FACTS ABOUT UC SEPARATION AGREEMENTS

- In response to the Board of Regents’ request, and various media and legislative inquiries, the University of California Office of the General Counsel has compiled information concerning separation agreements and settlement agreements entered into with employees who had non-court litigated claims during the five-year period 2001-05. Under the interim policy recently adopted by the Regents, all separation and settlement agreements with employees in non-litigated matters involving consideration of $100,000 or more shall be submitted to the Board for approval. Agreements of less than $100,000 shall be approved by the President.

- During this five-year period, 152,281 UC employees separated from their employment with the University. Of this total, approximately 0.46% (700 employees) who separated did so with separation agreements.

- These figures do not include court-litigated cases, which are separately reported and are approved either by the full Board of Regents; the Chairman of the Board, the Chairman of the Finance Committee, and the General Counsel; or by the General Counsel, in accord with the Regents' Policy on Settlement of Claims and Litigation.

- The General Counsel has calculated that the total, five-year cost of the 700 agreements identified is approximately $23 million. The average number of agreements per year of 140, approximately 0.45% of a workforce averaging over 165,000 annually for the years in question. Thus, the average cost per year is approximately $4.5 million; roughly 0.06% of the average salary budget of $7 billion for the years in question.

- The agreements are outlined and available in chart form, listing the basic terms of each agreement, and the cost of the agreement, as well as the type of employee involved (faculty, staff, member of the Senior Management Group), but without including the names of each employee, in consideration of the personal nature of the information.

- The agreements reflect a wide range of circumstances, including cases in which employees alleged adverse actions, such as termination, and their grievances were resolved by settlement; cases in which administrators determined that it was in the best interest of the institution for an employee to separate, but there was no "cause for termination" established, a specific legal requirement for long-term employees in certain job classifications; and cases in which an employee was to be laid off, through no fault of the employee. In any case in which an employee is given a benefit beyond what s/he is legally entitled to (such as pay for unused vacation), whenever possible the practice is to have the employee sign a waiver of any right to sue the University in
connection with his/her employment.

- Regarding the category on the chart marked "Cost Pursuant to Agreement/Release", determining the cost of each agreement was straightforward in most cases. For example, an employee might be terminated and given a lump sum payment in settlement of a grievance. The cost of the agreement would be the amount of the lump sum. Payments to which the employee was entitled independent of the separation/settlement agreement, for example, a severance payment required by a union contract, was not included as a "cost pursuant to agreement/release". (The inclusion of the word "release" reflects the fact that the agreements contain a provision releasing the University from any further claims by the employee related to his/her employment.)

- In some cases, the cost determination is less clear. For example, an employee might be assigned to another job, temporarily, at an agreed-upon salary. Since the employee would be working, and delivering services for the sum being paid, there was a question as to whether this should be counted as a "cost pursuant to agreement". The decision was made to include the salary of the new position as the cost of the agreement/release for purposes of the chart, since this is what was committed to in the agreement. In other cases, an employee might be entitled to remain in a job (a tenured position, for example) at a certain salary, but pursuant to the agreement was assigned to a new position, at a higher salary. Questions were raised over whether the cost of the agreement should be only the difference between the old job and the new job. The charts include both the salary of the old job and of the new job, as well as the difference between the salaries for those positions.

- There are six cases identified where the cost of the agreement was in excess of $250,000 where, if these were court litigation settlements, they would have been submitted to the Board of Regents for approval by the Chairman of the Board and the Chairman of the Finance Committee, or by the full Board. These include two previously reported cases: Celeste Rose, on the Davis campus, and Ilene Nagel, the former UCSB Executive Vice Chancellor. The others involve a former UCSF administrator, a former UCB Assistant Vice Chancellor; a former UCOP staff member; and a tenured faculty member at Santa Barbara.

- In the cases of the UCSF administrator, the Assistant Vice Chancellor at Berkeley, the UCOP staff member, and the tenured faculty member at UCSB, these constituted what the General Counsel has defined as "separation agreements", arising from circumstances in which the employees made no adverse claim. As the General Counsel has explained previously, until the adoption by the Board of Regents of the Interim Policy on Separation Agreements, the General Counsel's view was that such separation agreements did not constitute the settlement of "claims or litigation", since no claims or litigation were pending. Accordingly, there was no requirement that such agreements be brought to the Board for interim approval, or approval by the full Board. The new policy requires that all such agreements, in excess of $100,000, be brought to the full Board for approval.
In the case of Celeste Rose on the Davis campus, this was regarded by the General Counsel as a “separation agreement”. Ms. Rose separated from her Vice Chancellor position and assumed a new administrative position with duties to be mutually agreed upon. She has been receiving her salary pursuant to the agreement although the specific duties to be performed are still under discussion.

In the case of Nagel, the former UCSB Executive Vice Chancellor, it was not General Counsel’s view that this constituted a "pure” separation agreement since the agreement did not provide for any separation from University employment, but rather for a three year appointment in the Office of the President as Senior Advisor to the Provost followed by return to her tenured faculty position at UCSB. During the time of her appointment in the President's Office, she was paid at her EVC salary level ($206,100/year). Her faculty salary at UCSB during this period, if she had returned to her tenured position, would have been $116,500. In addition, the agreement provided for $130,000 lump sum payment to her. Counsel did not bring this to the Board for approval because it was deemed an agreement providing for a change of responsibilities for a continuing employee with the only real "settlement cost" being the $130,000 lump sum payment. The matter was reported on thoroughly by the media and the agreement was released to the press at the time it was entered into 2002. Under the interim "Policy on Employee Separation or Settlement Agreements in Non-Litigated Matters", such an agreement would be brought to the full board for approval.

The charts outlining the separation agreements are available at [www.universityofcalifornia.edu/news/compensation/separationagreements.html](http://www.universityofcalifornia.edu/news/compensation/separationagreements.html)

The interim policy on separation agreements is available at [http://www.universityofcalifornia.edu/regents/aar/janw.pdf](http://www.universityofcalifornia.edu/regents/aar/janw.pdf)