

Office of the President

TO THE MEMBERS OF THE COMMITTEE ON COMPENSATION:

ACTION ITEM

*For the Meeting of March 15, 2007*

**TRANSFER OF ASSETS AND LIABILITIES FROM THE UNIVERSITY OF CALIFORNIA RETIREMENT PLAN (UCRP) TO THE LOS ALAMOS NATIONAL SECURITY, LLC DEFINED BENEFIT PENSION PLAN AND AGREEMENT REGARDING THE ONGOING OBLIGATIONS OF THE DEPARTMENT OF ENERGY TO REIMBURSE THE UNIVERSITY FOR CONTRIBUTIONS TO THE UCRP**

**EXECUTIVE SUMMARY**

Effective June 1, 2006, the management of the Los Alamos National Laboratory (“LANL”) transferred from the University to the Los Alamos National Security, LLC (“LANS”). Approximately 6,600 former UC employees elected to transfer their accrued UCRP benefits and service credit to the LANS Defined Benefit Pension Plan (“LANS Plan”). Under the terms of management Contract No. W-7405-ENG-36 (“Contract”) between the University of California and the Department of Energy / National Nuclear Security Administration (“DOE/NNSA”) governing the transition to a successor contractor, the University is required to transfer the assets and liabilities associated with the UCRP benefits accrued by LANL employees who have elected to participate in the LANS Plan.

This item requests authorization to enter into two agreements that will implement the transfer of assets and liabilities from UCRP to the LANS Plan on or about April 2, 2007 and confirm the DOE/NNSA’s continuing commitment to fund any shortfalls attributable to the benefits of LANL employees retained in UCRP, as well as to make any amendments to UCRP that are necessary to carry out the intent of the agreements.

Previous Actions: **January 2007:** The Regents were updated regarding the status of the transfer of assets and liabilities from UCRP to the LANS Plan and were advised that a proposal with a target date of April 2, 2007 for the final transfer of UCRP assets and liabilities was expected to be presented for action in March 2007.

**December 2006:** The Regents approved, under Interim Authority, payment of benefits from UCRP to or on behalf of LANS Plan members who retire prior to the asset and liability transfer from UCRP to the LANS Plan, but only to the extent the benefits are attributable to service with UC as of May 31, 2006.

**September 2006:** The Regents revised the authority granted to the President at the May 2006 meeting to make initial and interim transfers of UCRP assets to the LANS Plan of up to \$50 million.

**May 2006:** The Regents authorized the President to transfer UCRP assets to the LANS Plan on a monthly basis, but only to the extent necessary to fund benefit claims under the LANS Plan.

Relevant Policy: Plan document for UCRP and Contract.

Issues:

- Authorization to enter into an agreement to transfer assets and liabilities from UCRP to the LANS Plan;
- Authorization to enter into an agreement that confirms DOE/NNSA's ongoing obligation to fund UCRP benefits associated with LANL service if a shortfall occurs; and
- Authorization to amend UCRP to implement the transfer of UCRP assets on behalf of former UC employees at LANL who have elected to participate in the LANS Plan.

### RECOMMENDATION

The President recommends that the Committee on Compensation recommend to The Regents that, in accordance with the provisions of the Contract governing the transition to a successor contractor at LANL, the Associate Vice President, Human Resources and Benefits, be authorized to enter into the following agreements on behalf of the University as sponsor of UCRP and The Regents as trustees of UCRP, provided the agreements are substantially as described in the Background to this item; to execute any regulatory filings associated with the transfer of assets and liabilities; and, pursuant to the Regent's authority to amend UCRP, to adopt any amendments to UCRP that are necessary to carry out the provisions of the agreements:

- 1) The Agreement Concerning the Transfer of Assets and Liabilities ("Transfer Agreement") incorporates the terms agreed to by the University and the DOE/NNSA for the transfer of assets and liabilities from UCRP to the LANS Plan, including the amount of assets to be transferred and the documentation required to be provided to UC prior to the transfer of any assets.

- 2) The substantive terms of the agreement confirming the DOE/NNSA's ongoing funding obligation for UCRP benefits associated with LANL service ("Funding Agreement") define the method for calculating any future funding shortfalls, commit DOE/NNSA to a schedule of payments to restore full funding of the separately accounted for segment within UCRP to which the assets and liabilities associated with members' LANL service are allocated ("LANL Segment"), and address other administrative matters.

Neither of these agreements will become effective, and no assets will be transferred, unless the Office of the General Counsel determines each is in substantially the form as described in the Background to this item and each has been properly executed.

In accordance with prior direction from The Regents, University administrators have consulted with the appropriate standing and special committees and task forces of the Academic Senate concerning the issues addressed in this item. As described more fully in the Background to this item, at its meeting of February 28, 2007, the Academic Council unanimously endorsed the analysis and recommendation of the University Committee on Faculty Welfare-Task Force on Investment and Retirement (TFIR) to support entering into agreements with the substantive terms discussed with TFIR which are described in this item.

## BACKGROUND

Historically, under the University's prime contracts for LANL from 1943-2006, DOE/NNSA has reimbursed the University for contributions made to UCRP to meet the actuarial projections of the costs of the benefits accrued by LANL employees who participated in UCRP. The assets and liabilities associated with the UCRP benefits of University employees performing service at LANL have been allocated to the LANL Segment within UCRP and accounted for separately by the Regents' actuary each year since the early 1990s at the request of DOE/NNSA.

Upon the expiration of the term of the existing Contract on May 31, 2006 and consistent with their prior elections, active LANL employees who transitioned employment to LANS began participation in the LANS Plan or became inactive UCRP members (if already vested) and began participation in the LANS market-based defined contribution plan. The Contract requires a transfer of UCRP assets and liabilities associated with the benefits of LANL employees who elected to participate in the LANS Plan.<sup>1</sup> Consistent with the Contract terms, modified as agreed upon by the parties to facilitate administration, all calculations regarding the share of UCRP assets and liabilities associated with LANL service that are subject to division between UCRP and the LANS

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<sup>1</sup> UCRP will retain the assets and liabilities for a supplemental benefit, referred to as the Capital Accumulation Payment (CAP) accounts for all LANL employees, including those who elected to transfer their basic UCRP benefit to the LANS Plan. All references in this item to the "UCRP benefit" of a LANL employee refer only to the basic UCRP benefit.

Plan are based on a valuation date of May 31, 2006 determined by using the actuarial assumptions and methods established by The Regents for UCRP.

The formula outlined in the Contract ("Formula") for determining the amount to be transferred to the LANS Plan is defined as "A minus B" where "A" equals the market value of the assets allocated to the LANL Segment prior to transfer and "B" equals the liabilities associated with the UCRP benefits of the active LANL employees who elected to leave their benefits in UCRP and the group of former LANL employees who had already become disabled, retired, deceased or inactive UCRP members by June 1, 2006, or their eligible survivors or beneficiaries. Both groups are collectively referred to below as "Retained LANL Payees." The Formula calculation results in a 100% funded status for the value of the benefits of Retained LANL Payees on a market value of assets basis immediately following the transfer.

### *Transfer Agreement*

The Transfer Agreement contains the terms and conditions negotiated between the University and the DOE/NNSA for the transfer of assets and liabilities from UCRP to the LANS Plan. As of May 31, 2006, the total market value of UCRP assets allocated to the LANL Segment was \$4,448,574,090 ("A"), and the liabilities for the UCRP benefits of the Retained LANL Payees as reported in the June 1, 2006 Special Interim Addendum Report for LANL were \$3,169,811,239 ("B"). Following the Formula results in a May 31, 2006 market value of assets to be transferred (with adjustments as set forth below) from UCRP to the LANS Plan of \$1,278,762,851 ("A minus B"). The transfer of assets and liabilities from UCRP to the LANS Plan is proposed to take place on or about April 2, 2007. The LANS Plan will then assume the liabilities transferred from UCRP effective as of June 1, 2006.

The amount of assets to be transferred will be adjusted for the total return earned by the UCRP portfolio from May 31, 2006, allocable expenses, buybacks for UCRP service credit, and distributions from UCRP to the small number of LANS employees who retired before the transfer of assets and liabilities to the LANS Plan as authorized by The Regents under Interim Authority in December 2006. The amount of assets to be transferred is considered to be the final transfer amount, with additional post-transfer adjustments, or true-ups, to reflect the final performance numbers of certain assets, other investment-related end-of-the-month accountings, any changes requested by the regulators and data corrections.

Assets will be transferred on an in-kind basis under a method agreed upon by UC and DOE/NNSA. The investments to be transferred will be documented in writing and attached as an exhibit to the Transfer Agreement. The agreement allows the flexibility to take into account restrictions on certain investments, such as private equities, real estate and emerging markets.

Prior to the transfer of any UCRP assets, DOE/NNSA will provide evidence that both the Transfer Agreement and the Funding Agreement have been executed or validly adopted and various other representations and assurances established by the University's legal counsel.

The transfer of assets and liabilities from UCRP to the LANS Plan will undergo regulatory review from the IRS to insure compliance with applicable federal tax laws and will be adjusted if necessary to conform to such requirements.

### *Funding Agreement*

The Funding Agreement clarifies and implements the commitment by DOE/NNSA under the Contract to reimburse UC for any contributions made to UCRP to fund any existing or future funding shortfalls in UCRP attributable to the LANL Segment. It also establishes the methodology of calculating whether a current shortfall exists.

The DOE/NNSA has agreed to a target funded ratio for the LANL Segment within UCRP of 100%. Any year that the segment is underfunded (using UCRP actuarial assumptions), DOE/NNSA will begin seven years of level payments in an amount projected to restore full funding by the end of the seven-year term. The DOE/NNSA will generally be required to follow a similar seven-year payment approach with the corporate pension plans at its sites under recent changes in the pension funding rules that apply to private employer plans. Under the agreed-upon approach, reimbursements by the DOE/NNSA will be the greater of the payment calculated under the seven-year amortization method or the amount needed to meet liquidity needs for the LANL Segment. Liquidity needs are defined as three times the amount of benefit payments and expenses for the LANL Segment for prior plan year.

In return for clarifying its funding obligation and committing to a payment schedule if a shortfall in the LANL Segment funding occurs, the University agrees that the LANL Segment may remain within UCRP indefinitely, provided DOE/NNSA satisfies its payment obligations.

Because the liabilities of the DOE/NNSA are fixed under the Contract as of May 31, 2006, DOE/NNSA will have approval authority over any ad hoc inflation-based increases in benefits of Retained LANL Payees even if the adjustments are proposed for all UCRP members and beneficiaries. DOE/NNSA will also have approval rights, which it cannot unreasonably withhold, for any proposed changes to UCRP that would:

- Affect only Retained LANL Payees or, in the future, any retained LANL Payees together with any similar retained members and beneficiaries associated with the Lawrence Livermore National Laboratory;
- Raise costs for the Los Alamos Segment beyond that of UCRP generally; or
- Use actuarial assumptions or an asset allocation for the LANL Segment that is different from the assumptions and allocation used generally for UCRP.

The Regents retain all of the fiduciary authority to manage UCRP, but will continue, as in the past, to provide notice to DOE/NNSA of changes to UCRP. The Regents will oversee administration and management of UCRP and its trust fund without the need for prior approval from DOE/NNSA, and take all actions it deems necessary to track the costs and expenses properly allocable to the LANL Segment. The University will continue to provide, at DOE/NNSA expense, an annual addendum report on the LANL Segment and such other calculations as may be required to administer the Funding Agreement. A portion of the costs of UCRP administration will be allocated as an expense to the LANL Segment.

When all benefits have been paid to the Retained LANL Payees, DOE/NNSA will be entitled to receive any surplus in the LANL Segment, subject to regulatory requirements on such a transaction, or will be required to pay any remaining deficit in the funding of the segment.

### *Actuarial Valuation*

In order to determine the appropriate assets and liabilities of the LANL Segment, a special actuarial valuation was performed by The Regents' actuary, The Segal Company, based on May 31, 2006 data. The valuation was performed in consultation with internal and external counsel and as agreed to with DOE/NNSA in order to carry out the terms of the Contract. A complete copy of this June 1, 2006 Special Interim Addendum Report for LANL is shown in [Attachment 1](#).

### *Consultation*

University administrators have consulted with the appropriate representatives of the Academic Senate, including the University Committee on Faculty Welfare ("UCFW"), the UCFW Task Force on Investment and Retirement, the University Committee on Planning and Budget, the Academic Council Special Committee on the National Labs, and the Academic Council regarding the issues described in this item. In addition, University administrators have consulted, and will continue to consult with various constituent groups on these issues. [Attachment 2](#) contains the University Committee on Faculty Welfare-Task Force on Investment and Retirement (UCFW-TFIR) Analysis and Recommendation to Support the Draft "Agreement on Terms for Transfer of Assets from UCRP to LANS Plan and Continued Administration and Obligation Related to LANL Portion of UCRP" dated January 24, 2007, and the transmittal letter from the Chair of the Academic Senate indicating that this document was unanimously endorsed by the Academic Council at its February 28, 2007 meeting.

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.