

September 17, 2024

# 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 thereby threaten the fulfillment of the institution’s academic mission and, eventually, its very survival.~~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.

Tenure termination due to financial exigency shall occur only when an emergency cannot be alleviated by less drastic means (as detailed below). By the same token, financial exigency must be severe enough to justify, in principle, termination of some faculty across the University, not just in selected departments. 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. The President, after consulting with the Fiscal Priorities and Budget Planning Committee, shall inform members of Faculty Assembly, in writing, of the imminence or existence of a bona fide financial exigency.
2. The elected faculty members of the University Senate shall constitute themselves as an ad hoc committee, chaired by a member they elect, to evaluate the declaration of financial exigency. This committee shall have access to all information it deems necessary and appropriate to fulfill its charge, and it shall report its findings, in writing, to members of Faculty Assembly and to the President.
3. The aforementioned ad hoc committee shall establish a Consultative Committee on Financial Exigency to recommend to the President a program appropriate for meeting the crisis at hand. This committee shall consist of four fulltime tenured faculty members elected by the electorate of Faculty Assembly and one academic administrator elected by the Council of Academic Deans. The committee shall also include, as full voting members, the Provost as well as chairs of the Faculty Welfare Committee, the Academic Policy Committee, the Fiscal Priorities and Budget Planning Committee, and the Campus Planning Committee. The committee shall elect its own chair.
- ~~1.4. 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 to FAM, AAUP-AFT. The University administration shall also provide in a timely manner such additional data which Senate or FAM, AAUP-AFT may request within the fifteen (15) calendar days following that presentation.~~
- ~~2.5. To review the declaration by the University, Senate shall create an ad hoc Committee on Financial Exigency to be composed of 24 members and shall elect 12 of its members, at least 8 of whom must be members of Faculty Assembly not serving in an administrative capacity. FAM, AAUP-AFT will select the remaining 12 members, at least 8 of whom must be members of Faculty Assembly not serving in an administrative capacity. The committee shall be co-chaired by two members, one elected from among its members that had been elected to the committee by Senate and the other selected by FAM, AAUP-AFT from among the members it selected.~~

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

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 77 ~~4. The administration and the ad hoc Committee on Financial Exigency shall then agree to~~  
 78 ~~submit either a joint recommendation or separate recommendations to the Board of~~  
 79 ~~Trustees as to whether a condition of financial exigency exists. Both the Administration~~  
 80 ~~and the committee agree not to submit a recommendation to the Board of Trustees, and~~  
 81 ~~the Board of Trustees shall not accept recommendations from either party, until forty-five~~  
 82 ~~(45) calendar days after the Administration's presentation to the ad hoc committee, but~~  
 83 ~~not sooner than fifteen (15) calendar days after the giving of any additional data the~~  
 84 ~~committee may have requested as provided above. Discussions by the Board of Trustees~~  
 85 ~~leading to action on the question of financial exigency must take place in a public~~  
 86 ~~meeting. Retrenchment may not occur without a formal declaration of financial exigency~~  
 87 ~~by the Board of Trustees, which must include a statement of the amount of money needed~~  
 88 ~~to relieve the exigency and be followed by immediate notification to the U.S. Department~~  
 89 ~~of Education and to University accreditors.~~

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~~5.8.~~ After a formal declaration of a fiscal emergency by the Board of Trustees, the Committee on Financial Exigency shall have 60 calendar days to recommend activities, offices, services, functions, programs, departments, or divisions – academic as well as nonacademic – that should be eliminated, contracted, or consolidated. Explicit criteria include but are not limited to:

- a. need, in light of the academic mission of the University at the time of financial exigency;
- b. quality, as determined by annual or other formal evaluations;
- c. enrollment patterns;
- d. cost-benefit relationships;
- e. number of persons served; and
- f. frequency with which a service is rendered.

~~6.9.~~ In developing recommendations for relieving the exigency but prior to consideration of termination of tenured or promoted faculty or of academic departments or programs, the Committee on Financial Exigency, shall evaluate and the University shall implement all other feasible alternatives and remedies to meet or alleviate the crisis situation. These alternatives and remedies must first include the following:

- a. Relieve the exigency by means of exhausting the possibilities of immediately initiating mechanisms for raising additional funds or of reallocating current general funds;
- b. Drawing down the endowment and reserved funds;
- c. Eliminate or reduce activities that (a) are not self-supporting (that is gifts, grants, contracts, or income from endowments designated for or other funds produced by that activity are less than the expense of that activity excluding tuition remission), or (b) are not in direct support of academic programs, or (c) are not essential for continued operation of the academic mission of the University;
- d. Imposing a freeze on all new appointments across the University;
- e. Providing incentives for early retirement;
- f. Providing incentives for voluntary resignations;
- g. Making use of available federal or state funds or grants;
- h. Deferring across-the-board salary increases;
- i. Deferring merit salary increases;

- j. Proposing across-the-board salary cuts and / or salary reductions for a proportion of the highest paid administrative positions with management or supervisory roles who are also not bargaining unit members;
- k. Encouraging change of employment status from fulltime to three-quarters time to half-time, with continuing fringe benefits;
- l. Encouraging temporary leaves of absence or furloughs without pay;
- m. Reassigning personnel within the University (NOTE: In all cases of reassignment requiring retraining or “retooling,” the University shall provide the affected persons with financial assistance, time-release, or both, as appropriate.).
- ~~n.~~ Bargaining unit faculty members shall not be subject to mandatory furloughs except as a consequence of Financial Exigency as defined in this Agreement. Any mandatory furloughs of bargaining unit faculty members must be in accordance with the University policy, “Furlough Policy: Unclassified Staff and Instructional Staff” (July 1, 2023).

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

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

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

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

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

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

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

12. Each bargaining unit faculty member who has received notice of dismissal or nonrenewal pursuant to this section:

- a. will be given a personal letter from the Provost that expressly states that the separation from employment does not imply a negative judgment about the bargaining unit faculty member's individual performance.
- b. The Provost shall offer to send letters of explanation and professional resume on behalf of affected bargaining unit faculty members to other institutions to assist in efforts to find them suitable placement elsewhere.

## Right of Negotiation

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

## Right of Appeal

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

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

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

## Salary or Notice

If an appointment of a tenured or promoted bargaining unit member is terminated, the bargaining unit member shall 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 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 service; at least one year, if the decision is reached after eighteen months of service; provided, nevertheless, that no salary or notice is required beyond the term to which the bargaining unit member has most recently been appointed. A tenured or promoted bargaining unit member with more than three (3) years of full-time service will be permitted to complete the current year and, in addition, be given salary or notice for two (2) additional years.



## Severance

If an appointment of a tenured or promoted bargaining unit member is terminated by retrenchment, and independent of the salary or notice provisions in this article, the University shall within 60 days of release provide 1025% of their current annual salary in a lump sum payment for each completed academic year of continuous-Miami service.

## Possible Reinstatement

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