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FACULTY SENATE EXECUTIVE COMMITTEE

February 19, 2013
3:00 - 4:30 p.m.
Champ Hall

Agenda

- 3:00 Call to Order**.....Renee Galliher
Approval of Minutes January 22, 2013
- 3:05 Announcements**.....Renee Galliher
• Next Brown Bag Lunch w/President March 28th noon Champ Hall
- 3:10 University Business**.....Stan Albrecht, President
Raymond Coward, Provost
- 3:30 Information Items**
1. Budget and Faculty Welfare Committee Report.....Carol Kochan
2. Academic Freedom and Tenure Committee Report.....Bryce Fifield
3. Research Council Report.....Mark McLellan
4. LibQual Survey.....Jennifer Duncan
- 4:10 New Business**
1. EPC Items.....Larry Smith
2. PRPC 402 dealing w/elimination of the Graduate Student Senate.....Terry Peak
3. Post Tenure Review Taskforce Outcomes.....Renee Galliher
4. 406 Taskforce Outcomes.....Vince Wickwar
- 4:30 Adjournment**



FACULTY SENATE EXECUTIVE COMMITTEE MINUTES

January 22, 2013 3:00 P.M.

Champ Hall Conference Room

Present: Renee Galliher (Chair), Dale Barnard, Alan Blackstock, sub for David Cassidy, Richard Clement (excused), Karen Mock for Todd Crowl (excused), Dan Davis for Jennifer Duncan (excused), Curtis Dyreson, Nancy Hills, Doug Jackson-Smith, Yanghee Kim, Vincent Wickwar, President Stan Albrecht (Ex-Officio) (excused), Provost Ray Coward (Ex-Officio), Glenn McEvoy (Past President), Joan Kleinke (Exec. Sec.), Marilyn Atkinson (Assistant, excused) **Guests:** Terry Peak, Larry Smith,

Renee Galliher called the meeting to order at 3:00 p.m.

Approval of Minutes

Vince Wickwar made a motion to approve the minutes of December 10, 2012. The motion was seconded by Curtis Dyreson and was passed unanimously.

Announcements

Brown Bag Lunch with the President & Provost. January 23, 12:00 noon in Champ Hall.

University Business - President Albrecht and Provost Coward.

President Albrecht updated the FSEC on expected topics for the upcoming legislative session that will impact higher education in the state. Several issues likely to be addressed include Medicaid reform, gun control, and budgets for higher education building projects. The final budget will depend largely on what happens at the federal level. The legislature will likely pass a bare bones budget, then go back into session and work on details when more is known. This will mean that obtaining funding for our priorities as a university will be more difficult than previously expected.

Legislation has already been written to seek approval to remove the cap on out of state tuition waivers for a 3 year period and to extend the Legacy tuition waiver to the grandparents' generation.

A decision was finalized that will divide the Mountain West Conference into two divisions for football with a December playoff game to be held at the home of the team ranked highest at that point. Basketball will not be divided into divisions.

There was a dramatic drop in Logan campus undergraduate enrollment following the purge over the last weekend. The university felt it could handle the loss of 250 students internally. As of last Friday, enrollment was down 201. Since the purge enrollment is down a little over 400. Every 50 students lost, translates into lost revenue of \$125,000. Overall enrollment is down system wide almost 12%.

The president has developed a program that will be funded by Workforce Services to provide higher education opportunities to individuals that age out of the foster care program.

Information Items

Campus Store Report – David Hansen. David Hansen was not able to attend the meeting because of illness, so the report was presented by Allan Blackstock. Highlights of the report are that the Bookstore has changed its name to The Campus Store. There is a search underway for a new director; David Hansen has been acting as interim director. Renee Galliher asked if the report has historically included financial information, and it has not.

A motion to place report on the consent agenda was made by Glenn McEvoy and seconded by Doug Jackson-Smith. The motion passed unanimously.

New Business

EPC Items - Larry Smith. The January EPC report was short and quite routine. There were 3 R-401 proposals presented and approved.

A motion to place the EPC report on the consent agenda was made by Doug Jackson-Smith and seconded by Vince Wickwar. The motion passed unanimously.

Bookstore Committee – Alan Blackstock. Allan has served on the Bookstore Committee and with the change of the name to the Campus Store, thought it may be an appropriate time to revisit the charge of the committee. In his time on the committee, most of the pressing issues have been resolved. Because students are bypassing the campus store for book purchases, he questions the need of a Bookstore Committee and if it is deemed necessary, what should the role and the focus of the committee be? Currently Alan is the only member of the committee. It is unclear when the committee came to be. The FSEC decided to table the discussion until next month and invite David Hansen in to discuss the viability of the committee.

Structure of the faculty senate and standing committees – Renee Galliher/Glenn McEvoy. There have been many discussions amongst the Faculty Senate presidency recently regarding how best to conduct the Faculty Senate business with the growing number of faculty we have and as spread out geographically as they are. Glenn outlined a few problems with the current structure;

1. Some colleges have difficulty finding enough people interested in being elected to the Faculty Senate.
2. The standing committees of the senate now consist of 15 people. Chairs of these committee have much difficulty finding times where the majority of the committee can meet.

Glenn raises the question of whether a leaner Faculty Senate and standing committees would solve these problems. There was considerable discussion as to whether such changes would increase the workload of Senators and committees. USU has the largest Faculty Senate in the state. Renee asked if the FSEC believes this should be brought before the senate for discussion and development of a plan; possibly create a task force to generate ideas on how to make such changes. The senators engaged in a discussion about the concept in general, and whether other models exist that could be studied and used as a guide.

Doug Jackson-Smith made a motion to place the general discussion on the agenda as an information item. The motion was seconded by Glenn McEvoy and the motion passed unanimously.

Old Business

PRPC Code Changes 405.8.2, Ombudsperson (second reading) – Terry Peak. PRPC added the phrase “in person or by electronic conferencing” where the presence of the ombudsperson is referred to. The wording was left intact after a spirited discussion during the first reading to the Faculty Senate.

A motion to place this on the agenda for a second reading as an action item was made by Doug Jackson-Smith, seconded by Yanghee Kim and the motion passed unanimously.

PRPC 407, Medical Incapacity (second reading) – Terry Peak. The FSEC had previously directed PRPC to only address the issue of medical incapacity in this section of the code, as the rest of the needed changes will be addressed by a subcommittee review.

A motion to place this as an action item on the agenda was made by Glenn McEvoy and seconded by Dale Barnard. The motion passed unanimously.

A motion was made by Yanghee Kim to charge PRPC to address section 402 of the code, by changing the wording of Graduate Student Senate to Graduate Student Officers as there is no longer a Graduate Student Senate. The motion was seconded by Glenn McEvoy and passed unanimously.

Adjournment

Renee Galliher asked for a motion to adjourn the meeting. The meeting adjourned at 4:45 p.m.

Minutes Submitted by: Joan Kleinke, Faculty Senate Executive Secretary, 797-1776

Budget and Faculty Welfare Committee Report 2013

Prepared by Carol Kochan

Charge:

The duties of the Budget and Faculty Welfare (BFW) Committee are to (1) participate in the university budget preparation process, (2) periodically evaluate and report to the Senate on matters relating to faculty salaries, insurance programs, retirement benefits, sabbatical leaves, consulting policies, and other faculty benefits; (3) review the financial and budgetary implications of proposals for changes in academic degrees and programs, and report to the Senate prior to Senate action relating to such proposals; and (4) report to the Senate significant fiscal and budgetary trends which may affect the academic programs of the University.

Committee Members:

- Rhonda Miller (14) - Agriculture
- Jon Gudmundson (13) - Arts
- Alan Stephens (13) - Business
- Dale Wagner (15) - Education & Human Services
- Vicki Allen (13) - Engineering
- Sarah Gordon (13) - Humanities & Social Sciences
- Karin Kettenring (14) - Natural Resources
- Stephen Bialkowski (13) - Science
- Carol Kochan (14) - Libraries (Chair)
- Joanne Rouche (13) - Extension
- Vacant - Regional Campuses & Distance Education
- Troy Hunt (14) - USU-Eastern
- Ilka Nemere (15) - Senate
- Christopher Skousen (15) - Senate
- Scott Bates (15) - Senate

Meeting Dates:

April 2, 2012; May 2, 2012; September 27, 2012; October 22, 2012; November 11, 2012; December 3, 2012; January 14, 2013; February 1, 2013

Outline of meeting Facts and discussions:

Last year, the BFW committees focused on surveying the faculty to determine the issues and concerns related to *Extra Service Compensation (ESC)*. Although the ESC code itself did not change, the way the code is being interpreted has changed. We surveyed the faculty and received a number of comments and concerns. The committee is analyzing these in preparation for an eventual report to Faculty Senate

Executive Committee. Work on this is temporarily tabled while the committee reviews other proposed code changes.

The BFW Committee was asked to review and comment on proposed revisions to *Faculty Code 406: Program Discontinuance, Financial Exigency, and Financial Crisis*. The committee reviewed the document and is preparing a summary report outlining perceived strengths as well as concerns and suggestions for improvement.

The committee also was asked to review the proposed revisions to *Faculty Code 405.12: Post Tenure Review*. Renee Galliher presented information on the document at the January meeting. The committee asked questions about the proposed changes and will hold a special meeting on February 11, 2013 to review the document in depth.

Two BFW members, Alan Stephens and Carol Kochan, represent the Faculty on the Benefits Advisory Committee which works with Human Resources to review proposed changes to benefits. Other members of that committee consist of two members each from professional classified ranks.

Issues:

Items on the agenda for further discussion are: *Post Tenure Review (Faculty Code 405.12, Extra Service Compensation, Sanctions and Grievances (Faculty Code 407)*.

ACADEMIC FREEDOM & TENURE COMMITTEE REPORT

February 2013

Prepared by M. Bryce Fifield, Chair

AFT Committee Members 2012-2013 (from Faculty Senate website)

Grant Cardon (15) - Agriculture
Lynn Jemison Keisker (13) - Arts
Kathy Chudoba (15)- Business
Bryce Fifield (14) - Education & Human Services (Chair)
Robert Spall (15) - Engineering
Maria Spicer-Escalante (13)- Humanities & Social Sciences
Helga Van Miegroet (13) - Natural Resources
Mark Riffe (14) - Science
Britt Fagerheim (13) - Libraries
Kathy Riggs (15) - Extension
Aaron Roggia (13) - Regional Campuses & Distance Education
Anthony Lott (14) - USU-Eastern
Foster Agblevor (15) - Senate
Craig Petersen (13) - Senate
John Stevens (15) - Senate

Summary of Committee Meetings

The AFT Committee has held four meetings since the beginning of the current academic year. Participation of committee members who are not located on the Logan campus is made possible by teleconference. The minutes of each meeting have been reviewed by the committee and are submitted to Joan Kleinke to be posted on the Faculty Senate web site.

Disposition of Grievances

To date in the current academic year, the AFT Committee has handled one Inquiry Panel and is in the process of assembling one Hearing Panel. The Inquiry Panel was assembled to address a sanction against a faculty member accused of violating the Code of Conduct. The faculty member resigned which terminated the need for the panel.

A Hearing Panel has been assembled to address a grievance brought by a faculty member whose appointment has not been renewed. Respondents to the faculty member's grievance are currently preparing responses and the next step will be to review the case in a Pre-hearing meeting.

Review of Proposed Changes to Code

AFT Committee members met with Renee Galiher of the Post Tenure Review task force and Vince Wickwar and Glenn McEvoy of the Section 406 task force to review recommended changes to the Faculty Code. Committee members are currently reviewing the recommended changes and will discuss them at the upcoming February meeting.

Improving Due Process in Panel Hearings

Committee members have had several discussions about how to improve the due process of hearing and inquiry panels that come under the auspices of the AFT Committee. Even though the processes and deadlines for handling grievance and inquiry hearings are outlined in the faculty code, it has been the experience of committee members that they are often working in the dark when they are called upon to chair a panel. We are in the process of developing some simple guides that will assist panel chairs in fulfilling their responsibilities. We will be carefully reviewing these tools so that they are absolutely consistent with the faculty code.

Research Council Report to the Faculty Senate

Executive Summary

Prepared by Mark R. McLellan, Vice President for Research and Dean

Office of Research and Graduate Studies

January 30, 2013

Executive Summary

The annual report to the Faculty Senate covers the major activities of the Office of Research and Graduate Studies and Research Council from July 1, 2011 through June 30, 2012. It is a summary of all service units for which the Vice President and Dean has responsibility and includes the Graduate School, Sponsored Programs Office, Proposal Development Office, Environmental Health and Safety Office, Institutional Review Board, Laboratory Animal Research Center, Research Computing, Research Integrity and Compliance.

Mission of the Office of the Vice President for Research

It is the mission of USU's Office of Research and Graduate Studies to facilitate research and graduate education among faculty and students by:

- Producing internal funding opportunities and external funding guidance.
- Providing efficient research support services.
- Developing individual researcher capacity.
- Facilitating graduate student recruitment, admissions, support and degree completion.
- Supporting graduate and undergraduate research.

Research Council

The Research Council provides advice and recommendations to the Vice President for Research and Dean of the School of Graduate Studies. Additionally, members of the Council provide direct and important channels of communication between researchers and those who make decisions affecting research at USU. The following are selected major issues addressed by USU's Research Council in FY2012:

- **Office Merger** - The integration of the Research Office and the School of Graduate Studies was completed and is now identified as the **Office of Research and Graduate Studies**. The core decision team included Mark McLellan and his Associate Vice Presidents and Associate Deans, Dr. Jeff Broadbent and Dr. Shelley Lindauer. The goal of the office merger is to enhance research and the graduate experience at Utah State University with balance, focus and training.
- **Grantsmanship Program** – To augment the Grant Writer's Institute at USU, the Office of Research and Graduate Studies offers grantsmanship training twice a year (fall and summer) for faculty. Graduate students are offered "new researcher" training once a year. This training is presented by Grant Writers Limited (www.grantcentral.com). Dr. McLellan chose this company because of their exceptional training method and his previous experience with them while he was at Texas A&M and the University of Florida. This is an intensive eight-hour course of instruction focused on "writing to the review process." Approximately 125 participant slots are open for each session. For FY2012, 170 faculty and research support staff received this training, as well as 130 graduate students and/or postdocs. The RGS Office covers all expenses (including lunch and breaks).
- **EPSCoR**
The EPSCoR Track I proposal of \$20M was awarded to the State of Utah. This award, led by Dr. Todd Crowl (USU) as PI, will enhance Utah's statewide research infrastructure. This is an important award for the state where future opportunities can be leveraged from this award. Rita Teutonico was selected as the State's EPSCoR Director (GOED) and Utah contracted with Batelle to draft the State's Science and Technology Plan.

- **Overview of Improvements/Revisions to SP-01 Form** The Sponsored Programs Office (SPO) completed improvements to the SP-01 form to alleviate some of the administrative burdens, as well as to capture new agency related compliance requirements. The revised form is much easier to use than previous versions. It includes “on-line fillable sections” and access/pull down options if the user has questions about the information required. The goal is that the revised form will interface electronically with other forms and accommodate electronic signatures for improved workflow management.
- **College F&A Program Dollars**
The dean’s research support component of the F&A budget was increased to represent 5% of total F&A generated by all of the colleges. The amount available for distribution will fluctuate as total F&A revenues increase or decrease. Funds will continue to be allocated proportional to colleges’ previous year F&A earnings. In previous years, a small portion (10%) of the total budget was allocated to support research efforts in The Huntsman School of Business, HaSS and Caine College of the Arts.
The research support component for these Schools/Colleges will be allocated based on the ratio of tenured and tenure track FTE faculty as reported for the most recent year on the Analysis, Assessment & Accreditation Office website.
- **Tuition Awards**
Review continued on the best model for distribution of college tuition awards. With limited resources, once the funds are specified, deans will then determine how their available funds will be leveraged within their college. At the February 2012 Research Council meeting, a motion was made to give approval for the Office of Research and Graduate Studies to review and recommend F&A resources that will create a one-time transition pool to support Graduate Tuition Awards for FY2013. Research Council approved the motion unanimously.
- **ASCEND Newsletter**
This monthly electronic publication replaced *Research News* and the *Graduate Gazette* as a combined resource to provide greater communication across campus from the Office of Research and Graduate Studies. Distribution reaches all USU employees (administration, faculty and staff), as well as graduate and undergraduate research students. Key metrics are relayed each month, along with upcoming calendar events and focus topics related to graduate and undergraduate research.
- **NIH Financial Conflict of Interest Requirements**
Federal changes and new compliance requirements from the Public Health Service (PHS) were announced. The revised regulations (effective August 2012) have impact on all PHS grants and cooperative agreements. The changes are significant and it was necessary that USU update its Conflict of Interest (COI) policy. The most notable change is that before funds will be released to a program, individuals associated with a grant will be required to make a determination as to their financial interests in an organization or a nonpublic company. A USU working group of current PHS funded faculty met to establish preliminary guidelines that will be drafted as policy change to ensure that USU is compliant to the new PHS requirements.
- **Research Week 2012**
Research Week was held April 8 thru 12. A new event, celebrating our top researchers, was featured on the first evening. The entire week was successful and participation by both undergraduate and graduate students continues to increase each year. This year also included an expanded offering of workshops and training that was available to faculty and graduate students.
- **Oak Ridge Associated Universities (ORAU) Site Visit**
USU is a new institutional member to ORAU. Dr. Andy Page, ORAU President and CEO, visited Logan on April 12, 2012. He was extremely pleased with the strengths USU has to offer and enjoyed the overview of USU’s Commercialization & Regional Development Office, USU STEM, Water Research Laboratory, Center for Person’s with Disabilities, High Performance Computing and the Space Dynamics Laboratory. Membership with ORAU will open new opportunities for USU to be a partner in collaborative opportunities with other member institutions, opportunities for internships, and access to ORAU facilities and training.

- **USU High Performance Computing (HPC) & RGS Reporting Changes**

John Hanks rejoined USU as the new HPC Director after spending the past four years at MIT and Colorado State. USU HPC was renamed “Division of Research Computing” so that the name is more inviting to all users across campus. The goal for this division is to meet the needs and storage resources of a greater population on campus. Eric Held continues in his role as Chair of USU’s Computing Advisory Board.

- **Graduate Program Review**

College self-study reviews were completed. The Task Force, chaired by Janis Boettinger, shared their findings with the faculty in a *Best Practices Forum* on April 26, 2012. Their findings were released to faculty on May 1, 2012, as well as with deans and department heads. Five-year plans are also underway where departments are in the process of implementing the new ideas to build for the future.

- **New Presidential Doctoral Research Fellow (PDRF) Program**

This program is designed, in part, as a recruiting mechanism to bring the best doctoral students to USU. Ten PDRFs will be selected each year. The RGS Office will work with deans and associate deans to optimize the timing of the selection process and discuss opportunities to integrate cohort ideas across campus.

- **Sunrise Sessions**

- October 28, 2011 - Presenter: Noelle E. Cockett (College of Agriculture)
 - Topic: “Sheep Genomics: Lessons Learned From Science”
- January 20, 2012 – Presenter: Randy Lewis (USTAR Professor)
Biology Synthetic Biom anufacturing Center
 - Topic: “Spider Silk: An Ancient Biomaterial for the Future”
- April 13, 2012 – Presenter: Layne Coppock (College of Natural Resources)
 - Topic: “Empowering African Women to Transform Drought-Ravaged Communities”
- June 8, 2012 – Presenter: Vonda Jump (Emma Eccles Jones College of Education and Human Services – Center for Persons with Disabilities)
 - Topic: “Overcoming Trauma: Promoting Optimal Outcomes for Babies in Orphanages”



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February 19, 2013

The USU Libraries will be conducting a university-wide survey to get information about our user's satisfaction with library services and collections. We will be using a shorter version of the same national survey instrument, LibQual, that was used in 2007 so we can compare results from the previous surveys. Several changes were made to library services and collections based on the 2007 results, such as increasing our access to electronic journals and books. As we evaluate our services and collections we need your feedback again. This survey has been approved by the Provost's office and IRB.

Susanne Clement
Special Projects and Assessment Librarian

Report from the Educational Policies Committee February 7, 2013

The Educational Policies Committee met on February 7, 2013. The agenda and minutes of the meeting are posted on the Educational Policies Committee web page¹ and are available for review by the members of the Faculty Senate and other interested parties.

During the February 7 meeting of the Educational Policies Committee, the following discussions were held and key actions were taken.

1. Approval of the report from the Curriculum Subcommittee meeting of January 10, 2013 which included the following notable actions:
 - The Curriculum Subcommittee approved 66 requests for course actions.
 - A motion to approve a request from the Nutrition Dietetics and Food Sciences Department to reduce the number of PhD dissertation credits in NFS was approved.
 - A motion to approve a request from the Psychology Department to change the program name/degree for the Master of Science program with a specialization in School Counseling to a Master of Education (M. Ed.) with Specialization in School Counseling was approved.
 - A motion to approve a request from the Center for Women and Gender to offer a Graduate Certificate of Women and Gender Studies was approved. The graduate certificate will be based in the College of Humanities and Social Science.
2. There was no meeting of the Academics Standards Subcommittee in January.
3. Approval of the report from the General Education Subcommittee meeting of December 11, 2012. Of note:
 - The following General Education courses and syllabi were approved:
 - ARTH 2640 (BCA)
 - HIST 3489 (DHA/CI)
 - HIST 3490 (DHA/CI)
 - HIST 3560 (DHA/CI)
 - A motion to create a USU 1010: Connections/Gen Ed subcommittee was approved. The subcommittee will consist of the following members of the General Education Subcommittee of the EPC, ex officios: ASUSU Student Body President; USU Eastern representative; the Library representative; and the subcommittee chairs of the Arts, Humanities, Social Sciences, and Sciences disciplinary subcommittees, as well as the administrator of Connections from Student Services and faculty who have taught this course, to be appointed by the Chair of the General Education

1. <http://www.usu.edu/fsenate/epc/archives/index.html>



POLICY MANUAL

FACULTY

Number 402

Subject: The Faculty Senate and Its Committees

Effective Date: July 1, 1997

Revision Dates: November 16, 2001, April 29, 2002, January 12, 2007, April 30, 2007, March 6, 2009, August 13, 2010, July 8, 2011

Date of Last Revision: January 6, 2012

402.12 SENATE STANDING COMMITTEES

12.6 Educational Policies Committee (EPC)

(1) Duties.

The major function of this committee shall be to serve as the Senate committee on educational policy, including program discontinuance for academic reasons (policy 406.2). In addition to conducting studies and making recommendations as specifically instructed by the Senate, the committee itself may initiate such activities. Routine actions taken under established policy, such as approval for specific course changes, additions, or deletions, shall be submitted to the Senate as information items. All policy recommendations and major actions shall be referred to the Senate for approval or disapproval. Specific duties of the Educational Policies Committee shall include consideration of standards and requirements for university designated honors such as cum laude, magna cum laude, and summa cum laude.

(2) Membership.

The Educational Policies Committee consists of the executive vice president and provost or designee; one faculty representative from each academic college, Regional Campuses and Distance Education, USU-CEU, Extension, and the Library; one faculty representative from the Graduate Council; the chairs of the EPC Curriculum Subcommittee, General Education Subcommittee, Academic Standards Subcommittee, two student officers from the elected ASUSU student government and one ~~student officer from the GSS~~ [elected graduate student](#)

[leader](#). The faculty representatives are elected to the committee in accordance with policy 402.11.2.

(3) Term of members.

The term of office for faculty members on the Educational Policies Committee shall be in accordance with policy 402.11.2. The term of office for student members shall be one year ~~and shall coincide with the term of ASUSU and GSS officers~~.

(4) Chair.

The executive vice president and provost or his/her designated representative shall serve as chair of the Educational Policies Committee. The Committee will elect a vice chair from its members to serve in the absence of the chair. The chair or his/her designee will report to the Senate on the committee's actions.

(5) Curriculum Subcommittee.

The Curriculum Subcommittee will formulate recommendations on curricular matters, such as course changes, and forward the same to the Educational Policies Committee. This subcommittee shall consist of the chairs of the curriculum committee of each academic college, three faculty members appointed from the elected membership of the Educational Policies Committee, one faculty representative each from Regional Campuses and Distance Education, USU-CEU, Extension, and the Library, and two students, one from the ASUSU and one ~~from the GSS~~ [elected graduate student leader](#). The terms of Educational Policies Committee members on the subcommittee will correspond to their terms on the Educational Policies Committee. The term of office for student members shall be one year ~~and shall coincide with the term of ASUSU and GSS officers~~. The subcommittee shall elect a chair annually, preferably at the last meeting of the academic year.

(6) General Education Subcommittee.

The General Education Subcommittee formulates and reviews policy with respect to general education. The subcommittee shall consist of three faculty members and one student appointed from the Educational Policies Committee. Their terms will correspond to their Educational Policies Committee terms. Additional members may be appointed to the subcommittee for two-year terms by the Educational Policies Committee to lend academic expertise to the areas of emphasis in the general education program of the university. Recommendations developed by the General Education Subcommittee will be submitted to the Educational Policies Committee. The subcommittee shall elect a chair annually, preferably at the last meeting of the academic year.

(7) Academic Standards Subcommittee.

The Academic Standards Subcommittee (a) recommends policy on all matters pertaining to academic evaluation of students, including admission, retention, grade assignment, and

graduation; (b) recommends discipline policy regarding student academic dishonesty; and (c) approves the process for discipline regarding alleged academic violations by students and for grievance hearings in cases of alleged student academic dishonesty. The subcommittee shall consist of four faculty members and one student appointed from the Educational Policies Committee. Their terms will correspond to their Educational Policies Committee terms. Additional members may be appointed to the subcommittee for two-year terms by the Educational Policies Committee to lend expertise.

Recommendations from this subcommittee will be submitted to the Educational Policies Committee. The subcommittee shall elect a chair annually, preferably at the last meeting of the academic year.

12.7 Faculty Evaluation Committee (FEC)

(1) Duties.

The Faculty Evaluation Committee shall (a) assess methods for evaluating faculty performance; (b) recommend improvements in methods of evaluation; and (c) decide university awards for Professor and Advisor of the Year.

(2) Membership.

The committee shall consist of one faculty representative from each academic college, Regional Campuses and Distance Education, USU-CEU, Extension, and the Library, two student officers from the ASUSU and one ~~student officer from the GSS~~ elected graduate student leader. The faculty representatives are elected to the committee in accordance with policy 402.11.2. The committee will elect a chair annually, preferably at the last meeting of the academic year.

Post-Tenure Review (PTR) Task Force

Impetus for taskforce development:

1. NWCCU 2007 accreditation team recommended USU review its PTR policies for possible revision and for consistent implementation (based on the finding that some 5 year reviews are cursory in nature and “faculty don’t have time to perform rigorous annual reviews”)
2. Every year at the state legislature there is discussion of eliminating tenure for new faculty hires, but so far no bill has made it out of committee
3. Utah Board of Regents policy (R481) says the purpose of PTR is to: a) recognize good performance, and b) communicate to faculty specific areas in need of improvement

The PTR Task Force

Co-chairs: Raymond Coward and Glenn McEvoy (2011-2012)/Renee Galliher (2012 - 2013)

Members: Renee Galliher, Gretchen Peacock, Robert Schmidt, Diane Calloway-Graham, Ralph Whitesides, Richard Jenson

Task Force Activities: Across spring and summer 2012, the task force met 15 times, held three “town hall” meetings to gather feedback from faculty, met with the administrative councils for all colleges and the library, and reviewed the faculty codes for 10 sister institutions. This information was analyzed to generate a summary of issues and recommendations presented to the faculty senate in April. A recommended code revision was drafted over summer/fall 2012. Unanimous approval of a recommended code revision was not achieved by the task force. The current draft of suggested revisions represents a compromise that the task force presents to the broader faculty for additional input and review.

Task Force Meetings:

February 1, 2012
February 8, 2012
February 22, 2012
March 1, 2012
March 6, 2012
March 19, 2012
March 27, 2012
April 3, 2012
April 9, 2012
April 18, 2012
May 3, 2012
May 9, 2012
June 12, 2012
August 28, 2012
October 11, 2012

Meetings with Colleges:

February 7, 2012 (Libraries)
February 9, 2012 (Engineering)
February 14, 2012 (Science)
February 15, 2012 (Agriculture;
Education and Human Services)
February 16, 2012 (Arts; Humanities
and Social Sciences; Natural Resources)
February 27, 2012 (Business)

Town Hall (Faculty Forum) Meetings:

February 14, 2012
February 15, 2012
February 16, 2012

Guiding Principles of the Task Force Efforts

- 1) **Retain the integrity of tenure as a valued system for protecting academic freedom:** See 405.12 “Tenure is a means to certain ends, specifically academic freedom and a sufficient degree of economic security to make the profession attractive to men and women of ability”
In USU’s system of shared governance, faculty have primary responsibility for appointments, promotions, tenure, terminations, and dismissals of other faculty (401.8.1(3)).
“To hold a position with tenure means that appointment is permanent and not subject to dismissal or reduction in rank except as defined in Policy 407” (405.1.2).

- 2) **Demonstrate to external stake holders that tenured faculty members undergo meaningful and rigorous evaluation, with explicit remediation guidelines and consequences for chronic underperformance:**

The current code says that if a DH determines that the performance of a tenured faculty member is unsatisfactory, he or she “may initiate the negotiation of a professional development plan” (405.12.3). This draft of proposed code says that upon finding that a tenured faculty member’s performance is unsatisfactory for two consecutive years, the DH “must initiate a professional development plan” and this plan is written by the DH in consultation with the faculty member.

The current code says that if performance problems by tenured faculty are not rectified through the professional development plan process then “other nonpunitive measures should be considered in lieu of a sanction...the standard for sanction remains that of adequate cause, namely conduct contrary to the standards set forth in policy 403.” This draft of proposed code states that if the DH finds the tenured faculty member’s performance unsatisfactory over three years and a comprehensive peer review committee agrees with this assessment in two consecutive years, then “the department head and dean will refer the matter to the President who may initiate sanction proceedings as outlined in Section 407.”

The current standard for sanctioning a faculty member for performance problems is that faculty members must exercise “reasonable care in meeting their commitments to the institution” (403.3.2(7)) and “reasonable care” is defined in 403.3.5. This draft of proposed code leaves this standard in place, but suggests adding a second standard of conduct related to performance: namely that “faculty members fulfill the duties associated with their position as specified in their role statements.” The current code says that the criteria for the award of tenure or promotion shall not be employed in post-tenure reviews (405.12.2) and, that the basic performance standard for both annual reviews and for post-tenure reviews is whether the faculty member discharges “conscientiously and with professional competence” the duties associated with his or her position (405.12.1 and 405.12.2). This draft of proposed code contains a statement that says “The basic standard for appraisal shall be whether the faculty member under review fulfills the duties associated with his/her position as specified in his/her role statement.” Thus, the standard of performance against which a tenured faculty member is reviewed changes from discharging duties “conscientiously and with professional competence” to the standard that is articulated in the role statement.

- 3) **Respond to suggestions and concerns raised by faculty and administrative colleagues regarding strengths and challenges with current post tenure review:** See table below

The Current Draft Code Revision Proposal: The following table summarizes the reports to the faculty senate on April 2nd and April 30th, along with specific code revision suggestions outlined in the attached code draft.

Issues Identified during Data Collection (Presented to FS on April 2)	General Guiding principles for Revision (Presented to FS on April 30)	Specific Code Revision Recommendations
The conduct of post-tenure reviews varies widely across campus.	In revising the process, practices for post-tenure review should be standardized across the university and more detailed instructions should be provided in Section 405 of the USU Policy Manual.	Greater detail throughout the section to provide more structure; annual review process described in greater detail with timeline and decision making criteria; comprehensive peer review occurs at college level to provide greater consistency; language clarified throughout to reference role statement as standard for evaluating performance
The current policy requiring 5-year post-tenure reviews for all tenured faculty members is labor intensive, time consuming and largely focused on faculty who are meeting or exceeding expectations in all areas of their role statement.	In light of the small number of tenured faculty with serious performance deficiencies as well as the fact that all faculty members are reviewed annually by their department heads, conducting a comprehensive peer review on every tenured faculty member every five years (as required by the present USU Policy Manual) provides little added value. Instead, we suggest that some type of precipitating event (e.g., multiple negative performance reviews by the department head) be used to trigger a more comprehensive post-tenure review. In essence, the annual review of all tenured faculty members by their department head that is required by current code <u>is</u> a post-tenure review.	Section 12.1 – the annual review serves as the basis of post tenure review Section 12.2(2) – a comprehensive peer review is triggered by two consecutive annual reviews stating that the faculty is not fulfilling the duties outlined in the role statement
The current requirement of an individualized	If comprehensive post-tenure reviews involving peers only occur after some “precipitating event;” this problem is	Section 12.2(2) and 12. 4 – a comprehensive college peer review committee will be utilized

<p>review committee for each tenured faculty member increases the work load for senior faculty and, moreover, can pit “neighbor against neighbor” in a very delicate and critical personnel decision. These procedures can result in uncomfortable or difficult relationships between colleagues.</p>	<p>significantly diminished. Further, we believe that standing college committees provide greater experience and consistency than do unique committees that are formed for each individual undergoing a comprehensive post-tenure peer review.</p>	
<p>Substandard faculty performance needs to be addressed quickly and should not wait for the next scheduled 5-year post-tenure review. The annual performance reviews of tenured faculty by department heads can be misleading if based on a 12-month cycle instead of a “rolling” 3 to 5 year period.</p>	<p>If the annual review is considered the post-tenure review, then deficiencies in performance can be identified on an annual basis and professional development plans (if needed) can be implemented to “help the tenured faculty member more fully meet role expectations” (Section 405.12.3). Given the vagaries of review and publication cycles, as well as fluctuations in other performance metrics, annual reviews of tenured faculty by department heads should cover the last three to five years versus just the past 12 months; i.e., a rolling system.</p>	<p>Section 12.1 and 12. 2(1) – Annual review covers past 5 years; professional development plan may be initiated after first negative annual review; comprehensive peer review must be conducted after second negative review; if the peer review committee agrees that the faculty member is underperforming a professional development plan must be initiated.</p>
<p>Our current system of post-tenure review does not include sufficient balance and coordination between the feedback from peers and that from administrative colleagues (i.e., department heads and deans).</p>	<p>We endorse the idea of checks and balances in post-tenure review – some combination of administrative perspective balanced with some sort of peer review. After the precipitating event, input of both constituents should be solicited. After a serious performance deficiency is identified and communicated in the comprehensive post-tenure review, the faculty member should have a reasonable period</p>	<p>Section 12.2 - An initial negative review from the department head indicates declining performance across the past 5 years. Following the first negative annual review, the faculty member has one year to demonstrate improvement. The next annual review is to take “into account progress on the professional development plan” (Section 12.3) if one was implemented. Thus, the faculty</p>

	<p>of time to improve his/her performance.</p>	<p>member may not have returned to the desired level of performance over the course of one year, but progress on the professional development plan in accordance with the timeline outlined in the plan will move the faculty member out the comprehensive review process. If a subsequent annual review indicates failure to meet expectations of the role statement and a comprehensive review committee agrees that the faculty member is not satisfying his or her role statement, a professional development plan must be implemented. Thus, faculty members have two years following the first negative review to return to satisfactory fulfillment of the role statement.</p>
<p>In the ideal, there should be some financial reward for superior post-tenure performance.</p>	<p>If the annual review is considered as our post-tenure review process, then every year when there are revenues allocated there will be opportunities for merit, equity, and retention adjustments for tenured and untenured faculty. Given the vagaries of legislative funding, it is not possible to guarantee senior faculty a fixed salary increase for a positive post-tenure review.</p>	<p>Section 12.2(1) Faculty members are eligible for merit increases as available when the annual review indicates that they are fulfilling the expectations outlined in their role statements.</p>

Recommended changes with track changes

405.12 REVIEW OF FACULTY

In addition to the reviews that are mandatory ~~There are two additional reviews of faculty performance other than those~~ for tenure-eligible faculty and for promotion, the performance of all faculty members will be reviewed annually. ~~–These are annual reviews for faculty will be used as the basis for recommendations for salary adjustments and for term appointment renewal, and quinquennial reviews of tenured faculty. They will also serve as the basis for the post-tenure review process for tenured faculty.~~

Tenure (see Section 405.1) is a means to certain ends, specifically: freedom of teaching, research and other academic endeavors, and a sufficient degree of economic security to make the profession attractive to men and women of ability. Academic freedom and economic security for faculty are indispensable to the success of a university in fulfilling its obligation to its students and to society. With tenure comes a professional responsibility; ~~the obligation to~~ conscientiously and competently ~~to~~ devote one's energies and skills to the teaching, research, extension and service missions of the university. A central dimension of academic freedom is the exercise of professional judgment in such matters. The intent of ~~the post-tenure review~~ process is to support the principles of academic freedom and tenure through the provision of effective evaluation, useful feedback, appropriate intervention, and timely and affirmative assistance to create an environment where ~~ensure that every~~ faculty members can ~~continues~~ to experience professional development and accomplishment during the various phases of ~~his or her~~ their careers. Useful feedback should include tangible recognition to those faculty members who have demonstrated high or improved performance. It is also the intent of this policy to acknowledge that there will be different expectations in different disciplines and changing expectations at different stages of faculty careers. Consistent with these differing expectations is the realization that the evaluative weights allocated within a faculty member's role statement may change over time to reflect new duties and responsibilities as one's career evolves. (See policy 4.5.6.1 for a description of the process that must be followed to change the role statement of a faculty member.)

12.1 Annual Review of Faculty

Each department, in collaboration with the academic dean or vice president for extension and agriculture, and where appropriate, the chancellor or regional campus dean, shall establish procedures by which all faculty members shall be reviewed annually. Such reviews shall focus on, at a minimum, incorporate an analysis of the fulfillment of the duties outlined in the role statement. Recognizing that faculty accomplishments do not always occur in a linear fashion, this review should take into account performance over the past 5 years (or since the individual's appointment to USU if less than 5 years). The basic standard for appraisal shall be whether the faculty member under review ~~fulfills the~~ discharges conscientiously and with professional competence the duties associated with his/her position as specified in ~~assigned within the context of his/her~~ role statement. If this standard is met, the faculty member will be considered to be meeting expectations. ~~appropriately associated with his or her position.~~ The department head or supervisor shall meet with the faculty member annually to review this analysis of the fulfillment of the role statement and, subsequently, provide a written report of this review to the faculty member. A copy of this report shall be sent to the academic dean or vice president for extension and agriculture, and, where appropriate, chancellor or regional campus dean. ~~The annual evaluation and recommendation by the department head or supervisor for~~

~~tenure-eligible faculty (405.7.1 (3)) may constitute this review for salary adjustment.~~ For faculty with term appointments, the annual review shall also include a recommendation regarding renewal of the term appointment. This annual review is the basis for merit increases when funding for such increases is available.

12.2 QuinquennialPost-Tenure Review of Tenured Faculty

~~Tenured faculty shall be reviewed every five years by a post-tenure quinquennial review committee consisting of at least three tenured faculty members who hold rank equal to or greater than the faculty member being reviewed. The committee shall be appointed by the department head or supervisor in consultation with the faculty member and academic dean or vice president for extension, and, where applicable, the chancellor or regional campus dean, and must include at least one member from outside the academic unit. If there are fewer than two faculty members in the academic unit with equal to or higher rank than the candidate, then the department head or supervisor shall, in consultation with the academic dean or vice president for extension, and, where appropriate, the chancellor or regional campus dean, complete the membership of the committee with faculty of related academic units. Department heads and supervisors of the faculty member being reviewed shall not serve on this committee, and no committee member may be a department head or supervisor of any other member of the committee. An administrator may only be appointed to the quinquennial review committee with the approval of the faculty member under consideration.~~

~~For post-tenure quinquennial review meetings and for meetings held between either the department head or supervisor and the candidate to review the committee's evaluation and recommendation, the candidate or department head or supervisor may request the presence of an ombudsperson in accordance with policy 405.6.5. The basic standard for appraisal shall be whether the faculty member under review discharges conscientiously and with professional competence the duties appropriately associated with his or her position as specified in the role statement. It is the intent of this policy to acknowledge that there will be different expectations in different disciplines and changing expectations at different stages of faculty careers. This evaluation of tenured faculty shall include the review of the annual evaluation (405.12.1), and shall include the current curriculum-vita and other professional materials deemed necessary by the faculty member, and any professional development plan in place. The review will be discipline and role specific, as appropriate to evaluate: (1) teaching, through student, collegial, and administrative assessment; (2) the quality of scholarly and creative performance and/or research productivity; and (3) service to the profession, the university, and the community. The criteria for the award of tenure or promotion to the most senior ranks shall not be employed for the review of the tenured faculty. In the event that a faculty member is promoted to the most senior rank, the review made by his or her promotion committee shall constitute the quinquennial review. In such cases, another review need not be scheduled for five years. Upon completion of its review, the review committee for tenured faculty shall submit a written report to the department head or supervisor, who shall forward a copy to the academic dean or vice president for extension, and, where appropriate, chancellor or regional campus dean. A copy of the committee's report shall be sent to the faculty member. In the event that the outcomes of a professional development plan are contested (405.12.3(3)), the review committee for tenured faculty may be called upon by the faculty member to conduct its quinquennial review ahead of schedule. In such cases, another review need not be scheduled for five years. The review committee may also, at times, between its quinquennial reviews, review the professional development plan as described in sections (405.12.3(1-2)).~~

(1) Annual Review

For tenured faculty, the annual review specified above constitutes the post-tenure review as long as the faculty member continues to fulfill the duties associated with his/her position as specified in his/her role statement. If a tenured faculty member is deemed to be fulfilling the duties as outlined in his/her role statement, he/she will be considered to be meeting expectations and will be considered eligible for a merit increase, if such monies are available.

If a tenured faculty member is deemed to not be fulfilling the duties specified in his/her role statement, a professional development plan may be implemented to address the specific area(s) of concern (see section 405.12.3). The department head or supervisor has the latitude to consider other options, including re-negotiation with the faculty member of his/her role statement to emphasize area(s) in which the faculty member is fulfilling duties as specified in his/her role statement. In addition, other options, such as phased resignation/retirement, medical leave, unpaid leave of absence, or career counseling may be available to the faculty member upon consultation with the USU Office of Human Resources.

If the next annual review indicates that the tenured faculty member is fulfilling the duties in his/her role statement, taking into account progress on the professional development plan if one was implemented, the faculty member will be considered eligible for merit pay increases if available. However, if the faculty member is judged as not fulfilling his/her duties as specified in his/her role statement by the department head for a second consecutive year, then a more comprehensive post-tenure review process will occur, as outlined below.

(2) Comprehensive Peer Review

If a tenured faculty member receives a second consecutive annual review in which he/she is deemed to not be fulfilling the duties of his/her position as specified in his/her role statement, the department head will request a comprehensive peer review be conducted by the appropriate college peer review committee (see section 405.12.4). College peer review committees will receive copies of the annual reviews from the previous two years (with each review covering a 5-year period as stated in 405.12.1), the material upon which the annual reviews were based (e.g., current curriculum vita, role statement, and self-assessment material), the most recent professional development plan (if one was implemented), and any additional material the faculty member or department head wishes the committee to consider. The committee may also elect to invite the faculty member and/or department head to provide additional input.

Following the review of all materials submitted by the department head and faculty member, the peer review committee will prepare a written report, providing an assessment of the faculty member's performance relative to his or her role statement, including a statement regarding whether the faculty member under review fulfills the duties associated with his/her position as specified in his/her role statement. Copies of the written report will be provided to the faculty member, department head, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean. An ombudsperson must be present at all meetings of a comprehensive peer review committee. Ombudspersons must receive adequate advance notice of a committee meeting from the chairperson (see policy 405.6.5).

If the peer review committee concludes that the faculty member is not fulfilling the duties associated with his/her position as specified in his/her role statement, the department head will implement a Professional Development Plan in consultation with the faculty member, as described in 405.12.3.

If the peer review committee concludes that the faculty member is fulfilling the duties associated with his/her position as specified in his/her role statement, no sanctions will be pursued against the faculty member relative to standard X in 403.3.2 and the faculty member will be eligible for merit increases as available.

Following a comprehensive peer review and the initiation of a Professional Development Plan, if the subsequent annual review indicates that the faculty member is fulfilling the duties of his/her position as specified in his/her role statement, the Professional Development Plan will be considered complete and the faculty member will be eligible for merit pay increase as available.

(3) Uncorrected Performance Deficiencies over Time

If, following an initial comprehensive peer review and the initiation of a Professional Development Plan, the subsequent (third consecutive) annual review indicates that the tenured faculty member is continuing to not fulfill the duties associated with his/her position as specified in his/her role statement, the department head will request a second comprehensive peer review. The procedures for this peer review will be the same as those outlined in 405.12.2 (2).

If the committee concludes that the faculty member continues to demonstrate recurrent and chronic performance deficiencies and is not fulfilling the duties of his/her position as specified in his/her role statement, the department head and dean will refer the matter to the President who may initiate sanction proceedings as outlined in Section 407.

12.3 Professional Development Plan

(1) The department head or supervisor may, as a consequence of the annual review process, initiate the negotiation of a professional development plan to help the tenured faculty member more fully meet role expectations, while. The plan shall respecting academic freedom and professional self-direction, and shall permit subsequent alteration. The professional development plan is written by the department head or supervisor in consultation with the faculty member. The final plan shall be The professional development plan shall be mutually agreed to and signed by the faculty member and the department head or supervisor and approved by the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean. If agreement cannot be reached, individual department, college, and/or University appeal or hearing procedures should be used to resolve disagreements before transmitting revised role statements to promotion advisory committee and tenure committees. Such appeal and hearing procedures can, upon request, include a review of the professional development plan by the Review Committee described in policy 405.12.2.

(2) The professional development plan should include elements which: (1) identify the faculty member's specific strengths and weaknesses (if any) and relate these to the allocation of effort evaluative weight assigned in the role statement; (2) define specific goals or outcomes needed to remedy the identified performance deficiencies; (3) outline the activities that are necessary to achieve the needed outcomes; (4) set appropriate time lines for implementing and monitoring the activities and achieving the outcomes; (5) indicate appropriate criteria for progress reviews and the evaluation of outcomes; and (6) identify any institutional commitments in the plan.

(3) The faculty member shall meet with the department head or supervisor, at times indicated as appropriate in the professional development plan, to monitor progress toward accomplishment of the goals or outcomes included in the plan. The department head or supervisor shall, at the conclusion of

~~the professional development plan. At the next scheduled annual evaluation, the department head or supervisor will evaluate the performance of the faculty member to determine if it now fulfillment of the goals or outcomes described in the plan, in terms of criteria established by the plan to determine whether the faculty member is consistent with the duties set forth in his/her role statement, taking into account progress on the professional development plan. The department head or supervisor shall meet with the faculty member to review this analysis and subsequently, the department head or supervisor shall provide a written report of this review to the faculty member and shall also forward a copy to the academic dean or vice president for extension, and, where appropriate, the chancellor or regional campus dean. For meetings held between either the department head or supervisor and the faculty member to discuss the report, the faculty member or department head or supervisor may request the presence of an ombudsperson in accordance with policy 405.6.5.~~

~~At the request of the faculty member, department head, or supervisor, this report may be reviewed by the committee for tenured faculty, who shall conduct an in-depth evaluation as described in 405.12.2, including an analysis of the fulfillment of the goals or outcomes, or any other features included in the professional development plan. In this event, this in-depth review shall constitute the quinquennial review and another review need not be scheduled for five years. Upon completion of its review, the committee shall submit a written report to the department head or supervisor. A copy of the committee's report shall be sent to the faculty member, to the chancellor or campus dean and to the academic dean or vice president for extension.~~

12.4 College Comprehensive Peer Review Committee

Comprehensive peer review committees consisting of five standing members and three alternates, all of whom are full Professors, shall be formed by every college, the Library, and Extension. Standing committee members will include four individuals elected by the college faculty and one individual appointed by the college dean. Alternates will include two elected individuals and one individual appointed by the dean. While only full Professors can serve on the peer review committee, nominations for the elected positions will be sought from all tenured and tenure-eligible faculty members within the college. All tenured and tenure-eligible faculty members will then vote for the appropriate number of candidates to ensure there are four elected standing members and two elected alternate members. With the exception of the Library, no more than two members can be from any one department. Department heads, associate deans, and others with full- or part-time administrative assignments are not eligible to serve on these committees. If a committee member takes on an administrative position during his/her period of committee service, he/she will be replaced.

Each comprehensive peer review committee member will serve a three-year term. However, terms will be staggered to ensure some continuity and to avoid, if possible, no more than half of the members being replaced in any given year. Vacancies will be filled through college elections for the four elected members and two elected alternates and dean appointment for the one appointed member and one appointed alternate. Each year the committee will elect an individual from within the committee who will serve as the committee chairperson for that year.

When a tenured faculty member undergoes a comprehensive peer review, the faculty member and/or department head or supervisor may each request that one committee member recuse him/herself and be replaced by an alternate member. Such requests should be made only when there is a clear conflict of interest (e.g., faculty member or department head has a close personal or professional relationship with a committee member). The alternate selected will be an elected alternate if an

elected standing member is replaced and the appointed alternate if the dean-appointed member is replaced.

12.4 Academic Process

~~Evaluations, conducted pursuant to Policy 407, may reveal continuing and persistent problems with a faculty member's performance that call into question the faculty member's ability to function in his or her position. If such problems have not been rectified by efforts at improvement as prescribed in a professional development plan, the outcomes of which have been judged (405.12.3.(3)) by the review committee (405.12.2), then other nonpunitive measures, should be considered in lieu of a sanction as per policy 407.1.1. The standard for sanction (policy 407.2) remains that of adequate cause, namely conduct contrary to the standards set forth in policy 403. Successive negative reviews do not in any way diminish the obligations of the university to show such adequate cause pursuant to policy 407.4.~~

Note: With the referral to Section 407 for sanction determination an additional standard must be added to section 403.3.2 (Standards of Conduct – Professional Obligations). This standard would read as follows:

Faculty members fulfill the duties associated with their position as specified in their role statements.

“Clean” version of recommended changes

405.12 REVIEW OF FACULTY

In addition to the reviews that are mandatory for tenure-eligible faculty and for promotion, the performance of all faculty members will be reviewed annually. These annual reviews will be used as the basis for recommendations for salary adjustments and for term appointment renewal. They will also serve as the basis for the post-tenure review process for tenured faculty.

Tenure (see Section 405.1) is a means to certain ends, specifically: freedom of teaching, research and other academic endeavors, and a sufficient degree of economic security to make the profession attractive to men and women of ability. Academic freedom and economic security for faculty are indispensable to the success of a university in fulfilling its obligation to its students and to society. With tenure comes a professional responsibility to conscientiously and competently devote one's energies and skills to the teaching, research, extension and service missions of the university. A central dimension of academic freedom is the exercise of professional judgment in such matters. The intent of the review process is to support the principles of academic freedom and tenure through the provision of effective evaluation, useful feedback, appropriate intervention, and timely and affirmative assistance to create an environment where faculty members can continue to experience professional development and accomplishment during the various phases of their careers. Useful feedback should include tangible recognition to those faculty members who have demonstrated high or improved performance. It is also the intent of this policy to acknowledge that there will be different expectations in different disciplines and changing expectations at different stages of faculty careers. Consistent with these differing expectations is the realization that the evaluative weights allocated within a faculty member's role statement may change over time to reflect new duties and responsibilities as one's career evolves. (See policy 4.5.6.1 for a description of the process that must be followed to change the role statement of a faculty member.)

12.1 Annual Review of Faculty

Each department, in collaboration with the academic dean or vice president for extension and agriculture, and where appropriate, the chancellor or regional campus dean, shall establish procedures by which all faculty members shall be reviewed annually. Such reviews shall focus on an analysis of the fulfillment of the duties outlined in the role statement. Recognizing that faculty accomplishments do not always occur in a linear fashion, this review should take into account performance over the past 5 years (or since the individual's appointment to USU if less than 5 years). The basic standard for appraisal shall be whether the faculty member under review fulfills the duties associated with his/her position as specified in his/her role statement. If this standard is met, the faculty member will be considered to be meeting expectations. The department head or supervisor shall meet with the faculty member annually to review this analysis of the fulfillment of the role statement and, subsequently, provide a written report of this review to the faculty member. A copy of this report shall be sent to the academic dean or vice president for extension and agriculture, and, where appropriate, chancellor or regional campus dean. For faculty with term appointments, the annual review shall also include a recommendation regarding renewal of the term appointment. This annual review is the basis for merit increases when funding for such increases is available.

12.2 Post-Tenure Review of Tenured Faculty

(1) Annual Review

For tenured faculty, the annual review specified above constitutes the post-tenure review as long as the faculty member continues to fulfill the duties associated with his/her position as specified in his/her role statement. If a tenured faculty member is deemed to be fulfilling the duties as outlined in his/her role statement, he/she will be considered to be meeting expectations and will be considered eligible for a merit increase, if such monies are available.

If a tenured faculty member is deemed to not be fulfilling the duties specified in his/her role statement, a professional development plan may be implemented to address the specific area(s) of concern (see section 405.12.3). The department head or supervisor has the latitude to consider other options, including re-negotiation with the faculty member of his/her role statement to emphasize area(s) in which the faculty member is fulfilling duties as specified in his/her role statement. In addition, other options, such as phased resignation/retirement, medical leave, unpaid leave of absence, or career counseling may be available to the faculty member upon consultation with the USU Office of Human Resources.

If the next annual review indicates that the tenured faculty member is fulfilling the duties in his/her role statement, taking into account progress on the professional development plan if one was implemented, the faculty member will be considered eligible for merit pay increases if available. However, if the faculty member is judged as not fulfilling his/her duties as specified in his/her role statement by the department head for a second consecutive year, then a more comprehensive post-tenure review process will occur, as outlined below.

(2) Comprehensive Peer Review

If a tenured faculty member receives a second consecutive annual review in which he/she is deemed to not be fulfilling the duties of his/her position as specified in his/her role statement, the department head will request a comprehensive peer review be conducted by the appropriate college peer review committee (see section 405.12.4). College peer review committees will receive copies of the annual reviews from the previous two years (with each review covering a 5-year period as stated in 405.12.1), the material upon which the annual reviews were based (e.g., current curriculum vita, role statement, and self-assessment material), the most recent professional development plan (if one was implemented), and any additional material the faculty member or department head wishes the committee to consider. The committee may also elect to invite the faculty member and/or department head to provide additional input.

Following the review of all materials submitted by the department head and faculty member, the peer review committee will prepare a written report, providing an assessment of the faculty member's performance relative to his or her role statement, including a statement regarding whether the faculty member under review fulfills the duties associated with his/her position as specified in his/her role statement. Copies of the written report will be provided to the faculty member, department head, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean. An ombudsperson must be present at all meetings of a comprehensive peer review committee. Ombudspersons must receive adequate advance notice of a committee meeting from the chairperson (see policy 405.6.5).

If the peer review committee concludes that the faculty member is not fulfilling the duties associated with his/her position as specified in his/her role statement, the department head will implement a Professional Development Plan in consultation with the faculty member, as described in 405.12.3.

If the peer review committee concludes that the faculty member is fulfilling the duties associated with his/her position as specified in his/her role statement, no sanctions will be pursued against the faculty member relative to standard X in 403.3.2 and the faculty member will be eligible for merit increases as available.

Following a comprehensive peer review and the initiation of a Professional Development Plan, if the subsequent annual review indicates that the faculty member is fulfilling the duties of his/her position as specified in his/her role statement, the Professional Development Plan will be considered complete and the faculty member will be eligible for merit pay increase as available.

(3) Uncorrected Performance Deficiencies over Time

If, following an initial comprehensive peer review and the initiation of a Professional Development Plan, the subsequent (third consecutive) annual review indicates that the tenured faculty member is continuing to not fulfill the duties associated with his/her position as specified in his/her role statement, the department head will request a second comprehensive peer review. The procedures for this peer review will be the same as those outlined in 405.12.2 (2).

If the committee concludes that the faculty member continues to demonstrate recurrent and chronic performance deficiencies and is not fulfilling the duties of his/her position as specified in his/her role statement, the department head and dean will refer the matter to the President who may initiate sanction proceedings as outlined in Section 407.

12.3 Professional Development Plan

(1) The professional development plan is written by the department head or supervisor in consultation with the faculty member. The final plan shall be approved by the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean.

(2) The professional development plan should include elements which: (1) identify the faculty member's specific strengths and weaknesses and relate these to the allocation of evaluative weight assigned in the role statement; (2) define goals or outcomes needed to remedy the identified performance deficiencies; (3) outline the activities that are necessary to achieve the needed outcomes; (4) set appropriate time lines for achieving the outcomes; (5) indicate appropriate criteria for progress reviews and the evaluation of outcomes; and (6) identify any institutional commitments.

(3) The faculty member shall meet with the department head or supervisor, at times indicated as appropriate in the professional development plan, to monitor progress toward accomplishment of the goals or outcomes included in the plan. At the next scheduled annual evaluation, the department head or supervisor will evaluate the performance of the faculty member to determine if it is consistent with the duties set forth in his/her role statement, taking into account progress on the professional development plan. For meetings held between either the department head or supervisor and the faculty member to discuss the report, the faculty member or department head or supervisor may request the presence of an ombudsperson in accordance with policy 405.6.5.

12.4 College Comprehensive Peer Review Committee

Comprehensive peer review committees consisting of five standing members and three alternates, all of whom are full Professors, shall be formed by every college, the Library, and Extension. Standing committee members will include four individuals elected by the college faculty and one individual appointed by the college dean. Alternates will include two elected individuals and one individual appointed by the dean. While only full Professors can serve on the peer review committee, nominations for the elected positions will be sought from all tenured and tenure-eligible faculty members within the college. All tenured and tenure-eligible faculty members will then vote for the appropriate number of candidates to ensure there are four elected standing members and two elected alternate members. With the exception of the Library, no more than two members can be from any one department. Department heads, associate deans, and others with full- or part-time administrative assignments are not eligible to serve on these committees. If a committee member takes on an administrative position during his/her period of committee service, he/she will be replaced.

Each comprehensive peer review committee member will serve a three-year term. However, terms will be staggered to ensure some continuity and to avoid, if possible, no more than half of the members being replaced in any given year. Vacancies will be filled through college elections for the four elected members and two elected alternates and dean appointment for the one appointed member and one appointed alternate. Each year the committee will elect an individual from within the committee who will serve as the committee chairperson for that year.

When a tenured faculty member undergoes a comprehensive peer review, the faculty member and/or department head or supervisor may each request that one committee member recuse him/herself and be replaced by an alternate member. Such requests should be made only when there is a clear conflict of interest (e.g., faculty member or department head has a close personal or professional relationship with a committee member). The alternate selected will be an elected alternate if an elected standing member is replaced and the appointed alternate if the dean-appointed member is replaced.

Note: With the referral to Section 407 for sanction determination an additional standard must be added to section 403.3.2 (Standards of Conduct – Professional Obligations). This standard would read as follows:

Faculty members fulfill the duties associated with their position as specified in their role statements.

405.12 REVIEW OF FACULTY

There are two additional reviews of faculty performance other than those for tenure-eligible faculty and for promotion. These are annual reviews for faculty for salary adjustments and for term appointment renewal, and quinquennial reviews of tenured faculty.

Tenure (see Section 405.1) is a means to certain ends, specifically; freedom of teaching, research and other academic endeavors, and a sufficient degree of economic security to make the profession attractive to men and women of ability. Academic freedom and economic security for faculty are indispensable to the success of a university in fulfilling its obligation to its students and to society. With tenure comes professional responsibility, the obligation conscientiously and competently to devote one's energies and skills to the teaching, research, extension and service missions of the university. A central dimension of academic freedom is the exercise of professional judgment in such matters. The intent of post-tenure review is to support the principles of academic freedom and tenure through the provision of effective evaluation, useful feedback, appropriate intervention, and timely and affirmative assistance to ensure that every faculty member continues to experience professional development and accomplishment during the various phases of his or her career. Useful feedback should include tangible recognition to those faculty who have demonstrated high or improved performance. It is also the intent of this policy to acknowledge that there will be different expectations in different disciplines and changing expectations at different stages of faculty careers.

12.1 Annual Review of Faculty

Each department shall establish procedures by which all faculty shall be reviewed annually. Such reviews shall, at a minimum, incorporate an analysis of the fulfillment of the role statement. The basic standard for appraisal shall be whether the faculty member under review discharges conscientiously and with professional competence the duties appropriately associated with his or her position. The department head or supervisor shall meet with the faculty member annually to review this analysis of the fulfillment of the role statement and, subsequently, provide a written report of this review to the faculty member. A copy of this report shall be sent to the academic dean or vice president for extension, and, where appropriate, chancellor or regional campus dean. The annual evaluation and recommendation by the department head or supervisor for tenure-eligible faculty (405.7.1 (3)) may constitute this review for salary adjustment. For faculty with term appointments, the annual review shall also include a recommendation regarding renewal of the term appointment.

12.2 Quinquennial Review of Tenured Faculty

Tenured faculty shall be reviewed every five years by a post-tenure quinquennial review committee consisting of at least three tenured faculty members who hold rank equal to or greater than the faculty member being reviewed. The committee shall be appointed by the department head or supervisor in consultation with the faculty member and academic dean or vice president for extension, and, where applicable, the chancellor or regional campus dean, and must include at least one member from outside the academic unit. If there are fewer than two faculty members in the academic unit with equal to or higher rank than the candidate, then the department head or supervisor shall, in consultation with the academic dean or vice president for extension, and, where appropriate, the chancellor or regional campus dean, complete the membership of the committee with faculty of related academic units. Department heads and supervisors of the faculty member being reviewed shall not serve on this committee, and no committee member may be a department head or supervisor of any other member of the committee. An administrator may only be appointed to the quinquennial review committee with the approval of the faculty member under consideration.

For post-tenure quinquennial review meetings and for meetings held between either the department head or supervisor and the candidate to review the committee's evaluation and recommendation, the candidate or department head or supervisor may request the presence of an ombudsperson in accordance with policy 405.6.5. The basic standard for appraisal shall be whether the faculty member under review discharges conscientiously and with professional competence the duties appropriately associated with his or her position as specified in the role statement. It is the intent of this policy to acknowledge that there will be different expectations in different disciplines and changing expectations at different stages of faculty careers. This evaluation of tenured faculty shall include the review of the annual evaluation (405.12.1), and shall include the current curriculum vita and other professional materials deemed necessary by the faculty member, and any professional development plan in place. The review will be discipline and role specific, as appropriate to evaluate: (1) teaching, through student, collegial, and administrative assessment; (2) the quality of scholarly and creative performance and/or research productivity; and (3) service to the profession, the university, and the community. The criteria for the award of tenure or promotion to the most senior ranks shall not be employed for the review of the tenured faculty. In the event that a faculty member is promoted to the most senior rank, the review made by his or her promotion committee shall constitute the quinquennial review. In such cases, another review need not be scheduled for five years.

Upon completion of its review, the review committee for tenured faculty shall submit a written report to the department head or supervisor, who shall forward a copy to the academic dean or vice president for extension, and, where appropriate, chancellor or regional campus dean. A copy of the committee's report shall be sent to the faculty member. In the event that the outcomes of a professional development plan are contested (405.12.3(3)), the review committee for tenured faculty may be called upon by the faculty member to conduct its quinquennial review ahead of schedule. In such cases, another review need not be scheduled for five years. The review committee may also, at times, between its quinquennial reviews, review the professional development plan as described in sections (405.12.3(1-2)).

12.3 Professional Development Plan

(1) The department head or supervisor may, as a consequence of the annual review process, initiate the negotiation of a professional development plan to help the tenured faculty member more fully meet role expectations. The plan shall respect academic freedom and professional self-direction, and shall permit subsequent alteration. The professional development plan shall be mutually agreed to and signed by the faculty member and the department head or supervisor and approved by the academic dean or vice president for extension, and, where appropriate, the chancellor or regional campus dean. If agreement cannot be reached, individual department, college, and/or University appeal or hearing procedures should be used to resolve disagreements before transmitting revised role statements to promotion advisory committee and tenure committees. Such appeal and hearing procedures can, upon request, include a review of the professional development plan by the Review Committee described in policy 405.12.2.

(2) The professional development plan should include elements which: (1) identify the specific strengths and weaknesses (if any) and relate these to the allocation of effort assigned in the role statement; (2) define specific goals or outcomes needed to remedy the identified deficiencies; (3) outline the activities that are necessary to achieve the needed outcomes; (4) set appropriate time lines for implementing and monitoring the activities and achieving the outcomes; (5) indicate appropriate criteria for progress reviews and the evaluation of outcomes; and (6) identify any institutional commitments in the plan.

(3) The faculty member shall meet with the department head or supervisor, at times indicated as appropriate in the professional development plan, to monitor progress toward accomplishment of the goals or outcomes included in the plan. The department head or supervisor shall, at the conclusion of the professional development plan, evaluate the fulfillment of the goals or outcomes described in the plan, in terms of the criteria established by the plan. The department head or supervisor shall meet with the faculty member to review this analysis and subsequently, the department head or supervisor shall provide a written report of this review to the faculty member and shall also forward a copy to the academic dean or vice president for extension, and, where appropriate, the chancellor or regional campus dean. For meetings held between either the department head or supervisor and faculty member to discuss the report, the faculty member or department head or supervisor may request the presence of an ombudsperson in accordance with policy 405.6.5. At the request of the faculty member, department head, or supervisor, this report may be reviewed by the committee for tenured faculty, who shall conduct an in-depth evaluation as described in 405.12.2, including an analysis of the fulfillment of the goals or outcomes, or any other features included in the professional development plan. In this event, this in-depth review shall constitute the quinquennial review and another review need not be scheduled for five years. Upon completion of its review, the committee shall submit a written report to the department head or supervisor. A copy of the committee's report shall be sent to the faculty member, to the chancellor or campus dean and to the academic dean or vice president for extension.

12.4 Academic Process

Evaluations, conducted pursuant to Policy 407, may reveal continuing and persistent problems with a faculty member's performance that call into question the faculty member's ability to function in his or her position. If such problems have not been rectified by efforts at improvement as prescribed in a professional development plan, the outcomes of which have been judged (405.12.3.(3)) by the review committee (405.12.2), then other nonpunitive measures, should be considered in lieu of a sanction as per policy 407.1.1. The standard for sanction (policy 407.2) remains that of adequate cause, namely conduct contrary to the standards set forth in policy 403. Successive negative reviews do not in any way diminish the obligations of the university to show such adequate cause pursuant to policy 407.4.

AFT Response to Post Tenure Review Taskforce

General consensus in the committee was that this code constitutes a great improvement over current code. Strengths include the reduction in faculty burden by eliminating the mandatory 5 year review for all faculty, implementation of the peer review committee as a counterbalance for administrative review, and making peer review more standardized and “removed” from the faculty member. College peer review committees reduce the likelihood of having to evaluate your next door neighbor. AFT members felt that this process would be invoked very rarely – likely less than 2% of faculty members are expected to end up in peer review proceedings.

Things that would need to be put in place: procedures for review would need to be more standardized and perhaps strengthened across units on campus. Many departments would have to change their evaluation processes to encompass the rolling 5 year review and to provide an overall evaluation (i.e., fulfilling role statement vs. not fulfilling role statement).

Things to consider:

- 1) With the rolling 5 year review, does it make sense to weigh the more recent years more heavily than more distant years?
- 2) What happens if a faculty member has a negative review one year, a positive review the next, a negative review the next, and so on? Is it possible to get caught in a cycle of positive and negative reviews that goes on and on?

Questions

- 1) The department head constructs the professional development plan “in consultation” with the faculty, but ultimately can create a plan that the faculty member did not endorse. This is a change from previous code. One idea might be that the college peer review committee would have to approve of a plan (after the peer review committee has agreed with a department head negative review). After much discussion, the task force opted to limit the role of the peer review committee to evaluation rather than remediation, but of course this can be revisited.
- 2) Questions about how the standard for performance is defined. The proposed revision describes the standard as “fulfilling the duties outlined in the role statement.” Role statements are structured differently at different times in university history, but for decades the role statement has been the “job description.” While questions were raised about whether referencing the role statement as the standard for performance changed the standards for evaluation, several AFT committee members argued that the role statement is the most obvious and straightforward description of the expectations for faculty.
- 3) There was a concern about faculty members only undergoing peer review when they are “in trouble.” Committee consensus was that the efficiency gained through the trigger model outweighed this concern, and that the college level peer review committee provided enough distance between the faculty member and the committee that this concern was mitigated somewhat.

AFT Response to Policy 406 Taskforce

Global comments:

- 1) Overall, I think the proposed changes are an improvement over the existing policy because language is clearer, and the flowcharts help make the logic of the process clearer.
- 2) I like the conceptual separation of determining the crisis (President and Trustees/Regents) and developing a plan (President, university governance, and academic/professional employees).

Q1: Modest concern about the reduction in time for notifying faculty about upcoming layoffs, and the fact that tenured faculty have fewer reinstatement rights.

- Reduced to 5 and 10 from 30 and 90. Working days or calendar days?
 - The task force rationale is that the 5 day limit refers to the number of days in which you must file intent to appeal (page 9). The appeal notification only needs a short email of intent to appeal – this can be completed in a few minutes. In addition, faculty will likely be aware of these issues and if faculty is away on a trip etc., they will be monitoring email. This will likely be coming after a process of not filling positions, voluntary retirement, etc.
 - The timeline must be short in order to work
 - Tenured and tenure-track faculty are protected over other groups in this policy, although tenured and tenure-track are treated largely the same way in the updated policy.
- Tenure track given preferential treatment to re-hire, whereas non-tenured given opportunity to rehire – 406.4.3 (1)
 - The committee will revisit this issue because this was not the intent of the policy. Minor wording changes are necessary to clarify that the policy for rehire is the same for tenured and tenure-track faculty.

Q2: “Ideally” a faculty member with tenure will not be terminated in favor of retaining a faculty member with tenure - 406.5.2 (1).

- Words like “ideally” make the following text more of a suggestion than a policy. The document will be reviewed carefully to make sure that necessary faculty protections are presented as concrete policy.

Q3: The department must agree to accept a faculty member from another dept. Does the whole dept need to agree?

- Each department deals with these things differently. The goal was to be as open as possible to variety of ways departments deal with this.

Q4: There are parallels between the process of notifying faculty about termination or decreases in appointment and those for dealing with classified employees as outlined in

HR policies. As a small point of clarification, it might be helpful to note whether or not these procedures are in sync – as they should be.

- This is the faculty code, so the code will focus on faculty
- We should do a check of the HR code to make sure the faculty code matches 300 code. Renee will address. Has BrandE reviewed?

Q5: Notice of reduction in status (3, 6 or 12 months). If the president deems shorter time, he/she may deem so. 406.5.2 (4).

- Not a blank check, but something the president can work with.
- Does the president decide this on his/her own?

Q6: Furlough not listed as an option.

- Where is this codified?
- How to deal with people on federal money to not go on furlough – this costs the university money
- Is this an issue of process rather than something that should be placed in faculty code?
- This affected professional and classified as well. Should 406 focus on faculty only?
- Regarding lecturers, this might be an issue for Faculty Senate.

Q7: A notice for non-tenured (and non tenure-track) faculty (specifically lecturers) had to be given by a specific date or they had to wait a full year.

- That date is hard and fast – but it gave a period of time between notice and layoff.
- This might be something to address, or there might just be no way around this

Memo: To Faculty Senate Executive Committee, Academic Freedom and Tenure Committee and Professional Responsibilities and Procedures Committee

From: Budget and Faculty Welfare Committee

Subject: Review of the proposed revisions of section 405 of the Faculty Code

Outline: What follows is: 1) an executive summary of the findings of the BFW committee (pages 1 - 3), and, 2) detailed notes and comment attached to the proposed code changes (pages 4 - 16).

Findings: It is our finding that the revision poses significant issues with respect to faculty welfare

Key Issues

1. The foundation for the justification of this code revision lacks academic rigor. Private interviews with administrators and unscientific sampling of DH do not meet the standards of scientific statistical data collection. At this point in time, based on what evidence has been provided us, we are not convinced there is actually a problem sufficient to warrant the proposed changes in code.
2. The tenor of the proposed code change has moved from supportive and recognizing accomplishment to adversarial and punitive actions.
3. The net result of this code change is a reduction in the benefits of tenure and a significant reduction if not elimination of the concept of shared governance.
4. The code changes the standard of performance a tenured faculty member must meet to avoid sanctions. Thus the reasonable care standard 403.3.5¹ has been replaced by a requirement to meet the same standards (e.g. excellence in primary role) applied to achieving tenure.
 - a. This code change eliminates the “reasonable care standard” as the criteria for evaluation.
 - b. This code change eliminates the following statement in the existing code; **“The criteria for the award of tenure or promotion to the most senior ranks shall not be employed for the review of the tenured faculty.”**

¹ 403.3.5 Definition of Reasonable Care

This term, which is familiar to the law, means that the level of performance required of a faculty member is that which is recognized in the profession as reasonable in the light of the obligations which he or she has assumed, competing demands upon his or her energy and time, nature and quality of his or her work, and all other circumstances which the academic community would properly take into account in determining whether he or she was discharging his or her responsibilities at an acceptable level.

- c. The effect of this change is that a faculty member will be required to re-earn tenure every year, since annual faculty reviews will be based solely on the role statement.
 - d. There are enormous problems with the current form of role statements as expressed to the BFW committee and in the faculty forum.
5. This code change places these decisions in the hands of administrators, contrary to current code section 401.8.1 (3) "Faculty status and related matters, such as appointments, reappointments, nonrenewals of appointments, terminations, dismissals, reductions in status, promotions, and the granting of tenure are primarily a faculty responsibility."
- a. Professional development plans, rather than being negotiated between a faculty member and DH are now written by the DH only in consultation with the faculty member.
 - b. This granting of faculty rights to administration represents a degradation of tenure and consequently the rights of shared governance.
6. The proposed language of the code is directed to dismissal, rather than constructive actions.
7. With respect to this proposed code change:
- a. A group of departmental faculty peers is better qualified to evaluate a faculty member's work than a single DH or college committee.
 - b. Only two consecutive annual reviews as a trigger of committee review provides too brief a window to adequately assess a trend of non-performance.
 - c. Suggest an addition to the code that allows a faculty member to have a departmental committee review at any point following a negative review.
 - d. Adequate time (minimum 3 years after development of the work plan) and funding (e.g. professional development workshops, meeting attendance) to meet the objectives of a faculty work plan should be provided.

Vote of the Budget and Faculty Welfare Committee:

This document is to be delivered to the Faculty Senate Executive Committee and to the chair of the Professional Responsibilities and Procedures Committee from the Budget and Faculty Welfare Committee. The vote was unanimous.

Post-Tenure Review (PTR) Task Force

Impetus for taskforce development:

1. NWCCU 2007 accreditation team recommended USU review its PTR policies for possible revision and for consistent implementation (based on the finding that some 5 year reviews are cursory in nature and “faculty don’t have time to perform rigorous annual reviews”) ¹ ²
2. Every year at the state legislature there is discussion of eliminating tenure for new faculty hires, but so far no bill has made it out of committee ³
3. Utah Board of Regents policy (R481) says the purpose of PTR is to: a) recognize good performance, and b) communicate to faculty specific areas in need of improvement

The PTR Task Force

Co-chairs: Raymond Coward and Glenn McEvoy (2011-2012)/Renee Galliher (2012 - 2013)

Members: Renee Galliher, Gretchen Peacock, Robert Schmidt, Diane Calloway-Graham, Ralph Whitesides, Richard Jenson

Task Force Activities: Across spring and summer 2012, the task force met 15 times, held three “town hall” meetings to gather feedback from faculty, met with the administrative councils for all colleges and the library, and reviewed the faculty codes for 10 sister institutions. This information was analyzed to generate a summary of issues and recommendations presented to the faculty senate in April. A recommended code revision was drafted over summer/fall 2012. Unanimous approval of a recommended code revision was not achieved by the task force. The current draft of suggested revisions represents a compromise that the task force presents to the broader faculty for additional input and review.

Task Force Meetings:

February 1, 2012
February 8, 2012
February 22, 2012
March 1, 2012
March 6, 2012
March 19, 2012
March 27, 2012
April 3, 2012
April 9, 2012
April 18, 2012
May 3, 2012
May 9, 2012
June 12, 2012
August 28, 2012
October 11, 2012

Meetings with Colleges:

February 7, 2012 (Libraries)
February 9, 2012 (Engineering)
February 14, 2012 (Science)
February 15, 2012 (Agriculture;
Education and Human Services)
February 16, 2012 (Arts; Humanities
and Social Sciences; Natural Resources)
February 27, 2012 (Business)

Town Hall (Faculty Forum) Meetings:

February 14, 2012
February 15, 2012
February 16, 2012

BFW 2/13/13 5:37 PM

Comment [1]: NWCCU did request some changes: Recommendation Number 8: The committee recommends that the university review for possible revision and for consistent implementation of the pre-tenure faculty mentoring and evaluation policies and procedures and the post-tenure faculty evaluation policies and procedures, including institutional involvement in implementing plans for improvement.

In response the university issued the following response:
Faculty Senate leadership and central administration have agreed that the topic of post-tenure faculty evaluation will be widely discussed during the Academic Year 2011-2012. To launch this discussion, the Executive Vice President and Provost made a presentation to all department heads, deans and Faculty Senate Leadership regarding the value of a meaningful review process for tenured faculty. Three of the “take away” messages from the presentation included: (1) there is a concern about underperforming faculty who seem protected by tenure; (2) underperforming faculty must be given the opportunity to bring their performance in line with their role statements; and (3) if they fail to do so, there is language in our current faculty code to dismiss a tenured faculty member. This conversation will be ongoing throughout the Academic Year 2011-2012.

BFW 2/14/13 10:22 AM

Comment [2]: Two basic points

- 1)The takeaways make the assumption that this is a problem.
 - a. Foundations of the assumption.
 - i. Interviews by the task force with some administrators and a small number of faculty. (as per Senate President statement at Faculty Forum)
 1. We need access to the notes the committee took on their meetings with colleges to determine for ourselves the extent of the problem. At this point in time, based on what evidence has been provided us, we are not convinced there is actually a problem sufficient to warrant the proposed changes in code.
 2. A survey by the provost in which he said DH identified 10% of their faculty as a problem.
 - 2)Comment: lacks academic rigor. Private interviews with administrators and unscientific sampling of DH do not meet the standards of scientific statistical data collection
 - 3)The third condition, “if they fail to do so, there is language in our current faculty code to dismiss a tenured faculty member” in the response to NWCCU is evidence that the purpose of this proposal is to make it easier for administrators to dismiss faculty, includ ... [1]

BFW 2/13/13 5:41 PM

Comment [3]: This is a deceptive reason. Only 2 bills have been presented to the legislature since 1997. These were in 2011 and 2012 by Christopher Herrod, who is no longer in the legislature.

Guiding Principles of the Task Force Efforts

- 1) **Retain the integrity of tenure as a valued system for protecting academic freedom:** See 405.12 “Tenure is a means to certain ends, specifically academic freedom and a sufficient degree of economic security to make the profession attractive to men and women of ability”

In USU’s system of shared governance, faculty have primary responsibility for appointments, promotions, tenure, terminations, and dismissals of other faculty (401.8.1(3)).

“To hold a position with tenure means that appointment is permanent and not subject to dismissal or reduction in rank except as defined in Policy 407” (405.1.2).

- 2) **Demonstrate to external stake holders that tenured faculty members undergo meaningful and rigorous evaluation, with explicit remediation guidelines and consequences for chronic underperformance:**

The current code says that if a DH determines that the performance of a tenured faculty member is unsatisfactory, he or she “may initiate the negotiation of a professional development plan” (405.12.3). This draft of proposed code says that upon finding that a tenured faculty member’s performance is unsatisfactory for two consecutive years, the DH “must initiate a professional development plan” and this plan is written by the DH in consultation with the faculty member.^{4,5}

The current code says that if performance problems by tenured faculty are not rectified through the professional development plan process then “other nonpunitive measures should be considered in lieu of a sanction...the standard for sanction remains that of adequate cause, namely conduct contrary to the standards set forth in policy 403.” This draft of proposed code states that if the DH finds the tenured faculty member’s performance unsatisfactory over three years and a comprehensive peer review committee agrees with this assessment in two consecutive years, then “the department head and dean will refer the matter to the President who may initiate sanction proceedings as outlined in Section 407.”⁶

The current standard for sanctioning a faculty member for performance problems is that faculty members must exercise “reasonable care in meeting their commitments to the institution” (403.3.2(7)) and “reasonable care” is defined in 403.3.5. This draft of proposed code leaves this standard in place, but suggests adding a second standard of conduct related to performance: namely that “faculty members fulfill the duties associated with their position as specified in their role statements.” The current code says that the criteria for the award of tenure or promotion shall not be employed in post-tenure reviews (405.12.2) and, that the basic performance standard for both annual reviews and for post-tenure reviews is whether the faculty member discharges “conscientiously and with professional competence” the duties associated with his or her position (405.12.1 and 405.12.2). This draft of proposed code contains a statement that says “The basic standard for appraisal shall be whether the faculty member under review fulfills the duties associated with his/her position as specified in his/her role statement.” Thus, the standard of performance against which a tenured faculty member is reviewed changes from discharging duties “conscientiously and with professional competence” to the standard that is articulated in the role statement.⁷

- 3) **Respond to suggestions and concerns raised by faculty and administrative colleagues regarding strengths and challenges with current post tenure review:** See table below

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Comment [4]: This paragraph, along with following paragraphs has the effect of rendering tenure virtually nonexistent at USU. This is essentially a 2 year tenure clock, in which a tenured faculty member must meet tenure requirements every year. This is a violation of 405.12.2 of the code which states: “**The criteria for the award of tenure or promotion to the most senior ranks shall not be employed for the review of the tenured faculty.**”

This proposal seeks to eliminate previous cited section of the code (in bold above) which will constitute severe harm to the tenure system and the whole concept of shared governance.

Shared governance, is in part, based on the idea that a faculty member need not fear reprisals from a DH, Dean or Provost whose policies he or she might oppose. This wording in the code puts enormous power in the hands of the DH and Deans. In short, it considerably streamlines mechanisms to i fire faculty.

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Comment [5]: The existing code states that a professional development plan is negotiated between the faculty member and the DH. The proposed code change call for the DH to write the plan. This is antithetical to shared governance, and opens the door for potential abuse.

BFW 2/13/13 5:18 PM

Comment [6]: Again we are presented with what is in effect a 2 year tenure clock with the penalties imposed by 407 being the same as those for violating provisions of 403 such as plagiarism and sexual harassment.

This guide seeks to change 403 removing the reasonable care standard, effectively imposing tenure guidelines on all faculty. (See the proposed deletion in section 403 at end of this document.)

BFW 2/14/13 8:59 AM

Comment [7]: This in essence leads to the end of tenure and shared governance at USU. This changes the existing code from the reasonable care standard 403.3.2.7 to a stricter criterion of failing to meet requirements of the role statement. Ignoring the problems with the current form of role statements as expressed to this committee and in the faculty forum, most role statements require excellence in the primary role, which is the standard by which tenure is awarded. This is again in direct violation of 405.12.2. This proposal seeks to do away with that standard as well.

This statement essentially makes it non-optimal for any faculty member to work in any area other than his or her primary role statement; ergo no committees, no senate, no faculty inputs. This is antithetical to shared governance, and has the potential to greatly lessen faculty input in various critical areas, including the vital area of curriculum.

As a research doctoral university, we wish to attract the very best professors. Weakening tenure ... [2]

The Current Draft Code Revision Proposal: The following table summarizes the reports to the faculty senate on April 2nd and April 30th, along with specific code revision suggestions outlined in the attached code draft.

Issues Identified during Data Collection (Presented to FS on April 2)	General Guiding principles for Revision (Presented to FS on April 30)	Specific Code Revision Recommendations
The conduct of post-tenure reviews varies widely across campus.	In revising the process, practices for post-tenure review should be standardized across the university and more detailed instructions should be provided in Section 405 of the USU Policy Manual.	Greater detail throughout the section to provide more structure; annual review process described in greater detail with timeline and decision making criteria; comprehensive peer review occurs at college level to provide greater consistency; language clarified throughout to reference role statement as standard for evaluating performance
The current policy requiring 5-year post-tenure reviews for all tenured faculty members is labor intensive, time consuming and largely focused on faculty who are meeting or exceeding expectations in all areas of their role statement.	In light of the small number of tenured faculty with serious performance deficiencies as well as the fact that all faculty members are reviewed annually by their department heads, conducting a comprehensive peer review on every tenured faculty member every five years (as required by the present USU Policy Manual) provides little added value. Instead, we suggest that some type of precipitating event (e.g., multiple negative performance reviews by the department head) be used to trigger a more comprehensive post-tenure review. In essence, the annual review of all tenured faculty members by their department head that is required by current code <u>is</u> a post-tenure review.	Section 12.1 – the annual review serves as the basis of post tenure review Section 12.2(2) – a comprehensive peer review is triggered by two consecutive annual reviews stating that the faculty is not fulfilling the duties outlined in the role statement
The current requirement of an individualized	If comprehensive post-tenure reviews involving peers only occur after some “precipitating event;” this problem is	Section 12.2(2) and 12. 4 – a comprehensive college peer review committee will be utilized

review committee for each tenured faculty member increases the work load for senior faculty and, moreover, can pit “neighbor against neighbor” in a very delicate and critical personnel decision. These procedures can result in uncomfortable or difficult relationships between colleagues.	significantly diminished. Further, we believe that standing college committees provide greater experience and consistency than do unique committees that are formed for each individual undergoing a comprehensive post-tenure peer review.	
Substandard faculty performance needs to be addressed quickly and should not wait for the next scheduled 5-year post-tenure review. The annual performance reviews of tenured faculty by department heads can be misleading if based on a 12-month cycle instead of a “rolling” 3 to 5 year period.	If the annual review is considered the post-tenure review, then deficiencies in performance can be identified on an annual basis and professional development plans (if needed) can be implemented to “help the tenured faculty member more fully meet role expectations” (Section 405.12.3). Given the vagaries of review and publication cycles, as well as fluctuations in other performance metrics, annual reviews of tenured faculty by department heads should cover the last three to five years versus just the past 12 months; i.e., a rolling system.	Section 12.1 and 12. 2(1) – Annual review covers past 5 years; professional development plan may be initiated after first negative annual review; comprehensive peer review must be conducted after second negative review; if the peer review committee agrees that the faculty member is underperforming a professional development plan must be initiated.
Our current system of post-tenure review does not include sufficient balance and coordination between the feedback from peers and that from administrative colleagues (i.e., department heads and deans).	We endorse the idea of checks and balances in post-tenure review – some combination of administrative perspective balanced with some sort of peer review. After the precipitating event, input of both constituents should be solicited. After a serious performance deficiency is identified and communicated in the comprehensive post-tenure review, the faculty member should have a reasonable period	Section 12.2 - An initial negative review from the department head indicates declining performance across the past 5 years. Following the first negative annual review, the faculty member has one year to demonstrate improvement. The next annual review is to take “into account progress on the professional development plan” (Section 12.3) if one was implemented. Thus, the faculty

	of time to improve his/her performance.	member may not have returned to the desired level of performance over the course of one year, but progress on the professional development plan in accordance with the timeline outlined in the plan will move the faculty member out the comprehensive review process. If a subsequent annual review indicates failure to meet expectations of the role statement and a comprehensive review committee agrees that the faculty member is not satisfying his or her role statement, a professional development plan must be implemented. Thus, faculty members have two years following the first negative review to return to satisfactory fulfillment of the role statement.
In the ideal, there should be some financial reward for superior post-tenure performance.	If the annual review is considered as our post-tenure review process, then every year when there are revenues allocated there will be opportunities for merit, equity, and retention adjustments for tenured and untenured faculty. Given the vagaries of legislative funding, it is not possible to guarantee senior faculty a fixed salary increase for a positive post-tenure review.	Section 12.2(1) Faculty members are eligible for merit increases as available when the annual review indicates that they are fulfilling the expectations outlined in their role statements.

Recommended changes with track changes

405.12 REVIEW OF FACULTY

In addition to the reviews that are mandatory for tenure-eligible faculty and for promotion, the performance of all faculty members will be reviewed annually. These annual reviews will be used as the basis for recommendations for salary adjustments and for term appointment renewal. They will also serve as the basis for the post-tenure review process for tenured faculty. 8

Tenure (see Section 405.1) is a means to certain ends, specifically, freedom of teaching, research and other academic endeavors, and a sufficient degree of economic security to make the profession attractive to men and women of ability. Academic freedom and economic security for faculty are indispensable to the success of a university in fulfilling its obligation to its students and to society. With tenure comes a professional responsibility to conscientiously and competently devote one's energies and skills to the teaching, research, extension and service missions of the university. A central dimension of academic freedom is the exercise of professional judgment in such matters. The intent of the review process is to support the principles of academic freedom and tenure through the provision of effective evaluation, useful feedback, appropriate intervention, and timely and affirmative assistance to create an environment where faculty members can continue to experience professional development and accomplishment during the various phases of their careers. Useful feedback should include tangible recognition to those faculty members who have demonstrated high or improved performance. It is also the intent of this policy to acknowledge that there will be different expectations in different disciplines and changing expectations at different stages of faculty careers. Consistent with these differing expectations is the realization that the evaluative weights allocated within a faculty member's role statement may change over time to reflect new duties and responsibilities as one's career evolves. (See policy 4.5.6.1 for a description of the process that must be followed to change the role statement of a faculty member.)

12.1 Annual Review of Faculty

Each department, in collaboration with the academic dean or vice president for extension and agriculture, and where appropriate, the chancellor or regional campus dean, 9 shall establish procedures by which all faculty members shall be reviewed annually. Such reviews shall focus on an analysis of the fulfillment of the duties outlined in the role statement. Recognizing that faculty accomplishments do not always occur in a linear fashion, this review should take into account performance over the past 5 years (or since the individual's appointment to USU if less than 5 years). The basic standard for appraisal shall be whether the faculty member under review fulfills the duties associated with his/her position as specified in his/her role statement. If this standard is met, the faculty member will be considered to be meeting expectations. 10 The department head or supervisor shall meet with the faculty member annually to review this analysis of the fulfillment of the role statement and, subsequently, provide a written report of this review to the faculty member. A copy of this report shall be sent to the academic dean or vice president for extension and agriculture, and, where appropriate, chancellor or regional campus dean. For faculty with term appointments, the annual review shall also include a recommendation regarding renewal of the term appointment. This annual review is the basis for merit increases when funding for such increases is available.

12.2 Post-Tenure Review of Tenured Faculty

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Gretchen Peacock 5/11/12 12:27 PM

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Renee Galliher 5/18/12 7:58 AM

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Renee Galliher 5/23/12 10:01 PM

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Raymond T. Coward 5/31/12 8:09 AM

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Raymond T. Coward 5/31/12 8:10 AM

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BFW 2/14/13 10:23 AM

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(1) Annual Review

For tenured faculty, the annual review specified above constitutes the post-tenure review as long as the faculty member continues to fulfill the duties associated with his/her position as specified in his/her role statement. ¹⁴ If a tenured faculty member is deemed to be fulfilling the duties as outlined in his/her role statement, he/she will be considered to be meeting expectations and will be considered eligible for a merit increase, if such monies are available. ¹⁵

If a tenured faculty member is deemed to not be fulfilling the duties specified in his/her role statement, a professional development plan may be implemented to address the specific area(s) of concern (see section 405.12.3). The department head or supervisor has the latitude to consider other options, including re-negotiation with the faculty member of his/her role statement to emphasize area(s) in which the faculty member is fulfilling duties as specified in his/her role statement. In addition, other options, such as phased resignation/retirement, medical leave, unpaid leave of absence, or career counseling may be available to the faculty member upon consultation with the USU Office of Human Resources.

If the next annual review indicates that the tenured faculty member is fulfilling the duties in his/her role statement, taking into account progress on the professional development plan if one was implemented, the faculty member will be considered eligible for merit pay increases if available. However, if the faculty member is judged as not fulfilling his/her duties as specified in his/her role statement by the department head for a second consecutive year, then a more comprehensive post-tenure review process will occur, as outlined below.

(2) Comprehensive Peer Review¹⁶

If a tenured faculty member receives a second consecutive annual review in which he/she is deemed to not be fulfilling the duties of his/her position as specified in his/her role statement, the department head will request a comprehensive peer review be conducted by the appropriate college peer review committee (see section 405.12.4). College peer review committees will receive copies of the annual reviews from the previous two years (with each review covering a 5-year period as stated in 405.12.1), the material upon which the annual reviews were based (e.g., current curriculum vita, role statement, and self-assessment material), the most recent professional development plan (if one was implemented), and any additional material the faculty member or department head wishes the committee to consider. The committee may also elect to invite the faculty member and/or department head to provide additional input.

Following the review of all materials submitted by the department head and faculty member, the peer review committee will prepare a written report, providing an assessment of the faculty member's performance relative to his or her role statement, including a statement regarding whether the faculty member under review fulfills the duties associated with his/her position as specified in his/her role statement. Copies of the written report will be provided to the faculty member, department head, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean. An ombudsperson must be present at all meetings of a comprehensive peer review committee. Ombudspersons must receive adequate advance notice of a committee meeting from the chairperson (see policy 405.6.5).

BFW 1/9/13 1:23 PM

Comment [14]: Once Again:

This in essence drives the end of tenure and shared governance at USU. This changes the EXISTING code from the reasonable care standard 403.3.2.7 to failing to meet requirements of the role statement. Ignoring the enormous problems with the current form of role statements as expressed to this committee and in the faculty forum, most role statement require excellence in the primary role, which is the standard by which tenure is awarded. This is again in direct violation of 405.12.2. This proposal seeks to destroy that standard as well.

This statement essentially makes it non-optimal for any faculty member to work in any area besides their primary role statement. No committees, no senate, no faculty inputs – an administration's dreams come true.

BFW 1/23/13 2:04 PM

Comment [15]: Note again, by violating 401.8.1 (3)(Faculty status and related matters, such as appointments, reappointments, nonrenewals of appointments, terminations, dismissals, reductions in status, promotions, and the granting of tenure are primarily a faculty responsibility) The potential for abuse by administration is obvious.

BFW 2/13/13 5:23 PM

Comment [16]: As opposed to the existing code, this committee becomes a tribunal, where guilt or innocence is determined. However, as opposed to US traditions, here guilt is presumed and the faculty must prove their innocence. The potential here for a litigious outcome is enhanced by this policy.

If the peer review committee concludes that the faculty member is not fulfilling the duties associated with his/her position as specified in his/her role statement, the department head will implement a Professional Development Plan in consultation with the faculty member, as described in 405.12.3.

If the peer review committee concludes that the faculty member is fulfilling the duties associated with his/her position as specified in his/her role statement, no sanctions will be pursued against the faculty member relative to standard X in 403.3.2 and the faculty member will be eligible for merit increases as available.

Following a comprehensive peer review and the initiation of a Professional Development Plan, if the subsequent annual review indicates that the faculty member is fulfilling the duties of his/her position as specified in his/her role statement, the Professional Development Plan will be considered complete and the faculty member will be eligible for merit pay increase as available.

(3) Uncorrected Performance Deficiencies over Time

If, following an initial comprehensive peer review and the initiation of a Professional Development Plan, the subsequent (third consecutive) annual review indicates that the tenured faculty member is continuing to not fulfill the duties associated with his/her position as specified in his/her role statement, the department head will request a second comprehensive peer review. The procedures for this peer review will be the same as those outlined in 405.12.2 (2).

If the committee concludes that the faculty member continues to demonstrate recurrent and chronic performance deficiencies and is not fulfilling the duties of his/her position as specified in his/her role statement, the department head and dean will refer the matter to the President who may initiate sanction proceedings as outlined in Section 407.

12.3 Professional Development Plan

(1) The professional development plan is written by the department head or supervisor in consultation with the faculty member. The final plan shall be approved by the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean.

(2) The professional development plan should include elements which: (1) identify the faculty member's specific strengths and weaknesses and relate these to the allocation of evaluative weight assigned in the role statement; (2) define goals or outcomes needed to remedy the identified performance deficiencies; (3) outline the activities that are necessary to achieve the needed outcomes; (4) set appropriate time lines for achieving the outcomes; (5) indicate appropriate criteria for progress reviews and the evaluation of outcomes; and (6) identify any institutional commitments.

(3) The faculty member shall meet with the department head or supervisor, at times indicated as appropriate in the professional development plan, to monitor progress toward accomplishment of the goals or outcomes included in the plan. At the next scheduled annual evaluation, the department head or supervisor will evaluate the performance of the faculty member to determine if it is consistent with the duties set forth in his/her role statement, taking into account progress on the professional development plan. For meetings held between either the department head or supervisor and the faculty member to discuss the report, the faculty member or department head or supervisor may request the presence of an ombudsperson in accordance with policy 405.6.5.

Gretchen Peacock 10/15/12 1:50 PM

Deleted: The department head or supervisor may, as a consequence of the annual review process, initiate the negotiation of a professional development plan to help the tenured faculty member more fully meet role expectations, while . The plan shall respect academic freedom and professional self-direction, and shall permit subsequent alteration.

Gretchen Peacock 5/11/12 12:40 PM

Deleted: The professional development plan shall be mutually agreed to and signed by the faculty member and the department head or supervisor and

BFW 2/13/13 5:23 PM

Comment [17]: The problem of this section is defined by the deletions. Instead of a mutually agreed upon professional development plan, the DH writes the plan and disagreement resolution has been deleted.

The statement "The plan shall respect academic freedom and professional self-direction, and shall permit subsequent alteration" is deleted

Renee Galliher 5/22/12 10:35 PM

Deleted: . If agreement cannot be reached, individual department, college, and/or University appeal or hearing procedures should be used to resolve disagreements before transmitting revised role statements to promotion advisory committee and tenure committees. Such appeal and hearing procedures can, upon request, include a review ... [19]

Gretchen Peacock 5/11/12 12:43 PM

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Raymond T. Coward 5/31/12 9:02 AM

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Renee Galliher 5/22/12 10:37 PM

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Renee Galliher 5/22/12 10:41 PM

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Gretchen Peacock 6/12/12 3:52 PM

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Raymond T. Coward 5/31/12 9:08 AM

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Gretchen Peacock 10/15/12 1:59 PM

Deleted: The department head or supervisor shall meet with the faculty member to review this ... [21]

12.4 College Comprehensive Peer Review Committee 18 19 20 21

Comprehensive peer review committees consisting of five standing members and three alternates, all of whom are full Professors, shall be formed by every college, the Library, and Extension. Standing committee members will include four individuals elected by the college faculty and one individual appointed by the college dean. Alternates will include two elected individuals and one individual appointed by the dean. While only full Professors can serve on the peer review committee, nominations for the elected positions will be sought from all tenured and tenure-eligible faculty members within the college. All tenured and tenure-eligible faculty members will then vote for the appropriate number of candidates to ensure there are four elected standing members and two elected alternate members. With the exception of the Library, no more than two members can be from any one department. Department heads, associate deans, and others with full- or part-time administrative assignments are not eligible to serve on these committees. If a committee member takes on an administrative position during his/her period of committee service, he/she will be replaced.

Each comprehensive peer review committee member will serve a three-year term. However, terms will be staggered to ensure some continuity and to avoid, if possible, no more than half of the members being replaced in any given year. Vacancies will be filled through college elections for the four elected members and two elected alternates and dean appointment for the one appointed member and one appointed alternate. Each year the committee will elect an individual from within the committee who will serve as the committee chairperson for that year.

When a tenured faculty member undergoes a comprehensive peer review, the faculty member and/or department head or supervisor may each request that one committee member recuse him/herself and be replaced by an alternate member. Such requests should be made only when there is a clear conflict of interest (e.g., faculty member or department head has a close personal or professional relationship with a committee member). The alternate selected will be an elected alternate if an elected standing member is replaced and the appointed alternate if the dean-appointed member is replaced.

22

Note: With the referral to Section 407 for sanction determination an additional standard must be added to section 403.3.2 (Standards of Conduct – Professional Obligations). This standard would read as follows: 23

Faculty members fulfill the duties associated with their position as specified in their role statements.

Gretchen Peacock 5/11/12 12:45 PM

Deleted: At the request of the faculty member, department head, or supervisor, this report may be reviewed by the committee for tenured faculty, who shall conduct an in-depth evaluation as described in 405.12.2, including an analysis of the fulfillment of the goals or outcomes, or any other features included in the professional development plan. In this event, this in-depth review shall constitute the quinquennial review and another review need not be scheduled for five years. Upon completion of its review, the committee shall submit a written report to the department head or supervisor. A copy of the committee's report shall be sent to the faculty member, to the chancellor or campus dean and to the academic dean or vice president for extension.

BFW 2/13/13 5:25 PM

Comment [18]: Given that a faculty member must, in effect, go up for tenure each year, it is unlikely that many would wish to serve on such a divisive and non-collegial committee.

Furthermore this code change makes sub-optimal to sitting on any university committee.

BFW 2/13/13 5:25 PM

Comment [19]: Again a violation of 401.8.1(3) Faculty have this responsibility, not administrators.

BFW 1/9/13 3:44 PM

Comment [20]: Why not all tenured faculty instead of just Fulls?

BFW 2/13/13 2:14 PM

Comment [21]: This committee is essentially a "STAR" committee at a college level, with the charge to find a way to terminate.

BFW 2/13/13 5:26 PM

Comment [22]: These deletions can lead to a more heavy handed response instead of "then other nonpunitive measures, should be considered in lieu of a sanction" as per policy 407.1.1.

Renee Galliher 5/22/12 10:38 AM

Deleted: 12.4 Academic Process ... [22]

BFW 2/14/13 3:39 PM

Comment [23]: Again, an attempt to eliminate the reasonable care standard outlined in 403.3.2.7 "Faculty members exercise "reasonable care" (policy 403.3.5) in meeting their commitments to the institution and to funding agencies where appropriate in research, publication, or other professional endeavors"

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Memo: To Faculty Senate Executive Committee, Academic Freedom and Tenure Committee and Professional Responsibilities and Procedures Committee

From: Budget and Faculty Welfare Committee

Subject: Review of the proposed revisions of section 406 of the Faculty Code

Outline: What follows is: 1) an executive summary of the findings of the BFW committee, 2) detailed notes and comment attached to the proposed code changes, and, 3) a copy of “The Role of the Faculty in Condition of Financial Exigency” recently produced by AAUP.

Findings: It is our finding that the revision improves the organization of this section of the code; however there are significant problems with the proposal with respect to the two issues of concern to the BFW Committee; Budget and Faculty Welfare.

With respect to budgetary issues:

We find that the proposed code change is confusing in terms of the definitions and distinctions between a financial exigency and a financial crisis. The more the committee discussed these two terms, the more unsure the committee became about the terms.

We find that the proposed code change is unclear in term of what triggers a declaration of exigency or crisis. The BFW committee *strongly* suggests that the definitions and triggers be well defined far in advance (now, for example) of these events actually happening. We suggest that in drafting a code change, the PRPC committee review the indexes of financial health used by the Ohio Board of Regents. These indexes may be found in the most recent draft report of the AAUP, “The Role of the Faculty in Conditions of Financial Exigency”, January 2013.

We find that the proposed code change is unclear in what level of consultation is lost when dealing with a financial crisis. An exigency seems to offer more consultation with faculty, departments and colleges than does a crisis. This reduction in consultation appears to be a function of needing to be “nimble” when dealing with a crisis. The BFW committee suggests that limits to consultation be more fully defined, including the reasoning for reducing the consultation.

We find no provision that allows faculty and staff access to the detailed financial data that would be used in declaring a financial exigency/crisis.

With respect to faculty welfare:

We find that some proposals in this section help preserve the faculty welfare with respect to the “integrity of tenure.” An example would be the creation of a Financial Crisis Advisory Committee.

However, we find that several deletions and additions to this proposed code revision represent potentially significant threats to faculty welfare through a degradation of the benefits and integrity of tenure.

Vote of the Budget and Faculty Welfare Committee:

This document and the AAUP document that is attached as an appendix be delivered to the Faculty Senate Executive Committee and to the chair of the Professional Responsibilities and Procedures Committee as the consensus opinion of the Budget and Faculty Welfare Committee. The vote was unanomous.

Executive Summary of detailed comments:

1. The revision improves the organization of this section of the code.
2. In the introductory paragraph of the *proposed* 406, the following sentence is deleted:
“Reduction in status of tenured faculty members shall only occur for reasons of program discontinuance, financial crisis, or bona fide financial exigency.” This deletion is the first of multiple changes that reduce, if not negate the rights and benefits of Tenure. In short, this proposed 406 makes it easier to terminate tenured faculty and violates “the integrity of the tenure system” *Existing* code 406.4.4(1)
3. The deletions of the relocation provision, 406.4.2 (1) and faculty employment after program reinstatement 406.4.2 (2) reduce the integrity of tenure. Said deletions make it easier to terminate tenured faculty. (see BFW Comment 11)
4. What is “substantial risk” (*proposed* code 406.2.4) to one person might be viewed as temporary and cyclical to someone else. Thus, a clearer definition (e.g., x% of decline in revenue, enrollment, funding, etc.) and who makes the determination of “substantial risk” would be helpful. (see BFW Comment 5).
5. Two major budgetary concern are:
 - a. “Good Excuse:” In the wake of the 2008 financial collapse administrations have used a “financial crisis” as justification for carte blanche in decision making.¹ This is documented in the 2013AAUP white paper “The Role of the Faculty in Conditions of Financial Exigency.”
(<http://www.aaup.org/report/role-faculty-conditions-financial-exigency>)

“There are widely accepted metrics for analyzing an institution’s financial health, metrics that make objective, reliable conclusions possible.” We suggest, as an example, a review of the Ohio Board of Regents metrics. Which are summarized in the AAUP white paper.

Finally proposed cuts MUST clearly state how the changes will create the needed funds.
 - b. “Sacrificial Lamb” Suppose there are five groups of people: A, B, C, D, E. Someone proposes a plan that hurts group C. Since there are four groups of people who aren’t hurt, they all support the plan. The attitude is, “Someone had to face the chopping block. I’ll vote for it being you.” Group C’s attempts to defend itself are ignored as “self-interest”. *The over-arching*

¹ AAUP White Paper, page 2

principles talked about need to give some guidance for how programs are selected for reduction or elimination.

6. Small word changes and deletions are particularly onerous with respect to protecting the integrity of tenure.

- a. Compare for example the *proposed* change:

“Tenured faculty members terminated through program discontinuance shall, for a period of three years following the date of their final salary payment, receive **preferential** consideration among candidates with comparable qualifications for any vacant and funded university position” 406.4.3 (1)

with the *existing* code:

“In cases of termination of tenured faculty members, the position concerned may not be filled by replacement within a period of three years from the effective date of the termination unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer was extended.” (see BFW Comment 12 and 13)

Tenured faculty should have the first opportunity for reinstatement -- period; not “preferential consideration”, but reinstatement. Remember that, in the case of code 406, tenured faculty members have lost their jobs by no fault of their own, rather by financial exigency. Thus, they should have every opportunity to get that job back.

- b. A *deletion* harms tenure.

- i. The sentence deleted is: "The integrity of the tenure system will be respected." 406.5.2 (1).

Instead the following is inserted: “**The integrity of the tenure system will be respected unless compelling evidence for strategic reductions is in the best interest of the university precludes this basic tenet.**”

Compelling evidence has no definition, and indeed section 604.4 (1) has been deleted. This section states: "except in extraordinary circumstances where a serious distortion of the specific academic program would otherwise result. The question of serious distortion shall be decided by the *Educational Policies Committee and the Faculty Senate*, with the approval of the president and the Board of Trustees. The finding of serious distortion shall be based on criteria which include, but are not limited to, essentiality of service and work,

field of specialization, and maintenance of necessary programs or services."

c. The one word addition harms tenure.

i. The proposal states:

Ideally, within an academic program, the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, unless program elimination has occurred. Proposed 604.5.2 (1)

ii. The current code states:

Within an academic program, the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the specific academic program would otherwise result. The question of serious distortion shall be decided by the Educational Policies Committee and the Faculty Senate, with the approval of the president and the Board of Trustees. The finding of serious distortion shall be based on criteria which include, but are not limited to, essentiality of service and work, field of specialization, and maintenance of necessary programs or services. CODE 406.4.4 (1)

7. There is no guidance as to the guiding principles and targets for declaring a financial crisis. Proposed code 406.5.1 (3) (See BFW Comment 17)

8. The time frames for appeals undergo severe reduction, which would allow precious little time for faculty to respond to dismissal.

a. Proposed 406.5.2 (3) and 406.5.2 (5). Existing code is 30 and 90 days for appeal of recommendation for reduction in status or termination, proposed change is 5 and 10 days. (See BFW Comment 22)

b. Appeal and hearing time frames in the existing code is 30 and 45 days, the proposed code is 10 and 30 days (see BFW Comment 22)

c. The president can arbitrarily, change both time lines. 406.5.2 (4) (see BFW Comment 23)

9. Administrative program and support services have equal standing with protecting the integrity of academics. Proposed code change 406.6.2 (1) (See BFW Comment 30)

a. It is important to note that "athletics" does not meet the definition of an "academic program", and thus is not bound by this code. However, it seems that common sense would dictate that if there were a true financial crisis or

financial exigency that the university would terminate extracurricular programs (e.g., athletics) rather than academic departments and academic personnel. The USU President's Office web page, under Mission Statement it reads that "...academics come first..." The code should specify that extracurricular programs will be terminated before academic ones as a result of financial crisis or financial exigency.

- b. The same can be said of administrative positions or support staff? Why are they excluded from this proposal?

Detailed Notes and Comments

In what follows the BFW committee has made detailed comments about the proposed code revision.

POLICY MANUAL

FACULTY

Number 406

Subject: ~~Suspension of Enrollment~~, Program Discontinuance, Financial Crisis and Financial Exigency

Effective Date: July 1, 1997

Revision: July 1, 1999, March 6, 2009, August 21, 2009

Date of Last Revision: July 8, 2011

406.1 INTRODUCTION

This section of the policy manual specifies the procedures for ~~suspending enrollment~~, discontinuing a program for academic reasons; ~~suspending enrollment~~, determining whether the university faces a major financial crisis ~~not definable as financial exigency~~; responding to a major financial crisis; determining whether ~~at a particular moment~~ the university faces ~~a state of financial exigency~~; responding to financial exigency; and reducing the status of, or terminating faculty members due to program discontinuance, ~~or bona fide financial exigency~~. ~~Reduction in status of tenured faculty members shall only occur for reasons of program discontinuance, financial crisis, or bona fide financial exigency.~~ In all of the decision making processes described in this section, all parties will act in a timely manner that is respectful of both the principle of shared governance and the need for the institution to take strategic and timely actions to fulfill its mission. The timetable for processes described in this section will be set by the university president.

Comment [BFW1]: Bona fide is a word of art that imposes on administration necessity to defend the declaration of any of the topics of this proposed change to the code

Comment [BFW2]: This deletion is the first of multiple changes that seek to reduce if not negate the rights and benefits of Tenure.

While the organization of the document is to be applauded, these inserts to make it easier to terminate tenured faculty violates "the integrity of the tenure system" Existing code 406.4.4(1)

406.2 DEFINITIONS

2.1 Academic Program.

An academic program has an identifiable teaching, research, or other academic mission and may operate within one or more academic units. An academic program must fulfill one or more of these criteria: (a) offer or administer a degree, certificate, or some other credential; (b) have an identifiable curriculum or be formally described in current university catalogs or other publications; or (c) be designated a "program" by specific faculty decision and have an identified group of one or more faculty.

Comment [BFW3]: The document often refers to the University "core mission or mission and goals. One finally finds a reference on page 9 the document. It is section 103 of the code. The University's Mission, Purpose and Functions is Policy 103. Perhaps this should be stated early on and thereafter referred to with consistent wording.

2.2 Suspension of Enrollment.

Suspension of enrollment is an action short of program discontinuance that, if not reversed, will lead to discontinuance, and which refers to the suspension of enrollment in a major subject, a minor subject where there is no corresponding major, a certificate program, or a

program awarding a credential certifying completion. Suspension of enrollment does not lead to reduction in status or termination of faculty in the program.

2.3 Program Discontinuance.

Program discontinuance for academic reasons ~~under this policy~~ means the cessation of a program, center, institute, school, department, academic college, or regional campus ~~or site~~ based upon educational and academic considerations. For the purposes of Policy 406.2, educational and academic considerations do not include cyclical or temporary variations in enrollment and/or budgets; but must reflect long-range judgments that the basic teaching, research, and extension mission of the university will be strengthened by the discontinuance. Program discontinuance does not preclude the reallocation of resources to other academic programs with higher priority based upon educational and academic considerations. Program discontinuance may entail the reduction in status or termination of faculty.

Comment [BFW4]: While this language is in the Existing code, we ask:

"Who makes these long term judgments." The BFW committee would argue that this is the purview of the "core" faculty of the institution.

2.4 Major Financial Crisis.

To constitute a major financial crisis, a situation facing the university shall ~~(a) be significantly and demonstrably~~ substantially more than a minor, temporary, and/or cyclical fluctuation in operating funds; and ~~(b) involve substantial risk to the survival of departments, colleges, or other major academic components of the university.~~ A substantial risk to survival is considered one where a substantial reduction occurs in: ~~(1, a) the ability to fulfill the mission of the academic unit, (2, b) the number of students served by the academic unit, or (3, c) the number and quality of course offerings.~~ A major financial crisis may entail the reduction in status or termination of faculty.

Comment [BFW5]: What is "substantial risk" to one person can be viewed as temporary and cyclical to another. Thus, a clearer definition (e.g. x% decline in revenue, enrollment, funding, etc). Who defines substantial risk?

2.5 Financial Exigency.

Financial exigency is an existing or imminent ~~very~~ severe financial crisis that: (a) threatens the mission of the institution as a whole, ~~that~~ (b) requires programmatic reductions or closings that may entail reductions in status or termination of faculty to enable the institution to accomplish its mission, and ~~that~~ (c) that cannot be alleviated by less drastic means.

Comment [BFW6]: Not well defined, consider for example the Ohio Board of Regents Document

2.6 Reduction in Status.

Reduction in status is a decrease in the length of the contract period and/or the percentage of time that a faculty member is employed by the university.

~~2.7 Serious Distortion of an Academic Program.~~

~~A serious distortion of an academic program shall be deemed to occur when the faculty remaining in the program would not be qualified to meet generally accepted program standards (Section 406.4.1(3)).~~

Comment [BFW7]: Since this is a definition -- it should remain here -- it is referenced later as a definition.

2.8 Temination as per 407??

Comment [BFW8]: There is no definition of termination. See existing code 406.2.3(2)

406.3 SUSPENSION OF ENROLLMENT

3.1 Procedure

(1) Initiation.

After full consultation with the department faculty and approval by the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, a department head that decides to suspend enrollment, must notify the Educational Policies Committee (EPC) as soon as the decision has been made.

(2) Review.

The Educational Policies Committee (EPC) will review the proposed suspension of enrollment for its effect on other academic programs of the university. The committee will hold hearings at which all constituencies affected, including students, faculty, and representatives from other departments affected by the proposed action, ~~once notified~~, have the opportunity to testify. At the conclusion of its deliberations, the Educational Policies Committee (EPC) will recommend approval or disapproval of suspension of enrollment to the Faculty Senate. The Faculty Senate shall make a recommendation to ~~the university president~~ provost who shall consult the university president. This process shall be concluded within 90 days following notification of the Educational Policies Committee (EPC). Suspension is granted by the university president subject to the legal obligation, if any, of the university to permit students already enrolled in the program to complete their course of study.

Comment [BFW9]: The Faculty Senate advises the President -- not the provost. See 402.2, 402.2.1, 402.2.2

(3) Time limitation.

At any time up to three years after a suspension of enrollment has been granted, it may be reversed by approval of the provost following the after receiving the recommendation of the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean. If suspension has not been reversed within this three-year period, program discontinuance must be initiated.

Comment [BFW10]: This changes weaken faculty input by eliminating the department in this consideration.

The existing code states: "may be reversed by the department, upon approval of the Educational Policies Committee, the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the president."

406.4 PROGRAM DISCONTINUANCE FOR ACADEMIC REASONS

4.1 Decision-Making Process

(1) Initiation.

Consideration of the possible discontinuance of an academic program may be initiated at any time by the faculty or a duly appointed faculty committee of that program; the faculty or an appropriate committee of the center, institute, school, department, college, or other academic unit of that program; ~~the~~ Graduate Council; the appropriate department head, academic dean

or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean or by the provost or president of the university. **Steps toward the discontinuance of a program do not require a prior suspension of enrollment in that program.** If a program discontinuance ~~may~~ results in the **reduction in status or termination** of faculty, the person or group initiating the consideration of discontinuance shall prepare, and submit to the provost, a memorandum ~~which that~~: (a) clearly identifies the program; (b) states explicit criteria by which faculty are identified with the program, (c) states the reasons, with respect to the university's mission and goals, for recommending discontinuance; (d) assesses the probable consequences for faculty, related programs, and the university in general; and (e) suggests a timetable for accomplishing discontinuance. **Program discontinuance is never to be declared with the aim of singling out a specific faculty member.**

(2) Distribution.

The provost shall distribute copies of the memorandum, embodying an initial or an amended proposal for program discontinuance, to: (a) the faculty members most directly involved in the academic program proposed for discontinuance; (b) the appropriate department head, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean; (c) relevant members of departments and colleges; (d) members of relevant college committees or councils; (e) ~~the Educational Policies Committee (EPC)~~ ~~(f)~~ the members of Budget and Faculty Welfare Committee (BFW); and ~~(g f)~~ the relevant student college senators.

(3) Consultation.

The groups above shall forward comments and recommendations to the appropriate academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean. He or she shall forward the comments and a recommendation to the provost, and, where appropriate, to the Graduate Council. **The** Graduate Council may review this material and make a recommendation to the provost. After receiving and considering the recommendations and comments, the provost shall submit the proposal, the comments, and a recommendation to the **Educational Policies Committee (EPC)**. **The Educational Policies Committee's (EPC)** recommendation shall be subject to review and debate by the Faculty Senate [Policy 402.12.6(1)]. All comments, recommendations, and supporting material shall be available to **the Faculty Senate** for **its** perusal.

(4) Final recommendation.

The Faculty Senate's recommendations shall be forwarded to the university president for consideration. The university president shall submit a final recommendation in writing to the Board of Trustees and the Board of Regents ~~and shall attach the written comments and recommendations of the Faculty Senate.~~

(5) Notice of program discontinuance.

Comment [BFW11]: This deletion should be reversed. The Board of Trustees and Regents should see the full record. More information has no detriments.

After the Board of Regents has approved a proposal by the university to discontinue a program, the appropriate academic dean, vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean ~~of the program, center, institute, school, department, academic college, or regional campus, or site~~ shall give written notice of the discontinuance to all persons in the ~~program, center, institute, school, department, academic college, or regional campus~~ academic unit. A minimum of one full year, beginning July 1, shall pass from the time a final decision is made to close an academic program to the actual program discontinuance.

4.2 Faculty Reduction in Status or Termination due to Program Discontinuance

(1) Notice of reduction in status or termination.

In addition to the general notice ~~of program discontinuance~~ in Policy 406.4.1(5), if the program discontinuance results in reduction in status or termination ~~of faculty, then~~ the university president shall give tenured and tenure-track faculty members in the discontinued ~~program, center, institute, school, department, academic college, or regional campus, or site~~ academic program formal notice of reduction in status or termination as follows: (a) if the appointee is untenured and in the first year of service, notice shall be given at least three months prior to reduction in status or termination; (b) if the appointee is untenured and in the second year of service, notice shall be given at least six months prior to reduction in status or termination; (c) if the appointee is tenured or is untenured but in the third or subsequent years of service, notice shall be given at least 12 months prior to reduction in status or termination; (d) the length of notice for faculty with term appointments (Policy 401.4) shall be parallel to that for the untenured faculty described above, with the exception of those term appointees with research or federal research ranks; termination of these faculty is coincident with and contingent upon the termination date of their extramural funding; if their funding extends beyond that of a discontinued program, they may be reassigned to another program; and (e) appointees with specialized functions as defined in Policy 401.5 shall be parallel to that for the tenured and tenure-eligible faculty described above.

(2) Relocation

~~During a grace period of three years, and with the assistance of the appropriate administrators (e.g., academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost) and the consent of the receiving department, every reasonable and good faith effort will be made to enable affected faculty members to obtain suitable positions for which they are qualified elsewhere in the university for which they are qualified. Tenured faculty members terminated through program discontinuance shall, for a period of three years following the date of their final salary payment, receive preferential consideration among candidates with comparable qualifications for any vacant and funded university position for which they apply and are qualified.~~

(3) Faculty employment after program reinstatement.

~~If a terminated program or position is reinstated, tenured faculty members terminated through program discontinuance shall have the right of immediate reinstatement for a period of three years following the final salary payment.~~

[Just state what you want to include without passing judgment as to why it was eliminated.]

4.3 Reinstatement

(1) Tenured Faculty.

Tenured faculty members terminated through program discontinuance shall, for a period of three years following the date of their final salary payment, receive preferential consideration among candidates with comparable qualifications for any vacant and funded university position ~~for which they apply and are qualified.~~ Upon request of the affected faculty member, ~~during a grace period of three years, with the assistance of the appropriate administrators (e.g., academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost) and with the consent of the receiving department unit, every~~ a reasonable and good faith effort will be made to enable affected faculty members to obtain suitable positions ~~for which they are qualified~~ elsewhere in the university for which they are qualified. ~~The receiving department or academic unit must consent to the appointment before it is made.~~

~~In cases of termination of tenured faculty members, the position concerned may not be filled by replacement within a period of three years from the effective date of the termination unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer was extended.~~

(2) Non-Tenured Faculty.

In cases of termination of non-tenured faculty members, the position concerned may not be filled by replacement within a period of one year from the effective date of the termination unless the person terminated has been offered a return to employment in that position and the person terminated has not accepted the offer within 30 calendar days.

(3) Termination of Offer of Reinstatement.

If an offer of reinstatement is not accepted within the timelines stated above, the university and the Board of Regents have no further obligation to the person terminated. ~~After the expiration of the applicable reinstatement period as provided herein, the institution and the Board of Regents have no further obligation to the affected faculty.~~

(4) Faculty Status and Benefits after Reinstatement.

A faculty member who has been terminated and who accepts reinstatement in the same position will resume the rank and tenure status held at the time of termination, be credited with any sick leave accrued prior to the date of the termination, be paid a salary

Comment [BFW12]: These 2 deletions (sections 2 and 3) is a clear indication that one of the goals of this code change is to REDUCE the integrity of tenure. That is, a goal is to make it easier to terminate tenured faculty. Less flame – Troy's comment on transfer between regional and main campus

Comment [BFW13]: This change is particularly damaging with respect to protecting the integrity of tenure.

Note this change is simply a rewording of the relocation policy that was deleted above.

Note in particular the next deleted section which is part of the existing code 406.5.1

Note the addition of the equivocal working, in particular a tenured faculty member who though no fault of her/his own now only has "preferential" consideration for a vacant position

This section should return to: **"In cases of termination of tenured faculty members, the position concerned may not be filled by replacement within a period of three years from the effective date of the termination unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer was extended."**

Again the intent to reduce the rights and benefits of tenure is obvious.

Comment [BFW14]: Except for the one year time limit, the reinstatement policy is better for non-tenured faculty. Again, a denigration of tenure rights.

commensurate with the rank and length of previous service, and will be credited with any annual leave which that the faculty member had accrued prior to the date of termination and for which the faculty member has not received payment.

Comment [BFW15]: For faculty members that may have served as DH, Assoc. Deans, Deans or in other position where their contracts were temporarily change to 12 month contracts, this deletion, harms their benefits.

406.5 MAJOR FINANCIAL CRISIS

5.1 Procedures

(1) Initiation.

If the president of the university identifies a possible major financial crisis, he or she shall inform and consult with the Budget and Faculty Welfare Committee (BFW), the Faculty Senate, the Professional Employees Association (PEA), and the Classified Employees Association (CEA) concerning the causes and the possible consequences of this financial crisis. The university president shall also identify possible solutions and the time frame by which decisions must be made by those entitled to participate in the consultative process [Flow Chart 406.X Boxes 1 and 2].

Comment [BFW16]: What is the measure of a financial crisis? No guidance is given. There are measures available.

Comment [BFW17]: This wording should be: "solutions and alternatives as per current code 6.2(1)"

(2) Declaration

Having informed and consulted with the above bodies, the university president will seek the approval of the Board of Trustees to declare a major financial crisis [Flow Chart 406.X Box 3].

The university president, with the approval of the Board of Trustees, may declare the existence of a major financial crisis and set the time frame for developing a plan [Flow Chart 406.X Box 4].

(3) Guiding principles and "targets"

The university president will then develop a set of over-arching principles to guide the university's response to the major financial crisis and establish "target" cuts for each academic and administrative unit. The university president will share these principles and "targets" with the university community [Flow Chart 406.X Box 5]. When establishing target reductions for each academic and administrative unit, the university president shall seek to minimize the negative consequences to the core missions of the university.

Comment [BFW18]: There is no guidance as to what these principles should be. Since the new proposed committee is guided by these principles it would seem some principles should be provided.

Changes need to save an amount of money which is related to the severity of the change.

If we are eliminating x% of faculty positions, we need to eliminate x% of administrative positions.

(4) Financial Crisis Advisory ~~Reduction~~ Committee

~~Concurrently~~ The university president will activate the Financial Crisis ~~Reduction~~ Advisory Committee (FCAC), which will consist of two Faculty Senate presidents appointed by the current Faculty Senate President; two faculty members appointed by the Budget and Faculty

Welfare Committee (BFW) upon consultation with the current Faculty Senate President; four administrators appointed by the university president; a Professional Employees Association (PEA) employee; and a Classified Employees Association (CEA) employee. ~~The university president will appoint the four administrators.~~ The respective presidents of the Professional Employees Association (PEA) and Classified Employees Association (CEA) will appoint representatives from their organizations [Flow Chart 406.X Box 6].

Following the over-arching principles established by the university president, ~~the academic colleges,~~ and administrative units will prepare plans to meet these “targets” [Flow Chart 406.X Box 7].

The Financial Crisis Advisory Committee (FCAC) will hold hearings with each dean or vice president and selected colleagues to review the plans submitted for their units. The intent of these hearings is to make sure the plans follow the over-arching principles and consider possible impacts on other academic or administrative units. If needed, the Financial Crisis Advisory Committee (FCAC) will ask the academic college or administrative unit to revise its plans and to return for another session [Flow Chart 406.X Boxes 8 and 9].

After meeting with all the academic and administrative units, the Financial Crisis Advisory Committee (FCAC) will formulate recommendations and present them to the university president [Flow Chart 406.x Box 10].

(5) University president’s plan

Considering these recommendations, the university president will formulate his or her own plan. The university president will then present this plan to the Faculty Senate, the Professional Employees Association (PEA), the Classified Employees Association (CEA), and the USU Executive Committee, and may revise the plan taking into account recommendations from those organizations. [Boxes 11 and 12]

(6) Board of Trustees

The university president will then present the final plan to the Board of Trustees for its ~~recommendations and~~ approval [Flow Chart 406.X Box 13].

(7) University community

With the approval of the Board of Trustees, the university president will announce the plan to the university community [Flow Chart 406.X Box 14].

5.2 Reduction in Status or Termination of Faculty due to a Major Financial Crisis

(1) ~~Plan for faculty reduction.~~ Plans to reduce in status or terminate faculty due to a major financial crisis.

As the process described in Policy 406.5.1 is taking place, the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost, shall, in consultation with the departments, department heads, and appropriate college committees, devise an orderly sequence of steps ~~which~~ that shall constitute ~~the college's faculty reduction~~ an academic unit's plan to reduce the status of, or terminate faculty. Included in such a plan will be explicit criteria by which individual faculty will be identified within the various programs under consideration for reduction or discontinuance. Program reductions or discontinuance are never to be declared with the aim of singling out a specific faculty member.

Insofar as feasible, the plan will emphasize the creation of various incentives such as voluntary retirement, early retirement, phased retirement, resignation, reduction in status, salary reduction, severance pay, or similar actions that will result in immediate or eventual cost savings for the university, and that are voluntarily entered into by individual faculty members rather than imposed by university authority.

When non-voluntary faculty reductions are necessary, unless explicitly stated and compelling academic reasons exist to the contrary, consideration will be given first to not filling existing faculty vacancies and not filling vacancies from resignations, retirements, or deaths. Consideration should next be given to the termination of instructional positions occupied by teaching assistants and faculty members with special appointments (adjunct, visiting, and temporary). Next, consideration should be given to the termination of faculty with term appointments. ~~Finally, consideration should be given to the termination of tenure-eligible or tenured faculty members. Ideally, within an academic program, the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, unless program elimination has occurred. The integrity of the tenure system will be respected unless overwhelming compelling evidence for strategic reductions is in the best interest of the university precludes this basic tenet.~~

Reduction in status or termination of tenured, tenure-eligible, or term appointment faculty members shall follow the procedures below.

(2) Review procedure.

Proposed faculty reduction plans shall be reviewed by faculty in affected ~~department and college faculties~~ academic units in light of ~~the~~ that unit's future strength, balance, quality of teaching, research, extension, and mission ~~of the department and college, tempered by concern for individual circumstances.~~ Faculty response to such reduction plans shall be forwarded in a timely manner to the appropriate department heads, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost.

The academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, shall notify, in writing, any faculty member who is the subject of a recommendation for reduction in status or termination. A faculty member who is so identified may respond in writing ~~at any point in~~ to the review with his or her comments

Comment [BFW19]: significant deletion at this point.

The sentence deleted is: "The integrity of the tenure system will be respected."

This sentence is use below, but with a qualifier that is much weaker than the provisions of the current code.

Comment [BFW20]: A equivocal addition of one word at this point changes the whole meaning of the sentence.

Comment [BFW21]: This is a substantially watered down statement concerning the limitations on retention of tenured faculty.

The existing code (406.4.4(1)) reads "except in extraordinary circumstances where a serious distortion of the specific academic program would otherwise result. The question of serious distortion shall be decided by the Educational Policies Committee and the Faculty Senate, with the approval of the president and the Board of Trustees. The finding of serious distortion shall be based on criteria which include, but are not limited to, essentiality of service and work, field of specialization, and maintenance of necessary programs or services."

All of this protection has been deleted. see page 17 of this proposed code change.

Comment [BFW22]: This deletion is limiting

becoming part of the record to be forwarded to the next level of review. Academic deans or the vice president for extension and agriculture, and where appropriate, the chancellor and regional campus deans, shall consider such a response ~~in consultation~~, and shall add ~~his/her~~ their separate recommendations and forward the complete file to the provost. ~~or the appropriate vice president.~~

The provost ~~or any appropriate vice provost~~ shall review the recommendations of the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean and any timely faculty response, as well as any appeals filed as in Policy 406.5.2(5).

(3) Appeal of recommendation for reduction in status or termination to the provost.

If a faculty member chooses to formally appeal to the provost, the faculty member must submit, within 5 (30) days of his or her receipt from the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, a notice of a recommendation for reduction in status or termination, a written notice of intent to appeal with the provost. A faculty member who has submitted notice of intent to appeal must file a formal written appeal with the provost within 10 (30) days of receipt of the notice of proposed reduction in status or termination. This written appeal must contain new relevant information not already considered in the review procedure (Policy 406.5.2(2)). The provost must respond in writing to the formal written appeal within 10 days.

[Not only is it unreasonable for the faculty to respond so quickly, but it isn't possible for deans to carefully consider all the submissions in such a short amount of time.]

(4) Notice of reduction in status or termination.

The provost shall forward the complete file with a recommendation to the university president. The provost shall also notify any affected faculty members in writing of his or her recommendation to the university president. Written notice from the university president or from the university president's designee will be given to a faculty member whose status is reduced or is terminated due to program elimination because of financial crisis as follows: (a) if the appointee is untenured and in the first year of service, notice shall be given at least three months prior to reduction in status or termination (b) if the appointee is untenured and in the second year of service, notice shall be given at least six months prior to reduction in status or termination; (c) if the appointee is tenured or is untenured but in the third or subsequent year of service, notice shall be given at least 12 months prior to reduction in status or termination; (d) the length of notice for faculty with term appointments (Policy 401.4) shall be parallel to that for the untenured faculty described above, with the exception of those term appointees with research or federal research ranks; termination of these faculty is coincident with and contingent upon the termination date of their extramural funding; if their funding extends beyond that of a discontinued program, they may be reassigned to another program. ~~If the president deems that circumstances warrant shorter times of notification of faculty reduction in status or termination, he or she may do so.~~

Comment [BFW23]: In the existing code, the days are 30 and 90. While it may be argued that the day should be reduced, this is draconian

Comment [BFW24]: This negates any notion of a time line defined above. This sentence should be removed.

The notice must include the following: (a) the effective date of termination; (b) a statement of the reasons for the declaration of financial crisis; (c) the basis, the procedures, and the criteria used for termination; (d) opportunities for appeal, including access to appropriate documentation, and the appealable issues as set forth in Policy 406.5.2(5) below; and (e) the reinstatement rights.

(5) Appeal and hearing for termination.

A faculty member may appeal a termination only for: (a) violation of his or her academic freedom, legal, statutory, or constitutional rights; (b) failure to comply with this policy, ~~the Board of Regents policy~~, or with the plan for personnel reduction approved by the ~~Board of Regents Trustees~~, or (c) arbitrary or capricious action. ~~Within 10 days of receiving a notice from the university president for reduction in status or termination, a faculty member who intends to appeal must notify, in writing, the university president and the Academic Freedom and Tenure Committee (AFT) of the intent to appeal. The formal appeal, with supporting documentation, must be filed with the Academic Freedom and Tenure Committee (AFT) within 30 days of receipt of notice from the university president. A hearing will then be conducted in a timely manner by the Academic Freedom and Tenure Committee (AFT), in accordance with procedures in Policy 407. Because of the need to address the financial crisis, the appeal process shall follow the steps in 407.6 except that it must be completed before the termination date of the faculty member. this appeal process will be used in lieu of grievance proceedings in 407 except for the timeline contained in that policy~~

Comment [BFW25]: The Board of Regents have the final approval NOT the trustees

Comment [BFW26]: Existing code allows 45 days. Again, a draconian reduction.

~~(6) Relocation-~~

~~During the grace period of three years, and with the assistance of the appropriate administrators (e.g., academic dean or vice president for extension and agriculture, or where appropriate, the chancellor or regional campus dean, and the provost) and with the consent of the receiving unit, every reasonable and good faith effort will be made to enable the affected faculty members who wish to do so to obtain suitable positions elsewhere in the university if qualified.~~

5.3 Reinstatement

~~Reinstatement of tenured and non-tenure track faculty members terminated as a result of financial crisis shall follow procedures in Section 406.4.3.~~

Comment [BFW27]: As discussed previously, this policy is significantly biased against tenured faculty.

406.6 FINANCIAL EXIGENCY

The university president may, in accordance with the procedures below and with the approval of the Board of Trustees, and ~~with the advice of the Faculty Senate, the Professional Employees Association (PEA), and the Classified Employees Association (CEA),~~ recommend to the Board of Regents that a state of financial exigency be declared. ~~Alternatively, a state of financial exigency may also be initiated declared unilaterally by the Board of Regents. In~~

Comment [BFW28]: BFW must be included 402.12.4

Plus in conflict with 406.6.1(1) and 406.6.1(2) of proposed change

either case, a state of financial exigency exists only after it has been declared by the Board of Regents.

The procedures for responding to a financial exigency are organized into three stages. Stage 1 includes procedures for declaring a financial exigency. Stage 2 involves planning for program elimination or reduction. Stage 3 includes plans for implementing reductions and/or program eliminations.

6.1 Stage 1. Procedures for Declaring Financial Exigency (Flow chart 406.Y)

(1) Initiation and consultation.

~~When~~ If the president of the university identifies a possible financial exigency, he or she shall inform the Budget and Faculty Welfare Committee (BFW), the Faculty Senate, the Professional Employees Association (PEA), and the Classified Employees Association (CEA) and the USU Executive Committee of the causes and the possible consequences of the declaration. The university president shall also ~~identify the measures considered by the university up to that point for dealing with the crisis, including a possible declaration of financial exigency, possible strategies that may be alternative to program reduction or program elimination, reasons why the university's financial circumstances may necessitate academic program reduction or elimination,~~ possible solutions and the time frame by which decisions must be made by ~~those entitled to participate in the consultative process, i.e., the~~ Budget and Faculty Welfare Committee (BFW), the Faculty Senate, the Professional Employees Association (PEA), the Classified Employees Association (CEA) and the USU Executive Committee [Flow chart 406.Y Boxes 1 and 2].

Comment [BFW29]: Why is this taken out? It is useful information

Time considerations will be critical when ~~the university must judge whether or not~~ a financial exigency exists. To the extent that such a judgment must be made in a brief time frame for a given situation, the time periods for the consultative process provided for in this policy [Flow Chart 406.Y Box 2] shall be specified by written notice from the university president giving those ~~for whom the consultative processes were provided~~ in the consultative process the ~~fullest~~ longest possible amount of time ~~under the circumstances~~. In that regard, the university president shall use his or her best efforts to secure the ~~fullest~~ longest period of time possible for consideration of these matters and the responses hereto.

(2) ~~Consultation~~ Receipt and consideration of recommendations.

Within the time period established by the university president and before making a recommendation to the Board of Regents, the university president shall receive and consider the comments and advice presented ~~on the matter~~ by the Budget and Faculty Welfare Committee (BFW), the Faculty Senate, the Professional Employees Association (PEA), the Classified Employees Association (CEA), and the USU Executive Committee. The Faculty Senate shall receive and consider the comments and advice of the Budget and Faculty Welfare Committee (BFW) as well as timely presented views by any other faculty or administrative

body, or individual faculty members, and shall make its recommendation to the university president concerning a declaration of financial exigency [Flow chart 406.Y Box 3].

(3) Declaration.

The university president shall submit ~~his or her~~ final recommendation on the declaration of financial exigency in writing to the Board of Trustees prior to submitting it to the Board of Regents [Flow chart 406.Y Boxes 4 and 5]. ~~The university president~~ shall attach the written comments and recommendations of the Faculty Senate, the Professional Employees Association (PEA), ~~and~~ the Classified Employees Association (CEA) ~~and the USU Executive Committee~~. The university president shall also send a copy of ~~his or her~~ final recommendations to the Faculty Senate, the Professional Employees Association (PEA), ~~and~~ the Classified Employees Association (CEA) ~~and the USU Executive Committee~~.

Upon consideration of the university president's recommendation, the Board of Regents shall make a final decision regarding ~~declare~~ the declaration of financial exigency [Flow chart 406.Y Box 6].

6.3 2 Financial Exigency: Stage 2. Planning for Program Reduction or Elimination (Flow chart 406.Y)

(1) ~~Iterative process~~ Plan Development.

After a declaration of financial exigency by the Board of Regents, ~~an iterative~~ process of university program elimination or reduction ~~planning may~~ shall begin. The intent of this process is to ensure ~~the continuing~~ integrity of ~~academic programs~~ and the overall mission of the university (see Policy 103).

Comment [BFW30]: Why take this out? It is the reason for the university.

~~(2) Administrative and support services.~~

The university president will ask the provost and the appropriate vice presidents to develop reduction and/or elimination plans in ~~both academic and administrative~~ ~~the~~ areas of ~~the~~ university ~~wide support services and administrative programs~~ [Flow chart 406.Y Box 7]. ~~The~~ development of plans for academic program reduction or elimination ~~plans~~ must involve consultation among departmental and college faculties to identify areas under consideration for academic program reduction or elimination. The following criteria and information sources shall be considered by those making judgments about which programs should be reduced or eliminated because of financial exigency: (a) legal mandate; (b) the general academic quality of the program with regard to scholarship, teaching, and service; (c) the extent of importance that the program has for the mission of the university; (d) the mission and goals of the university; (e) ~~Graduate Council review~~; ~~(f) findings~~ reports by national accreditation bodies; (f) reports by appropriate national ranking sources; (g) ~~such~~ other systematically-derived information, based on long-term considerations of program quality, as may be available; (h) the capacity of the program to generate external funding; (i) ~~faculty/student~~ student/faculty ratios; (j) student credit hours generated/faculty FTE; (k) cost effectiveness when compared to similar programs at other universities; and (l) relationship to

Comment [BFW31]: This is the first step in the existing code. Why is it not, in this revision. Consider for example eliminating such things as the motor pool or athletics.

the Board of Regents Master Plan for Higher Education in the State of Utah. The above list is not ranked and is not inclusive-all encompassing.

~~The first step in the planning process shall be for every academic and administrative unit of the university to assess its programs operations with regard to legal mandate, essentiality to the mission/role of the university, and quality. During subsequent steps, support services shall be reduced to the extent feasible while preventing significant impairment of the university's ability to fulfill its mission/role~~

~~Such Plans will be reviewed by the Budget and Faculty Welfare Committee (BFW), the Council of Deans, the Faculty Senate, relevant committees of the Professional Employees Association (PEA) and the Classified Employees Association (CEA), and the USU Executive Committee, and will be integrated with academic elimination or reduction plans (see Section 406.6.3 (3)) in light of the overall academic mission of the university. If a plan calls for the reduction or elimination of a specific academic unit, associated administrative units university wide support services must be re-evaluated and reduced as appropriate. Any reduction, or elimination of an academic unit program, center, institute, school, department, college, or regional campus, or site, shall be reviewed by the Budget and Faculty Welfare Committee (BFW); the Educational Policies Committee (EPC); the Graduate Council, where appropriate; the faculty members and/or faculty committee most directly involved in the program; the appropriate department head or supervisor, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean; relevant college committees or councils; relevant committees of the Professional Employees Association (PEA) and the Classified Employees Association (CEA); and relevant student advisory committees.~~

~~The views of these bodies shall be forwarded to the Faculty Senate for its consideration within the time periods prescribed by the university president. The conclusions of the above bodies and the Faculty Senate and all of the groups, committees, and individuals listed above shall be forwarded to the provost who shall consider them and forward them, along with his or her own recommendation, to the university president. When the university president's recommendations are submitted to the Board of Trustees and the Board of Regents, they shall be accompanied by the Faculty Senate's recommendations. After the Board of Trustees and the Board of Regents has have approved the plan by the university to eliminate a program, the appropriate academic or regional campus dean, vice president, or chancellor responsible for the academic unit of the program, center, institute, school, department, college, or regional campus, or site shall give written notice of the elimination to all persons, including students, in the program, center, institute, school, department, college, or regional campus, or site.[Flow chart 406.Y Box 8].~~

The university president will take into consideration recommendations for revisions to the proposed plan for the reduction and/or elimination plans in of academic the areas of university wide support services and administrative units programs received from the, the Council of Deans, Budget and Faculty Welfare Committee (BFW), the Faculty Senate, the relevant committees of the Professional Employees Association (PEA) and the Classified

Comment [BFW32]: In the existing code this was the second consideration for cuts, which if we are to protect academic programs, makes sense.

So why is this lumped in with administrative and support services?

Comment [BFW33]: Cut an important sentence.

Any reduction in support services shall precede further reduction or elimination of academic programs. 406.4.3(3) last para.

Comment [BFW34]: Should be part of the written record

Employees Association (CEA), and the USU Executive Committee [Flow chart 406.Y, Box 9].

If the university president makes revisions to the reduction and elimination plans based on recommendations by the Faculty Senate, the Budget and Faculty Welfare Committee (BFW), relevant committees of the Professional Employees Association (PEA) and the Classified Employees Association (CEA), and the USU Executive Committee, then the revised plan will be reviewed by the affected committees or associations. The university president will then consider recommendations from this review. ~~Revised plans will be reviewed by appropriate committees or associations and an opportunity for additional recommendations for revisions provided~~ [Flow chart 406.Y, Box 10].

Once plans for the reduction and/or elimination of programs in academic and administrative units ~~program~~ have been finalized, the university president will recommend the final plan to the Board of Trustees and then the Board of Regents for approval [Flow chart 406.Y, Box 11]. The Board of Trustees and the Board of Regents, in that order, will consider approval of the recommended plans for reduction and/or elimination in academic and administrative programs the university president submitted [Flow chart 406.Y, Box 12] .

Once plans for program reduction and/or elimination in academic and administrative units areas have been approved by the Board of Regents, the university president will deliver written notice to all affected by the plan [Flow chart 406.Y, Box 13].

~~(3) Academic program elimination or reduction.~~

~~The university president, after consultation with the USU Executive Committee, the Council of Deans, the Faculty Senate, and the Budget and Faculty Welfare Committee (BFW), shall direct the provost to develop plans for implementation of academic program elimination or reduction. These plans shall include a timetable for their implementation [Flow chart 406.Y Box 7].~~

~~The development of plans for academic program elimination or reduction plans must involve consultation among departmental and college faculties to identify areas under consideration for academic program eliminations or reductions. The following criteria and information sources shall be considered by those making judgments about which programs should be eliminated or reduced because of financial exigency: (a) legal mandate; (b) the general academic quality of the program with regard to scholarship, teaching, and service; (c) the extent of importance that the program has for the mission of the university; (d) the mission and goals of the university; (e) Graduate Council review; (f) findings reports by national accreditation bodies; (g) reports by appropriate national ranking sources; (h) such other systematically derived information, based on long term considerations of program quality, as may be available; (i) the capacity of the program to generate external funding; (j) faculty/student/faculty ratios; (k) cost effectiveness when compared to similar programs at other universities; and (l) relationship to the Board of Regents Master Plan for Higher Education in the State of Utah. The above list is not ranked and is not inclusive.~~

~~(4) Review.~~

~~If a plan calls for the elimination or reduction of a specific program, center, institute, school, department, college, or regional campus, or site, that element of the plan shall be reviewed by the Budget and Faculty Welfare Committee (BFW); the Educational Policies Committee (EPC); the Graduate Council, where appropriate; the faculty members and/or faculty committee most directly involved in the program; the appropriate department head or supervisor, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean; relevant college committees or councils; relevant committees of the Professional Employees Association (PEA) and the Classified Employees Association (CEA); and relevant student advisory committees. The views of these bodies shall be forwarded to the Faculty Senate for its consideration within the time periods prescribed by the university president. The conclusions of the above bodies and the Faculty Senate shall be forwarded to the provost who shall consider them and forward them, along with his or her own recommendation, to the university president. When the university president's recommendations are submitted to the Board of Trustees and the Board of Regents, they shall be accompanied by the Faculty Senate's recommendations. After the Board of Trustees and the Board of Regents has have approved the plan by the university to eliminate a program, the appropriate academic or regional campus dean, vice president, or chancellor of the program, center, institute, school, department, college, or regional campus, or site shall give written notice of the elimination to all persons, including students, in the program, center, institute, school, department, college, or regional campus, or site.~~

6.3 Stage 3. Implementation of Plans for Reduction and/or Program Elimination (Flow chart 406.Y).

(1) Development of Implementation Plans.

The university president will direct the provost and vice presidents to develop a plan with a timetable for the implementation of the plan to reduce and/or eliminate academic or administrative ~~units~~ programs [Flow chart 406.Y, Box 14].

The development of implementation plans for reduction and/or elimination of academic and administrative programs will include consultation with affected deans, departments, and faculty [Flow chart 406.Y, Box 15].

(2) Review of Implementation Plans.

The university president will provide an opportunity to review implementation plans for the reduction and/or elimination of academic or administrative ~~units~~ programs by all employees affected by the plan [Flow chart 406.Y, Box 16].

Recommendations from ~~reviews of~~ affected employees who wish to respond will be sent to the Faculty Senate, Professional Employee Association (PEA), and the Classified Employees Association (CEA) [Flow chart 406.Y, Box 17].

The Faculty Senate, Professional Employee Association (PEA), and the Classified Employees Association (CEA) will submit recommendations for revisions to implementation plans to the provost and those, together with all ~~other~~ previous recommendations, will be submitted together with the provost’s recommendations to the university president [Flow chart 406.Y, Boxes 18 and 19].

(§ 3) Timetable.

~~Once financial exigency has been declared,~~ The university president shall submit to the Faculty Senate, Professional Employee Association (PEA), and the Classified Employees Association (CEA) a timetable for relieving the state of financial exigency. ~~Further, he or she~~ and shall periodically report progress in this endeavor to these same bodies and the Trustees and Regents [Flow chart 406.Y, Box 20]. ~~Faculty Senate on a quarterly basis.~~

6.4 Reductions in Status; Terminations

~~The procedures described in Policy 406.5.2 shall apply; . except that the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure except in extraordinary circumstances where a serious distortion (see Section 406.2.7) of the specific academic program would otherwise result. The question of serious distortion shall be decided by the Educational Policies Committee (EPC) and the Faculty Senate, with the approval of the university president and the Board of Trustees. The finding of serious distortion shall be based on criteria which include, but are not limited to, essentiality of service and work, field of specialization, and maintenance of necessary programs or services.~~

Comment [BFW35]: AGAIN, a reduction in the rights and benefits of tenure.

6.5 Reinstatement

~~Reinstatement of tenured and non-tenure track faculty members terminated as a result of financial exigency shall follow procedures in Section 406.4.3.~~

Comment [BFW36]: AGAIN, a reduction in the rights and benefits of tenure.

406.75 REINSTATEMENT RIGHTS

75.1 For Tenured Faculty

~~Tenured faculty members terminated through program discontinuance shall, for a period of three years following the date of their final salary payment, receive preferential consideration among candidates with comparable qualifications for any vacant and funded university position for which they apply and are qualified. Upon request of the affected faculty member, during a grace period of three years, with the assistance of the appropriate administrators (e.g., academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost) and with the consent of the receiving department unit, every a reasonable and good faith effort will be made to enable affected faculty members who wish to do so, to obtain suitable positions for which they are qualified elsewhere in the university for which they are qualified during a grace period of three years.~~

In cases of termination of tenured faculty members, the position concerned may not be filled by replacement within a period of three years from the effective date of the termination unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer was extended.

75.2 For Non-Tenured Faculty

In cases of termination of non-tenured faculty members, the position concerned may not be filled by replacement within a period of one year from the effective date of the termination unless the person terminated has been offered a return to employment in that position and the person terminated has not accepted the offer within 30 calendar days.

75.3 Termination of Offer of Reinstatement

If an offer of reinstatement is not accepted within the timelines stated above, the university and the Board of Regents have no further obligation to the person terminated. After the expiration of the applicable reinstatement period as provided herein, the institution and the Board of Regents have no further obligation to the affected faculty.

75.4 Faculty Status and Benefits after Reinstatement

A faculty member who has been terminated and who accepts reinstatement in the same position will resume the rank and tenure status held at the time of termination, be credited with any sick leave accrued prior to the date of the termination, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave which that the faculty member had accrued prior to the date of termination and for which the faculty member has not received payment.

BFW minimal fixes to the proposed change to 406.

The following section shows the changes or reinstatements of deleted sections of the existing code that we deem mandatory in any proposed code change. These insertions or reinstatements are shown in a BOLD green font.

POLICY MANUAL

FACULTY

Number 406

Subject: **Suspension of Enrollment**, Program Discontinuance, Financial Crisis and Financial Exigency

Effective Date: July 1, 1997

Revision: July 1, 1999, March 6, 2009, August 21, 2009

Date of Last Revision: July 8, 2011

406.1 INTRODUCTION

This section of the policy manual specifies the procedures for ~~suspending enrollment~~, discontinuing a program for academic reasons; ~~suspending enrollment~~, determining whether the university faces a major financial crisis ~~not definable as financial exigency~~; responding to a major financial crisis; determining whether ~~at a particular moment~~ the university faces ~~a state of~~ financial exigency; responding to financial exigency; and reducing the status of, or terminating faculty members due to program discontinuance, **documented financial crisis, or financial exigency. Reduction in status of tenured faculty members shall only occur for reasons of program discontinuance, financial crisis, or bona fide financial exigency.** In all of the decision making processes described in this section, all parties will act in a ~~timely~~ manner that is respectful of both the principle of shared governance and the need for the institution to take strategic and timely actions to fulfill its mission **as per Section 103** of the code. The timetable for processes described in this section will be set by the university president.

406.2 DEFINITIONS

2.1 Academic Program.

An academic program has an identifiable teaching, research, or other academic mission and may operate within one or more academic units. An academic program must fulfill one or more of these criteria: (a) offer or administer a degree, certificate, or some other credential;

(b) have an identifiable curriculum or be formally described in current university catalogs or other publications; or (c) be designated a “program” by specific faculty decision and have an identified group of one or more faculty.

2.2 Suspension of Enrollment.

Suspension of enrollment is an action short of program discontinuance that, if not reversed, will lead to discontinuance, and which refers to the suspension of enrollment in a major subject, a minor subject where there is no corresponding major, a certificate program, or a program awarding a credential certifying completion. Suspension of enrollment does not lead to reduction in status or termination of faculty in the program.

2.3 Program Discontinuance.

Program discontinuance for academic reasons ~~under this policy~~ means the cessation of a program, center, institute, school, department, academic college, or regional campus ~~or site~~ based upon educational and academic considerations. For the purposes of Policy 406.2, educational and academic considerations do not include cyclical or temporary variations in enrollment and/or budgets; but must reflect long-range judgments that the basic teaching, research, and extension mission of the university will be strengthened by the discontinuance. Program discontinuance does not preclude the reallocation of resources to other academic programs with higher priority based upon educational and academic considerations. Program discontinuance may entail the reduction in status or termination of faculty.

2.4 Major Financial Crisis.

To constitute a major financial crisis, a situation facing the university shall ~~(a) be significantly and demonstrably~~ substantially more than a minor, temporary, and/or cyclical fluctuation in operating funds; and ~~(b)~~ involve substantial risk to the survival of departments, colleges, or other major academic components of the university. A substantial risk to survival is considered one where a substantial reduction occurs in: ~~(1, a)~~ the ability to fulfill the mission of the academic unit, ~~(2, b)~~ the number of students served by the academic unit, or ~~(3, c)~~ the number and quality of course offerings. A major financial crisis may entail the reduction in status or termination of faculty.

2.4 (a) Substantial Risk

Substantial risk is defined as

The BFW committee recommends that serious consideration be given to “THE ROLE OF THE FACULTY IN CONDITIONS OF FINANCIAL EXIGENCY” (AAUP January 2013) We especially suggest in this context consideration of Appendix II measuring financial distress.

2.5 Financial Exigency.

Financial exigency is an existing or imminent ~~very~~ severe financial crisis that: (a) threatens the mission of the institution as a whole, ~~that~~ (b) requires programmatic reductions or closings that may entail reductions in status or termination of faculty to enable the institution to accomplish its mission, and ~~that~~ (c) that cannot be alleviated by less drastic means.

This section needs to be expanded to include metrics such as those use by the Ohio State Board of Regents.

2.6 Reduction in Status.

Reduction in status is a decrease in the length of the contract period and/or the percentage of time that a faculty member is employed by the university.

2.7 Serious Distortion of an Academic Program.

A serious distortion of an academic program shall be deemed to occur when the faculty remaining in the program would not be qualified to meet generally accepted program standards (Section 406.4.1(3)).

2.8 Termination

Termination is defined as per 406.2.3(2)

406.3 SUSPENSION OF ENROLLMENT

3.1 Procedure

(1) Initiation.

After full consultation with the department faculty and approval by the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, a department head that decides to suspend enrollment, must notify the Educational Policies Committee (EPC) as soon as the decision has been made.

(2) Review.

The Educational Policies Committee (EPC) will review the proposed suspension of enrollment for its effect on other academic programs of the university. The committee will hold hearings at which all constituencies affected, including students, faculty, and representatives from other departments affected by the proposed action, ~~once notified~~, have the opportunity to testify. At the conclusion of its deliberations, the Educational Policies Committee (EPC) will recommend approval or disapproval of suspension of enrollment to the Faculty Senate. The Faculty Senate shall make a recommendation to the **university president**

~~provost~~ who shall consult the university president. This process shall be concluded within 90 days following notification of the Educational Policies Committee (EPC). Suspension is granted by the university president subject to the legal obligation, if any, of the university to permit students already enrolled in the program to complete their course of study.

(3) Time limitation.

At any time up to three years after a suspension of enrollment has been granted, it may be reversed by the department, upon approval of the Educational Policies Committee, the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the president. ~~reversed by approval of the provost following the after receiving the recommendation of the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean.~~ If suspension has not been reversed within this three-year period, program discontinuance must be initiated.

406.4 PROGRAM DISCONTINUANCE FOR ACADEMIC REASONS

4.1 Decision-Making Process

(1) Initiation.

Consideration of the possible discontinuance of an academic program may be initiated at any time by the faculty or a duly appointed faculty committee of that program; the faculty or an appropriate committee of the center, institute, school, department, college, or other academic unit of that program; ~~the~~ Graduate Council; the appropriate department head, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean-or by the provost or president of the university. **Steps toward the discontinuance of a program do not require a prior suspension of enrollment in that program.** If a program discontinuance ~~may~~ results in the **reduction in status or termination** of faculty, the person or group initiating the consideration of discontinuance shall prepare, and submit to the provost, a memorandum ~~which that:~~ (a) clearly identifies the program; (b) states explicit criteria by which faculty are identified with the program, (c) states the reasons, with respect to the university's mission and goals, for recommending discontinuance; (d) assesses the probable consequences for faculty, related programs, and the university in general; and (e) suggests a timetable for accomplishing discontinuance. **Program discontinuance is never to be declared with the aim of singling out a specific faculty member.**

(2) Distribution.

The provost shall distribute copies of the memorandum, embodying an initial or an amended proposal for program discontinuance, to: (a) the faculty members most directly involved in the academic program proposed for discontinuance; (b) the appropriate department head, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean; (c) relevant members of departments and colleges; (d)

members of relevant college committees or councils; (e) ~~the Educational Policies Committee (EPC)~~ ~~(f)~~ the members of Budget and Faculty Welfare Committee (BFW); and ~~(g f)~~ the relevant student college senators.

(3) Consultation.

The groups above shall forward comments and recommendations to the appropriate academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean. He or she shall forward the comments and a recommendation to the provost, and, where appropriate, to the Graduate Council. The Graduate Council may review this material and make a recommendation to the provost. After receiving and considering the recommendations and comments, the provost shall submit the proposal, the comments, and a recommendation to the Educational Policies Committee (EPC). The Educational Policies Committee's (EPC) recommendation shall be subject to review and debate by the Faculty Senate [Policy 402.12.6(1)]. All comments, recommendations, and supporting material shall be available to the Faculty Senate. ~~for its perusal.~~

(4) Final recommendation.

The Faculty Senate's recommendations shall be forwarded to the university president for consideration. The university president shall submit a final recommendation in writing to the Board of Trustees and the Board of Regents and shall attach the written comments and recommendations of the Faculty Senate.

(5) Notice of program discontinuance.

After the Board of Regents has approved a proposal by the university to discontinue a program, the appropriate academic dean, vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean ~~of the program, center, institute, school, department, academic college, or regional campus, or site~~ shall give written notice of the discontinuance to all persons in the ~~program, center, institute, school, department, academic college, or regional campus~~ academic unit. A minimum of one full year, beginning July 1, shall pass from the time a final decision is made to close an academic program to the actual program discontinuance.

4.2 Faculty Reduction in Status or Termination due to Program Discontinuance

(1) Notice of reduction in status or termination.

In addition to the general notice of program discontinuance in Policy 406.4.1(5), if the program discontinuance results in reduction in status or termination of faculty, ~~then~~ the university president shall give tenured and tenure-track faculty members in the discontinued ~~program, center, institute, school, department, academic college, or regional campus, or site~~ academic program formal notice of reduction in status or termination as follows: (a) if the appointee is untenured and in the first year of service, notice shall be given at least three months prior to reduction in status or termination; (b) if the appointee is untenured and in the

second year of service, notice shall be given at least six months prior to reduction in status or termination; (c) if the appointee is tenured or is untenured but in the third or subsequent years of service, notice shall be given at least 12 months prior to reduction in status or termination; (d) the length of notice for faculty with term appointments (Policy 401.4) shall be parallel to that for the untenured faculty described above, with the exception of those term appointees with research or federal research ranks; termination of these faculty is coincident with and contingent upon the termination date of their extramural funding; if their funding extends beyond that of a discontinued program, they may be reassigned to another program; and (e) appointees with specialized functions as defined in Policy 401.5 shall be parallel to that for the tenured and tenure-eligible faculty described above.

(2) Relocation

During a grace period of three years, and with the assistance of the appropriate administrators (e.g., academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost) and the consent of the receiving department, every reasonable and good faith effort will be made to enable affected faculty members to obtain suitable positions for which they are qualified elsewhere in the university for which they are qualified. Tenured faculty members terminated through program discontinuance shall, for a period of three years following the date of their final salary payment, receive preferential consideration among candidates with comparable qualifications for any vacant and funded university position for which they apply and are qualified.

(3) Faculty employment after program reinstatement.

If a terminated program or position is reinstated, tenured faculty members terminated through program discontinuance shall have the right of immediate reinstatement for a period of three years following the final salary payment.

4.3 Reinstatement

(1) Tenured Faculty.

~~Tenured faculty members terminated through program discontinuance shall, for a period of three years following the date of their final salary payment, receive preferential consideration among candidates with comparable qualifications for any vacant and funded university position for which they apply and are qualified. Upon request of the affected faculty member, during a grace period of three years, with the assistance of the appropriate administrators (e.g., academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost) and with the consent of the receiving department unit, every a reasonable and good faith effort will be made to enable affected faculty members to obtain suitable positions for which they are qualified elsewhere in the university for~~

~~which they are qualified. The receiving department or academic unit must consent to the appointment before it is made.~~

In cases of termination of tenured faculty members, the position concerned may not be filled by replacement within a period of three years from the effective date of the termination unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer was extended.

(2) Non-Tenured Faculty.

In cases of termination of non-tenured faculty members, the position concerned may not be filled by replacement within a period of one year from the effective date of the termination unless the person terminated has been offered a return to employment in that position and the person terminated has not accepted the offer within 30 calendar days.

(3) Termination of Offer of Reinstatement.

If an offer of reinstatement is not accepted within the timelines stated above, the university and the Board of Regents have no further obligation to the person terminated. ~~After the expiration of the applicable reinstatement period as provided herein, the institution and the Board of Regents have no further obligation to the affected faculty.~~

(4) Faculty Status and Benefits after Reinstatement.

A faculty member who has been terminated and who accepts reinstatement in the same position will resume the rank and tenure status held at the time of termination, be credited with any sick leave accrued prior to the date of the termination, be paid a salary commensurate with the rank and length of previous service, **and will be credited with any annual leave which that the faculty member had accrued prior to the date of termination and for which the faculty member has not received payment.**

406.5 MAJOR FINANCIAL CRISIS

5.1 Procedures

(1) Initiation.

If the president of the university identifies a possible major financial crisis (**METRICS?**), he or she shall inform and consult with the Budget and Faculty Welfare Committee (BFW), the Faculty Senate, the Professional Employees Association (PEA), and the Classified Employees Association (CEA) concerning the causes and the possible consequences of this financial crisis. The university president shall also identify possible solutions and alternatives, the time

frame by which decisions must be made by those entitled to participate in the consultative process [Flow Chart 406.X Boxes 1 and 2].

(1)(a) The metrics defining a major financial crisis are (see AAUP white paper)

(2) Declaration

Having informed and consulted with the above bodies, the university president will seek the approval of the Board of Trustees to declare a major financial crisis [Flow Chart 406.X Box 3].

The university president, with the approval of the Board of Trustees, may declare the existence of a major financial crisis and set the time frame for developing a plan [Flow Chart 406.X Box 4].

(3) Guiding principles and “targets”

The university president will then develop a set of over-arching principles to guide the university’s response to the major financial crisis and establish “target” cuts for each academic and administrative unit. The university president will share these principles and “targets” with the university community [Flow Chart 406.X Box 5]. When establishing target reductions for each academic and administrative unit, the university president shall seek to minimize the negative consequences to the core missions of the university **as per section 103.**

(3a) The over-arching principles will include ...

At the very least the proposed plans MUST clearly state how the changes will create the needed funds.

The integrity of the tenure system will be respected.

If we are eliminating x% of faculty positions, we need to eliminate x% of administrative positions

(4) Financial Crisis Advisory ~~Reduction~~ Committee

~~Concurrently~~ The university president will activate the Financial Crisis ~~Reduction~~ Advisory Committee (FCAC), which will consist of two Faculty Senate presidents appointed by the current Faculty Senate President; two faculty members appointed by the Budget and Faculty Welfare Committee (BFW) upon consultation with the current Faculty Senate President; four administrators appointed by the university president; a Professional Employees Association (PEA) employee; and a Classified Employees Association (CEA) employee. ~~The university president will appoint the four administrators.~~ The respective presidents of the Professional Employees Association (PEA) and Classified Employees Association (CEA) will appoint representatives from their organizations [Flow Chart 406.X Box 6].

Following the over-arching principles established by the university president, ~~the academic colleges,~~ and administrative units will prepare plans to meet these “targets” [Flow Chart 406.X Box 7].

The Financial Crisis Advisory Committee (FCAC) will hold hearings with each dean or vice president and selected colleagues to review the plans submitted for their units. The intent of these hearings is to make sure the plans follow the over-arching principles and consider possible impacts on other academic or administrative units. If needed, the Financial Crisis Advisory Committee (FCAC) will ask the academic college or administrative unit to revise its plans and to return for another session [Flow Chart 406.X Boxes 8 and 9].

After meeting with all the academic and administrative units, the Financial Crisis Advisory Committee (FCAC) will formulate recommendations and present them to the university president [Flow Chart 406.x Box 10].

(5) University president’s plan

Considering these recommendations, the university president will formulate his or her own plan. The university president will then present this plan to the Faculty Senate, the Professional Employees Association (PEA), the Classified Employees Association (CEA), and the USU Executive Committee, and may revise the plan taking into account recommendations from those organizations. [Boxes 11 and 12]

(6) Board of Trustees

The university president will then present the final plan to the Board of Trustees for its ~~recommendations and~~ approval [Flow Chart 406.X Box 13].

(7) University community

With the approval of the Board of Trustees, the university president will announce the plan to the university community [Flow Chart 406.X Box 14].

5.2 Reduction in Status or Termination of Faculty due to a Major Financial Crisis

(1) ~~Plan for faculty reduction.~~ Plans to reduce in status or terminate faculty due to a major financial crisis.

As the process described in Policy 406.5.1 is taking place, the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost, shall, in consultation with the departments, department heads, and appropriate college committees, devise an orderly sequence of steps ~~which~~ that shall constitute ~~the college’s faculty reduction~~ an academic unit’s plan to reduce the status of, or terminate faculty. Included in such a plan will be explicit criteria by which individual faculty

will be identified within the various programs under consideration for reduction or discontinuance. Program reductions or discontinuance are never to be declared with the aim of singling out a specific faculty member.

Insofar as feasible, the plan will emphasize the creation of various incentives such as voluntary retirement, early retirement, phased retirement, resignation, reduction in status, salary reduction, severance pay, or similar actions that will result in immediate or eventual cost savings for the university, and that are voluntarily entered into by individual faculty members rather than imposed by university authority.

When non-voluntary faculty reductions are necessary, unless explicitly stated and compelling academic reasons exist to the contrary, consideration will be given first to not filling existing faculty vacancies and not filling vacancies from resignations, retirements, or deaths. Consideration should next be given to the termination of instructional positions occupied by teaching assistants and faculty members with special appointments (adjunct, visiting, and temporary). Next, consideration should be given to the termination of faculty with term appointments. **The integrity of the tenure system will be respected. Within an academic program, the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the specific academic program would otherwise result. The question of serious distortion shall be decided by the Educational Policies Committee and the Faculty Senate, with the approval of the president and the Board of Trustees. The finding of serious distortion shall be based on criteria which include, but are not limited to, essentiality of service and work, field of specialization, and maintenance of necessary programs or services.**

~~Finally, consideration should be given to the termination of tenure-eligible or tenured faculty members. Ideally, within an academic program, the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, unless program elimination has occurred. The integrity of the tenure system will be respected unless overwhelming compelling evidence for strategic reductions is in the best interest of the university precludes this basic tenet.~~

Reduction in status or termination of tenured, tenure-eligible, or term appointment faculty members shall follow the procedures below.

(2) Review procedure.

Proposed faculty reduction plans shall be reviewed by faculty in affected ~~department and college faculties~~ academic units in light of ~~the~~ that unit's future strength, balance, quality of teaching, research, extension, and mission of ~~the department and college, tempered by concern for individual circumstances.~~ Faculty responses to such reduction plans shall be forwarded in a timely manner to the appropriate department heads, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost.

The academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, shall notify, in writing, any faculty member who is the subject of a recommendation for reduction in status or termination. A faculty member who is so identified may respond in writing **at any point** to the review with his or her comments becoming part of the record to be forwarded to the next level of review. Academic deans or the vice president for extension and agriculture, and where appropriate, the chancellor and regional campus deans, shall consider such a response ~~in consultation~~, and shall add ~~his/her~~ their separate recommendations and forward the complete file to the provost. ~~or the appropriate vice president.~~

The provost ~~or any appropriate vice provost~~ shall review the recommendations of the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean and any timely faculty response, as well as any appeals filed as in Policy 406.5.2(5).

(3) Appeal of recommendation for reduction in status or termination to the provost.

If a faculty member chooses to formally appeal to the provost, the faculty member must submit, within **30** days of his or her receipt from the academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, a notice of a recommendation for reduction in status or termination, a written notice of intent to appeal with the provost. A faculty member who has submitted notice of intent to appeal must file a formal written appeal with the provost within **30** days of receipt of the notice of proposed reduction in status or termination. This written appeal must contain new relevant information not already considered in the review procedure (Policy 406.5.2(2)). The provost must respond in writing to the formal written appeal within 10 days.

(4) Notice of reduction in status or termination.

The provost shall forward the complete file with a recommendation to the university president. The provost shall also notify any affected faculty members in writing of his or her recommendation to the university president. Written notice from the university president or from the university president's designee will be given to a faculty member whose status is reduced or is terminated due to program elimination because of financial crisis as follows: (a) if the appointee is untenured and in the first year of service, notice shall be given at least three months prior to reduction in status or termination (b) if the appointee is untenured and in the second year of service, notice shall be given at least six months prior to reduction in status or termination; (c) if the appointee is tenured or is untenured but in the third or subsequent year of service, notice shall be given at least 12 months prior to reduction in status or termination; (d) the length of notice for faculty with term appointments (Policy 401.4) shall be parallel to that for the untenured faculty described above, with the exception of those term appointees with research or federal research ranks; termination of these faculty is coincident with and contingent upon the termination date of their extramural funding; if their funding extends beyond that of a discontinued program, they may be reassigned to another program. **If the president deems that circumstances warrant shorter times of notification of faculty reduction in status or termination, he or she may do so.**

The notice must include the following: (a) the effective date of termination; (b) a statement of the reasons for the declaration of financial crisis; (c) the basis, the procedures, and the criteria used for termination; (d) opportunities for appeal, including access to appropriate documentation, and the appealable issues as set forth in Policy 406.5.2(5) below; and (e) the reinstatement rights.

(5) Appeal and hearing for termination.

A faculty member may appeal a termination only for: (a) violation of his or her academic freedom, legal, statutory, or constitutional rights; (b) failure to comply with this policy, ~~the Board of Regents policy~~, or with the plan for personnel reduction approved by the Board of **Regents Trustees**, or (c) arbitrary or capricious action. Within 15 days of receiving a notice from the university president for reduction in status or termination, a faculty member who intends to appeal must notify, in writing, the university president and the Academic Freedom and Tenure Committee (AFT) of the intent to appeal. The formal appeal, with supporting documentation, must be filed with the Academic Freedom and Tenure Committee (AFT) within 35 days of receipt of notice from the university president. A hearing will then be conducted in a timely manner by the Academic Freedom and Tenure Committee (AFT), in accordance with procedures in Policy 407. Because of the need to address the financial crisis, the appeal process shall follow the steps in 407.6 except that it must be completed before the termination date of the faculty member. ~~this appeal process will be used in lieu of grievance proceedings in 407 except for the timeline contained in that policy~~

~~(6) Relocation-~~

~~During the grace period of three years, and with the assistance of the appropriate administrators (e.g., academic dean or vice president for extension and agriculture, or where appropriate, the chancellor or regional campus dean, and the provost) and with the consent of the receiving unit, every reasonable and good faith effort will be made to enable the affected faculty members who wish to do so to obtain suitable positions elsewhere in the university if qualified.~~

5.3 Reinstatement

Reinstatement of tenured and non-tenure track faculty members terminated as a result of financial crisis shall follow procedures in Section 406.4.3.

406.6 FINANCIAL EXIGENCY

The university president may, in accordance with the procedures below and with the approval of the Board of Trustees, and **with** the advice of the Faculty Senate, **Budget and Faculty Welfare (BFW)**, the Professional Employees Association (**PEA**), and the Classified Employees Association (**CEA**), recommend to the Board of Regents that a state of financial

exigency be declared. ~~Alternatively, a state of financial exigency may also be initiated declared unilaterally by the Board of Regents. In either case, a state of financial exigency exists only after it has been declared by the Board of Regents.~~

The procedures for responding to a financial exigency are organized into three stages. Stage 1 includes procedures for declaring a financial exigency. Stage 2 involves planning for program elimination or reduction. Stage 3 includes plans for implementing reductions and/or program eliminations.

6.2 Stage 1. Procedures for Declaring Financial Exigency (Flow chart 406.Y)

(3) Initiation ~~and consultation.~~

~~When~~ If the president of the university identifies a possible financial exigency, he or she shall inform the Budget and Faculty Welfare Committee (BFW), the Faculty Senate, the Professional Employees Association (PEA), and the Classified Employees Association (CEA) ~~and the USU Executive Committee~~ of the causes and ~~the~~ possible consequences of the declaration. The university president shall also **identify the measures considered by the university up to that point for dealing with the crisis, including a possible declaration of financial crisis, possible strategies that may be alternative to program reduction or program elimination, reasons why the university's financial circumstances may necessitate academic program reduction or elimination, possible solutions,** and the time frame by which decisions must be made by ~~those entitled to participate in the consultative process, i.e.,~~ the Budget and Faculty Welfare Committee (BFW), the Faculty Senate, the Professional Employees Association (PEA), the Classified Employees Association (CEA) and the USU Executive Committee [Flow chart 406.Y Boxes 1 and 2].

Time considerations will be critical when ~~the university must judge whether or not~~ a financial exigency exists. To the extent that such a judgment must be made in a brief time frame for a given situation, the time periods for the consultative process provided for in this policy [Flow Chart 406.Y Box 2] shall be specified by written notice from the university president giving those ~~for whom the consultative processes were provided~~ in the consultative process the ~~fullest~~ longest possible amount of time ~~under the circumstances~~. In that regard, the university president shall use his or her best efforts to secure the ~~fullest longest~~ period of time possible for consideration of these matters and the responses hereto.

(4) ~~Consultation~~ Receipt and consideration of recommendations.

Within the time period established by the university president and before making a recommendation to the Board of Regents, the university president shall receive and consider the comments and advice presented ~~on the matter~~ by the Budget and Faculty Welfare Committee (BFW), the Faculty Senate, the Professional Employees Association (PEA), the Classified Employees Association (CEA), ~~and the USU Executive Committee~~. The Faculty Senate shall receive and consider the comments and advice of the Budget and Faculty Welfare Committee (BFW) as well as timely presented views by any other faculty or administrative

body, or individual faculty members, and shall make its recommendation to the university president concerning a declaration of financial exigency [Flow chart 406.Y Box 3].

(3) Declaration.

The university president shall submit ~~his or her~~ final recommendation on the declaration of financial exigency in writing to the Board of Trustees prior to submitting it to the Board of Regents [Flow chart 406.Y Boxes 4 and 5]. The university president shall attach the written comments and recommendations of the Faculty Senate, the Professional Employees Association (PEA), ~~and~~ the Classified Employees Association (CEA) and the USU Executive Committee. The university president shall also send a copy of ~~his or her~~ final recommendations to the Faculty Senate, the Professional Employees Association (PEA), ~~and~~ the Classified Employees Association (CEA) and the USU Executive Committee.

Upon consideration of the university president's recommendation, the Board of Regents shall make a final decision regarding ~~declare~~ the declaration of financial exigency [Flow chart 406.Y Box 6].

6.3 2 Financial Exigency: Stage 2. Planning for Program Reduction or Elimination (Flow chart 406.Y)

(1) ~~Iterative process~~ Plan Development.

After a declaration of financial exigency by the Board of Regents, an ~~iterative~~ process of university program elimination or reduction ~~planning may~~ shall begin. The intent of this process is to ensure the ~~continuing~~ integrity of ~~academic programs~~ and the overall mission of the university (see Policy 103).

(2) Administrative and support services.

The president will ask the provost and the appropriate vice presidents to develop reduction and/or elimination plans in the areas of university-wide support services and non-academic programs. Such plans will be reviewed by the president's executive committee, the Council of Deans, the Budget and Faculty Welfare Committee, and the relevant committees of the Professional Employees Association and the Classified Employees Association, and will be integrated with academic elimination or reduction plans (see Section 406.4.3 (3)) in light of the overall academic mission of the university. If a non-academic program has been reduced or eliminated, university-wide support services must be re-evaluated and reduced as appropriate. These reductions shall precede further reductions in or elimination of academic programs.

(3) Academic Program elimination

The university president will ask the provost and the appropriate vice presidents to develop reduction and/or elimination plans in ~~both academic and administrative~~ the areas of ~~the university-wide support services and administrative programs~~ [Flow chart 406.Y Box 7]. The

development of plans for academic program reduction or elimination ~~plans~~ must involve consultation among departmental and college faculties to identify areas under consideration for academic program reduction or elimination. The following criteria and information sources shall be considered by those making judgments about which programs should be reduced or eliminated because of financial exigency: (a) legal mandate; (b) the general academic quality of the program with regard to scholarship, teaching, and service; (c) the extent of importance that the program has for the mission of the university; (d) the mission and goals of the university; (e) ~~Graduate Council review~~; (f) ~~findings~~ reports by national accreditation bodies; (f) reports by appropriate national ranking sources; (g) ~~such~~ other systematically-derived information, based on long-term considerations of program quality, as may be available; (h) the capacity of the program to generate external funding; (i) ~~faculty/student~~ student/faculty ratios; (j) student credit hours generated/faculty FTE; (k) cost effectiveness when compared to similar programs at other universities; and (l) relationship to the Board of Regents Master Plan for Higher Education in the State of Utah. The above list is not ranked and is not ~~inclusive~~-all encompassing.

~~The first step in the planning process shall be for every academic and administrative unit of the university to assess its programs operations with regard to legal mandate, essentiality to the mission/role of the university, and quality. During subsequent steps, support services shall be reduced to the extent feasible while preventing significant impairment of the university's ability to fulfill its mission/role~~

~~Such~~ Plans will be reviewed by the Budget and Faculty Welfare Committee (BFW), ~~the Council of Deans, the Faculty Senate~~, relevant committees of the Professional Employees Association (PEA) and the Classified Employees Association (CEA), and the USU Executive Committee, ~~and will be integrated with academic elimination or reduction plans (see Section 406.6.3 (3))~~ in light of the overall academic mission of the university. **Any reduction in support services shall precede further reduction or elimination of academic programs. If a plan calls for the reduction or elimination of a specific academic unit, associated administrative units, university-wide support services must be re-evaluated and reduced as appropriate.** Any reduction, or elimination of an academic unit ~~program, center, institute, school, department, college, or regional campus, or site~~, shall be reviewed by the Budget and Faculty Welfare Committee (BFW); the Educational Policies Committee (EPC); ~~the Graduate Council, where appropriate~~; the faculty members ~~and/or faculty committee~~ most directly involved in the program; the appropriate department head or supervisor, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean; relevant college committees or councils; relevant committees of the Professional Employees Association (PEA) and the Classified Employees Association (CEA); ~~and relevant student advisory committees.~~

~~The views of these bodies shall be forwarded to the Faculty Senate for its consideration within the time periods prescribed by the university president. The conclusions of the above bodies and the Faculty Senate and all of the groups, committees, and individuals listed above shall be forwarded to the provost who shall consider them and forward them, along with his or her own recommendation, to the university president. When the university president's recommendations are submitted to the Board of Trustees and the Board of Regents, they~~

~~shall be accompanied by the Faculty Senate's recommendations. After the Board of Trustees and the Board of Regents has have approved the plan by the university to eliminate a program, the appropriate academic or regional campus dean, vice president, or chancellor responsible for the academic unit of the program, center, institute, school, department, college, or regional campus, or site shall give written notice of the elimination to all persons, including students, in the program, center, institute, school, department, college, or regional campus, or site.~~[Flow chart 406.Y Box 8].

The university president will take into consideration recommendations for revisions to the proposed plan for the reduction and/or elimination ~~plans in~~ of academic ~~the areas of~~ university-wide support services and administrative units ~~programs~~ received from the, ~~the~~ Council of Deans, Budget and Faculty Welfare Committee (BFW), the Faculty Senate, ~~the~~ relevant committees of the Professional Employees Association (PEA) and the Classified Employees Association (CEA), and the USU Executive Committee [Flow chart 406.Y, Box 9].

If the university president makes revisions to the reduction and elimination plans based on recommendations by the Faculty Senate, the Budget and Faculty Welfare Committee (BFW), relevant committees of the Professional Employees Association (PEA) and the Classified Employees Association (CEA), and the USU Executive Committee, then the revised plan will be reviewed by the affected committees or associations. The university president will then consider recommendations from this review. ~~Revised plans will be reviewed by appropriate committees or associations and an opportunity for additional recommendations for revisions provided~~ [Flow chart 406.Y, Box 10].

Once plans for the reduction and/or elimination of programs in academic and administrative units ~~program~~ have been finalized, the university president will recommend the final plan to the Board of Trustees and then the Board of Regents for approval [Flow chart 406.Y, Box 11]. The Board of Trustees and the Board of Regents, in that order, will consider approval of the recommended plans for reduction and/or elimination in academic and administrative programs the university president submitted [Flow chart 406.Y, Box 12] .

Once plans for program reduction and/or elimination in academic and administrative units areas have been approved by the Board of Regents, the university president will deliver written notice to all affected by the plan [Flow chart 406.Y, Box 13].

~~(3) Academic program elimination or reduction.~~

~~The university president, after consultation with the USU Executive Committee, the Council of Deans, the Faculty Senate, and the Budget and Faculty Welfare Committee (BFW), shall direct the provost to develop plans for implementation of academic program elimination or reduction. These plans shall include a timetable for their implementation [Flow chart 406.Y Box 7].~~

~~The development of plans for academic program elimination or reduction plans must involve consultation among departmental and college faculties to identify areas under consideration~~

for academic program eliminations or reductions. The following criteria and information sources shall be considered by those making judgments about which programs should be eliminated or reduced because of financial exigency: (a) legal mandate; (b) the general academic quality of the program with regard to scholarship, teaching, and service; (c) the extent of importance that the program has for the mission of the university; (d) the mission and goals of the university; (e) Graduate Council review; (f) findings reports by national accreditation bodies; (gf) reports by appropriate national ranking sources; (hg) such other systematically derived information, based on long term considerations of program quality, as may be available; (ih) the capacity of the program to generate external funding; (ji) faculty/student/faculty ratios; (kj) cost effectiveness when compared to similar programs at other universities; and (lj) relationship to the Board of Regents Master Plan for Higher Education in the State of Utah. The above list is not ranked and is not inclusive.

(4) Review.

If a plan calls for the elimination or reduction of a specific program, center, institute, school, department, college, or regional campus, or site, that element of the plan shall be reviewed by the Budget and Faculty Welfare Committee (BFW); the Educational Policies Committee (EPC); the Graduate Council, where appropriate; the faculty members and/or faculty committee most directly involved in the program; the appropriate department head or supervisor, academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean; relevant college committees or councils; relevant committees of the Professional Employees Association (PEA) and the Classified Employees Association (CEA); and relevant student advisory committees. The views of these bodies shall be forwarded to the Faculty Senate for its consideration within the time periods prescribed by the university president. The conclusions of the above bodies and the Faculty Senate shall be forwarded to the provost who shall consider them and forward them, along with his or her own recommendation, to the university president. When the university president's recommendations are submitted to the Board of Trustees and the Board of Regents, they shall be accompanied by the Faculty Senate's recommendations. After the Board of Trustees and the Board of Regents has have approved the plan by the university to eliminate a program, the appropriate academic or regional campus dean, vice president, or chancellor of the program, center, institute, school, department, college, or regional campus, or site shall give written notice of the elimination to all persons, including students, in the program, center, institute, school, department, college, or regional campus, or site.

6.3 Stage 3. Implementation of Plans for Reduction and/or Program Elimination (Flow chart 406.Y).

(3) Development of Implementation Plans.

The university president will direct the provost and vice presidents to develop a plan with a timetable for the implementation of the plan to reduce and/or eliminate academic or administrative units programs [Flow chart 406.Y, Box 14].

The development of implementation plans for reduction and/or elimination of academic and administrative programs will include consultation with affected deans, departments, and faculty [Flow chart 406.Y, Box 15].

(4) Review of Implementation Plans.

The university president will provide an opportunity to review implementation plans for the reduction and/or elimination of academic or administrative ~~units~~ programs by all employees affected by the plan [Flow chart 406.Y, Box 16].

Recommendations from ~~reviews of~~ affected employees who wish to respond will be sent to the Faculty Senate, Professional Employee Association (PEA), and the Classified Employees Association (CEA) [Flow chart 406.Y, Box 17].

The Faculty Senate, Professional Employee Association (PEA), and the Classified Employees Association (CEA) will submit recommendations for revisions to implementation plans to the provost and those, together with all ~~other~~ previous recommendations, will be submitted together with the provost's recommendations to the university president [Flow chart 406.Y, Boxes 18 and 19].

(~~5~~ 3) Timetable.

~~Once financial exigency has been declared,~~ The university president shall submit to the Faculty Senate, Professional Employee Association (PEA), and the Classified Employees Association (CEA) a timetable for relieving the state of financial exigency. ~~Further, he or she~~ and shall periodically report progress in this endeavor to these same bodies and the Trustees and Regents [Flow chart 406.Y, Box 20]. ~~Faculty Senate on a quarterly basis.~~

6.4 Reductions in Status; Terminations

The procedures described in Policy 406.5.2 shall apply, . except that the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure except in extraordinary circumstances where a serious distortion (see Section 406.2.7) of the specific academic program would otherwise result. The question of serious distortion shall be decided by the Educational Policies Committee (EPC) and the Faculty Senate, with the approval of the university president and the Board of Trustees. The finding of serious distortion shall be based on criteria which include, but are not limited to, essentiality of service and work, field of specialization, and maintenance of necessary programs or services.

6.5 Reinstatement

Reinstatement of tenured and non-tenure track faculty members terminated as a result of financial exigency shall follow procedures in Section 406.4.3.

406.75 REINSTATEMENT RIGHTS

75.1 For Tenured Faculty

Tenured faculty members terminated through program discontinuance shall, for a period of three years following the date of their final salary payment, receive preferential consideration among candidates with comparable qualifications for any vacant and funded university position for which they apply and are qualified. Upon request of the affected faculty member, during a grace period of three years, with the assistance of the appropriate administrators (e.g., academic dean or vice president for extension and agriculture, and, where appropriate, the chancellor or regional campus dean, and the provost) and with the consent of the receiving department unit, every a reasonable and good faith effort will be made to enable affected faculty members who wish to do so, to obtain suitable positions for which they are qualified elsewhere in the university for which they are qualified during a grace period of three years.

In cases of termination of tenured faculty members, the position concerned may not be filled by replacement within a period of three years from the effective date of the termination unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer was extended.

75.2 For Non-Tenured Faculty

In cases of termination of non-tenured faculty members, the position concerned may not be filled by replacement within a period of one year from the effective date of the termination unless the person terminated has been offered a return to employment in that position and the person terminated has not accepted the offer within 30 calendar days.

75.3 Termination of Offer of Reinstatement

If an offer of reinstatement is not accepted within the timelines stated above, the university and the Board of Regents have no further obligation to the person terminated. After the expiration of the applicable reinstatement period as provided herein, the institution and the Board of Regents have no further obligation to the affected faculty.

75.4 Faculty Status and Benefits after Reinstatement

A faculty member who has been terminated and who accepts reinstatement in the same position will resume the rank and tenure status held at the time of termination, be credited with any sick leave accrued prior to the date of the termination, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave which that the faculty member had accrued prior to the date of termination and for which the faculty member has not received payment.

Appendix

The Role of the Faculty in Conditions of Financial Exigency, American Association of University Professors, 2013 <http://www.aaup.org/report/role-faculty-conditions-financial-exigency>

THE ROLE OF THE FACULTY IN CONDITIONS OF FINANCIAL EXIGENCY

(JANUARY 2013)

The draft report that follows, prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure, was approved for publication by Committee A at its meeting in November 2012 with an invitation for comments on the report from Association members and other interested parties. They should be addressed to Jordan Kurland (jkurland@aaup.org) at the AAUP's Washington office. Those received by March 1 will be considered in preparing the final version of the report, its approval and adoption anticipated by Committee A and the Council at the meetings of the two bodies in late May and June 2013.

I. Introduction

The past forty years have witnessed a decisive shift in power in American colleges and universities.¹ Increasingly, institutions that were once governed jointly by faculty members and administrators have become overwhelmingly or wholly dominated by their administrations, as the faculty senates at these institutions have withered into insignificance. For the most part, the faculty retains jurisdiction over systems of peer review and the protocols of scholarly communication, but, astonishingly, faculty members have begun to lose control over the one central element of higher education where they have long been presumed to have invaluable expertise—the curriculum. Administrators are making unilateral budgetary decisions that profoundly affect the curricula and the educational missions of their institutions; rarely are those decisions recognized as decisions about the curriculum, even though the elimination of entire programs of study (ostensibly for financial reasons) has obvious implications for the curricular range and the academic integrity of any university.

As decision-making power has shifted to administrators, public universities have felt intensified financial pressures, especially in the wake of the financial crisis of 2008. Because the effects of the crisis have been especially pronounced for state budgets, public universities from coast to coast have seen severe if not draconian cuts in state appropriations and corresponding increases in tuition. States for a generation have been gradually shifting costs from state funding to tuition payments, but the new pressures have arrived at a time when public and legislative complaints about college tuition are on the rise and when concerns over student debt have become national news. The perfect storm thus generated—declining financial support combined with rule to a larger degree by administrative fiat—affords administrations the potential to manufacture a sudden “crisis” where none exists. For example, shifting costs from state revenues to student tuition payments does not in itself constitute an immediate financial crisis. We believe doing so is bad public policy, but it is a way of avoiding a funding shortfall, not creating one. Similarly, although many university endowments suffered substantial losses

1. In this report we will henceforth use the term “universities” interchangeably with “institutions,” although we are aware that the term often applies to institutions that would ordinarily be designated as “colleges.”

during the recession, very few institutions actually rely on endowment income for a major portion of their budgets. For that matter, endowments have by now largely recovered, as have the markets on which they are dependent. Claims of financial crisis based on the performance of the market should thus be met with skepticism.

As the AAUP discovered in its investigation of how New Orleans institutions responded to the effects of Hurricane Katrina, public perception of a crisis has opened a window of opportunity for campus managers to make some of the cuts and programmatic changes they have in fact long wanted to make.² An institution's desire to shift priorities is not the same as a fiscal crisis, and one should not mistake the former for the latter. As we will detail below, claims that a campus is facing either a crisis or a form of slow fiscal starvation need to be investigated thoroughly, and neither the faculty nor the staff can conduct such an investigation without access to detailed financial data. There are widely accepted metrics for analyzing an institution's financial health, metrics that make objective, reliable conclusions possible. We stress *objective* conclusions, because administration assertions about financial challenges cannot always be accepted at face value. That is not to say that small liberal arts colleges and some public institutions are not facing real financial pressures. It is to say that all members of the university community deserve to participate in relevant discussions of those pressures—and to do so with the aid of sound and detailed information.

The immediate occasion of this report is the decision of some university administrations to cut costs by eliminating entire programs—and terminating the positions of tenured faculty members in those programs. The University at Albany, State University of New York, has been the best-known example, having made international news in 2010 when it announced the closing of its classics, French, Italian, Russian, and theater degree programs; the AAUP had begun an investigation but suspended it after two potentially affected French professors agreed to retire and the closing of the several degree programs was not followed by the involuntary termination of any tenured faculty appointments. Though it received much less national attention at the time, Southeastern Louisiana University also eliminated its undergraduate French majors (in French and French education) in 2010, dismissing the program's three tenured professors with a year's notice—and then offering one of them a temporary instructorship at a sharply reduced salary. In April 2012, an AAUP investigating committee's report on the University of Louisiana System, with its focus on Southeastern Louisiana University and Northwestern State University, was published online, and Committee A presented statements on these two institutions in the nine-university system to the 2012 annual meeting, which imposed censure. In addition to the discontinuance of the French majors at Southeastern, with the resulting action against the three tenured professors, the chemistry major at the University of Louisiana at Monroe was discontinued, but without notification of termination to anyone among five threatened chemistry professors; and the discontinuance of the doctoral program in cognitive sciences at the University of Louisiana at Lafayette, while followed by notification of appointment termination to two tenured professors, resulted in steps to avoid implementation. At Northwestern State, however, a wide range of programs suffered

2. "Report of an AAUP Special Committee: Hurricane Katrina and New Orleans Universities," *Academe*, May–June 2007, 59–125.

discontinuance and more than twenty tenured professors suffered termination of appointment through the ending of programs, including economics, German, journalism, philosophy, and physics. The sweeping, across-the-board actions were shortly followed by news of massive cuts at the University of Northern Iowa, which in March 2012 announced the elimination of more than fifty programs. An AAUP investigation at Northern Iowa resulted in a report to be published online in January. Massive layoffs at National-Louis University, a private institution in Chicago, also triggered an appointment of an AAUP investigating committee, which conducted its site visit in October. Likewise, the Nevada system has been under severe duress: state general-fund appropriations have been cut by more than 30 percent since 2009, representing over \$200 million in annual support lost. At the University of Nevada, Reno, the system's oldest campus, twenty-three degree programs have been closed and dozens of faculty members have been released, including nearly twenty tenured faculty members. At the University of Nevada, Las Vegas, President Neal Smatresk contemplated seeking a declaration of financial exigency in spring 2011 when state cuts appeared to be even more severe. (Since 2010, UNLV has lost \$73 million in annual state support, eliminated over three hundred total positions, and cut eighteen degree programs but avoided layoffs of tenured professors and of most faculty members with appointments probationary for tenure.)

Those institutions, however, have by and large declined to issue declarations of financial exigency. The sole recent exception is Southern University and Agricultural and Mechanical College in Baton Rouge, where the AAUP is currently investigating a declaration of financial exigency that led to the termination of the appointments of at least ten professors with tenure. It has therefore become clear that the AAUP needs to address program closures that are made in the absence of declarations of exigency and to revisit our *Recommended Institutional Regulations on Academic Freedom and Tenure* accordingly.

The current Recommended Institutional Regulation 4c sets a very high bar for terminations on grounds of financial exigency: "Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency, i.e., an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means."

Regulation 4d, by contrast, provides procedures for tenure terminations as a result of program closings not mandated by financial exigency: "Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur as a result of bona fide formal discontinuance of a program or department of instruction." Regulations 4d(1) and 4d(2) set out the conditions for discontinuing programs and tenure commitments:

- (1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.

[Note: "Educational considerations" do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.]

- (2) Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service.

[Note: When an institution proposes to discontinue a program or department of instruction, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

Neither of these regulations appears adequate to the situation in which many institutions now find themselves—in part because the standard of “exigency” was initially drawn from small, private, impecunious institutions, not large state universities, few of which can plausibly be said to face imminent crises that threaten their very existence. In recent decades, and especially in recent years, colleges and universities in the public sector have more commonly experienced intermediate conditions that may have significant impact on aspects of the academic mission but do not threaten the survival of the institution as a whole. Thus most colleges and universities are not declaring financial exigency even as they plan for widespread program closings and terminations of tenured and nontenured faculty appointments. They are refusing to declare exigency for ostensibly good reasons (namely, that their financial conditions are not so dire as those invoked by Regulation 4c or that a declaration of financial exigency would itself worsen the institution's financial condition) and for arguably bad reasons (namely, so that they can operate in severe-financial-crisis mode, bypassing AAUP standards of faculty consultation and shared governance without the bad publicity of declaring exigency). This report seeks to address this phenomenon and to propose sound procedures for program review under conditions captured by neither Regulation 4c nor Regulation 4d as currently written.

As we note in more detail below, this report is in some respects a continuation of a debate begun in the mid-1970s, the last era of major retrenchment in American higher education. Then, W. Todd Furniss, a staff officer of the American Council on Education (ACE), had criticized the gap between Regulations 4c and 4d, writing, “Good sense tells us that in the real world there are far more conditions between imminent bankruptcy on the one hand and, on the other, program change that would ‘enhance’ the ‘educational mission of the institution as a whole’ in the absence of a financial emergency.”³ At the time, Committee A chair and former AAUP president Ralph S. Brown had replied that “‘discontinuance’ may be invoked in hard times as a substitute, perhaps a subterfuge, for an exigency crisis that cannot be convincingly asserted.”⁴ The relevance of Furniss's and Brown's concerns to current conditions is obvious. But the widespread and systemic nature of the challenges facing American universities in the

3. W. Todd Furniss, “The 1976 AAUP Retrenchment Policy,” *Educational Record* 57, no. 3 (1976): 135.

4. Ralph S. Brown Jr., “Financial Exigency,” *AAUP Bulletin* 62 (1976): 13.

second decade of the twenty-first century compels us to revisit and revise the terms of the debate begun a generation ago. We are therefore proposing a new definition of “financial exigency” that is more responsive to actual institutional conditions and that will extend the standard of exigency to situations not covered by the AAUP’s current definition. Under this new definition, an institution need not be on the brink of complete collapse in order to declare exigency. Rather, it needs to demonstrate that substantial injury to the institution’s academic mission will result from prolonged and drastic reductions in funds available to the institution, and it needs to demonstrate dispositively that the determination of its financial health is guided by generally accepted accounting principles.

Our definition of “financial exigency” is as follows: *Financial exigency names a severe financial crisis that threatens the academic mission of the institution as a whole and that cannot be alleviated by less drastic means.* We will expand on this definition and provide detailed recommendations for the faculty deliberations necessary for a legitimate declaration of exigency that warrants program closure. But we want to make it clear at the outset that many current “crises” represent shifts in priorities rather than crises of funding. Financial exigency is not a plausible complaint from a campus that has shifted resources from its primary missions of teaching and research toward employing increasing numbers of administrators or toward unnecessary capital expenditures. A campus that can reallocate resources away from teaching and research is not a campus that can justify cuts in its core mission on financial grounds. Discussions of a campus’s financial state cannot be fairly or responsibly conducted without faculty consultation about budgetary priorities. Cuts in teaching and research must be a last resort, after, among other actions, the administrative budget is reviewed and reduced and supplements for athletics and other nonacademic programs are eliminated. Moreover, colleges and universities need more objective, quantitative standards for claiming financial exigency — such as an index that uses ratios that incorporate institutional debt level and reserves, along with other data, to come up with a composite score to assess and establish institutional financial health. The Ohio Board of Regents (OBR), for example, uses such an index and requires that the composite score fall below a certain level for two consecutive years before classifying an institution as being in serious financial difficulty. (Appendix II to our report describes the components of an index that is similar to the OBR index and can be used to guide determinations of an institution’s financial condition.)

This report provides guidance for how legitimate claims of financial exigency can be reviewed and substantiated and for how institutions should proceed with program closures under such a condition. Nothing in it weakens academic freedom, tenure, and shared governance as they are now understood and protected in the AAUP’s current *Recommended Institutional Regulations*. On the contrary, the report urges that institutions increase the level of faculty consultation and deliberation at every stage of the process, beginning with the guideline that is currently a note to Regulation 4c(1), stipulating that “there should be a faculty body that participates in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued.”

To close this introduction, we want to make explicit the reasons why the faculty should be centrally involved in deliberations about exigency. Certainly, such involvement is not the model in the corporate world, where downsizings and layoffs are simply announced and

severance packages issued. Why then should academe be any different? The answer goes to the heart of the rationale for tenure as the basis for academic freedom, and indeed to the heart of the rationale for institutions of higher education. As Matthew Finkin and Robert Post have written,

[I]nstitutions of higher education serve the public interest and . . . promote the common good. The common good is not to be determined by the arbitrary, private, or personal decree of any single individual; nor is it to be determined by the technocratic calculation of rational and predictable profit incentives. The common good is made visible only through open debate and discussion in which all are free to participate. *Faculty, by virtue not only of their educational training and expertise but also of their institutional knowledge and commitment, have an indispensable role to play in that debate.*⁵

Program closures are matters of curriculum, central to the educational missions of colleges and universities—missions over which the faculty should always have primary responsibility. Closures ordered by administrative fiat—even, or especially, when they are ordered by administrators who believe they have done due diligence in program review—are therefore inimical not only to the educational mission of colleges and universities but also to the social contract according to which faculty expertise, academic freedom, and tenure serve the public good.

We believe it is crucial to keep the larger picture in view. After World War II, the United States embarked on the world's most extensive experiment in mass higher education. That experiment was a success, if one measures success by the fact that the American system of higher education was commonly described, over the ensuing decades, as the envy of the rest of the world; it was a success as an expansion of the promise of democracy as well. But in recent years the social contract underwriting that experiment has been largely rewritten. Tenure has been eroded by the growth of the ranks of the non-tenure-track faculty, and it is no coincidence that academic decision making has moved more and more emphatically into the hands of administrations. Tenure itself has increasingly been understood as a private, individual affair, a merit badge signifying that a faculty member has undergone peer review and is entitled to academic freedom in his or her teaching and research; few in academe, much less those outside of it, appreciate the broader principle that tenure serves the public good by allowing for independence of inquiry and by providing an incentive to intellectual exploration. At the same time, state legislatures have steadily disinvested in institutions of higher education, offloading costs onto individuals and families and characterizing education as a private investment rather than a public good.

The recent wave of program closures represents the confluence of all these long-term trends: the erosion and redefinition of tenure, the massive growth in the ranks of the contingent faculty outside the tenure system, and the nationwide disinvestment in public higher education. It is time for faculty members to reclaim and reassert their proper roles as the stewards and guardians of the educational missions of their institutions—for the good of American higher

5. Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic Freedom* (New Haven, CT: Yale University Press, 2009), 125; emphasis added.

education and the greater good of all.

II. The History of the Financial Exigency Clause

The initial 1915 AAUP document on academic freedom and tenure did not address institutional financing. The term *financial exigencies* appears first in Association of American Colleges drafts in the early 1920s.

A. Origins and Context

The Association's seminal 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* provided the groundwork for the system of academic tenure in American higher education. It proceeded from the standpoint of high principle and moved to practical application but was not concerned with the relationship of tenure to institutional financing. A decade after the issuance of the *Declaration*, the American Council on Education sponsored a conference in Washington devoted to the formulation of a set of shared principles. In addition to those from the ACE, representatives from the American Association of University Professors, the Association of American Colleges, the Association of American Universities, the Association of Governing Boards, the Association of Urban Universities, the Association of Land Grant Colleges, the National Association of State Universities, and the American Association of University Women took part, with conference participation weighted heavily on the side of academic administration. The bases for discussion were drafts prepared by the Association of American Colleges (AAC) in 1922 and 1923. The resulting 1925 *Conference Statement on Academic Freedom and Tenure* set forth the following provisions on "Academic Tenure" pertinent to the issue before us: "Termination of permanent or long-term appointments because of financial exigencies should be sought only as a last resort, after every effort has been made to meet the need in other ways and to find for the teacher other employment in the institution. Situations which make drastic retrenchment of this sort necessary should preclude expansions of the staff at other points at the same time, except in extraordinary circumstances."

Concerns about the inadequacies of the 1925 document within the AAUP ran deep. According to the leading historian of the subject, the very manner of its promulgation was viewed by AAUP leaders as a "charade."⁶ But these reservations ran to issues other than the financial exigency clause, which, as will be seen momentarily, was understood by Committee A to be of a piece with the provision in the succeeding jointly formulated 1940 *Statement*.

Negotiations with the AAC on a successor document began in 1937, not only in the wake of the Great Depression, but also in light of an intensive study of higher education's response to the Depression commissioned by the AAUP that appeared that year.⁷ The study surveyed the universe of institutions that higher education comprised at the time: most were private, small, denominationally or locally controlled, and penurious. Institutional mortality was common. The study noted that "even in prosperous times" five to ten colleges "normally disappear or

6. Walter P. Metzger, "The 1940 Statement of Principles on Academic Freedom and Tenure," *Law and Contemporary Problems* 53, no. 3 (Summer 1990): 27.

7. Malcolm Willey et al., *Depression, Recovery, and Higher Education* (New York: McGraw-Hill, 1937).

merge each year.”⁸ The mortality rate accelerated as the Depression deepened: in 1935, twenty-nine colleges closed.

The authors of the study were not fazed by the prospect of institutional closure.⁹ They were, however, unsettled by strategies for institutional survival, especially by their aggregate effect:

Are the ultimate purposes of higher education best served by adjusting institutional finances to depression circumstances through the process of decreasing the numbers of young men and women at the lowest ranks, and at the same time restricting the entrance into the profession of other young men and women who would normally come up through the rank of instructor? The faculty of tomorrow depends upon the recruits of today. Temporarily the problems of diminishing budgets may be solved by releasing some of the young men and appointing but few others. The older men carry on, and institutional prestige is maintained. But will this prove to be sound procedure in the end?

“The alternative,” the authors quickly added, “is not the discharge of older men, in favor of instructors.”¹⁰

The AAUP-commissioned study summarized institutional response to the Depression as follows:

The character of educational institutions has changed in the past thirty years. Business, professional, and vocational interests have assumed a more important place. An aura of practicality hangs over the campus. The educational institution is more of the world than ever before. . . . As all the data thus far have shown, the ups and downs of the world of business have their counterpart in academic matters. Men are hired or dropped, salaries are raised or cut, and tenure is more or less secure as general economic conditions fluctuate between prosperity and depression.¹¹

The authors called for greater “faculty cohesion” —and, presumably, institutional cohesion as well—on “principles they regard as essential to the welfare of higher education.”¹²

The drafters of the 1940 *Statement* sought to achieve just that cohesion, but on its face the final text was actually less instructive on this issue than its 1925 predecessor. The 1940 *Statement* provided in its entirety that “[t]ermination of a continuous appointment because of financial exigency should be demonstrably bona fide.” Even so, a gloss of meaning was supplied in the

8. *Ibid.*, 211.

9. “The . . . data raise a question concerning the justification of seeking to maintain colleges and universities, of any size, that may finance themselves with minimum adequacy in prosperity periods, but cannot do so during years of depression. . . . Why should two neighboring, financially weak schools each attempt to offer the same programs? Competition for students may have brought the duplication, but it is apparent that sooner or later many of these inadequately supported institutions will be compelled to face the facts of economic existence more realistically, and to examine them in terms of social need as well as in connection with the obligation to the student.” *Ibid.*, 171–2.

10. *Ibid.*, 34.

11. *Ibid.*, 452.

12. *Ibid.*, 451.

remarks of the AAC's lead negotiator, Henry Wriston, president of Brown University, in presenting the document for AAC adoption. On the clause itself, he remarked:

The plain fact is that dismissals directly due to financial emergency are really very rare. Speaking now as an administrative officer, it is much easier for me to say "no" to a man by pleading the exigencies of the budget than by denying a request on the merits. The displacement of a teacher on continuous appointment should not be merely an "economy move" but should be done only because of a genuine emergency involving serious general retrenchment. . . . It is a reminder that purity of purpose is no defense in the public eye, unless the purity is demonstrable. The provision is a protection to the administrative officer because it reminds him to establish the record so clearly that the exigency is as obvious to the public as it is to him.¹³

And on the larger cohesive purpose of the document, he echoed and emphasized its stated premises:

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extra-mural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Upon freedom and economic security, and hence upon tenure, depends the success of an institution in fulfilling its obligations to its students and to society. There is a statement of the philosophy of tenure. *Tenure is not an end in itself.*¹⁴

Fast upon the adoption of the 1940 *Statement*, the AAUP investigated two institutions in light of the newly fashioned financial exigency clause. This early engagement anticipates the Association's thinking later on; it treats administrative behavior that has recurred over the years.

The first investigation concerned the decision by the president of New York's Adelphi College in 1939 to dismiss five senior faculty members, all department heads.¹⁵ The institution was in bankruptcy. There was no question of an existing state of financial exigency, and the AAUP's committee of investigation said as much: "Manifestly, financial difficulty had become such as to compel consideration of the necessity of faculty dismissals."¹⁶ Faculty salaries had been reduced by 25 percent since 1930. But more had to be done. A special committee of the board of trustees, on which the president served, reviewed the unit cost of those departments giving academic credit, but also considered the president's plan for future curricular development and for the direction of the college. The result was the dismissal of the highest-paid person in each department sharing the highest unit cost, with one notable exception. The chair of the Department of Sociology and Economics was dismissed even as his department ranked fifteenth in unit costs.

The investigating committee was critical of the use of unit cost as the sole metric and was especially critical of the educational consequence of removing the most senior and

13. *Association of American Colleges Bulletin* 24, no. 1 (March 1939): 122.

14. *Ibid.*, 113; emphasis added.

15. "Adelphi College," *AAUP Bulletin* 27 (1941): 494–517.

16. *Ibid.*, 501.

experienced members of the faculty.¹⁷ It noted that the faculty had proposed other economies, proposals with which the administration did not seriously engage. Several members of the faculty argued that courses in art, dance, and music should be eliminated before reductions in the liberal arts, but these courses apparently were in keeping with the president's vision for the direction of the college. And the actual saving to the college was less than the sum of the salaries of those dismissed as the result in part of the appointment of a dean, an office heretofore vacant. The committee concluded that "not all permissible alternatives short of dismissal had been explored and given full consideration." And the committee found that "factors other than financial were influential": that the degree to which faculty members did not agree with the administration played a role in singling them out for release.¹⁸ None of those dismissed was provided a hearing.

The second investigation dealt with the decision of the president of Memphis State College in 1942 to terminate the appointments of two professors of long service—one in history, one in English—as "an economy measure" after having stated to the faculty that the college was facing a "financial emergency."¹⁹ The college had experienced a 27 percent drop in enrollment with a consequent loss of tuition revenue, only half of which would be made up out of reductions in the operational budget. The president argued that the instructional budget would have to be reduced by 14 percent to make up the shortfall, but a salary reduction of that dimension would fall disproportionately on the lower paid. The State Board of Education approved the terminations even as it approved the appointment of two new teachers in English; in addition, a football coach was hired who had no team to coach but who taught courses on a part-time basis that had been deemed "redundant" in the release of one of the faculty members.

The Association's general secretary had written to the president suggesting measures that might be taken to avoid the terminations; these the administration rejected out of hand. The investigating committee took them up: a "proportional and equitably graduated reduction" of professional and administrative salaries, save those in the lowest brackets; redistribution of teaching duties without filling vacancies; termination of temporary and short-term appointments; or some combination of these options. Without denying the existence of the shortfall, the investigating committee doubted that the dismissals were driven by the administration's concern for economy. In the case of one of the dismissed faculty members, the investigating committee agreed that her department was "overstaffed"; however, it opined, "[i]f dismissals were necessary in this department, they should have been made of those most recently appointed, but the evidence shows that these recent appointees were 'flexible' (one of them doubled in coaching football and the other directed intramural sports)."²⁰

As in the Adelphi case, there was incontrovertible evidence that faculty members were singled out for release because of presidential displeasure—for their having been "uncooperative" and critical of the administration. Again, no hearing was provided; nor were the faculty's views solicited or considered.

17. Ibid., 515, citing "University Unit Costs," *U.S. Office of Education Bulletin* No. 21 (1937) (emphasizing the complexities of interpreting unit costs).

18. Ibid., 516.

19. "Academic Freedom and Tenure: Memphis State College," *AAUP Bulletin* 29 (1943): 550–80.

20. Ibid., 572.

These early applications of the financial exigency clause manifest the temptation to justify a dismissal of an out-of-favor faculty member as an “economy move.”²¹ But more important, they underline the need to explore alternatives to a financial shortfall, to retain experienced faculty members of long service, and to ventilate the ground of discharge in a hearing. The investigating committees’ emphasis on the educational unwisdom of terminating the services of senior (tenured) faculty members while adjunct, part-time, or junior faculty members are retained, even as those terminated might be the higher paid and be less “flexible,” circles back to the 1940 *Statement*’s justification for tenure: that the academic profession cannot be made attractive to the most promising if, after passing a lengthy and exacting period of probation in which their academic merit has been made manifest, professors can lose their academic posts because of evanescent shifts in student enrollment or arbitrary redirection of resources or programmatic restructuring, undertaken by administrative fiat. Absent any faculty participation or review, the procedure thus lacks the critical elements of transparency argued as essential by Brown’s President Wriston.²² As he contended and as the 1940 *Statement* makes clear, these elements are a matter of public policy, not of special solicitude for the tenured.

B. The 1970s and the Era of Retrenchment

Regulation 4 was initially drafted in 1957 but did not become the focus of extended discussion until the 1970s, when the Association witnessed a wave of cases involving declarations of

21. A decade and a half later, Texas Technical College would dismiss three tenured faculty members who had displeased the institution’s board of directors because of their political or civic activities. The appointment of one faculty member was terminated after the adult education program he led, supported by outside funds, was discontinued for “reasons of economy.” “Texas Technical College,” *AAUP Bulletin* 44 (1958): 170–87. This might well be the AAUP’s first reported case of release of a tenured professor on grounds of program discontinuance. A member of the board was quoted in the press as follows: It was the further view of the Board that the so-called adult education program as formerly sponsored by the Ford Foundation was of little academic importance, considering the need for money in other vital and well-established fields. Hence, the adult education program, largely suspect of genuine academic value by many patrons of Texas Tech and by the most distinguished segments of the faculty, should be discontinued. Personally, I’ve always viewed it as a bit of plush academic boondoggling that any institution genuinely dedicated to the great academic traditions, and the really consecrated teachers who pursue it, can ill afford. In keeping with its duties established by law, the Board decided to terminate it permanently. (181) In response to this, the investigating committee observed:

Persons with whom the committee talked treated with skepticism the claim of economy, pointing out that only about one-third of one per cent of the total College budget was involved, and that the money taken from the Adult Education Program was simply transferred to the general account and not to some other pressing need. Neither is the claim of economy consistent with the fact that the next ranking person on the staff of the Program, who had the title of Executive Assistant, was not affected in the same manner as Professor Stensland [the released faculty member], but is still retained on the faculty. (181–2)

22. At both Adelphi and Memphis State, for example, the dismissals were accomplished while the presidents were attempting to effect significant reorganizations of their own devising to which the released faculty members were not sympathetic.

financial exigency. Former AAUP president and Committee A chair David Fellman summarized the phenomenon in a 1984 essay for *Academe*:

As the national economic recession of the 1970s gathered momentum, the administrations of many colleges and universities began to invoke pleas of financial difficulty, in some cases defined by them as “financial exigency,” to justify terminating the appointments of tenured faculty members and persons in probationary status before the end of their terms. Beginning with Bloomfield College in New Jersey in 1973, a steady stream of serious cases has come to the attention of the Association. From the spring of 1974 until March 1984, ten cases involving issues relating to financial exigency that were investigated by *ad hoc* committees led to reports published under the auspices of Committee A in the Association’s journal. . . .

Retrenchment has taken many forms, but the release of tenured and nontenured faculty members has presented the academic profession with its most acute problem.²³

The Association’s last sustained analyses of the financial exigency clause stem from that era, and most of the findings of those analyses remain relevant today. Then as now, the financial crisis was real—and deep: it was a time when the nation’s largest city came close to declaring bankruptcy. But time and again, Committee A investigations found that institutional authorities declared financial exigency under circumstances that bordered on the ludicrous. At Bloomfield College, infamously, the administration abolished the tenure system and dismissed a large proportion of the tenured faculty while simultaneously hiring a similar number of nontenured new faculty members, and the president’s determination that the college had a net worth of \$12,000,000 did not take into account the college’s ownership of two golf courses valued at \$15,000,000. At Sonoma State University in California, “the investigating committee noted that while the [twenty-four] layoffs were occurring, a new presidential assistant was appointed with a substantial salary and two new associate deanships were created without consulting the faculty.”²⁴ At Metropolitan Community Colleges in Missouri, “where sixteen full-time tenured faculty members were laid off, the investigating committee stressed that the local faculty hearing committee had concluded that the alleged financial crisis was only ‘a projected or hypothetical one based on predicted events which never occurred.’”²⁵ Then as now, “crises” were announced as pretexts for decisions that effectively eroded the institution of tenure; then as now, those decisions were made almost entirely without faculty input or consultation. “In most of the cases reported by Committee A for publication,” Fellman concluded, “faculty involvement was either nonexistent or grossly inadequate.”²⁶

Noting that declared emergencies were often not real emergencies and pointing out that the faculty was largely ignored in administrators’ responses to such “emergencies” merely kicks the can down the road. Such faculty determinations need to be made—and this report strongly recommends that faculty members be intimately involved in the determinations of the extent of

23. Fellman, “The Association’s Evolving Policy on Financial Exigency,” *Academe*, May–June 1984, 14.

24. *Ibid.*, 16.

25. *Ibid.*, 17.

26. *Ibid.*, 20.

their institution's financial conditions—but a structural problem remains with Regulations 4c and 4d of the *Recommended Institutional Regulations*. That problem was first pinpointed in W. Todd Furniss's critique, "The 1976 AAUP Retrenchment Policy," in which Furniss cites his March 28, 1975, letter to AAUP general secretary Joseph Duffey. Speaking for the Commission on Academic Affairs of the American Council on Education, Furniss had written:

The definitions of financial exigency and the conditions for programmatic change given in the regulation are, in the view of the Commission, too skimpy to be useful. . . . [T]he definitions as written imply that termination for financial exigency is legitimate *only* when an entire institution is on the brink of bankruptcy, and those for program change *only* when there are no financial considerations (which would require the procedures for financial exigency). Good sense tells us that in the real world there are far more conditions between imminent bankruptcy on the one hand and, on the other, program change that would "enhance" the "educational mission of the institution as a whole" in the absence of a financial emergency.²⁷

Ralph S. Brown's important essay "Financial Exigency" (to which Furniss was partly responding) acknowledges that program discontinuance

meshes only imperfectly with financial exigency terminations. Recognition of it has developed independently, and without any explicit foundation in the 1940 *Statement of Principles*. . . .

The imperfect fit of discontinuance with financial exigency comes from an impractical desire to keep the two wholly separated. This desire arises from the observation that "discontinuance" may be invoked in hard times as a substitute, perhaps a subterfuge, for an exigency crisis that cannot be convincingly asserted. A little redefinition here, a showing of declining enrollments there, and—presto—the Professor of Italian is terminated, because the Italian program in the Romance Languages Department has been discontinued.²⁸

Brown's concerns remain our concerns, which is why we remain so vigilant about the possibility that any attempt to devise Association guidelines for bridging the gap between 4c and 4d will be taken as license to grease the skids for program closings in hard times. But we note that Brown immediately added, "[I]t is entirely natural that the educational value of fields of instruction or research should be viewed with a colder eye in bad times than in good. The only way to keep the process from getting out of hand is to insist on good faith educational judgments, and to hope that the faculty, exercising its primary responsibility in such matters, will make them."²⁹ Furniss's criticism of Regulation 4 includes the objection that the phrase "primary responsibility" is ambiguous ("the Commission found itself questioning whether 'primary' means 'initial,' 'chief,' or 'exclusive,' and requested that Committee A modify the phrase or define it"); similarly, it will not escape anyone's attention that "good faith educational

27. W. Todd Furniss, "The 1976 AAUP Retrenchment Policy," *Educational Record* 57, no. 3 (1976): 133–9.

28. Brown, "Financial Exigency," 13.

29. *Ibid.*

judgments” is also a phrase that invites a wide range of interpretations.³⁰ Indeed, as we noted in the introduction, it is plausible to read this report as an attempt to address the arguments made more than thirty years ago by Brown and Furniss, and to offer guidance regarding the lingering ambiguities of Regulations 4c and 4d. The task is rendered only more urgent by seismic changes in the academic workforce between the mid-1970s and today—namely, the end of mandatory retirement and explosive growth in the number of contingent, non-tenure-track faculty members, the latter of whom can be seen as the legacy of the era of retrenchment, as retiring tenured faculty members were increasingly replaced with various forms of adjunct (including full-time non-tenure-track) positions. Additionally, the need to revise AAUP guidelines on financial exigency and program discontinuance is complicated by the fact that over the past four decades the political climate has become markedly more hostile to the institution of tenure at all levels, with a fair amount of the hostility coming from university administrators. Last but not least, as we have noted above, over the past four decades the practice of shared governance has been weakened considerably in much of American higher education. This report hinges on, and emphatically advocates, a reversal of that trend and a reassertion of the fundamental principle that the faculty should play the primary role in determining the educational mission of their institutions.

III. Recommendations for Institutions Experiencing Financial Exigency

As will be seen, with the focus of financial exigency now to be on the survival of the institution’s academic mission, the determining role of the institution’s faculty becomes truly crucial.

A. Determination of the Financial Condition of the Institution

In what follows, we review AAUP policy on the role of faculty members in the determination of their institutions’ financial condition. We believe that our policy documents and reports provide decisive guidance in these matters, and we note at the outset that it seems to be increasingly difficult to find institutions in which the faculty has been afforded the primary responsibility—or, if that phrase is ambiguous, *any* responsibility—to conduct those determinations. Once again, this is not to say that the crises facing many institutions are not real; it is to say only that the critical protocol established in a note to Regulation 4c(1), that “there should be a faculty body that participates in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued,” is often being ignored. Frequently, a crisis is simply declared, and steps are taken to meet it—steps that sometimes, but not regularly, involve substantial consultation with an appropriate faculty body. In too many cases, “faculty consultation” seems to consist of merely informing faculty members of what will be done to them.

The *Statement on Government of Colleges and Universities* was jointly formulated in 1966 by the AAUP, the ACE, and the Association of Governing Boards of Universities and Colleges. The AAUP adopted the document as official policy, and the other two organizations commended it to the attention of their membership. The statement recognizes a division of labor among trustees, presidents, and faculty members and offers the following recommendation with regard

30. Furniss, “The 1976 AAUP Retrenchment Policy,” 137.

to budgeting: “The allocation of resources among competing demands is central in the formal responsibility of the governing board, in the administrative authority of the president, and in the educational function of the faculty. Each component should therefore have a voice in the determination of short- and long-range priorities, current budgets and expenditures, and short- and long-range budgetary projections.”³¹ The statement further specifies that the judgment of the faculty “is central to general educational policy” and that the faculty therefore “has primary responsibility for such fundamental areas as curriculum, subject matter, and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process.”³² We hold that program closure is very much a matter of educational policy and that the faculty should therefore be accorded an *initial and decisive* role—to answer Furniss’s question about the meaning of “primary”—in any deliberations over program closure and release of tenured faculty members.

Additionally, the AAUP’s statement *The Role of the Faculty in Budgetary and Salary Matters*, adopted in 1972, reads as follows:

The faculty should participate both in the preparation of the total institutional budget and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical plant and grounds, and so on). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources and the proportion to be devoted directly to the academic program. *This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board.*³³

Established AAUP policies therefore provide clear and unambiguous support for the position that faculty consultation and participation should be integral to the budget process, quite apart from any consideration of the financial status of the institution. Faculty consultation and participation in budget matters should simply be part of the ordinary course of business, in good times or in bad. In other words, we are not proposing a radical new platform of emergency measures whereby faculty committees are summoned to review university budgets only when institutions are experiencing financial exigency; we are reaffirming the principles that inform policies in place for forty years and more, recommending that faculty participate in the budget process at every stage—even as we acknowledge that on many campuses, these policies would in fact lead to radical changes in business as usual.

But AAUP policy also speaks specifically to occasions in which institutions are experiencing financial exigency and in response to which emergency measures are contemplated. The first recommendation in the Association’s statement *On Institutional Problems Resulting from Financial Exigency: Some Operating Guidelines* reads as follows: “There should be early, careful, and meaningful faculty involvement in decisions relating to the reduction of instructional and research programs. The financial conditions that bear on such decisions

31. AAUP, *Policy Documents and Reports*, 10th ed. (Washington, DC: AAUP, 2006), 137.

32. *Ibid.*, 139.

33. *Ibid.*, 149; emphasis added.

should not be allowed to obscure the fact that instruction and research constitute the essential reasons for the existence of the university.”³⁴ Although the call for “early, careful, and meaningful faculty involvement” might seem to be clear on its face, we believe that recent developments with regard to program closures have rendered it necessary for us to specify “faculty involvement” in greater detail. We therefore propose the following procedures for faculty involvement in program closures.

Before any proposals for program discontinuance on financial grounds are made or entertained, the faculty must be afforded the opportunity to render an assessment in writing on the institution’s financial condition. The faculty body may be drawn from an elected faculty senate or elected as an ad hoc committee by the faculty; it should not be appointed by the administration. At institutions governed by collective bargaining agreements, the leadership of the union is an elected body of its faculty members and should have a role in the assessment as well. (Should the faculty refuse to participate in a process that might result in faculty layoffs, they effectively waive their right to do so.) We recommend, in order to make those determinations, that the faculty should have access to, at minimum, five years of audited financial statements, current and following year budgets, and detailed cash flow estimates for future years. Beyond that, in order to make informed proposals about the financial impact of program closures, the faculty needs access to detailed program, department, and administrative-unit budgets; but *the determination of the financial position of the institution as a whole must precede any discussion of program closures*. As stated in Regulation 4c(1), the faculty should determine whether “all feasible alternatives to termination of appointments have been pursued,” including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, and cuts to noneducational programs and services.

We note ruefully that this recommendation speaks to practices to which few institutions now adhere and will doubtless be read as a radical departure from business as usual—even though it follows clearly from AAUP principles. We also anticipate that it will meet with resistance from some administrators who will claim that faculty members do not have requisite expertise in these matters. We acknowledge that faculty members who engage in detailed consultation of this kind will necessarily have to be or become literate in budgetary matters. But there are two critical points that need to be considered. The first is that every institution of higher education that offers a full curriculum of instruction necessarily includes faculty members who specialize in accounting, finance, and economics more generally. Their expertise is directly relevant to the determination of financial exigency. The second is that outside the disciplines of accounting, finance, and economics, faculty members long experienced in the analysis of complex data relevant to their particular disciplines as well as to their own departments and schools can be expected to bring seasoned judgment to bear on institutional finances and their impact on the future of educational programs.

However, when we speak of “the financial position of the institution as a whole” we are not simply returning to the standard of “an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means” than the

34. Ibid., 147.

termination of appointments. Again, we are proposing a new definition of “financial exigency” that we believe corresponds more closely to the facts on the ground for most institutions of higher education. Financial exigency can be catastrophic and corrosive even when it does not threaten (as it rarely does) the survival of the institution as a whole. But because this definition of “financial exigency” does not require that an institution be faced with the prospect of immediate closure and bankruptcy, it must be accompanied by greater safeguards for faculty members and more stringent guarantees that it will not be abused.

Neither Regulation 4c nor Regulation 4d requires an institution to consult with or seek input from faculty members in programs slated for termination. This seems to us a significant omission, particularly since our guidelines on institutional problems resulting from financial exigency insist that such consultation is imperative: “Given a decision to reduce the overall academic program, it should then become the primary responsibility of the faculty to determine where within the program reductions should be made. Before any such determination becomes final, those whose life’s work stands to be adversely affected should have the right to be heard.”³⁵ It may be objected that the results of such a recommendation would be predictable, insofar as very few affected faculty members would argue for their own program’s elimination or their own release. However, some arguments for a program’s elimination or preservation are better than others, and we believe that faculty members must be entrusted with the right to make and assess those arguments. Regulation 4c(2) affords a faculty member whose position is terminated “the right to a full hearing before a faculty committee,” and Regulation 4d(3) provides that a faculty member whose position is terminated for reasons other than exigency “may appeal a proposed relocation or termination resulting from a discontinuance and has a right to a full hearing before a faculty committee.” But there is no provision for consultation with such faculty members before the decision is made. In the future, we propose, faculty members in a program being considered for discontinuance because of financial exigency should be informed in writing that it is being so considered and given at least thirty days in which to respond. We recommend that Regulations 4c and 4d be revised accordingly.

B. Another Suitable Position Elsewhere within the Institution

Regulation 4d(2) states,

Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member’s appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member’s length of past and potential service.

This provision is crucial to determining whether a program is being discontinued for sound, legitimate educational reasons or whether it is being discontinued simply in order to shed its

35. Ibid.

tenured faculty members: an institution that makes no substantial effort (or, as is often the case, no effort at all) to find “another suitable position” for faculty members affected by program closure is effectively using program closure as a convenient way to terminate tenured appointments.

The problem, of course, lies in specifying what “another suitable position” might be. It is obviously beyond the capacity of this subcommittee to imagine every kind of possible program discontinuance and the potentially suitable positions for which affected faculty members should be considered; the challenge lies in developing overarching principles that can have numerous specific applications. The question is further complicated when one considers the case of *Browzin v. Catholic University*, as Ralph Brown explained in 1976:

What is a program? What is a department? Here also we must rely on good faith, and on faculty involvement. An example of questionable judicial definition, albeit to a good end, is found in the *Browzin* case. . . . The issue was whether an adequate attempt had to be and had been made to place Professor Browzin in another suitable position. The trial in the lower court had concentrated on financial exigency. An ambiguity in the 1968 [*Recommended Institutional Regulations on Academic Freedom and Tenure*] seemed to relate the obligation to seek a suitable position only to cases of abandonment of program. Judge Wright, striving to give effect to what he thought were underlying goals, concluded that “financial exigency is in the case, but so is *abandonment of a program of instruction*” (italics Judge Wright’s). Since courses in Soil Mechanics and Hydrology, “Browzin’s particular responsibility,” were given up, “The University did discontinue Browzin’s program of instruction.” If the issue had been solely whether Browzin could be terminated because of a program discontinuance, I do not think we would want to accept this notion of a one-man program. The case would then seem to be a simple breach of tenure, in the absence of financial exigency.

Why then is a larger carnage acceptable? Only because it does not seem to be right to require a university to maintain a program, and the people in it, when a serious educational judgment has been made, in the language of [Regulation 4d(1)’s] note, that “the educational mission of the institution as a whole will be enhanced by the discontinuance.”³⁶

We see no reason to abandon or revise the AAUP’s long-standing position on one-person programs, which seem to us administrative devices for cherry-picking tenured faculty members for release. In the AAUP’s 1983 report on Sonoma State University, for instance, the investigating committee commented decisively on that institution’s use of “Teaching Service Areas” to define individual faculty members as one-person programs. “Through the device of the Teaching Service Area,” the committee wrote, “the newly engaged nontenured faculty members may be reappointed while the appointment of a tenured professor with many years of service may be terminated. The administration need only decide to reduce the ‘biology’ Teaching Service Area by one person and leave ‘microbiology’ and ‘molecular biology’ alone.”³⁷ The committee therefore found, and we concur, that such a procedure “is prone to abuse by the

36. Brown, “Financial Exigency,” 13.

37. “Academic Freedom and Tenure: Sonoma State University,” *Academe*, May–June 1983, 8.

administration and serves to undermine academic freedom, tenure, and due process.”³⁸ Whatever name such procedures go under (or, as is more likely, when they carry no official designation at all), we hold that they are not “program closures” as we understand the term, but, rather, an illegitimate means for targeting and terminating individual faculty appointments.

We therefore want to try to answer Brown’s question—*what is a program?*—without relying exclusively on good faith and faculty involvement (though both are clearly necessary). First and foremost, programs cannot be defined ad hoc, at any size; programs must be recognized academic units that existed prior to the declaration of financial exigency. The term “program” should designate a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines. Ideally, the term should designate a department or similar administrative unit that offers majors and minors; at the University of Northern Iowa in 2012, by contrast, the administration’s definition of “program area” was not agreed to by United Faculty, the local AAUP collective bargaining unit, and was indeed so fluid and capricious as to allow for multiple cherry-picking operations. One way to determine whether a program closure is bona fide is to ask whether the courses in the program continue to be offered, as was the case at Southeastern Louisiana University after it “closed” its majors in French and French education. In other words, the elimination of a major or minor in a course of study is, of itself, no excuse for the release of tenured faculty members if courses are still on the books (presumably to be taught instead by non-tenure-track faculty members, or by faculty members who have been stripped of tenure).³⁹

As the court in *Browzin* held,

[T]he obvious danger remains that “financial exigency” can become too easy an excuse for dismissing a teacher who is merely unpopular or controversial or misunderstood—a way for the university to rid itself of an unwanted teacher but without according him his important procedural right. The “suitable position” requirement would stand as a partial check against such abuses. An institution motivated only by financial considerations would not hesitate to place the tenured professor in another suitable position if one can be found, even if this means displacing a nontenured instructor.⁴⁰

We note, however, that in the years since *Browzin*, and Brown’s response thereto, academic programs themselves have undergone substantial transformation. The change has brought about both danger and opportunity. First, with the post–World War II expansion of American higher education, the meaning of “another suitable position” has changed radically. Second, since the 1970s, in every field of intellectual endeavor—from the arts and humanities to the

38. *Ibid.*, 9.

39. This is not to say that a faculty member should be guaranteed the same courses he or she taught prior to the declaration of financial exigency. If the elimination of a major or minor entails the elimination of advanced courses in a subject, so be it. We will not seek to uphold the right of a Spanish professor to continue teaching small seminars on Cervantes instead of lower-division language-instruction courses. We are concerned here only with preserving the positions of tenured faculty members, not with dictating the content of their course loads.

40. *Browzin v. Catholic University*, 527 F.2d 843 (U.S. App. D.C.) at 847.

social, speculative, and applied sciences—colleges and universities have heralded the virtues of interdisciplinarity and have created a wide variety of innovative interdepartmental programs, centers, and institutes in order to encourage interdisciplinary research, teaching, and collaboration. On the one hand, this transformation of the curricular landscape would appear to have made it easier for administrations to define “programs” whose proposed discontinuance is simply a means of terminating one troublesome tenured professor. On the other hand, the expansion or redefinition of the traditional disciplines, together with the creation of new interdisciplinary programs, should also have made it easier for institutions to find “another suitable position” for faculty members in discontinued programs.

Two examples will help illustrate what we are suggesting. At SUNY-Albany, the tenured professors in classics, French, Italian, and Russian could very well have been consolidated in a department of languages and literatures that would also have included Spanish and less-taught other languages. If the SUNY-Albany administration did not consider this possibility, it would be but one of many ways in which AAUP standards were ignored. At Pennsylvania State University, the termination of the university’s science, technology, and society program—itsself created, in 1969–70, by faculty members from the colleges of earth and mineral sciences, engineering, liberal arts, and science—affected five tenure-track professors working on a wide variety of subjects, such as the history of autism and networks created by families with autistic children, the politics of food security, and the history of Chinese ecological science and environmental governance, with a focus on climate policy and urban development. The faculty members involved clearly can be housed in any number of academic units, from the traditional Department of Human Development and Family Studies to newer interdisciplinary units such as the Huck Institutes of the Life Sciences, the Penn State Institutes of Energy and the Environment, and the International Center for the Study of Terrorism.⁴¹ American universities have found many ways of creating such centers and institutes, using them as devices for establishing new areas of research and teaching and for engaging new faculty members. We are aware that few of these centers and institutes were created with the intention that they would include tenure-track faculty lines. But because the AAUP maintains that tenure is held in the institution rather than any department, college, program, or other subdivision within the institution, we believe that it is incumbent upon institutions to be at least as creative in finding ways to relocate faculty members whose programs have been discontinued. In some cases, relocating a faculty member may involve provost-level negotiations, if, for instance, the faculty member’s line is to be transferred between colleges. But in all cases, the first sentence of Regulation 4d(2) must be observed: the institution must make every effort to place the faculty member concerned in another suitable position before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction. The effort to find another suitable position must

41. Penn State conducted its program closures, which were announced in 2011, by means of a “Core Council” that included minimal faculty input, none of which concerned the financial state of the university. There was no attempt to find “another suitable location” for the probationary faculty members in the science, technology, and society program until after its closure had been decreed, though arrangements were eventually made for some—not all—of the faculty members affected.

precede the announcement of an institution's *intent* to terminate a program; it cannot follow the announcement as faculty members and administrators scramble to put together a Plan B.

If an undergraduate major or a graduate program is eliminated but lower-level courses continue to be offered (as is the case with many reductions of foreign-language programs), the professor who is reassigned from upper-level to lower-level courses is not considered to be relocated "elsewhere." Tenure rights enable the professor to assume the teaching of lower-level courses that have been taught by nontenured faculty members; departments and colleges should not assume that if upper-level courses are eliminated, the tenured faculty members who taught them need to be released as well. All relocations of tenured faculty members should allow those faculty members to retain their tenure rights, including eligibility for service on department, college, and institution-wide committees; no relocated professor should suffer a reduction in his or her salary, unless across-the-board salary reductions are part of an institution's response to its financial condition, and no relocated professor should suffer demotion from his or her previously earned academic rank.

Again, the AAUP holds that the locus of tenure is in the institution as a whole, not in any subdivision (department, college, program) thereof. Therefore, the elimination of a program in which a faculty member has tenure does not entail the elimination of that faculty member's tenure rights, and it is for this reason that he or she has the right to be relocated.

We note also that an increasingly common justification for program closure is "low completion rates," that is, low numbers of graduates per year. We believe that gauging enrollment simply by counting the number of student majors is especially inimical to sound academic judgments. Often, modern languages such as French and German are unduly penalized by such calculations, because they discount the number of students who meet language requirements by taking courses in French and German without majoring in those subjects; but in the University of Louisiana System and at the University of Northern Iowa, this kind of bean counting affected the sciences as well, as when the UNI administration slated a physics program for closure without considering how many majors in the other sciences needed to take courses in physics. So-called "data-driven" program closures should be eschewed in favor of comprehensive, orderly reviews of the full profile of an institution's curricular offerings, reviews that are guided not solely by enrollment numbers but also by sound, rational, and justifiable determinations of the intellectual strengths and weaknesses of each program.

Lastly, we reaffirm the provisions of Regulations 4d(2) and 4d(3), requiring institutions to offer a reasonable period of training for faculty members affected by program discontinuance, financial and other support for such training, severance pay equitably adjusted to the faculty member's length of past and potential service, the right to appeal a proposed relocation or termination, and the right to a full hearing before a faculty committee.

C. Personnel Priorities

Regulation 4c(1) states that "judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body. The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for

identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of length of service.” In earlier versions, this clause read “considerations of age and length of service,” but it was revised to conform to the Age Discrimination in Employment Act of 1967. Since the end of mandatory retirement in academe, this issue has become only more complex, and it is complicated still further by the multiple demographic changes in the academic workforce over the past four decades: the professoriate contains far more women and minorities than it did in 1970 (a development we welcome) and far fewer faculty members with tenure as a proportion of all faculty members (a development we deplore). Forty years ago, roughly three-quarters of all faculty members were tenured or probationary for tenure; today, roughly three-quarters of all faculty members do not have, and have little hope of gaining, the protections of tenure.

When programs are discontinued and faculty members face relocation or release, priority must be given to the tenured, or tenure itself will lose meaning. It is worth reviewing this imperative with regard to the consideration of “seniority” in our revised definition of financial exigency. Thanks to the dramatic expansion and institutionalization of the nontenured ranks, it is possible to find non-tenure-track faculty members with significant seniority—amounting even to decades—over newly tenured members of the faculty. Similarly, our operating guidelines on institutional problems resulting from financial exigency state that “as particular reductions are considered, rights under academic tenure should be protected. The services of a tenured professor should not be terminated in favor of retaining someone without tenure who may at a particular moment seem to be more productive.”⁴²

However, Regulation 4c(3) complicates matters somewhat: “The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure *except in extraordinary circumstances where a serious distortion of the academic program would result.*” (Emphasis added.) Matters are complicated still further by AAUP policy holding that all full-time faculty members who have exceeded seven years of service are considered to be within the cohort of the tenured, regardless of whether they have undergone formal tenure procedures. As a result, their rights to the protections of academic due process that accrue with tenure are identical to those of faculty members with tenure. It is only for the purpose of defining professional standards for relocating or releasing tenured faculty members in programs facing discontinuance that we draw a distinction between these categories. When programs are discontinued, institutions must make every effort to relocate both formally and informally tenured faculty members to other academic programs. What should be strictly forbidden, in any case, are decisions to terminate faculty appointments based on quantitative or otherwise reductive assessments that do not consider the breadth and versatility of a faculty member’s research and teaching, since these determinations effectively create a system of punishment and reward that does not answer to essentially educational considerations and is easy to manipulate by appeal to evanescent fluctuations in enrollments and research funding, or evanescent fluctuations in the productivity of individual faculty members.

Further, we want to enhance the role of all faculty members in decision making. We call attention to a critical passage in the AAUP statement *The Role of the Faculty in Budgetary and*

42. *Policy Documents and Reports*, 147.

Salary Matters, which grants to nontenured faculty members a key role in the determination of financial exigency, consonant with the role we recommend for tenured faculty members:

Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and as specifically as possible of significant impending financial difficulties. The faculty — *with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of any reduction* — should participate at the department, college or professional school, and institution-wide levels in key decisions as to the future of the institution and of specific academic programs within the institution.⁴³

The reference to the faculty's being "informed as early and as specifically as possible" is potentially misleading; although administrators have a fiduciary responsibility to alert the campus to impending challenges, in a properly collaborative and consultative environment, the faculty would have a detailed and ongoing sense of the institution's financial health. In a similar vein, AAUP operating guidelines on institutional problems resulting from financial exigency specify that "the granting of adequate notice to nontenured faculty should also be given high financial priority." We propose that "adequate notice" be understood in relation to a non-tenure-track faculty member's length of service. For instance, in Regulation 13e(1), the following provision is made for "part-time faculty members who have served for three or more terms during a span of three years": "Written notice of reappointment or nonreappointment will be issued no later than one month before the end of the existing appointment. If the notice of reappointment is to be conditioned, for example, on sufficiency of student enrollment or on financial considerations, the specific conditions will be stated with the issuance of the notice." We propose that this provision be extended to all nontenured faculty members who are released as a result of a declaration of financial exigency; nontenured faculty members with more than seven years of service have long-standing affiliations with an institution, and they may have to make major life changes—switching careers, moving families—in order to seek new positions. Nontenured faculty members with three or more years of service but less than seven should be granted six months of additional appointment after notice of termination on the same grounds. Tenured faculty members, if they are released on the ground that they are not as qualified to execute the fullest possible range of the program's educational and institutional mission as others in their cohort, should be provided with an additional year of appointment after they have been given notice of termination for financial considerations.⁴⁴ We note that this provision is especially germane to our revised definition of financial exigency, insofar as a campus that is not experiencing an imminent financial crisis that threatens the survival of the institution as a whole (but, rather, a *severe* financial crisis that threatens the

43. *Ibid.*, 150; emphasis added.

44. We find it exceptionally vexing to have to set a standard for providing adequate notice of nonreappointment for non-tenure-track faculty members with more with seven years of service when our policies do not recognize the legitimacy of an institution's having any full-time faculty members in this category. But we want to provide some protection for the full-time non-tenure-track faculty members even though we do not accept the legitimacy of their positions off the tenure track.

academic mission of the institution as a whole) presumably will have the time and resources necessary to give its long-serving faculty members adequate long-term notice of termination.

Finally, there is the question of how departments should prioritize terminations of tenured faculty appointments with regard to educational considerations. Particularly in fields that have undergone substantial intellectual transformations in recent decades, these decisions can pit established fields against emerging fields—to the detriment of the former, if too much weight is given to recent developments in a discipline, or to the detriment of the latter, if too much weight is given to traditional areas and forms of scholarship. This committee finds it exceptionally difficult to recommend specific courses of action in such cases; we cannot say, as a general rule, whether (to take a salient example from the Furniss-Brown exchange) a department should prefer to keep its three senior tenured scholars of European history or terminate one of them in favor of keeping the younger tenured scholar in Asian studies. Such decisions will be wrenching regardless of their outcomes and may lead to substantial redefinition of a department's or program's core educational mission. We propose, therefore, that any decisions about the priority of subfields within a discipline be made with respect to the long-term health and viability of the discipline as an educational enterprise, as determined by deliberations in good faith, balancing the virtues of both established and emerging fields and asking which areas of study, and which methodologies, will best serve the discipline and prospective student populations for the foreseeable future.

There are good reasons for our hesitation in this matter. We do not wish to compel, or to give administrators the right to compel, individual departments to accept refugees from closed programs. We consider it illegitimate to try (for example) to force a chemistry department to appoint a pharmacist from a discontinued program, or for law schools or economics departments to accept business professors who teach law or economics if the law school or economics department in question deems those professors to be unqualified for appointment. However, *every good faith effort must be made to find another suitable position for displaced faculty members with tenure*, and if one department blocks an appointment, it should provide a written statement of its rationale. Whenever a department refuses the reappointment of a faculty member, the burden remains on the administration to try to find another plausible department as a home. Every presumption should be in favor of preserving the tenured position; as we noted above, interdisciplinary programs, centers, and institutes might well accommodate displaced faculty members, particularly if their work crosses disciplinary boundaries. No invidious reasons should be accepted for a department's decision not to accept a displaced faculty member; a department cannot insist that it does not want to hire another woman or demur on ideological grounds that would violate a faculty member's academic freedom. If a faculty member believes that his or her rejection by a proposed relocation department is invidious, spurious, or in violation of AAUP principles, that faculty member should have the right to appeal to an appropriate faculty committee. But that committee's recommendation should be advisory, not binding; and we do not grant deans and provosts the right to override the wishes of departments if those departments' decisions are based on legitimate educational and intellectual grounds.

D. Proposed Changes for Individual Institutions

At institutions not covered by collective bargaining agreements, the foregoing policy statements, like all AAUP guidelines, are recommendations: they represent our careful consideration of best practices for colleges and universities, and they offer a definitive measure by which institutions can gauge their adherence to the standards that should govern American higher education. The faculty and administrations at institutions not governed by collective bargaining should therefore work together to include the report's policy statements and recommendations in their institutional regulations and faculty handbooks.

Collective bargaining representatives that incorporate some or all of the AAUP's previous recommendations related to this report into their collective agreements, or that seek in the future to negotiate new or revised agreements that incorporate these recommendations, should also seek to ensure that disputes regarding the interpretation and enforcement of the policies and procedures are resolved through a grievance process that includes binding arbitration. In the best cases, the enforceable procedures that result will include an opportunity for the faculty, acting through the union or the faculty senate, to participate in the determination of whether a bona fide financial exigency exists. In such cases, the parties may need to determine whether to continue with their existing understanding of "financial exigency" or to adopt our revised definition. Similarly, those institutions whose agreements specifically include AAUP-recommended program review and closure procedures that entail faculty participation in these decisions, or incorporate such AAUP-recommended procedures by reference, should update their agreements to incorporate these revised recommendations. We recommend, further, that collective bargaining representatives take special care to ensure that faculty members without tenure are granted the right to participate in determinations of financial exigency and program discontinuance, since they are likely to bear the brunt of program closures and layoffs.

Too often, however, the imposition of excessively narrow interpretations of negotiable terms and conditions of employment means that faculty collective bargaining agreements fall short of the faculty involvement that constitutes best practice. Contracts that do not provide the safeguards afforded by faculty participation in decisions respecting financial exigency and program closure typically must then rely entirely on layoff and recall provisions to protect academic integrity and faculty rights. In view of the flexibility provided by the vast increase in instruction by part-time and short-term appointees, and the deleterious consequences for academic freedom and educational quality that may be expected to result, there is no excuse for layoff procedures that permit routine reliance on the layoff of faculty members within the term of their appointments in order to meet short-term financial or enrollment concerns. Where proposed layoffs involve dismissal of faculty members with tenure, faculty members whose length of service entitles them to the protections of tenure, or term appointees within the term of their appointments, agreements should adopt at minimum AAUP-recommended procedures regarding order of layoff, length of notice, fair consideration for alternative suitable positions, and severance pay. These agreements ought particularly to ensure, through seniority provisions and appeal procedures, that layoffs cannot be based on considerations inconsistent with academic integrity and academic freedom.

IV. Conclusion

This report has sought to address the gap between Regulation 4c on financial exigency and Regulation 4d on program discontinuance by redefining “financial exigency.” As we set forth in the introduction, our new definition names a condition that is less dramatic than that in which the very existence of the institution is immediately in jeopardy but is significantly more serious and threatening to the educational mission and academic integrity of the institution than ordinary (short- and long-term) attrition in operating budgets. Financial exigency can legitimately be declared only when substantial injury to the institution’s academic mission will result from prolonged and drastic reductions in funds available to the institution, and only when the determination of the institution’s financial health is guided by generally accepted accounting principles. In proposing this new definition, however, we insist again that financial exigency is not a plausible complaint from a campus that has shifted resources from its primary missions of teaching and research toward the employment of increasing numbers of administrators or toward unnecessary capital expenditures.

In order to ensure that our definition of “financial exigency” does not become an excuse for program elimination and the termination of tenured faculty positions when less drastic responses to institutional crisis are available, this report urges that faculty members be involved in consultation and deliberation at every stage of the process, beginning with a determination that a state of financial exigency exists. We offer specific recommendations for such faculty involvement:

1. Before any proposals for program discontinuance on financial grounds are made or entertained, the faculty should have the opportunity to render an assessment in writing on the institution’s financial condition.
2. Faculty bodies participating in the process may be drawn from the faculty senate or elected as ad hoc committees by the faculty; they should not be appointed by the administration.
3. The faculty should have access to, at minimum, five years of audited financial statements, current and following-year budgets, and detailed cash-flow estimates for future years.
4. In order to make informed proposals about the financial impact of program closures, the faculty needs access to detailed program, department, and administrative-unit budgets.
5. The faculty should determine whether “all feasible alternatives to termination of appointments have been pursued,” including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration.
6. Faculty members in a program being considered for discontinuance because of financial exigency should be informed in writing that it is being so considered and given at least thirty days in which to respond. Both tenured and nontenured faculty members should be involved.

We reaffirm the AAUP’s long-standing opposition to the elimination of “one-person” programs, which allows for selective, arbitrary termination of tenured faculty members; and we reaffirm

the principle that tenured faculty members hold tenure in the institution as a whole, not in any college, department, program, or other subdivision thereof. We also affirm long-standing AAUP policy that all full-time faculty members who have taught at an institution for over seven years are considered to be within the cohort of the tenured, whether or not they have undergone formal tenure procedures. It is precisely because tenure resides in the entire institution that tenured faculty members have the right to another suitable position within the institution, and we urge institutions to be creative in finding ways to relocate faculty members whose programs have been discontinued. Most important, we reiterate that the institution must make every effort to place the faculty member concerned in another suitable position *before* the administration issues notice to a faculty member of its intention to terminate his or her appointment because of formal discontinuance of a program or department of instruction. We reaffirm the principle that tenured faculty members must not be released and then replaced with nontenured faculty members. And we recommend that faculty members without tenure who are released as a result of program closure be given notice of nonreappointment commensurate with their length of service to the institution. Finally, we recommend that collective bargaining representatives adopt the recommendations of this report to the fullest extent possible.

We affirm these principles and make these recommendations not as a rearguard measure, not as a last-ditch attempt to keep the flickering flame alive before the forces of austerity engulf American higher education. We do believe that the forces of austerity are threatening to engulf American higher education; certainly this is why institutions are closing programs that should be part of any serious educational institution's curricular portfolio and implementing policies that further erode the ranks and the discretionary authority of the tenured professoriate. But we do not issue this report in a defensive mode. On the contrary, we believe that the erosion of the ranks and of the discretionary authority of the tenured professoriate is not only bad for American higher education but also bad for society as a whole and for the future of the United States. Program closures on the scale we have recently witnessed represent a massive transfer of power from the faculty to the administration *over curricular matters that affect the educational missions of institutions*, for which the faculty should always bear the primary responsibility. In most cases the decisions to close programs are made unilaterally and are driven by criteria that are not essentially educational in nature; they are therefore not only procedurally but also substantively illegitimate. Moreover, program closures on this scale appear to reflect—and to implement—a widespread belief that faculty positions and instructional costs are the first expenditures an institution should seek to trim, as opposed to expenditures on administration or capital projects.

We cannot say this strongly enough: the widespread closure of academic programs, when undertaken by administrations unilaterally or on occasion with a fig leaf of faculty participation, represents a significant threat to the foundations of American higher education. These initiatives essentially transform colleges and universities from educational to managerial institutions, in which instruction in a course of study is simply another “deliverable” and where programs are so many inventory items to be discounted, downsized, or discontinued according to a reductive logic of efficiency and the imperative to lower labor costs whenever possible. We are not as a rigid matter of principle opposed to program closures. The AAUP has long

acknowledged that a college or university can discontinue a program of instruction, but our standard has been that if the discontinuation is not undertaken for financial reasons, it must be shown to enhance the educational mission of the institution as a whole; we have long acknowledged that programs can be cut in times of financial exigency, but only if an appropriate faculty body is involved in the decision-making process, beginning with the determination of whether an institution is experiencing bona fide financial exigency. But by and large, the program closings of recent years do not meet any of these standards. They represent a violation of the principles on which American higher education should operate and must be contested by a vigorous, principled, and informed faculty.

Michael Bérubé (English)
 Pennsylvania State University, *chair*

Gregory S. Brown (History)
 University of Nevada, Las Vegas

Charles Clotfelter (Public Policy, Law, and Economics)
 Duke University

Matthew W. Finkin (Law)
 University of Illinois at Urbana-Champaign

Cary R. Nelson (English)
 University of Illinois at Urbana-Champaign

Christopher Newfield (English)
 University of California, Santa Barbara

Deanna D. Wood (Library Science)
 University of New Hampshire

David M. Rabban (Law), *ex officio*
 University of Texas at Austin

Ronald G. Ehrenberg (Economics), *consultant*
 Cornell University

Jordan E. Kurland, *staff*

The Subcommittee

APPENDIX I

**Proposed Regulation 4 as Revised and Regulation 8
of the Association's
*Recommended Institutional Regulations on Academic Freedom and Tenure***

**4. TERMINATION OF APPOINTMENTS
BY THE INSTITUTION**

a. Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may be effected by the institution only for adequate cause.

b. If termination takes the form of a dismissal for cause, it will be pursuant to the provisions specified in Regulation 5.

Financial Exigency¹

c. (1) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency, i.e., a severe financial crisis that threatens the academic mission of the institution as a whole and that cannot be alleviated by less drastic means.

[Note: Each institution in adopting regulations on financial exigency will need to decide how to share and allocate the hard judgments and decisions that are necessary in such a crisis.

As a first step, there should be a faculty body that participates in the decision that a condition of financial exigency exists or is imminent, and that all feasible alternatives to termination of appointments have been pursued, including expenditure of one-time money or reserves as bridge funding,

furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration.²

Judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body.³ The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty. The allocation of this responsibility may vary according to the size and character of the institution, the extent of the terminations to be made, or other considerations of fairness in judgment. The case of a faculty member given notice of proposed termination of appointment will be governed by the following provisions.]

(2) Before any proposals for program discontinuance on grounds of financial

exigency are made, the faculty or an appropriate faculty body will have opportunity to render an assessment in writing on the institution's financial condition.

[Note: Academic programs cannot be defined ad hoc, at any size; programs should be recognized academic units that existed prior to the declaration of financial exigency. The term "program" should designate a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines. When feasible, the term should designate a department or similar administrative unit that offers majors and minors.]

(i) The faculty or an appropriate faculty body will have access to at least five years of audited financial statements, current and following-year budgets, and detailed cash-flow estimates for future years.

(ii) In order to make informed recommendations about the financial impact of program closures, the faculty or an appropriate faculty body will have access to detailed program, department, and administrative-unit budgets.

(iii) Faculty members in a program being considered for discontinuance because of financial exigency will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it. Nontenured as well as tenured faculty members will be informed and invited to respond.

(3) If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a

faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:

(i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.

(ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.

(iii) Whether the criteria are being properly applied in the individual case.

(4) If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

(5) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

(6) In all cases of termination of appointment because of financial exigency,

the faculty member concerned will be given notice or severance salary not less than as prescribed in Regulation 8.

(7) In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and at least thirty days in which to accept or decline it.

Discontinuance of Program or Department for Educational Reasons⁴

d. Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur as a result of bona fide formal discontinuance of a program or department of instruction. The following standards and procedures will apply.

(1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.

[Note: "Educational considerations" do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.]

(2) Faculty members in a program being considered for discontinuance for educational considerations will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it. Nontenured as well as tenured faculty members will be invited to participate in these deliberations.

[Note: Academic programs cannot be defined ad hoc, at any size; programs must be recognized academic units that existed prior to the decision to discontinue them. The term "program" should designate a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines. When feasible, the term should designate a department or similar administrative unit that offers majors and minors.]

(3) Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service, an amount which may well exceed but not be less than the amount prescribed in Regulation 8.

[Note: When an institution proposes to discontinue a program or department of instruction based essentially on educational considerations, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

(4) A faculty member who contests a proposed relocation or termination resulting from a discontinuance has a right to a full hearing before a faculty committee.

The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in Regulation 4d. In such a hearing a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

Termination because of Physical or Mental Disability

e. WITHDRAWN [See "Accommodating Faculty Members Who Have Disabilities," in "Bulletin of the American Association of University Professors," special issue, *Academe*, July–August 2012, 30–42.]

Review

f. In cases of termination of appointment, the governing board will be available for ultimate review.

8. Terminal Salary or Notice⁵

If the appointment is terminated, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of probationary service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of probationary service; at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure. This provision for terminal notice or salary need not apply in the event that there has been a finding that

the conduct which justified dismissal involved moral turpitude. On the recommendation of the faculty hearing committee or the president, the governing board, in determining what, if any, payments will be made beyond the effective date of dismissal, may take into account the length and quality of service of the faculty member.

NOTES

1. See "The Role of the Faculty in Conditions of Financial Exigency." The definition of "financial exigency" offered in that report and adopted here is intended to be more responsive to actual institutional conditions, and intended to extend the standard of exigency to situations not covered by our previous definition.

2. See "The Role of the Faculty in Budgetary and Salary Matters," *Policy Documents and Reports*, 149–52, especially the following passages:

The faculty should participate both in the preparation of the total institutional budget and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical plant and grounds, and so on). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources and the proportion to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform

its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board. . . .

Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and specifically as possible of significant impending financial difficulties. The faculty—with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of the reduction—should participate at the department, college or professional school, and institution-wide levels in key decisions as to the future of the institution and of specific academic programs within the institution. The faculty, employing accepted standards of due process, should assume primary responsibility for determining the status of individual faculty members.

3. See “Statement on Government of Colleges and Universities,” *Policy*

Documents and Reports, 135–40, especially the following passage:

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy.

4. When discontinuance of a program or department is mandated by financial exigency of the institution, the standards of Regulation 4c above will apply.

5. For renewable term appointments not specifically designated as probationary for tenure, see “The Applicability of the ‘Standards for Notice of Nonreappointment’ to All Full-Time Faculty on Renewable Term Appointments,” in “Report of Committee A, 1994–95,” *Academe*, September–October 1995, 51–54.

APPENDIX II

Measuring Financial Distress

The purpose of this appendix is to provide faculty members with some guidance in understanding the financial condition of their institutions. While no single number can capture the entire financial condition of an institution, the composite index described below is designed to indicate whether an institution may be facing financial distress.

This index can be used to analyze how the financial condition of one institution has changed over time and to compare similar institutions. If the index falls below the threshold discussed in this appendix, it may indicate that the institution is facing financial exigency. However, the index's merely falling below the threshold does not automatically indicate that a state of financial exigency exists; falling below the threshold should instead be seen as necessary but not sufficient to declare that an institution is in severe financial distress. Even if an institution's composite index falls below the level that could indicate the existence of a state of severe financial distress, appropriate faculty committees as well as administrators at an institution should examine financial statements and other budgetary materials with great care to ensure that the factors causing the index to fall are real and not transient.

The index described below is a variant of the index used by the Ohio Board of Regents to assess the financial health of public institutions of higher education in Ohio. The index uses four ratios: a solvency ratio, an activity ratio, and two margin ratios. A *solvency ratio* measures the ability of an institution to meet its debt obligations. An *activity ratio* measures the ability of an institution to cover its operating expenses. *Margin ratios* measure the relationships between the inflow and outflow of resources at an institution.

There are several differences between how reserves, cash flow, and net assets are measured at public and private institutions. The Governmental Accounting Standards Board governs financial statements for public institutions, whereas the Financial Accounting Standards Board governs financial statements for private institutions.

The *solvency ratio* used in the index is known as the viability ratio, and it measures the ratio of reserves to the institution's long-term debt. At public institutions, reserves are defined as unrestricted net assets plus restricted expendable net assets. At private institutions, reserves are defined as unrestricted net assets plus temporarily restricted net assets. If a private institution does not separately report value of assets invested in physical plant net of accumulated depreciation minus the liability for long-term debt (net assets invested in plant), then the value of assets invested in plant net of accumulated depreciation minus the liability for long-term debt should be subtracted from unrestricted net assets. In addition, at institutions that offer postretirement benefits, the liabilities for these postretirement benefits should be subtracted from unrestricted net assets. The viability ratio shows the percentage of the institution's debt that could be paid off using reserves and is a primary indicator of solvency.

The activity ratio used in the composite index is known as the *primary reserve ratio*. It is the ratio of reserves (as defined in the previous paragraph) to operating expenses plus interest

on capital-asset related debt. The primary reserve ratio shows how many months an institution could continue its operations even if it had no sources of revenue.

The first margin ratio used in the composite index is the *cash-flow ratio*, which is the ratio of operating cash flow to total revenue. Institutions of higher education use accrual accounting, which means that they have certain “non-cash” expenses such as depreciation and the losses on the disposal of assets. In addition, unrealized changes in the value of assets (such as changes in the value of investments held in an endowment) can result either in gains that are booked as income or in losses that are booked as expenses. The existence of noncash expenses and unrealized gains and losses on investments means that the income or (losses) before other revenues (net income) is not always a reliable indicator of net resources gained or lost by an institution. The operating cash-flow ratio is therefore at times a better indicator of the inflow and outflow of resources that can support operations. At public institutions, operating cash flow is the sum of net cash used by operations and net cash provided by noncapital financing activities minus interest paid on capital debts and leases. At private institutions, operating cash flow is net cash provided by operating activities minus interest payments on capital debts and leases.

The second margin ratio is the *net-asset ratio*, which is the change in net assets divided by the total revenue. The change in net assets is the most comprehensive indicator of the difference between revenues and expenses and is therefore one of the primary performance indicators for institutions.

To create a composite index, each of the ratios listed above is converted into a continuous score between 0 and 5 using ranges from table 1 and the piecewise linear function shown in the equation below. (If one wishes, an index can be calculated with a step function simply by assigning scores for the various ratios using the table below and then taking a weighted average of those scores using the weights in table 2.) The advantage of using the piecewise linear function $s(X)$ is that it results in a score for each ratio that changes continuously as each underlying ratio changes. Without the piecewise linear function, a very small change in a ratio can lead to a large change in the score when the underlying ratio crosses a threshold.

Table 1. Ratio Scores						
	0	1	2	3	4	5
Viability Ratio	< 0	0 to .29	.30 to .59	.6 to .99	1.0 to 2.5	> 2.5 or N/A
Primary Reserve Ratio	< -.1	-.1 to .049	.05 to .099	.10 to .249	.25 to .49	.5 or greater
Cash Flow Ratio	< -.05	-.05 to 0	0 to .009	.01 to .029	.03 to .049	.05 or greater
Net Asset Ratio	< -.05	-.05 to 0	0 to .009	.01 to .029	.03 to .049	.05 or greater

The following piecewise linear function creates a continuous score by using a linear function between the points where the $a_0 \dots a_4$ represent the viability, primary reserve, and cash-flow and net-asset ratios:

$$s(X) = \begin{cases} 0 & \text{if } X \leq a_0 - \frac{a_1 - a_0}{2} \\ \frac{X - a_0}{a_1 - a_0} + .5 & \text{if } a_0 - \frac{a_1 - a_0}{2} \leq X \leq a_1 \\ \frac{X - a_1}{a_2 - a_1} + 1.5 & \text{if } a_1 \leq X \leq a_2 \\ \frac{X - a_2}{a_3 - a_2} + 2.5 & \text{if } a_2 \leq X \leq a_3 \\ \frac{X - a_3}{a_4 - a_3} + 3.5 & \text{if } a_3 \leq X \leq a_4 + \frac{a_4 - a_3}{2} \\ 5 & \text{if } X \geq a_4 + \frac{a_4 - a_3}{2} \end{cases}$$

Figures 1–4 illustrate how this function works compared to a simple step function. The horizontal axis shows a ratio (viability ratio, primary reserve ratio, cash-flow ratio, and net-asset ratio). Moving up vertically to the line and then left to the vertical axis translates the ratio into a score.

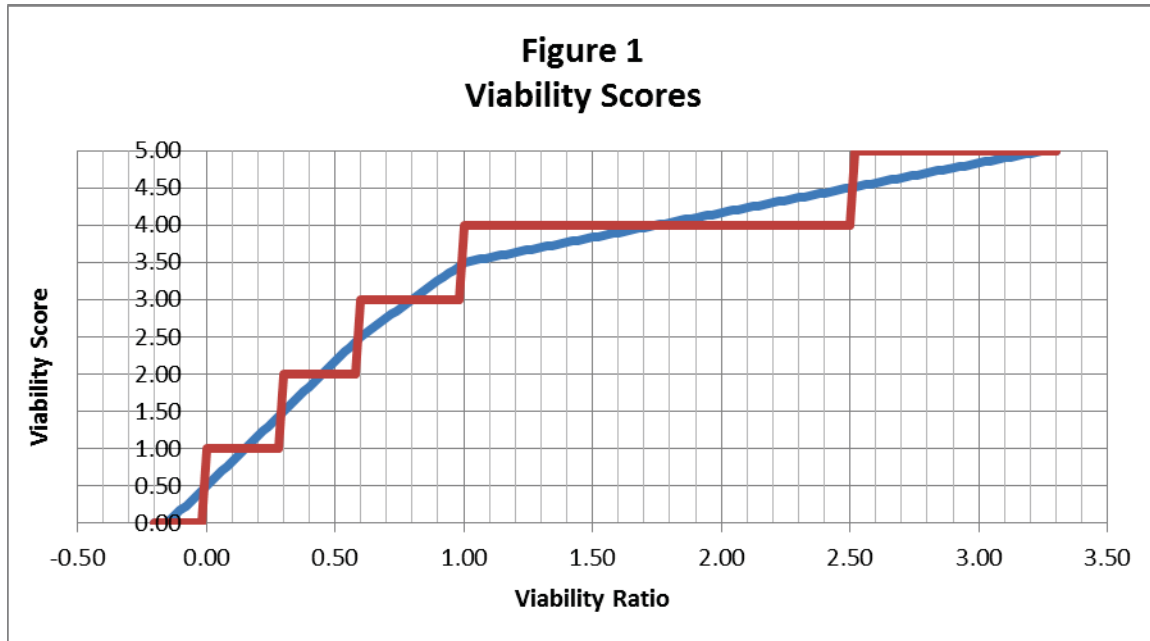


Figure 2
Primary Reserve Scores

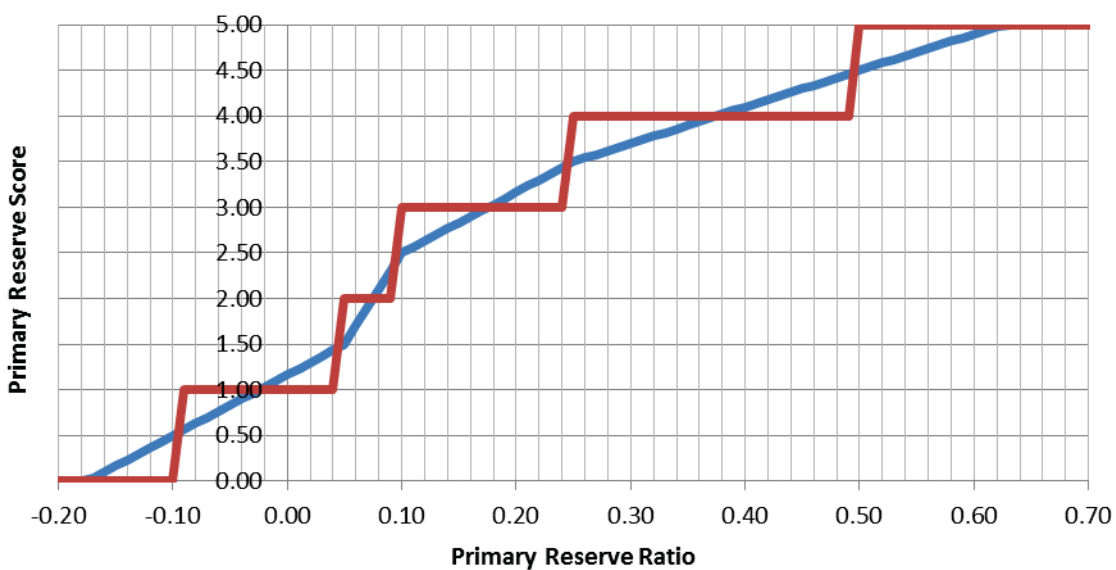
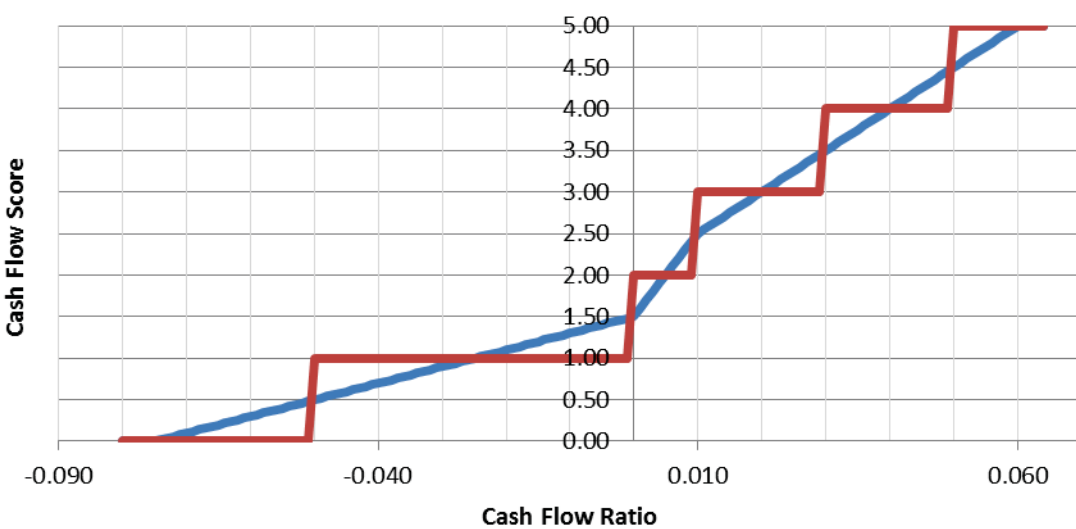
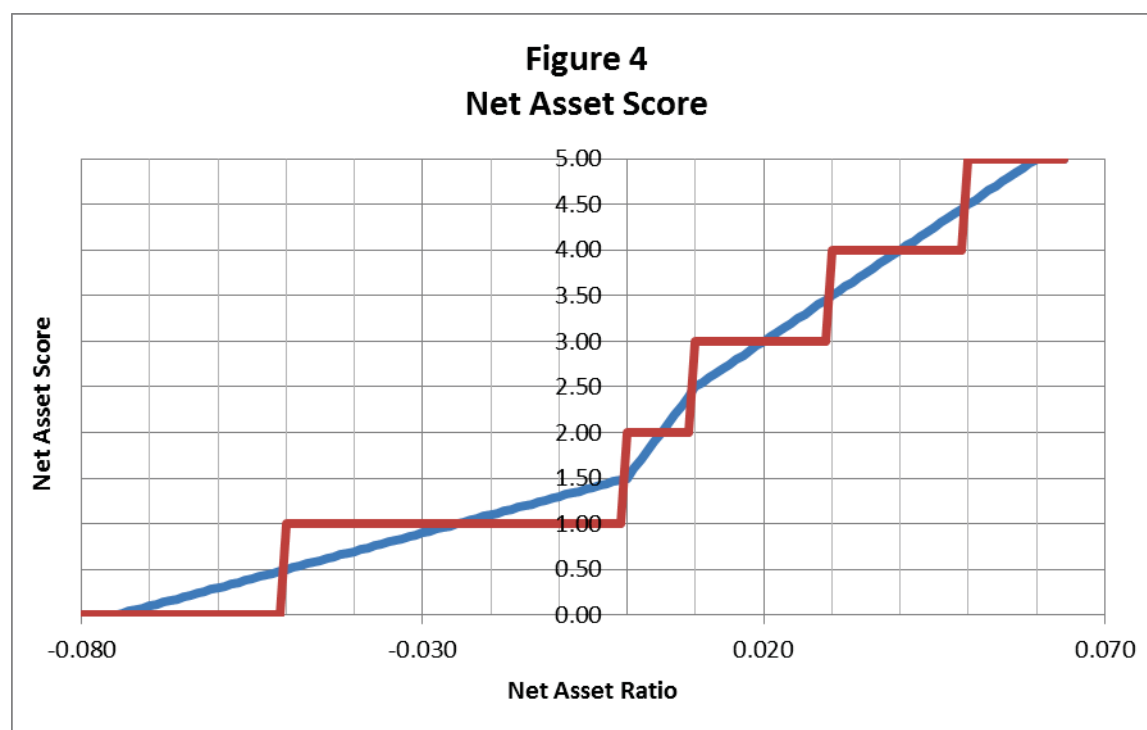


Figure 3
Cash Flow Score





The scores generated for each of the ratios using either the piecewise linear function or the step function are then weighted as follows:

Score	Weight
Viability Score	0.225
Primary Reserve Score	0.400
Cash Flow Score	0.250
Net Asset Score	0.125

Multiplying each weight times its respective score and summing creates a composite index. In general, a score of 1.5 or below for two consecutive years would indicate a condition of severe financial distress.

Discussion of Ratios

Viability Ratio

Definition: Reserves divided by debt

Public-sector reserves = Unrestricted net assets plus restricted expendable net assets

Private-sector reserves = Unrestricted net assets plus temporarily restricted net assets

What the ratio tells us:

Whether the institution has sufficient reserves in relation to the amount of debt. If the ratio is greater than 1.0, then reserves are greater than debt, which indicates financial strength.

Primary Reserve Ratio

Definition: Reserves divided by total expenses

What the ratio tells us:

Whether the institution has sufficient reserves to handle unexpected declines in revenues or unexpected increases in expenses. If the ratio is 33%, then the institution can cover expenses for four months (33% of twelve months). A ratio above 25% indicates that the institution is in a relatively strong position with respect to operating reserves.

Cash-Flow Ratio

Definition: Operational cash flows divided by total revenues

What the ratio tells us:

Whether the institution is generating sufficient cash flows to meet obligations. Cash from operating activities includes cash inflows from tuition, grants, and contracts and from sales and outflows for compensation, payments to suppliers, and payments for scholarships and fellowships. Cash flows from noncapital financing activities include state appropriations, grants for noncapital purposes (for example, Pell grants), and gifts. This ratio gives us a pure measure of cash flows.

Net-Asset Ratio

Definition: Change in net assets divided by total revenues

What the ratio tells us:

The change in net assets is total revenues less total expenses, so this ratio tells us whether there was a “profit” or “loss” during the year.

Technical Definitions

Unrestricted net assets are those for which the institution has financial freedom and flexibility. There is not a pot of cash sitting around, but if there are unrestricted net assets, then the institution has liquid assets (cash, investments, receivables) that it can tap.

Restricted expendable net assets are reserves that have been set aside for a particular purpose, such as paying future debt obligations. The institution cannot use these reserves for any other purpose, but an institution is much better off having a fund set aside to cover future obligations than not to have one.

Temporarily restricted net assets are donations that have a time component (as, for example, when a donor states that the principal of a gift cannot be used for ten years).

Debt is interest-bearing debt.

Public-sector operating cash flows consist of net cash (used) by operating activities plus net cash provided by noncapital financing activities (mostly the state appropriation) minus interest expense.

Private-sector operating cash flows consist of cash flows from operations minus interest expense.