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 procedures specified in Regulation 5.

Financial Exigency

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., an imminent financial crisis that threatens the survival 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.[5]

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.[6] 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 procedure.]

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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 a reasonable time in which to accept or decline it.

Discontinuance of Program or Department Not Mandated by Financial Exigency[7]

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) 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.]

(3) A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and 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. Termination of an appointment with tenure, or of a probationary or special appointment before the end of the period of appointment, because of physical or mental disability, will be based upon clear and convincing medical evidence that the faculty member, even with reasonable accommodation, is no longer able to perform the essential duties of the position. The decision to terminate will be reached only after there has been appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to present the faculty member's position

The Evaluation of Administrators

Institutions should develop procedures for periodic review of the performance of presidents and other academic administrators. The purpose of such periodic reviews should be the improvement of the performance of the administrator during his or her term of office. This review should be conducted on behalf of the governing board for the president, or on behalf of the appointing administrator for other academic administrators. Fellow administrators, faculty, students, and others should participate in the review according to their legitimate interest in the result, with faculty of the unit accorded the primary voice in the case of academic administrators. The governing board or appointing administrator should publish a summary of the review, including a statement of actions taken as a result of the review.

The Retention of Administrators

A more intensive review, conducted near the end of a stated term of administrative service, may be an appropriate component of the decision to retain or not to retain an administrator. When used for such a purpose, the review should include such procedural steps as formation of an ad hoc review committee, with different constituencies represented according to their legitimate interest in the result; consideration of such added data as the administrator's self-assessment and interviews with appropriate administrators and faculty and students; and submission of a report and recommendations, after the subject administrator has had an opportunity to comment on the text, to the board or appointing administrator. The board or appointing administrator should accept the recommendations of the review committee, except in extraordinary circumstances and for reasons communicated to the committee with an opportunity for response by the concerned parties prior to a final decision. The report should be made public, except for such sections as the board or appointing administrator and the review committee agree to be confidential, together with an account of actions taken as a result of the review.

All decisions on retention and nonretention of administrators should be based on institutionalized and jointly determined procedures which include significant faculty involvement. With respect to the chief administrative officer, the *Statement on Government* specifies that the "leadership role" of the president "is supported by delegated authority from the board and faculty." No decision on retention or nonretention should be made without an assessment of the level of confidence in which he or she is held by the faculty. With respect to other academic administrators, sound practice dictates that the president should neither retain an administrator found wanting by faculty standards nor arbitrarily dismiss an administrator who meets the accountability standards of the academic community. In no case should a judgment on retention or nonretention be made without consultation with all major constituencies, with the faculty involved to a degree at least co-extensive with its role in the original selection process.

The president and other academic administrators should in any event be protected from arbitrary removal by procedures through which both their rights and the interests of various constituencies are adequately safeguarded.

Notes

1. According to the "Statement on Government,"

   Joint effort of a most critical kind must be taken when an institution chooses a new president. The selection of a chief administrative officer should follow upon a cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested. . . .

   The selection of academic deans and other chief academic officers should be the responsibility of the president with the advice of, and in consultation with, the appropriate faculty. . . .

   The chair or head of a department, who serves as the chief representative of the department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members' judgment. The chair or department head should not have tenure in office; tenure as a faculty member is a matter of separate right. The chair or head should serve for a stated term but without prejudice to reelection or to reappointment by procedures that involve appropriate faculty consultation (AAUP, *Policy Documents and Reports,* 10th ed. [Washington, D.C., 2006], 137, 139).

On Institutional Problems Resulting from Financial Exigency: Some Operating Guidelines

The guidelines that follow reflect Association policy as set forth in the Recommended Institutional Regulations on Academic Freedom and Tenure, The Role of the Faculty in Budgetary and Salary Matters, *and other policy documents. They were formulated by the Association's staff, in consultation with the Joint Committee on Financial Exigency, Committee A on Academic Freedom and Tenure, and the Committee on College and University Governance. They were first issued in 1971 and reissued in slightly revised form in 1972. The current text includes revisions approved by Committee A in 1978.*

1. 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 should not be allowed to obscure the fact that instruction and research constitute the essential reasons for the existence of the university.
2. 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.
3. Among the various considerations, difficult and often competing, that have to be taken into account in deciding upon particular reductions, the retention of a viable academic program should necessarily come first. Particular reductions should follow considered advice from the concerned departments, or other units of academic concentration, on the short-term and long-term viability of reduced programs.
4. 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. Tenured faculty members should be given every opportunity, in accordance with Regulation 4c of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure,*[1] to readapt within a department or elsewhere within the institution; institutional resources should be made available for assistance in readaptation.
5. In some cases, an arrangement for the early retirement of a tenured faculty member, by investing appropriate additional institutional funds into the individual's retirement income (ordinarily feasible only when social-security benefits begin), may prove to be desirable if the faculty member is agreeable to it.
6. In those cases where there is no realistic choice other than to terminate the services of a tenured faculty member, the granting of at least a year of notice should be given high financial priority.
7. The granting of adequate notice to nontenured faculty should also be given high financial priority. The nonreappointment of nontenured faculty, when dictated by financial exigency, should be a consideration independent of the procedural standards outlined in Regulation 4c, with one exception: when the need to make reductions has demonstrably emerged after the appropriate date by which notice should be given, financial compensation to the degree of lateness of notice should be awarded when reappointment is not feasible.
8. A change from full-time to part-time service, on grounds of financial exigency, may occasionally be a feature of an acceptable settlement, but in and of itself such a change should not be regarded as an alternative to the protections set forth in Regulation 4c or as a substitute for adequate notice.

Such a body will also be of critical importance in representing faculty interests and interpreting the needs of the faculty to the governing board and president. The presence of faculty members on the governing board itself may, particularly in smaller institutions, constitute an approach that would serve somewhat the same purpose, but does not obviate the need for an all-faculty body that may wish to formulate its recommendations independent of other groups. In addition, at public institutions there are legitimate ways and means for the faculty to play a role in the submission and support of budgetary requests to the appropriate agency of government.

Budgetary decisions directly affecting those areas for which, according to the *Statement on Government*, the faculty has primary responsibility—curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life that relate to the educational process—should be made in concert with the faculty. Certain kinds of expenditures related to the academic program, such as the allocation of funds for a particular aspect of library development, student projects under faculty sponsorship, or departmental equipment, will require that the decision-making process be sufficiently decentralized to give the various units of the faculty (departments, divisions, schools, colleges, special programs) autonomy in deciding upon the use of their allocations within the broader limits set by the governing board, president, and agencies representative of the entire faculty. In other areas, such as faculty research programs or the total library and laboratory budget, recommendations as to the desirable funding levels for the ensuing fiscal period and decisions on the allocation of university funds within the current budget levels should be made by the university-level, all-faculty committee as well as by the faculty agencies directly concerned.[3] The question of faculty salaries, as an aspect of faculty status, is treated separately below.

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. The faculty, employing accepted standards of due process, should assume primary responsibility for determining the status of individual faculty members.[4] The question of possible reductions in salaries and fringe benefits is discussed in the section below. The faculty should play a fundamental role in any decision that would change the basic character and purpose of the institution, including transformation of the institution, affiliation of part of the existing operation with another institution, or merger, with the resulting abandonment or curtailment of duplicate programs.

Before any decisions on curtailment become final, those whose work stands to be adversely affected should have full opportunity to be heard. In the event of a merger, the faculties from the two institutions should participate jointly in negotiations affecting faculty status and the academic programs at both institutions. To the extent that major budgetary considerations are involved in these decisions, the faculty should be given full and timely access to the financial information necessary to the making of an informed choice. In making decisions on whether teaching and research programs are to be curtailed, financial considerations should not be allowed to obscure the fact that instruction and research constitute the essential reason for the existence of the university. Among the various considerations, difficult and often competing, that have to be taken into account in deciding upon particular reductions, the retention of a viable academic program necessarily should come first. Particular reductions should follow considered advice from the concerned departments, or other units of academic concentration, on the short-term and long-term viability of reduced programs.

Faculty Participation in Decisions Relating to Salary Policies and Procedures

The *Statement on Government* asserts that "the faculty should actively participate in the determination of policies and procedures governing salary increases." Salaries, of course, are part of the total budgetary picture; and, as indicated above, the faculty should participate in the

decision as to the proportion of the budget to be devoted to that purpose. However, there is also the question of the role of the faculty as a body in the determination of individual faculty salaries.

1. *The Need for Clear and Open Policy.* Many imagined grievances as to salary could be alleviated, and the development of a system of accountability to reduce the number of real grievances could be facilitated, if both the criteria for salary raises and the recommendatory procedure itself were (a) designed by a representative group of the faculty in concert with the administration, and (b) open and clearly understood.[5] Such accountability is not participation per se, but it provides the basis for a situation in which such participation can be more fruitful.

   Once the procedures are established, the person or group that submits the initial salary recommendation (usually the department chair, alone or in conjunction with an elected executive committee of the department) should be informed of its status at each further stage of the salary-determination process. As the *Statement on Government* points out, the chief competence for the judgment of a colleague rests in the department, school, or program (whichever is the smallest applicable unit of faculty government within the institution), and in most cases the salary recommendation presumably derives from its judgment. The recommending officer should have the opportunity to defend that recommendation at a later stage in the event of a serious challenge to it.

2. *Levels of Decision Making.* Not all institutions provide for an initial salary recommendation by the department chair or the equivalent officer; the Association regards it as desirable, for the reasons already mentioned, that the recommendation normally originate at the departmental level. Further review is normally conducted by the appropriate administrative officers; they should, when they have occasion to question or inquire further regarding the departmental recommendation, solicit informed faculty advice by meeting with the department head or chair and, if feasible, the elected body of the faculty. It is also desirable that a mechanism exist for review of a salary recommendation, or of a final salary decision, by a representative elected committee of the faculty above the department level in cases involving a complaint.[6] Such a committee should have access to information on faculty salary levels. Another faculty committee, likewise at a broader level than that of the department, may be charged with the review of routine recommendations.

   Of the role of the governing board in college and university government, the *Statement on Government* says: "The governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct of administration to the administrative officers, the president and the deans, and the conduct of teaching and research to the faculty. The board should undertake appropriate self-limitation." The *Statement* adds that "in the broadest sense of the term" the board "should pay attention to personnel policy." The thrust of these remarks is that it is inadvisable for a governing board to make decisions on individual salaries, except those of the chief administrative officers of the institution. Not only do such decisions take time that should be devoted to the board's functions of overview and long-range planning, but such decisions also are in most cases beyond the competence of the board.

   When financial exigency leads to a reduction in the overall salary budget for teaching and research, the governing board, while assuming final responsibility for setting the limits imposed by the resources available to the institution, should delegate to the faculty and administration concurrently any further review of the implication of the situation for individual salaries, and the faculty should be given the opportunity to minimize the hardship to its individual members by careful examination of whatever alternatives to termination of services are feasible.

3. *Fringe Benefits.* The faculty should participate in the selection of fringe-benefit programs and in the periodic review of those programs. It should be recognized that of these so-called fringe benefits, at least those included in the definition of total compensation set forth by the Association's Committee on the Economic Status of the Profession, have the