

December 6, 2023

Financial Exigency and Retrenchment

“Financial exigency” is defined as fiscal emergencies that have two characteristics:

1. They are long-term in nature, promising to persist, by all reasonable projections, into the foreseeable future; and
2. They both threaten the fulfillment of the institution’s core academic mission of high quality instruction and, within the next three to five years, its very survival. As such, financial exigency is to be distinguished from cyclical or temporary variations in enrollment and temporary fiscal fluctuations on the one hand, and from insolvency on the other.

Further, financial exigency shall not be used as a means or justification to curtail Academic Freedom, discriminate against persons or groups, nor avoid established processes and shared governance when determining affected programs or departments. Retrenchment of bargaining unit members, as used in this Article, is defined as termination of tenured or promoted bargaining unit members due to financial exigency. Retrenchment shall occur only when an emergency cannot be alleviated by less drastic means (some of which are detailed below).

Retrenchment Procedures in Case of Financial Exigency

In the event of financial exigency possibly involving termination of tenured or promoted bargaining unit member appointments the following procedures must be followed:

1. As soon as the university begins considering possible retrenchment due to financial exigency, the President, after consulting with the University Senate Fiscal Priorities and Budget Planning Committee, Faculty Assembly, and FAM, AAUP-AFT, shall inform Senate and FAM, AAUP-AFT, in writing, of its determination that there is the imminence or existence of a bona fide financial exigency. The detailed financial data upon which this anticipation is based, including the amount of savings which it deems necessary to effect, shall be presented to Senate by the Provost or designee and conveyed

35 to FAM, AAUP-AFT. The University administration shall also provide in a timely
 36 manner such additional data which Senate or FAM, AAUP-AFT may request within the
 37 fifteen (15) calendar days following that presentation.

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 39 2. To review the declaration by the University, Senate shall create an ad hoc Committee on
 40 Financial Exigency to be composed of 24 members and shall elect 12 of its members, at
 41 least 8 of whom must be members of Faculty Assembly not serving in an administrative
 42 capacity. FAM, AAUP-AFT will select the remaining 12 members, at least 8 of whom
 43 must be members of Faculty Assembly not serving in an administrative capacity. The
 44 committee shall be co-chaired by two members, one elected from among its members that
 45 had been elected to the committee by Senate and the other selected by FAM, AAUP-AFT
 46 from among the members it selected.

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 48 3. The committee members shall not be bound by confidentiality agreements or non-
 49 disclosure provisions regarding the work of the committee. The University shall provide
 50 the committee timely access to all information the committee deems necessary. The
 51 committee will have 30 calendar days in which to reach its conclusions, at which time it
 52 must issue a written report unless extended by agreement with the University.

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 54 4. The administration and the ad hoc Committee on Financial Exigency shall then agree to
 55 submit either a joint recommendation or separate recommendations to the Board of
 56 Trustees as to whether a condition of financial exigency exists. Both the Administration
 57 and the committee agree not to submit a recommendation to the Board of Trustees, and
 58 the Board of Trustees shall not accept recommendations from either party, until forty-five
 59 (45) calendar days after the Administration's presentation to the ad hoc committee, but
 60 not sooner than fifteen (15) calendar days after the giving of any additional data the
 61 committee may have requested as provided above. Discussions by the Board of Trustees
 62 leading to action on the question of financial exigency must take place in a public
 63 meeting. Retrenchment may not occur without a formal declaration of financial exigency
 64 by the Board of Trustees, which must include a statement of the amount of money needed
 65 to relieve the exigency and be followed by immediate notification to the U.S. Department
 66 of Education and to University accreditors.

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 68 5. After a formal declaration of a fiscal emergency by the Board of Trustees, the Committee
 69 on Financial Exigency shall have 60 calendar days to recommend activities, offices,
 70 services, functions, programs, departments, or divisions – academic as well as
 71 nonacademic – that should be eliminated, contracted, or consolidated. Explicit criteria
 72 include but are not limited to:

- 73 a. need, in light of the academic mission of the University at the time of financial
74 exigency;
- 75 b. quality, as determined by annual or other formal evaluations;
- 76 c. enrollment patterns;
- 77 d. cost-benefit relationships;
- 78 e. number of persons served; and
- 79 f. frequency with which a service is rendered.
- 80
- 81 6. In developing recommendations for relieving the exigency but prior to consideration of
82 termination of tenured or promoted faculty or of academic departments or programs, the
83 Committee on Financial Exigency, shall evaluate and the University shall implement all
84 other feasible alternatives and remedies to meet or alleviate the crisis situation. These
85 alternatives and remedies must first include the following:
- 86 a. Relieve the exigency by means of exhausting the possibilities of immediately
87 initiating mechanisms for raising additional funds or of reallocating current
88 general funds;
- 89 b. Drawing down the endowment and reserved funds;
- 90 c. Eliminate or reduce activities that (a) are not self-supporting (that is gifts, grants,
91 contracts, or income from endowments designated for or other funds produced by
92 that activity are less than the expense of that activity excluding tuition remission),
93 or (b) are not in direct support of academic programs, or (c) are not essential for
94 continued operation of the academic mission of the University;
- 95 d. Imposing a freeze on all new appointments across the University;
- 96 e. Providing incentives for early retirement;
- 97 f. Providing incentives for voluntary resignations;
- 98 g. Making use of available federal or state funds or grants;
- 99 h. Deferring across-the-board salary increases;
- 100 i. Deferring merit salary increases;
- 101 j. Proposing across-the-board salary cuts and / or salary reductions for a proportion
102 of the highest paid administrative positions with management or supervisory roles
103 who are also not bargaining unit members;
- 104 k. Encouraging change of employment status from fulltime to three-quarters time to
105 half-time, with continuing fringe benefits;
- 106 l. Encouraging temporary leaves of absence or furloughs without pay;
- 107 m. Reassigning personnel within the University (NOTE: In all cases of reassignment
108 requiring retraining or “retooling,” the University shall provide the affected
109 persons with financial assistance, time-release, or both, as appropriate.).

110 When retrenchment in academic programs becomes necessary, due consideration shall be
 111 given to providing for students enrolled in those programs to complete the requirements
 112 of the program.

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114 7. Should the foregoing alternatives prove insufficient, the President, in consultation with
 115 the appropriate vice president(s), dean(s), department chair(s), program director(s), shall
 116 act to determine specific persons whose appointments are to be terminated. Insofar as it
 117 affects the faculty, any such action must be done with prior consultation on the part of the
 118 Provost with the appropriate academic dean(s), on the part of the appropriate dean(s) with
 119 the appropriate department chair(s), and on the part of the appropriate chair(s) with the
 120 appropriate departmental tenure committee(s). Explicit criteria include but are not limited
 121 to:

- 122 a. teaching effectiveness;
- 123 b. distinction in one's discipline, as reflected in peer review within and outside the
 124 institution;
- 125 c. special skills requisite to the functioning of a program, department, or division;
- 126 d. service to the University;
- 127 e. faculty status, rank;

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129 Normal attrition is the preferred approach to the extent that it will assist in relieving the
 130 financial exigency. The teaching of overloads in a particular discipline shall be
 131 eliminated, unless this would result in a serious distortion of the academic program in
 132 that discipline.

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134 Part-time faculty shall be released before any full-time, non-tenured bargaining unit
 135 member is released, unless this would result in a serious distortion of the academic
 136 program in which the part-time faculty or full-time, non-tenured bargaining unit members
 137 are engaged. Part-time faculty and full-time, non-tenured, or non promoted bargaining
 138 unit members shall be released before any full-time, tenured or promoted bargaining unit
 139 member is released, unless this would result in a serious distortion of the academic
 140 program in which the part-time faculty, fulltime, non-tenured, and full-time, tenured or
 141 promoted bargaining unit members are engaged. Tenured faculty shall be the last
 142 category to be released, unless this would result in a serious distortion of the affected
 143 academic program.

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145 Before retrenchment of bargaining unit members because of financial exigency, the
 146 University shall endeavor to place the affected bargaining unit member in another
 147 suitable position within the University.

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 149 8. All processes regarding retrenchment shall be consistent with this contract and with
 150 University policy on affirmative action and non-discrimination. Moreover, the welfare of
 151 the tenured bargaining unit members shall predominate throughout, and only under
 152 extraordinary circumstances may nontenured appointments be given preference over
 153 tenured ones. All such preferential appointments shall require a three-fourths majority
 154 vote of the promotion and tenure committee(s) of the appropriate department(s), together
 155 with the approval of the appropriate department chair(s), the appropriate academic
 156 dean(s), and the Provost. The President shall inform the individuals whose appointments
 157 are to be terminated, by registered mail, providing each with a statement of the criteria
 158 employed and the procedures by which the decision was reached.

159 Right of Negotiation

160 FAM, AAUP-AFT shall have the right to negotiate with the university on any or all provisions
 161 regarding retrenchment prior to any retrenchment actions being taken.

162 Right of Appeal

163 In addition to grievance procedures under this contract and under university policy as fixed in
 164 MUPIM, a tenured or promoted bargaining unit member or untenured faculty during the period
 165 of their appointment who has been notified of termination of appointment due to financial
 166 exigency shall have the right to a hearing before the University Senate Committee on Faculty
 167 Rights and Responsibilities. The appeal shall be filed within thirty (30) calendar days of the date
 168 of the President's termination letter. The hearing shall be closed (unless the appellant requests
 169 otherwise), and the bargaining unit member shall have the right to counsel and to presentation of
 170 witnesses and all other relevant evidence. The issues in this hearing include:

- 171
 172 1. the validity of the criteria applied to the affected bargaining unit member; and
 173 2. the fairness and impartiality with which criteria were applied.

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 175 The Committee on Faculty Rights and Responsibilities shall maintain a summary record of the
 176 hearing and it shall forward it along with their recommendation in writing to the President, the
 177 bargaining unit member filing the appeal, and FAM AAUP-AFT, within sixty (60) calendar days
 178 of the President's termination letter.
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180 Salary or Notice

181 If an appointment of a tenured or promoted bargaining unit member is terminated, the bargaining
 182 unit member shall receive salary or notice in accordance with the following schedule: At least
 183 three months, if the final decision is reached by March 1 (or three months prior to the expiration)
 184 of the first year of service; at least six months, if the decision is reached by December 15 of the
 185 second year (or after nine months but prior to eighteen months) of service; at least one year, if
 186 the decision is reached after eighteen months of service; provided, nevertheless, that no salary or
 187 notice is required beyond the term to which the bargaining unit member has most recently been
 188 appointed. A tenured or promoted bargaining unit member with more than three (3) years of full-
 189 time service will be permitted to complete the current year and, in addition, be given salary or
 190 notice for two (2) additional years.

191 Severance

192 If an appointment of a tenured or promoted bargaining unit member is terminated by
 193 retrenchment, and independent of the salary or notice provisions in this article, the University
 194 shall within 60 days of release provide 25% of the annual salary in a lump sum payment for each
 195 completed academic year of continuous Miami service.

196 Possible Reinstatement

197 The University may not fill a position which a tenured or promoted bargaining unit member who
 198 has been terminated is qualified to teach in the opinion of peers for a period of five (5) years
 199 from the date of termination of service, unless the position is first offered to that bargaining unit
 200 member and they are given at least thirty (30) days to decide whether to accept or decline the
 201 position. A bargaining unit member thus recalled shall be recalled with full tenure and /or
 202 promotion as at the time of retrenchment. The University may not fill a position in which a non-
 203 tenured bargaining unit member who has been terminated is qualified to teach for a period of
 204 three (3) years from the date of termination of service unless the position is first offered to that
 205 bargaining unit member and they are given at least thirty (30) days to decide whether to accept or
 206 decline the position. A bargaining unit member thus recalled shall be recalled with the number of
 207 years of prior service at the University counting as part of their probationary period.