of the university) are likely to be needed in future. These might well include faculty pay cuts—but the authority for such cutting of pay already exists between the Regents and the Office of the President.

The comments received incorporated: (1) objections that can be summarized as questioning the necessity of this proposed Amendment; (2) overarching concerns about the document and process that include the lack of analysis and documentation associated with the amendment, the undue haste of assessment and proposed voting by the Regents, and lack of consultation; and (3) specific comments on, and objections to, the content of the Amendment and its Guidelines themselves. The first of these areas treats whether such an amendment should exist (our opinion is “no”); the second objects to the process and timeframe (too poorly documented, too fast, and with a process seemingly designed to minimize true Senate consultation); and the third raises major flaws that we see in the policy (flaws that we believe are fatal with respect to its adoption in anything approaching its current form). Our overarching statement is:

This cannot go forward for a Regents vote in July.

We expand on and justify this statement in the three sections below.

Is this Proposed Amendment Necessary?

Declaring “Financial Emergencies:” At the outset, we fundamentally question the notion of a “financial emergency”. The economy takes its turns, but even in such difficult times as now it moves slowly enough to render any need for “emergency powers” dubious. In our view, what this amendment *would* do if approved would be to foster a lack of foresight and planning by UCOP, since UCOP would know that emergency powers could always be invoked in the instance of financial downturns—and this amendment not only codifies but, in our view, regularizes the process of declaring a “financial emergency.”

Moreover, it is simply not clear what constitutes a financial “emergency”. The proposed amendment defines it as “any extreme financial circumstance that significantly impacts the operations of the University or a part thereof.” The accompanying guidelines state that the financial crisis “must be so severe that it jeopardizes the ability of the University to sustain its current operations in fulfilling its tripartite mission.” Although we understand the challenges of coming up with something more specific, without such criteria the Senate would have very little by which to evaluate the legitimacy of a proposed “emergency,” or to distinguish a true emergency from chronic mismanagement. This represents a major consideration: inept system-wide management (whether related to poor legislative advocacy, inadequate fee structures, or –for example- lack of retirement-system withholding) could simply be glossed over through the declaration of a financial emergency.

Natural Disasters vs. Extreme Financial Circumstances: The document is too broad in its attempt to group responses to financial emergencies together with natural disasters and/or medical emergencies, for two reasons:

- 1) The timescales, and therefore the degrees, of emergencies are different. Natural disasters and medical emergencies happen fast and require fast response. Financial emergencies emerge slowly and permit a more measured, considered response.
- 2) Financial emergencies hit the entire system whereas natural disasters typically affect only one campus (medical emergencies represent a possible exception here).

However, the Amendment does not appear to be due to an urgent need for a Natural Disasters Policy: when we have had natural disasters, as in the case of the 1989 Loma Prieta Earthquake (a time well-remembered on our campus), the central and northern California campuses that were affected worked together and in concert with the President’s office to see that the work of the university was restored as quickly as possible and with as little disruption as possible. The same was true during the 1994 earthquake in Southern California, and during the recent and terrible wildfires that have wracked the state. Given our history with respect to natural disasters, we can only assume that this request for a change in the Standing Orders is not precipitated by the desire to be prepared for a natural disaster, but rather that it is entirely motivated by the economic crisis.

Additional Powers and Furloughs: We understand that the President already has the power to cut the pay of UC employees, with this power being deployed in 1993, and possibly during the Great Depression. Hence, the motivation cannot be to simply grant the President the power to cut salary from the budget. The case of furloughs seems more complex (but no discussion is presented of what the President could do right now with respect to furloughs, so we are engaging in informed speculation), and might be the real rationale for

the policy, as might giving the President the ability to declare emergencies on individual campuses. Therefore, the aspects of this policy in which the President may not clearly already have documented authority is with respect to furloughs and/or campus-targeting of states of emergency—and we do not believe that such authorities need to be extended to the President (and, in any case, no rationale is given for why -or even whether- such authorities are needed).

Indeed, the possible imposition of furloughs raises an entirely separate set of concerns that are not addressed in this document. We are aware of no precedents for this action at UC. Salary cuts would likely affect the base salary, impacting benefits and compensation. While furloughs do not affect the salary base, they may well have extremely grave consequences in regard to their distribution and equity among the faculty. Those faculty in fields who are able to use external grants for summer salaries (or regular year salary) in order to make up for the loss of salary due to furlough, would be able to maintain their economic stability. However, those in fields such as Arts, Humanities, and some Social Sciences, which typically are not funded externally in this way will be disadvantaged and put in a different employment situation than their colleagues. In other words, this would cultivate a culture of “the haves and the have nots.” We note that there are no guidelines in the proposed amendment and its implementation document regarding the effects and outcome of furloughs. And, given that this document would formally create an avenue to pursue furloughs, an actual analysis of the furlough process, its implementation and ramifications should have been made—and none is apparent here.

Rather:

Suspending Due Process for Faculty?: Our concerns also extend to the suspension of the Rights of Privilege and Tenure as suggested in the wording of the amendment to Standing Order 100.4 (2) and the implementation document (“The President shall have the authority...to suspend the operation of any existing Regental or University policies otherwise applicable to furloughs and/or salary reductions that are contrary to the terms he or she deems necessary to the proposed implementation”). In short, whether the Amendment could result in the removal of the Rights of Privilege and Tenure of the faculty is entirely unclear, and no analysis of what 100.4(2) might involve is included. Moreover, there is no timeline indicated for the emergency powers of the President once assumed. Much like the (occasionally abrogated) right of *habeas corpus*, Privilege and Tenure rights are essential to our protections under the APM, with its procedures for fairness and transparency. To consider in a hasty fashion a poorly-justified Amendment involving potentially sweeping authority is not acceptable.

To summarize this section: We believe regularizing procedures for declaring “financial emergencies” is undesirable, and prone to abuse; We do not believe natural disasters and financial emergencies should be conflated; Given that the President clearly has the power to cut pay, we do not see the rationale for granting the power to pursue furloughs given that we do not understand, and are not told, how furloughs might be instituted (only that a Plan will be delivered when it is decided to furlough); And, we are concerned that the Amendment could produce abrogation of basic faculty Privilege and Tenure Rights. Hence, we view this amendment as not justified.

Timeframe, Context/Analysis, and Consultation with the Senate

Senate Consultation: With respect to Senate consultation, the cover letter’s statement that “...the Senate leadership has striven to incorporate strong Academic Senate consultation at the campus and systemwide level” directly contradicts our campus’s experience. We note that at the May Regents meeting when this proposal appeared as a discussion item, there was not quorum of the Regents and the only discussion was a comment from the Council Chair who spoke in support of this document, and commented on the high level

of involvement of the Senate in producing it. Given both the lack of information and prior consultation, we consider it entirely unacceptable for the Regents to vote on this amendment at their July meeting, and we are deeply troubled that, while the item was under Senate Review, the Council Chair appeared to be conveying Senate complicity in this document to the ultimate deciding authority on this policy.

Why is the Amendment So Poorly Documented? The document, as submitted for comment, contains no analysis of the nature of these changes, no contextualization, and no substantive statement as to why these policies are being proposed now, nor what the extant powers of the President are—all of this highly relevant information has been left to the reviewers to research. What are the relevant policies that are already in place? How would they be expanded or altered if the proposed changes are adopted? Which other institutions have such policies? Is this based on a template that is widely used? Why did it come to us without any analysis of the history or precedent for such powers? Indeed, there is no discussion of how the new proposals would interact with existing UC regulations and policies. And, as mentioned in the previous section, the implications of furloughs vs. salary cuts on employee benefits are also not analyzed. The extraordinary lack of analysis puts faculty at a disadvantage, as they typically are not experts in UC rules and regulations. A thorough, authoritative analysis of the impacts and implications of both the emergency-powers policy and any specific proposed financial measures should have been circulated when we were asked to give input. This is not a minor oversight: for a policy that has the level of prospective consequences that this “Emergency Powers” Act has, the complete lack of analysis and contextualization, coupled with the short timeframe for comment, implies either shoddy vetting and/or a lack of concern for substantive comment that many of our committees viewed as simply contemptuous of the Senate.

Timeframe: The document was submitted for systemwide comment on April 27th, with responses due May 26th, for (as we understand it) potential Regental action at their July meeting. Given the number of issues raised by this policy and the extraordinary lack of analysis presented to date, we believe that the proposed July date for Regental action is entirely unacceptable. If such a document is required, at a bare minimum, a revision which includes a decent level of analysis and documentation needs to be generated—and commented on. The timescale hence should move into the fall, and the Academic Council should insist that this item not proceed to a Regental vote in July.

Section Summary: It is incredibly important to ensure that this policy—which has implications for *every* employee of the system—is done thoughtfully and with due diligence. While we recognize that it might be easy to define ourselves as being in a “financial emergency,” we believe that the avenues of action that are available to the President—which include systemic pay cuts—are sufficient to sustain UC for the next 4-6 months (at least!) without the declaration of a state of emergency. Hence, there is no rationale that we can discern for the level of haste attached to this document, and a longer timeframe (extending into the fall) is required *if* the System decides to move forward with such an Amendment.

Specific Comments on the Amendment and its Guidelines

Impact on Education The educational mission of the University of California should be underscored; as it stands, the Amendment is silent on our educational role, and the Guidelines only include it in the context of Furloughs and Salary Reduction Planning. Indeed, any such policy should explicitly establish as a principle the aim to minimize to the extent possible the impact of emergencies (including salary cuts and furloughs) on students and their educational experience.

Declaration of Emergency under Interim Authority Policy Unlike natural disasters, extreme financial circumstances do not occur from one moment to the next or even overnight; instead, they develop over a

period of time that allows for consultation and planning before action is taken. For this reason, we oppose giving the President the authority to declare an Emergency for financial reasons under the Interim Authority Policy (which allows decisions to be taken by two or at most three individuals, see <http://www.universityofcalifornia.edu/regents/policies/6004.html>).

Declaration of Emergency on a Campus The language of the proposed amendment allows for the President to declare an Emergency on a campus without the request for such a declaration originating from the Chancellor of that campus; in fact, under the proposed amendment, this is allowed even if the “deficiency in available resources may result from significant reductions” in any one of a number of items, including “contracts and grants” and “gifts”. Hence, our reading of this Amendment is that it appears that, in its sweeping character and vagueness, it could actually allow a President to pursue the declaration of a campus emergency over gift receipts! Frankly, this is an absurd extension of Presidential powers. We believe that only the Chancellor of a campus should be able to request a declaration of Emergency on that campus and only after consultation occurs on the campus itself. This also raises the broader issue of whether it should be possible to have an Emergency declared on a single campus or a number of campuses without having a global declaration of Emergency across the entire UC system.

In many ways, the proposal conveys a view that reduces the system to ten campuses rather than a single university system. This is clearest in the statement that a financial emergency may arise that “impacts the operations of the University **or a part thereof**.”(bold added) An important question for the system, as a whole, is whether an emergency can exist on a campus basis, or whether for the UC system, a financial emergency is (only) one where the system itself is “endangered.” For one campus to face a budgetary crisis, with its own faculty and staff experiencing furloughs and/or salary cuts, while the other campuses conduct business as usual, flies in the face of the notion that the system is one university with ten campuses. Moreover, it is standard operating procedure for resources to flow between campuses, so that the sharing of resources is an established practice in times of both crisis and confidence. We note that the AAUP offers a useful understanding of “a demonstrably bona fide financial exigency, i.e., an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means.”¹ In its implicit endorsement of campus autonomy, the proposal raises fundamental questions about the nature of our UC system. These questions cannot be asked and answered in the short review period created by the Regental meeting calendar.

Timeframe of “Emergencies” There are no parameters in the proposed draft for how long such a state of emergency should last, or at what point economic conditions would warrant either its initiation or its termination. In other words, this is a wide open invitation to unchecked presidential power of declaration, implementation and sanctions with no institutional safeguards for long established principles of academic freedom, federal and Regental mandates for affirmative action, and many other procedural safeguards for the hiring, promotion and retention of faculty, the establishment and disestablishment of departments and programs, and binding legal agreements with unions affecting tens of thousands of university employees. In our view, it is not acceptable that the request for emergency powers extend to whatever timeframe that the President sees fit.

Breadth and Scope of Powers The proposal is both overly broad in its granting of presidential powers and threatening in its circumvention of the normal review process that served us well for many years. The

¹ American Association of University Professors, Recommended Institutional Regulations on Academic Freedom & Tenure, available at <http://www.aaup.org/AAUP/pubsres/policydocs/contents/RIR.htm>.

policy is not restricted to furloughs/pay cuts but suggests that the President can also suspend other policies, defined with very broad scope. In addition to the Privilege and Tenure concerns described above, can the President suspend UC's contributions to the cost of employees' health-care coverage? UCRP payments? Such possibilities are not explicitly excluded from the purview, and may well grant discretionary powers to the President that the Senate, the faculty, staff and students of UC might discover, to their regret, at some later date. Indeed, the sentence from (2): "The President further shall have the authority, during the pendency of the Declaration and consistent with applicable legal requirements, to suspend the operation of any existing Regental or University policies otherwise applicable to furloughs and/or salary reductions that are contrary to the terms he or she deems necessary to the proposed implementation" absolutely requires an analysis of what this means, as well as a justification for this apparently far-reaching provision.

Possible Differential Treatment of Campuses The next sentence in (2) states that salary cuts or furloughs might be ordered for some campuses but not for others. Given repeated references from UCOP in other contexts to "flagship campuses", we find this provision deeply disturbing. **We believe that the present fiscal challenge is a systemwide challenge, and the burdens of facing it should be shared over the whole system. We would like the document to state this as a guiding principle.** Additionally, analysis is needed that shows how the present language allowing for different measures on different campuses might actually play out in reality.

Implications for Benefits Both the proposed amendment and accompanying guidelines are silent on the implications that a declaration of Emergency would have on the benefits of UC employees. These implications may very well be different, depending on whether the employee is affected by a furlough or by a salary reduction, and they should be spelled out.

Timeframe of Consultation We do not understand why the President could wait up to 60 days before consulting with the Senate (Amendment Section 5), after invoking emergency powers without prior consultation. We would suggest a much shorter time frame (1 day or 1 week?), but in any case we simply do not accept that the President could invoke emergency powers without prior or immediate consultation with the Senate, which seems to be a violation of UC's constitutional shared governance.

Effects on Diversity We are greatly concerned about the particular vulnerability of people of color and women to programmatic cuts, prospective lay-offs and furloughs. These groups tend to be lecturers rather than Senate faculty, and/or proportionally tend to be those without tenure or with the least seniority. An overwhelming majority of staff are women. Gains made in the last 15 years or so in the hiring and retention of women and people of color faculty could be seriously and tragically compromised in the course of actions associated with an "emergency." In this regard we are particularly concerned that furloughs/lay-offs/cuts in particularly vulnerable academic departments, because they are small, or because they are in non-traditional or inter-disciplinary fields, could in effect disestablish them without following established protocols.

Sufficient Vetting and Shared Governance The proposed amendment and accompanying guidelines provide for very limited input from the Academic Senate, since only the campus Committees on Academic Personnel, Planning and Budget, and Faculty Welfare (and their counterparts at the system-wide level) are supposed to be involved in the consultation process. Yet, any declaration of Emergency would have profound implications for teaching and research, the core mission of the University of California. For this reason, we believe that the campus Committees on Educational Policy, Research, Admissions and Financial Aid, and the Graduate Council (and their counterparts at the system-wide level) should also be included. The principles of shared governance should not be compromised in matters of such gravity.

Conclusion

One of the most important functions of the UC President is to provide the forward-looking vision that the University as a whole might otherwise lack. Under normal circumstances, a President would have plenty of time to foresee a budget crisis such as the current one, which has been years in the making—it is no secret that our economy is cyclic, although the depths of troughs are, at times, difficult to discern. The need to plan aggressively for large budget cuts has been clear for some time, as has clearly been illustrated by our markedly declining level of state support. Our viewpoint is that the institution of Emergency Powers on financial grounds is a blunt and draconian tool with dictatorial overtones. Rather than promulgating a proposal for emergency powers, a more effective and comprehensive strategy of institution-wide consultation and communication (including with the Senate) over hypothetical cuts, furloughs, and salary reductions, which now seem all too likely to become reality, needs to be instituted. We fully recognize and appreciate that improvements in communication on budgetary matters have occurred at both the system-wide and campus levels—but we do believe that this process is not yet optimized. Our view is that the extant powers of the President, coupled with buy-in from campus constituencies (who are all well aware of the currently dire economic straits), would obviate the need for special “emergency powers” that abrogate normal consultative procedures.

Such an approach would have removed the need for this Amendment, which is ill-justified, poorly thought-out, and seems to open the possibility of invocation of authority that could be highly destructive to the University of California (even if the invocation of that authority were well-intentioned). It also undermines campus authority. **The UCSC Division urges the Academic Council to ensure that the strongest possible stance is taken with the Regents to ensure that this regrettable and potentially destructive mess is not enacted into Policy.**

Sincerely,

A handwritten signature in black ink, appearing to read "Quentin Williams". The signature is written in a cursive, flowing style.

Quentin Williams, Chair
Academic Senate
Santa Cruz Division