Are They Saying I'm Right? "They Pledged Your Tuition" III

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On October 20, UC issued a press release[1] (10/20/09) in which VP's Taylor and Lenz respond to my Open Letter to Students: "They Pledged Your Tuition." The UC press release confirms two major points I made:

1. It admits that *all* student tuition (including the education fee) is now pledged as part of the collateral for UC construction bonds.

2. It assumes that it would be *wrong* to use the Education Fee to pay for construction, or to service construction debt.

I say it assumes this because VP Taylor did not in any way qualify his categorical statement to the press on 10/20 that "educational fees are not used to pay debt service." Although Regental policy allows "registration" fees to be used to fund construction projects related to student services, VP Taylor did not suggest that the Regents had adopted a similar rationale for using "education fees "to fund some buildings, such as classrooms, rather than others (such as administration buildings). Nor did he point out that Berkeley Law has been allowed to charge students a tuition-like supplement (beyond UC's common education fee) for the express purpose of funding construction at Berkeley Law. His press release said nothing in support of any regental policies that might allow education fees to be used to pay debt service on some kinds of construction bonds.

Perhaps the reason VP refrained from advocating this use of "ed fees" in a press release is that doing so would call attention to an apparent inconsistency between the **Regents' inclusion of "ed fees" in its General Revenue and their Student Fee Policy**:

- The Regents' 2003 plan for a General Revenue Pool for financing construction bonds explicitly lumps *both* "ed fees "and "reg fees" as the single largest source of revenues that is pledged to repay construction debt; every subsequent bond indenture and financial statements says that the Regents *could* and *would* use "ed fees" for this purpose, as necessary.[2]

[1] http://www.universityofcalifornia.edu/news/article/22164
[2] http://cucfa.org/archive/Regents_2003_on_indenture_General%20Revenues.pdf ; http://cucfa.org/archive/Regents_2003_on_indenture_General_Revenues_IIf.pdf

- Yet the Regents' "Student Fee Policy" does not include construction funding among the permissible uses of "ed fees."[3] This policy, which was amended in 2004 and 2005, *still* does not include construction, despite the fact that the Regents have been legally *obligated* to use "ed fees" for debt service in certain circumstances ever since the first General Revenue Bonds were sold in 2004.

VP Taylor has now put the Regents in a pickle. Does their Student Fee Policy *legally* prohibit them from doing what they have pledged to do, or did they simply violate the Fee Policy when they did it? When President Yudof told the student press that UC *couldn't* do this, because it would be "illegal" (*Daily Cal*, 10/19/09) he might have meant that Regental fee policy would legally trump the pledge? If the pledge *could* trump the policy, this opens the question of whether protecting the instructional uses of "ed fees" is still a high regental priority.

We no longer know what the Regents' priorities are. The fact that their old "ed fee" policy remains in place suggests only that they are reluctant to admit that these fees can now be used for construction. Maybe they don't know, or don't want to know, whether "ed fees" are diverted by campuses competing for bond-funded projects; maybe the Regents simply count on VP Taylor to assure them that the campuses wouldn't think of using "ed fees" for debt service. Does VP Taylor really know that the instructional use of "ed fees" is sacrosanct on every campus? Have the Regents asked him to find out?

There is now no dispute that the Regents pledged student "ed fees" for construction; it is also clear that their own Student Fee Policy reflects the assumption that they *shouldn't* be used for this purpose. So what are the outstanding issues?

The first question is relatively narrow: Is UC actually *using* tuition revenue to pay debt service on construction?

The second question is a matter of values: Should UC use its opportunity to borrow against ever-increasing tuition in order to advance construction projects while cutting back on student instruction and services?

Both questions need to be addressed by the growing student movement to "Save UC."

1. **Is UC actually *using* tuition revenue to pay debt service on construction?**

In the October 20 press release, VP Taylor flatly denies that UC uses *any* tuition revenue to pay debt service. This statement is at odds with his October 6 presentation to UC's Academic Senate Committee on Planning and Budget that lists "sources of debt repayment" in the following order.

- *Student tuition and fees*
- *Indirect cost recovery*
- *Sales and Services -Educational activities*

[3] http://www.universityofcalifornia.edu/regents/policies/6069.html

- *Sales and Services -Auxiliary enterprises*
- *Unrestricted investment income*
- *Other (Section 28, student approved fees)*[4]

Here we have the full menu of revenue sources that the campuses can use for collateral and/or repayment of projects funded by General Revenue Bonds. Tuition (*including* "ed fees") is first on the list, and is the largest single component of the menu. He also says UC should "align" its construction finance program to avail itself of the growing "debt capacity" that General Revenue Bonds provide. How can these statements, originally made to the UC Committee on Planning and Budget on October 6, be reconciled with VP Taylor's October 20 press release stating that "educational fees are not used to pay debt service?"

There is only one way: drilling down to individual projects. According to regental policy "*[e]ach external financing request must identify a specific fund source to be pledged to repay the obligation*" and that this must be done, even for "*non-revenue generating facilities with an administrative component*."[5] If VP Taylor's press release is true, then every project that the Regents have thus far approved (all those listed at the back of eighteen supplemental bond indentures)[6] should be accompanied by what non-experts might call a 'shadow' indenture—i.e., a collateral and repayment plan that allows no recourse to charges against instruction.[7]

The Regents have a Committee on Audit that is supposed to protect the Regents from doing anything wrong with the money they administer as a trust for the People of California. I will attend the Audit Committee's October 28 meeting and ask it to audit VP Taylor's October 20 statement that Regents have not, in fact, approved any construction project that draws on tuition revenue (charges instructional programs) for debt service. This task should be straightforward if VP Taylor has these documents at his fingertips. The Audit Committee can reasonably assume that he would not have approved the press release without checking them.

While it verifies that neither the Regents nor the Adminstration has done anything wrong with past tuition increases, the Audit Commitee should seek a delay in Regental approval of the next tuition increase, now scheduled for November.

The need for a regental audit should not, however, overshadow the more important question:

2. **Is UC's Aa1 bond rating now a higher priority for the Regents than its instructional quality?**

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[4] http://cucfa.org/archive/Taylor_PPT_06_OCT_2009.pdf Italics added.
[5] *Ibid*., p. 6.
[6] These are now archived at www.cucfa.org.
[7] To the extent the "ed fees" are *not* being used to fund such buildings, students and employees should ask what other revenue sources listed above are being increased and/or diverted to pay off unrelated projects. Have student approved fees or employee parking fees been increased and then diverted for this purpose? There is also the question of how construction cost *over-runs* are funded. When I chaired my campus Committee on Planning and Budget, there was a tendency to fund these by taxing instructional budgets.

This is not a question most students would think to ask: how would they know about UC's bond rating and how it might be influencing decisions and priorities?

In their press release VPs Taylor and Lenz ignore my question about UC's bond rating: they simply repeat UC's oft-stated position that the *reason* for tuition increases is that the state has cut instructional funds. This reason is plausible because tuition revenues *could be* used for instruction. The problem is, as the bond documents indicate, that tuition does not *have to* be used for instruction. It *can* be used for construction, and has been pledged as collateral for bonds used to pay for construction. Until we see documentary evidence to the contrary, we may also assume that it is among the revenue sources used to pay debt service on bonds.

The plain fact is that tuition increases give the Regents an opportunity to borrow more for construction by increasing the pledged collateral. This effect of tuition on collateral is automatic; it does not require a further Regental decision. It follows that *any* increase in tuition *helps* UC's bond rating, regardless of how it is used, or what happens to instruction. So which is UC's higher priority, its bond rating or instructional quality?

The question remains unanswered. How can we know the Regents' real priorities now that they have given up on California's Master Plan? Even the Regents claim not to know what goals they now serve or should serve: they have appointed a Commission (the Gould Commission) to tell them.

VP Taylor's presentation of October 6 does not speak of regental priorities: it simply recommends that UC *seize* the opportunity created by tuition growth to increase construction borrowing. But **should the Regents accelerate construction while cutting back on student instruction and services?** VP Taylor attempts to answer this question in his 10/20 press release by explaining that UC saves a total of **$29M** in bond interest on bonds totaling $5.8B (in 2008 it was only .2%) by pledging student tuition. He thus implies that this saving[8] is the *only* difference the pledge of "ed fees" makes to the Regents.

The pledge of "ed fees," which are rising, also allows them to issue **more bonds.** Thus far in 2009 the Regents have issued $1.6B in new General Revenue bonds (at 4.6%-4.8%)—incurring more than twice the annual debt service that VP Taylor says UC has saved by including "ed fees" In the pledge. The Regents will soon announce a plan to pile on even more debt service by issuing yet another $2B in bonds to fund projects they have already approved. Under current regental plans, UC will have added **roughly $230M in new General Revenue Bond debt service since the 2008 financial crisis began, or more than 8x the amount that pledging "ed fees" has *saved* in lower interest cost.** This calls into question the whole idea that the slightly lower interest rate the Regents receive by pledging all their "general revenues" is a way to preserve funding for instruction.

[8] http://cucfa.org/archive/CA_Regents_of_the_Univ_of_CA_2009_Ser_Q_and_Ser_R_POS.pdf

Students should *question what UC wants to do with their tuition before going along with the next increase.* They shouldn't get bogged down in arguing about whether the lower interest rate justifies UC's decision to borrow more for construction. They should ask how their "ed fees" are being used at a time when the university is so short of funds that it must furlough faculty and staff, cut back support of basic services, including those funded by their "reg fees" and special fee assessments, which have not been affected by state budget cuts.

What if UC *really* wants to raise tuition simply because it has market research saying it is *too low*: that if it charged more, students would pay more? It wouldn't give this as a reason. It would tell each of its constituencies that it *really* wants to raise tuition *for them*: students will be told that UC is doing it to increase financial aid and replace funding for academic offerings that the state has withdrawn; faculty will be told that they're doing it to restore and raise salaries; staff will be told that there's no chance of a living wage without higher tuition. None of these groups will be told that UC *also* wants to raise tuition to expand its construction program—that's what Wall Street has been told. If UC's internal constituencies don't unite, UC will raise tuition so that it can do whatever it wants, which may simply be what Wall Street wants. That's part of the privatization effect.

To Sum Up:

UC's top priority should be to preserve and restore California's Master Plan for Higher Education. If this is no longer UC's highest priority, this change should be announced and UC should then be held publicly **accountable for what it *does with all* its revenue**—even the revenue that it regards as *its own*, beginning with tuition.

- **UC needs to be accountable for whether it has in fact used tuition (charges against instruction) as a source of funds for construction projects that don't pay for themselves.**
- Tuition increases should be *delayed* until we get an answer. **The Audit Committee must audit, now that questions have been raised about whether the Regents have (knowingly or not) approved the use of tuition for construction in the past.**
- **In addition to the audit, students should demand to know precisely what a 32% increase in tuition will fund. It's their money, their family's money and/or their student loan debt. They should know where this money is going.**
- Delaying tuition increases is only one step toward restoring UC as a high quality accessible public university. **The Regents' highest priority must be maintaining UC as a public University in accordance with the California Master Plan for Higher Education, not preserving UC's bond rating so that it can more rapidly privatize.**

October 23, 2009