

UC BERKELEY: OVERHEAD FOR INDUSTRY CONSORTIA/ AFFILIATE MEMBERSHIP AGREEMENTS: NEW PROCEDURES

BACKGROUND

Industry Consortia/ Affiliate Membership Programs bring vital financial support and industry contacts to the campus and provide great value to corporate members. Through membership fees they attract funding from both the private and public sectors and foster important industry-university relationships that benefit the university and companies. Companies become affiliated with such programs/centers through membership agreements signed by the campus Industry Alliances Office (<http://ipira.berkeley.edu>). The membership agreements assess a membership fee and an indirect cost.

At Berkeley, industry affiliate programs are formed around existing, discipline-specific areas of scientific expertise (often called centers) and are administered by program directors. The motivations for forming such program/centers are multifold. Goals may include:

- raising research and administration funding to support the center's research activities and teaching
- addressing unmet needs in scientific disciplines that may not be supported by public funding agencies due to programmatic changes or lack of a direct match (i.e., not fitting in any one federal programmatic funding priority)
- fostering the development of entirely new applications areas in the translational research space, for which new graduate programs must be established and/or new faculty hired
- bridging the gap between basic research performed at the University and the more applied, or translational, research necessary to create commercial products and services for public benefit
- creation and maintenance of vital private-public relationships that result in the future employment of our graduates, retention of our faculty and other University employees being as industry consultants, in donations, research sponsorships and collaborations, and conduct of clinical trials
- opportunities for providing industry members with advance information about Berkeley's cutting edge research in fields of interest to the members
- learning industry perspectives on possible commercial problems, or directions or applications of basic research

Many industry affiliates programs exist on campus and include some combination of the following elements:

- A. Emphasis on Learning about Berkeley Research: Corporate members pay an annual membership fee to join a center/program. They may be invited to several members-only seminars per year where they learn about Berkeley's cutting-edge research and obtain other center/discipline-specific information. From these meetings, as well as from other contacts with Berkeley researchers, industrial members develop relationships with researchers having expertise in their commercial fields of interest.

Such relationships often result in future jobs for graduates and/or key researchers being retained as consultants. Information, affiliations and relationships are key deliverables.

- B. Access to Intellectual Property. Corporate members may receive advance notification of patentable inventions and software developed under the program, and the first opportunity to obtain commercial licenses to such IP. Access to intellectual property is a key deliverable.
- C. Emphasis on Collaborative Research and Mutual Feedback: Members may send visitors to the campus, where they receive high-level information about research and center activity, and have opportunities for ongoing informal interaction with faculty, staff and students. This model is motivated primarily by research collaboration from the corporate side, and by receipt of valuable industry feedback and perspective from the University side. The right to send visiting industrial fellows from member companies to the center is a key deliverable.

In the spring of 2005 the Vice Chancellor for Research charged her Research Support Advisory Committee* (RSAC) with developing policy to guide the establishment and operation of Industry Affiliate Membership programs, as well as recommending appropriate indirect cost rates for these programs. (* Includes the deans of engineering, biology, chemistry, and public health, the Vice Provost for Academic Planning and Facilities, the Associate Vice Chancellor for Budget, the Director of Finance & Management Analysis, the Chair of the campus Senate Committee on Academic Planning and Resource Allocation, the Assistant Vice Chancellor for Research and the Assistant Vice Chancellor for Intellectual Property and Industry Research Alliances.)

In considering whether Industry Consortia/Affiliates Membership programs differ sufficiently from conventional contract-based industry sponsorship of research to warrant a different (lower) level of overhead recovery, RSAC identified the following three categories of industry affiliations with the university:

1. **Contract/Grant:** Relationships in which a *specific scope of work* constitutes a deliverable: this type of agreement is indistinguishable from a regular contract/grant and should be assessed the full 52% overhead.
2. **Research Gift:** Relationships in which numerous industry partners participate but *NO deliverables are provided* (no IP terms, no privileges offered that are not provided to any other interested company not a part of the affiliates program, no written promises to host industry visitors on campus): *this type of relationship is indistinguishable from a research gift and thus would be considered such and assessed the 10.5% administrative fee.*
3. **Industry Affiliate Membership Agreements with Deliverables:** Relationships in which it is anticipated that multiple (>3) companies pay membership fees or provide in-kind support to a Center, Institute, or Department, do not individually control the research agenda of the program, and receive non-discriminatory rights to deliverables. In these Affiliates Agreements, companies sign identical participation agreements that formally provide privileges to participant companies which are not available to non-members (therefore this sponsorship cannot be considered a gift). These Affiliates Program agreements may or may not provide member companies with specified access to Intellectual Property arising from the research.

The Research Support Advisory Committee proposed that Type #3 Industry Affiliate Membership programs should be considered vital programs for partial overhead waivers because 1) industry sponsorship in these arrangements constitutes broad-based support of campus research in a general area, rather than being focused on company-specific objectives and deliverables; 2) these relationships are critical components of university industry partnerships that strongly benefit the campus by providing an invaluable venue through which industry supports campus research and teaching; and 3) these relationships provide invaluable learning and career opportunities for Berkeley students by establishing venues for them to interact with industry researchers.

As a result of these deliberations, the Vice Chancellor for Research sought, and received approval on March 30, 2006 from the UC Office of the President (UCOP) of a permanent partial overhead waiver of full overhead for Industry Consortia/Affiliate Membership Agreements on the Berkeley campus.

NEW PROCEDURES

It is the policy of UC Berkeley to return a portion of campus overhead to support research administration in both central and administering units. In the case of Industry Consortia/Affiliate Membership Agreements, the following procedures will now apply.

Industry Consortia/Affiliate Membership Agreements: New Overhead Rate

Effective August 1, 2006, the new overhead rate for Industry Consortia/Affiliate Membership Agreements on the Berkeley campus is 20%. Industry Membership programs currently in effect will convert to the new overhead rate when the terms of their current membership agreements expire.

Industry Consortia/Affiliate Membership Agreements: New Overhead Distribution Plan.

The net overhead returned to campus from Industry Consortia/Affiliate Membership Agreements (adjusted to reflect the fact that the Office of the President retains a percentage of the overhead generated) will be distributed in its entirety by a formula based on the following breakdown of the 20% rate:

- To the Director of the Industry Affiliates Program for program support 4.0%
- To Research Administration and Campus Research Support 10.5%
 - 7.5% to local administering unit
 - 2.0% to central research administrative units
 - 1% to Berkeley Futures Grants and Matching Funds
- To the Central Campus for Facilities and Infrastructure Support 4.0%
- To the Office of Intellectual Property and Industry Research Alliances for Contract Negotiation & IP Management 1.5%

Thus, the largest percentage of the overhead, (10.5%), will be returned to the generating program, and its supporting administrative unit.