

**Office of the President  
May 1, 2003**

**TO THE MEMBERS OF THE COMMITTEE ON EDUCATIONAL POLICY AND THE  
COMMITTEE ON FINANCE:**

## **ITEM FOR ACTION**

**For Joint Meeting of May 15, 2003**

### **PROPOSAL TO OPPOSE CALIFORNIA STATE BALLOT INITIATIVE: CRECNO (CLASSIFICATION BY RACE, ETHNICITY, COLOR, OR NATIONAL ORIGIN)**

The President recommends that the Committee on Educational Policy and the Committee on Finance and recommend to The Regents that The Regents oppose the Classification By Race, Ethnicity, Color, or National Origin (CRECNO) initiative, to be included on the March 2004 statewide primary election ballot.

## **BACKGROUND**

The Classification by Race, Ethnicity, Color, or National Original initiative would prohibit the state and other public entities—including the University of California—from classifying certain individuals by race, ethnicity, color, or national origin. The initiative would permit action only for the following exemptions: to comply with federal law, or to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state, and for “medical research subjects and patients.” The initiative, a proposed amendment to the California Constitution, has qualified for the March 2004 primary election ballot.

The University of California currently collects socioeconomic data, including racial and ethnic data, in order to fulfill its mission. Faculty research relies on these data. They are also used in admissions and enrollment, educational outreach, student financial aid, faculty and staff employment, and contracting practices, to ensure that the University complies with appropriate federal and state regulations and to enable UC to assess the ability of these programs to reach all segments of society. Uses of these data include evaluation of the University's application, admission, and enrollment practices; assessment of the effectiveness of outreach programs; assessment of the availability of financial aid in certain instances; and a variety of other purposes, including academic research conducted by UC faculty and researchers. In addition, UC faculty and researchers rely on data collected by the State that classify individuals by race, ethnicity, color, or national origin.

In order to assess the initiative's impact on the University's operations, the President requested the Office of the General Counsel (OGC) to analyze the applicability of the initiative to the University as well as its implication, if approved by the voters, for various aspects of University operations. To assist the OGC in its analysis, Senior Vice President Darling gathered

information about how the University uses such data for faculty research, admissions and enrollment, educational outreach, financial aid, faculty and academic employment, staff employment, contracting, and institutional research and planning purposes. The relevant offices were asked to respond to the following questions:

1. What racial and ethnic data does UC collect?
2. Why does UC collect such data?
3. At whose behest does UC collect such data?
  - Are the data collected for the University's own purposes or to fulfill a reporting requirement to a state or federal agency? If the latter, what is the agency's mandate to collect it? Is it a statutory mandate? Is it a regulatory mandate? Or is it an administrative request from the agency?
4. If the data are collected by faculty, researchers, and graduate students for their research purposes, could they still do so under CRECNO? In other words, would the initiative affect faculty research differently than it would affect other aspects of the University?
5. If state agencies could no longer collect such data, how would this restriction affect faculty research? Would it affect the University's ability to recruit and retain faculty, researchers, and graduate students? In order to address this issue, the Governor's Office assisted the University by surveying State agencies and departments whose databases include racial and ethnic classifications and are regularly utilized by UC faculty in academic and policy-related research. The Governor's Office asked agencies whether the data are collected pursuant to federal law, or as a requirement for the receipt of federal funding.
6. After taking into account the exemptions in the initiative that permit the collection of such data, what would the impact on the University's mission if it were not able to collect and use such data?

### **Summary of Impact on University Research and Operations**

General Counsel Holst has provided in the [attached memorandum](#) the opinion of the Office of the General Counsel as to the potential legal effect of the initiative; it incorporates descriptions of its likely operational impact in various areas of University activity based on information provided by the affected academic and administrative units.

Based on this analysis, while racial and ethnic data collection required for funding by the federal government could continue, the initiative nonetheless may restrict the University's ability to collect and use these data for a number of internal and other purposes critical to its mission. In the absence of ballot language and without knowing how the courts would interpret the voters'

intent, it is uncertain whether, for example, data that are “properly” collected pursuant to CRECNO could thereafter be used by the University for a variety of purposes. According to the Office of the General Counsel, further use, including analysis and other manipulation of data, would arguably be prohibited and the only use the University could make of the data would be that which is federally mandated.

The initiative's potential impact on academic research includes the possible loss of numerous state databases containing information classified by race and ethnicity. This loss could impede the University's ability to conduct research to advance knowledge and inform public policies relevant to the State and the nation. It is also likely that the UC campuses would experience a negative impact on their ability to attract the best faculty and graduate students in certain disciplines due to the perception that the State of California is hostile to research employing racial classifications; this could hinder UC's efforts to bring on faculty of the highest caliber to maintain quality while accommodating an anticipated surge in enrollment in the coming decade. Finally, to the extent faculty research was found to be "any other state operation," rather than the "operation of public education," the initiative could significantly limit the faculty's ability to collect data needed for research.

The initiative could also have a significant impact on other areas of University operations. In admissions and enrollment, for example, the initiative would prohibit collection of race and ethnic data from UC applicants and admits, while collection of enrollee data would likely be allowed to continue under federal law. The consequence would be to restrict internal and external accountability of the University's application, admission, and enrollment practices, as well as limit the scope of its evaluation of outreach and recruitment efforts and their impact on academic preparation and college-going patterns of students from different backgrounds. The initiative could impede the University's ability to both demonstrate its commitment to maintain a student body that encompasses the broad diversity of backgrounds characteristic of California, as specified in Regents' policies SP-1 and RE-28, and ensure that race, religion, sex, color, ethnicity, or national origin are not considered as criteria in the admissions process, pursuant to Proposition 209.

In UC's educational outreach enterprise, racial and ethnic data on program participants are used in evaluating and improving the effectiveness of the University's outreach programs and in ensuring that all demographic groups are accessing these programs. Collection of these data by the University would be curtailed as most of it is not federally mandated. Lack of ability to report program results for different groups of students could reduce private funding available for these programs.

In financial aid, although the University does not engage in any preferential awards on the basis of race or ethnicity, race-neutral means allow UC to continue to award targeted funds to aid-eligible students of specific ethnic or national backgrounds, thus increasing total funding available for all students. At the graduate level, lack of data on race and ethnicity would reduce the University's ability to use such funds for recruitment of admitted students. Lack of data on national origin would require UC to give up private funds targeted on this basis, thus reducing

total aid available for all students. (See pages 10-11 of the [attached OGC analysis](#) for a fuller discussion of the initiative's potential effects on financial aid.)

In employment, contracting, and institutional planning and research, much of the racial and ethnic data that UC collects are federally mandated; therefore the initiative would likely not have a significant impact. However, in certain instances where the University is prohibited from gathering data that are not federally mandated, operations in these areas could be negatively affected. For example, the University's ability to carry out activities that ensure non-discrimination in employment and contracting would be limited without racial and ethnic data. Such activities include conducting surveys of faculty intending to leave University employment that provide the administrative and academic departments valuable recruitment and retention information, and assessing faculty awareness of certain family leave policies. In addition, the University may be prohibited from reporting such data to interested parties, such as *U.S. News and World Report* for its institutional ranking purposes.

### **Conclusion**

While the CRECNO initiative provides for some exemptions—such as the collection and use of racial and ethnic data to comply with federal law, to establish or maintain eligibility for federal programs, or to prevent a loss of federal funds, and the classification of “medical research subjects and patients”—on balance, the initiative contains, depending on its ultimate interpretation by the courts, potentially significant restrictions, that would impede the University's ability to conduct basic and policy-related research, to carry out its admissions and outreach programs, and otherwise to carry out the University's mission without restricting the freedom of scientific and scholarly inquiry. The uncertainty about the initiative's impact on certain of the University's operations and its apparently clear impact on others is of great concern.

Based on these analyses, the President concludes that the potential impact as well as the lack of certainty about other possible impacts of the Classification By Race, Ethnicity, Color, or National Origin initiative could adversely affect the University's ability to carry out its core mission, including in the area of academic research. The Academic Senate has come to the same conclusion. The President hereby transmits the [Academic Council's letter](#) on this issue to The Regents. After considerable discussion and analysis, the Senate concludes that the initiative, by prohibiting the collection and, possibly, the utilization of racial and ethnic data not mandated by federal law, would hamper the work of many UC scholars, who rely on such data to inform their research. Furthermore, it is the Senate's view that the initiative could limit the availability of external research funding to UC faculty (particularly funding from private corporations, foundation, and individuals) if the research depended on racial or ethnic data. The Senate believes that in order for the University to retain its stature among research universities, it must be a hospitable venue for research on all matters of scholarly interest.

It is therefore recommended that The Regents oppose this measure.

**COMMITTEE ON  
EDUCATIONAL POLICY  
AND COMMITTEE ON FINANCE  
May 15, 2003**

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The **text of the initiative**, the **Office of General Counsel's analysis**, and the **Academic Council's letter** to the President are attached as background information for The Regents' discussion and action.

(Attachments)