



**Montana University System
Office of the Commissioner of Higher Education**

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February 19, 2009

Stephen M. Barrett, Chair
Board of Regents
Montana University System
4343 Sourdough Rd
Bozeman, MT 59715

Dear Regent Barrett,

Per the request detailed in your letter of February 15, 2009, President Gamble and I are responding to your questions about the timing and reporting of federal research initiative requests. As you note, it indeed would be unfortunate if the media attention to the FY10 requests were to impact negatively on the quality research programs in the Montana University System (MUS). Federal initiative requests are an important part of the total research enterprise and historically have accounted for an average of slightly less than 5% of total annual research expenditures in the System.

Sincerely,

Sheila Stearns
Commissioner
Montana University System

Commissioner Stearns' Responses

- 1. From the newspaper articles it appears that the roughly 100 page federal research appropriation request (the Request) was received by your office within just a day or two at most before Dr.'s Dooley and McCoy left for Washington to present the Request. How can you as Commissioner, we as Regents or the Governor weigh in on these important topics if we do not see and have adequate time to review and comment on the draft requests before they are presented in Washington?**
 - The Regents should have information about federal initiative requests as soon as the respective campuses can put them together. As acknowledged by both President Gamble and myself, that list for MSU should have come to us more quickly this year. It is important to note, however, that many of the requests were continuation requests from the previous year. Further, earmarked funds are managed by federal agencies in the same manner as funds that are awarded competitively. There must be a precisely described scope of work and a detailed budget that describes the funding necessary to conduct the scope of work proposed. Earmarked funds are subject to the same regulations and accounting oversight as competitively awarded funds. On the campuses, they are managed just like all other research projects within the Office of Sponsored Programs. There are many opportunities for either my office or a campus president to direct a research office not to pursue an earmarked project if the Board thought the project was inappropriate for the Montana University System.

- 2. When were you first provided any version of the Request? Once received, when did you first provide a copy to the Governor's office?**
 - The notebook containing the Montana State University FY10 Federal Initiative requests was received in the Office of the Commission of Higher Education on February 3, 2009. No one in the Commissioner's office provided a copy to the Governor at that time, although Deputy Commissioner Moore planned to give copies to all the regents at the March 2009 meeting of the Board of Regents.

- 3. Did you discuss the Request with President Gamble before its submission? If you did, did you meet and discuss this personally or were such discussions over the phone? When did the discussions take place relative to the delivery of the**
 - President Gamble and I did not discuss the FY10 request from MSU before it was distributed at offices in Washington, D.C.

- 4. I gather from the comments reported in the newspapers and email correspondence I have seen that the delay in submitting the request to the Commissioner's office and ultimately the Regents was based on an early December 2008 email exchange between Tyler Trevor and Dr. McCoy. My memory is that a similar exchange occurred in 2007. Given the fact that the 2007 exchange would have pointed out the timing difficulties of the current policy, instead of just continuing forth in 2008 under an approach that guaranteed lack of up-front involvement by the Regents, OCHE and the Governor, was any thought given to coming forward with suggested revisions to the policy that would meet the campus timing needs in a manner that did not compromise the oversight and review obligations of the Regents, OCHE or the Governor? In short, have any**

changes been suggested or proposed to find solutions to the timing problem, beyond just proceeding with the flawed approach?

- The first federal initiatives report was presented at the March 2008 Board of Regents meeting. This report was noted in the August 2008 Performance Audit Follow-up (08SP-022), and the auditors noted that "...This annual report will allow the BOR to play a more active and informed role in the MUS units' research activities." In fact, the e-mail exchange that you reference was in December 2007. In September 2008, Associate Commissioner Trevor responded to a campus request about timing of research reports by suggesting that the report should be one year after the last report – in March 2009. Mr. Trevor also suggested to Deputy Commissioner Moore (via e-mail before she actually began working at OCHE) that this was a policy that needed correction to match the reality of campus federal budget report timelines. That policy amendment is coming forth at the March 2009 BOR meeting.
- 5. Your comments, as reported in the Billings Gazette, suggest your belief that a *de facto* change in Board policy occurred as a result of the March 2008 Board discussions. The record itself does not reflect that. While an individual translation may occur in such a context I'm certain you realize that Board policy can only be changed by formal Board action. Until then it is not considered a policy change, *de facto* or otherwise.**
- Policies are intended to guide process and should match, to the extent possible, what actually happens in the system. BOR Policy 401 was established to underscore the importance of research oversight and to attempt to set a process for accountability. Like many other policies or by-laws of an organization, this policy needs some adjustment. As I explained to the Board during the March 2008 meeting, this should be viewed as normal administrative oversight and is not (nor should it be) some attempt to ignore Board of Regent policy.
- 6. Given what has transpired, what steps do you anticipate taking in working with the campuses (in addition to changes in Board of Regents policy, policies and procedures) to insure that the information regarding major federal dollar research requests is shared with the Regents, OCHE and the Governor in a timely manner?**
- BOR Policy 401 is being revised to state unequivocally that Federal Initiative requests must come to the Commissioner and be shared with the Board of Regents (electronically or by mail) before the requests can be shared with offices in Washington, DC. Further, the timing for the annual report on Research and Technology Transfer to the Board of Regents will be designated to be at the January meeting each year.
- 7. Information can be delivered and shared outside of the formal confines of meetings of the Board of Regents. Wouldn't you agree that if information is requested by the Regents or the Governor's office it should be supplied as soon as reasonably possible and in whatever form it is then available even if those requests ask for information at times outside of convenient campus timeframes?**

- Important information should be shared promptly. Reports also should be as complete and accurate as possible when they are provided.

President Gamble's Responses

- 1. From the newspaper articles it appears that the roughly 100 page federal research appropriation request (the Request) was received by your office within just a day or two at most before Dr.'s Dooley and McCoy left for Washington to present the Request. How much discussion occurred on campus, and with whom, regarding directions and policies about the submission of the Request? Were you able to adequately review and approve the Request, or were Dr.'s Dooley and McCoy advancing it mostly on their own initiative? When they were in Washington, with whom did they meet on this topic?**

The final draft of the Montana State University FY10 Federal Initiatives Book, which lists and describes our requests for targeted funding, was given to me on Friday January 30, 2009. MSU's FY10 Federal Initiatives Binder contains 28 total requests (55pages) from the MSU campuses, including 22 requests from the Bozeman campus, 5 requests from the Billings campus and one joint Bozeman and Northern request.

MSU has an extensive, in-depth process for reviewing requests that are submitted for inclusion in our Federal Initiatives. Conceptual ideas from faculty are submitted through the deans to me, the Provost and Vice President for Research. In late summer or early fall there are targeted discussions with faculty groups and individuals with input from our federal relations firm regarding topics that may be of most interest in the next congress. MSU is guided in selecting federal initiatives by considerations such as: consistencies with university mission and goals; opportunities to use an earmark to seed a program with a high probability of securing future competitive funding; faculty expertise in the proposed research area; and appropriate facilities and other infrastructure to perform the proposed research.

In January of each year, I meet with the Provost and Vice President for Research to review all of the proposals that have been submitted, and select the proposals that best fit the principles and are the most likely to be funded. For example, MSU would not submit a federal initiative requesting research funds from the National Institutes of Health or the National Science Foundation since there are no earmarks in those agencies. For the FY10 requests I met with the Provost and VPR on January 21, 2009 to cull the list of requests and decide on the projects that should move forward for FY10. After the meeting on the 21st it was necessary to revise some of the projects selected. The revisions were made and the books were assembled and finalized on January 30th.

Provost Dooley and Vice President McCoy left for Washington DC on Monday, February 2, 2009. One purpose of the trip was to discuss competitively funded research opportunities with managers at the National Institutes of Health. Another was to take advantage of the timing and deliver the MSU federal initiatives request to staff of the Montana congressional delegation. Provost Dooley and VPR McCoy met with Will Sehestedt and Heather O'Loughlin from the office of Senator Baucus, James Wise and Matt Jennings from the office of Senator Tester and with Congressman Rehberg and his staff member Kristin Smith.

The timing of this process is impacted by factors outside of the university's control, and this was especially true this year. MSU would normally wait for the current fiscal year federal funding to be set before we finalize our book. For example, if a project in the current year is funded, MSU would then decide whether to request continuation of the project. For the FY10 request, MSU received notice of one initiative that was funded by DOD, but all other FY09 requests were still pending. MSU recognized that this year, the

dire national economic conditions were causing Congress to focus on the 2009 American Recovery and Reinvestment Act. It was unclear how the current economic challenges would affect our Initiatives.

- 2. Knowing that the Request was being delivered to you at the last minute why wasn't the Request immediately sent to the Commissioner so it could have been shared with the Governor's office and the Regents?**

I received the final book of Federal Initiatives on Friday, January 30th. My office sent a copy to the OCHE on February 2 (received February 3), and to the Governor's Office on February 5 (received February 6). It was simply an error on my part that the book was not sent to both OCHE and the Governor's Office as soon as I received a final copy.

- 3. Did you discuss the Request with the Commissioner before its submission? If you did, did you meet and discuss this personally or were such discussions over the phone? When did the discussions take place relative to the delivery of the Request and/or the Request being taken to Washington?**

Commissioner Stearns and I did not discuss the MSU initiatives prior to the submission to the Congressional Offices.

- 4. I gather from the Commissioner's comments as reported in the newspapers and email correspondence I have seen that the delay in submitting the request to the Commissioner's office and ultimately the Regents was based on an early December 2008 email exchange between Tyler Trevor and Dr. McCoy. My memory is that a similar exchange occurred in 2007. Given the fact that the 2007 exchange would have pointed out the timing difficulties of the current policy, instead of just continuing forth in 2008 under an approach that guaranteed lack of up-front involvement by the Regents, OCHE or the Governor, was any thought given to coming forward with suggested revisions to the policy that would meet the campus timing needs in a manner that did not compromise the oversight and review obligations of the Regents, OCHE or the Governor? In short, did MSU ever try to find solutions to the timing problem, beyond just proceeding with the flawed approach?**

We did not address the timing difficulties before the Federal Initiatives were presented to the Congressional Offices. We assumed that the issue would be resolved at the March, 2009 meeting of the Board of Regents, when the FY10 Initiatives were presented and discussed.

- 5. Given what has transpired, what steps do you anticipate taking on your own campus (in addition to changes in Board of Regents policy, policies and procedures) to insure that the information regarding major federal dollar research requests is shared with the Regents, OCHE and the Governor in a timely manner?**

We recommend the Board policy for reporting the Federal Initiatives be revised to require that the list of federal initiative requests be submitted to the Board of Regents in January, before the congressional submittal deadline but after the list has been finalized at the campus level. Because the January Board meeting typically occurs before the list is finalized and the March meeting is held after the initiatives have been submitted, we

recommend a special meeting or telephone conference call be scheduled in January with the full Board. MSU will accelerate its timetable to make this work. The initiatives will be provided in advance of the meeting and the full Board will have had an opportunity to review the initiatives and provide input during the meeting.

- 6. Information can be delivered and shared outside of the formal confines of meetings of the Board of Regents. Wouldn't you agree that if information is requested by the Commissioner, the Governor's office or the Regents it should be supplied as soon as reasonably possible and in whatever form it is then available even if those requests ask for information at times outside of convenient campus timeframes?**

We agree that information requested by the Commissioner, Regents and the Governor should be provided as soon as possible and we have strived to do so. As noted previously, I erred in not providing the materials as soon as possible. I regret that our communications these past several months concerning the planned Initiatives were not as timely as they should have been. I pledge to work with the Commissioner and Regents to improve and clarify the process of reporting.