



SUBJECT: FINANCIAL CRISIS AND BONA FIDE FINANCIAL EXIGENCY

I. PURPOSE: The purpose of this document is to provide institutional policy and procedures in matters related to major financial crisis and bona fide financial exigency. Southern Utah University has a fundamental loyalty and concern for its faculty and staff employees, and financial exigency will be declared only under very unusual or severe conditions after all other feasible alternatives have been carefully considered.

II. REFERENCES

SUU Policy and Procedure 6.6 *Academic Freedom*

SUU Policy and Procedure 6.22 *Faculty Due Process*

SUU Policy and Procedure 6.28 *Professional Responsibility*

SUU Policy and Procedure 8.3.5 *Termination of Non-Academic Staff Employees and Disciplinary Sanctions*

SUU Policy and Procedure 8.4 *Employment Grievances*

Utah Code 53B-2-106 (Duties and Responsibilities of the President)

Utah State Board of Higher Education Policy *R481 Academic Freedom, Professional Responsibility, Tenure, Termination, and Post-Tenure Review*

Utah State Board of Higher Education Policy and Procedures *R482 Bona Fide Financial Exigency and Personnel Reduction*

American Association of University Professors (AAUP), Policy Documents and Reports, 2007 (This statement of policy and procedures contains some provisions which are the same as or similar to certain principles of bona fide financial exigency and personnel reduction adopted and promulgated by the (AAUP).

III. POLICY

A. Procedures for a Major Financial Crisis Which is Less Severe Than a Financial Exigency

1. In the event Southern Utah University is faced with a major financial crisis that is less severe than a financial exigency, Section III, B. enumerates various alternative approaches which are available to the University to



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deal with the situation. University action regarding these alternatives will involve substantive consultations with the Deans' Council, Faculty Senate, and Staff Association.

2. This Policy does not preclude the discontinuance or reduction of programs for academic reasons at any time.
3. Definition of Major Financial Crisis

To constitute a major financial crisis, a situation facing the University shall: (a) be significantly and demonstrably more than a minor, temporary, and/or cyclical fluctuation in operating funds; and (b) involve significant risk to the survival of programs, departments, colleges, or other major components of the University.

B. Declaration of Major Financial Crisis

1. When the President identifies a possible major financial crisis, he or she shall inform the President's Council, Deans' Council, Faculty Senate, and the Staff Association concerning the causes and possible consequences of the crisis. The President shall also identify the measures considered by the University up to that point for dealing with the crisis, possible strategies which may be alternatives to program reduction or program discontinuance, and, as warranted, reasons why the University's financial circumstances may necessitate program reduction or discontinuance, and the time frame by which decisions on these matters must be made by all those entitled to participate in the consultative process. In that regard, the President shall use his/her best efforts to secure the fullest period of time possible for the consideration of these matters and to the response.
2. The Deans' Council, Faculty Senate, and Staff Association shall receive and consider the comments and advice from appropriate advisory committees, administrative officers, and individual faculty, and staff, on whether the President should declare the existence of a major financial crisis. After consulting with the President regarding whether a major financial crisis exists, the Deans' Council, Faculty Senate, and Staff Association shall express their views in writing to the President.

C. Implementation of a Major Financial Crisis



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1. When the President, with the approval of the Board of Trustees, declares the existence of a major financial crisis, the University's actions in response to the crisis shall be governed by the provisions of Sections III., C through J of this Policy. Sections III, D and E however, refer specifically to only financial exigency. When declaring major financial crisis, the Board of Trustees must take action by written resolution setting forth the basis for its decision, after notice and hearing, as required by Trustees Bylaws, and Utah statute for open meetings of the Board of Trustees.
2. When a major financial crisis has been declared, the President shall consult with the President's Council, Deans' Council, Faculty Senate, and the Staff Association concerning strategies for dealing with the crisis. In considering the alternatives and their application, first priority shall be given to the maintenance of the educational and academic programs central to the mission² of the University. These alternatives might include, but are not limited to:
 - a. Restrictions on student enrollment.
 - b. Voluntary personnel action including reassignment, retirement, partial retirement, early retirement, resignation, extended sabbatical/leave, severance pay, or reduction in FTE.
 - c. Not filling existing faculty and staff vacancies or vacancies resulting from resignation, retirement, or death.
 - d. Discontinuance or reduction in nonacademic programs, units and support services to the extent necessary and feasible without significantly impairing the University's ability to pursue its basic educational purposes and responsibilities.
 - e. Discontinuance of instructional positions occupied by teaching assistants/fellows, lecturers, part-time faculty, term and auxiliary faculty, and other non-tenure-track faculty.
 - f. Salary reductions not tantamount to dismissals.
 - g. Dismissal of nontenured (tenure-track) faculty positions, unless an appointed committee determines in a specific program that, in their



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judgment, such a dismissal would create a "serious distortion" in that program (see Section III. G. of this document).

- h. Academic program consolidation or reduction pursuant to alternatives in Sections III. C. a – g above which do not involve tenured faculty.
- i. Tenured faculty members may not be laid off for major financial crisis except for: (1) those who are on probation pursuant to Policy 6.22, or (2) those who are working under development plans pursuant policy 6.1.4II, or (3) a bona fide program or unit discontinuance occurs via the procedure described in XVI., of policy 6.22, Faculty Due Process.
- j. This list is not intended to be in any order of priority since it is recognized that the University, when faced with a difficult financial situation, would be engaged in an iterative process to identify possible cost reduction measures, and that units and programs within Southern Utah University have particular needs and preferences, which vary over time.

D. Definition of Bona Fide Financial Exigency

A bona fide financial exigency is an existing or imminent financial crisis which, if uncorrected, would threaten the survival of the institution as a whole and which could not be alleviated reasonably by less drastic means. "Survival of the institution as a whole" is expressly defined for purposes of this policy as the availability of adequate state appropriated ⁴ (~~cross out of footnote 4 is not showing~~) funds to enable Southern Utah University substantially to fulfill its mission as approved by the Board of Higher Education.

E. Declaration of Bona Fide Financial Exigency

- 1. Under such circumstances, in order for Southern Utah University to carry out the purposes and responsibilities central to its mission, it may become necessary for the University to discontinue or reduce nonacademic or academic "programs" and their attendant units, subunits, departments, or courses. A declaration of financial exigency supposes that efforts to reach the needed level of reduction shall be consistent with the goal of preserving the institution's ability to substantially fulfill its academic



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mission. Nevertheless, this policy also covers circumstances wherein modification of the mission statement may be required.

2. Only the Board of Higher Education **can** declare a bona fide financial exigency at one or more institutions in the Utah System of Higher Education. A declaration of financial exigency for all of the system institutions would in effect be a declaration of financial exigency for the system as a whole. Hence, a declaration by the Board of Higher Education of financial exigency may authorize the President, with the approval of the Board of Trustees, to recommend and implement, subject to Board approvals as provided herein; the following personnel reductions.
 - a. Reductions in force through layoffs⁵ of faculty, by program discontinuances shall follow the procedure outline in Policy 6.22, Section XV.
 - b. Reductions in force through layoffs⁵ of faculty by program reductions shall follow the procedures as outlined herein.
 - c. Reductions in force through layoffs⁵ of staff by program reductions or discontinuances shall follow the procedures as outlined herein. For all staff reductions not originating from major financial crisis and financial exigency considerations, the process outlined in SUU Personnel Policies and Procedures, II-14, for Reduction in Force will be followed.

F. Plan for Personnel Reductions

1. After a declaration of (a) major financial crisis, or (b) financial exigency, the President shall prepare and recommend to, respectively, (a) the Board of Trustees, or (b) the Board of Higher Education a plan for personnel reductions.
 - a. The plan shall include: (a) discussion of the necessity and procedures for personnel reductions; (b) the appropriate nonacademic and academic programs within the University identified for personnel reductions, and (c) the criteria for identifying the staff and faculty members who are to be laid off because of program discontinuance and/or because of program reduction.



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- b. In the development of the plan, there shall be consultation with the Attorney General's Office, and substantive involvement of the Deans' Council, Faculty Senate, and Staff Association of the University.
- c. As a first step, the President will instruct each nonacademic and academic structural component of the University to assess its programmatic operation with regard to its quality and importance to the mission of the University as a basis upon which to determine the plan for personnel reduction.
- d. Acting on the information gathered in the process, the President's and Deans' Councils will prepare criteria and determine their recommended plan for personnel reduction. These recommendations, along with supporting information, will then be submitted to the Faculty Senate and Staff Association.
- e. In considering the alternatives and their application, first priority shall be given to the maintenance of the educational and academic programs central to the mission of the University.
- f. As part of their deliberation process, the Faculty Senate and Staff Association shall provide opportunity for departments and/or faculty and staff affected to defend their program operations and personnel.⁶
- g. Personnel reductions resulting from program discontinuances and/or program reductions, upon which the Deans' Council, Faculty Senate, and Staff Association agree, shall be forwarded to the President's Council and then the President for his/her final decision. Letters communicating the action of the Faculty Senate, Deans' Council, and Staff Association shall be prepared by the appropriate Vice Presidents and Provost, including their personal recommendations.
- h. Should there be disagreement among the Deans' Council, Faculty Senate, Staff Association and/or other administrative entities on certain proposed program discontinuances or reductions, such as a deadlock on nonacademic versus academic programs, a negotiation process shall be established by the President's Council that



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facilitates the required level of personnel reduction and recognizes procedures established in SUU Policy 6.22 and 8.3.

- i. Any such process shall require the subsequent participation of the, Deans' Council, Faculty Senate, and Staff Association.
- j. Under such divisive circumstances, final authority for approval of the plan for personnel reduction, with attendant program discontinuance and/or program reduction, rests with the President, Board of Trustees, and the Board of Higher Education. A letter detailing dissenting views regarding the plan for personnel reduction shall be prepared by the Provost or the appropriate Vice President. In addition to communicating the action of the Faculty Senate, Deans' Council, and Staff Association, the appropriate Vice President or Provost will also provide his/her personal recommendations. This letter should be reviewed by the Deans' Council, Faculty Senate Executive Committee, or Staff Association, and will accompany the President's plan for (a) the Board of Trustees' response for major financial crisis, or (b) the Board of Higher Education's consideration for financial exigency.
- k. Before any layoffs become effective, (a) the Board of Trustees, or (b) the Board of Higher Education must first consider and approve a plan for personnel reductions under its declaration of, respectively, (a) major financial crisis, or (b) financial exigency.

G. Personnel Reductions

1. Personnel Reductions will be done equitably, in good faith, and in a systematic manner directly related to financial exigency. Due process procedures are described in Policies 6.22 and 8.3 relating, respectively, to faculty and staff layoffs arising from program discontinuances or reductions attendant to financial exigency.
2. Personnel Reduction Criteria

In making any personnel reduction recommendation to the Board of Trustees or the Board of Higher Education, the first priority of the President shall be the maintenance of the academic and educational programs central to the mission of Southern Utah University. High



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priority shall also be given to the preservation of the quality and effectiveness of all essential noninstructional, maintenance, administrative or support (nonacademic) programs of the University.

- a. Criteria for faculty or staff reduction might include, but are not limited to, quality, essentiality of service and work, field of specialization, maintenance of necessary programs or services, tenure of tenured faculty, rank, time in rank, length of service, and in case of tie-breaker, maintenance of affirmative action programs. Those faculty and staff who are deemed to be of key importance to the specific program or function will be retained in preference to other faculty and staff, whatever their status. A faculty or staff member is of "key importance" if his/her layoff would result in a "serious distortion" of the specific program or function which is being reduced or discontinued, as determined by the institution under its policies developed pursuant to section III. G. 3

3. "Serious Distortion" Defined When Faculty Reductions Occur

The finding of "serious distortion" when faculty reductions occur is based on criteria established by the Faculty Senate and approved by the Deans' Council, President, Board of Trustees, and the Board of Higher Education in conjunction with a plan for personnel reduction. These criteria should include, but not be limited to, essentiality of service and work, field of specialization, and maintenance of necessary programs or service. A finding of "serious distortion" in conjunction with the layoff of a tenured faculty member does not require a finding of any deficiency in his/her performance.

4. Retention of Nontenured Faculty When Tenured Faculty Are Laid Off

It is not a requirement under conditions of a declaration by (a) the Board of Trustees of a major financial crisis, or (b) the Board of Higher Education of bona fide financial exigency that all nontenured, tenure-track faculty members throughout the University be first laid off before tenured faculty can be laid off when faculty reductions occur. However, under a major financial crisis, tenured faculty may be laid off only under bona fide program discontinuances for academic reasons. In either case (a) or (b) above, a tenured faculty member within a specific program will not be laid off in favor of retaining a faculty member without tenure, except where a



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serious distortion of the specific academic program would otherwise result. The determination of "serious distortion" shall be made by the Faculty of the school or college involved, as per the procedure outlined in section III.G.3 by a simple majority vote. If affirmatively determined by the appropriate body, a recommendation of "serious distortion" will be made to the President and the Board of Trustees for their approval.

5. New Faculty Appointments When Tenured Faculty Are Dismissed

When faculty reductions occur at SUU due to a major financial crisis or a financial exigency, the University will not layoff tenured faculty members from a program and at the same time make new faculty appointments to other positions in that program except where a serious distortion in the academic program of the institution would otherwise result. The determination of "serious distortion" shall be made by the Faculty of the school or college involved, as per the procedure outlined in section III.G.3

H. Notice of Layoff

Within the time frame provided in section H.2. below, the President must give notice in writing to faculty and staff who are affected by a personnel reduction resulting from a program discontinuance or reduction.

1. Form of Notice for Personnel Reductions

The notice must include the following:

- a. The effective date of layoff;
- b. A statement of the reasons for the Board of Trustees, or Board of Higher Education's action to declare, respectively, a major financial crisis, or a financial exigency;
- c. The basis, the procedures, and the criteria used to layoff faculty and staff;
- d. Any opportunity for reconsideration or appeal including access to appropriate documentation, and the issues that may or may not be considered; and



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e. The reinstatement rights of the faculty and staff.

2. Time of Notice

The University shall make every effort to give as much notice as practical in light of the major financial crisis or financial exigency to each affected faculty and staff member in advance of the effective date of the layoff.

The legislative appropriation process and the subsequent analysis needed before the Board of Trustees or Board of Higher Education declares a condition of, respectively, major financial crisis, or financial exigency and receives, considers, and approves implementation of the process for personnel reduction may allow little time for official notice of layoff. The granting of adequate notice, and where possible, the full notice provided by institutional policy pursuant to faculty as provided in section XV, of Policy 6.22, Faculty Due Process on program discontinuance, should be afforded high priority by the University. In any case, the Board of Higher Education requires the following minimum written notice of layoff:

- a. To tenured faculty members a notice of layoff not less than six months before the effective date of the layoff.
- b. To nontenured faculty members (tenure-track) not less than sixty (60) calendar days before the effective date of the layoff.
- c. To all non-tenure-track faculty and staff who have been employed at SUU for five or more years, not less than sixty (60) calendar days⁷ before the effective date of the layoff.
- d. To all other non-tenure-track faculty and staff not less than thirty (30) calendar days⁷ before the effective date of the layoff.
- e. If adequate notice is not provided, severance pay must be provided in lieu of these minimum notice requirements in sections IV. C. 2. a through e.

3. Reassignment

At the time it is preparing and implementing a plan for personnel reduction, the University shall, to the extent practicable, make a good faith effort to reassign any staff or faculty member to be laid off to another



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known existing, vacant, and suitable position within Southern Utah University for which he/she is qualified. This good faith effort to reassign staff and faculty need not extend beyond the effective date of the layoff, but the staff and faculty do enjoy the rights provided herein.

- a. The reassignment of faculty, including decisions regarding tenure, salary and other rights in the new assignment, shall be negotiated with the decision authority resting with the faculty of the department to which the proposed reassignment is to be made. The department tenure and tenure-track faculty shall decide by simple majority vote whether the faculty member in question is qualified for any given position. If, as affirmatively determined by the department faculty, Placement in another position would be facilitated by a reasonable period of training, financial support not to exceed a one academic-year (nine months) sabbatical leave may be recommended to the President and the Board of Trustees, if financially possible.
- b. A faculty or staff member to be laid off has no right to displace another staff or faculty member from their position nor to expect that a new position will be created in order to maintain employment.
- c. The tenure and tenure-track faculty of a receiving department, however, shall maintain the right to displace a nontenured faculty member in order to retain a tenured faculty member in a position for which he/she is qualified, if this does not compromise the integrity of the program and if such a decision is deemed to be in the best interest of the University. While the administration facilitates such action, the decision to displace nontenured faculty rests with the tenure and tenure-track faculty in the department which would be receiving such a tenured faculty member, and shall be decided by simple majority vote.

4. Appeal Rights

Unless otherwise required by law or regulation, the appeal procedure at Southern Utah University shall not delay the effective date of the layoff. The University's policy provides for an internal appeals process described in Policy 6.22 and 8.4 respectively, for staff and faculty layoffs resulting



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from program discontinuances or reductions. On the other hand, the decision to layoff a faculty or staff member is not appealable to the Board of Trustees or the Board of Higher Education.

5. Standard of Review

An affected faculty or staff member may contest a layoff only for:

- a. Violation of his/her academic freedom, or constitutional or statutory rights, or
- b. Failure to comply with University policy, or with the plan for personnel reduction approved by the Board of Trustees or Board of Higher Education. Because the procedures for the declaration of, respectively, major financial crisis or financial exigency contained herein require the demonstration of the need for such declaration after substantive consultation, notice, and hearing, the decision of the Board of Trustees or Board of Higher Education to declare, respectively, a major financial crisis, or financial exigency is not subject to contest in any grievance or appeal procedure within Southern Utah University or before the Board of Higher Education.

I. Reinstatement Rights for Layoff

1. For tenured faculty - In cases of layoff of tenured faculty members, the position concerned may not be filled by replacement within a period of three (3) years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within thirty (30) calendar days after the offer was extended.
2. For nontenured faculty or staff - In cases of layoff of nontenured faculty or staff members, the position concerned may not be filled by replacement within a period of one (1) year from the effective date of the layoff unless the person laid off has been offered a return to employment in that position and the person laid off has not accepted the offer within thirty (30) calendar days after the offer was extended.
3. If an offer of reinstatement is not accepted, the University and the Board of Higher Education have no further obligation to the person laid off.



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After the expiration of the applicable reinstatement period as provided herein, Southern Utah University and the Board of Higher Education have no further obligation to the affected staff and faculty.

4. A faculty member who has been laid off and who accepts reinstatement in the same position will resume the rank and tenure status held at the time of layoff, be credited with any sick leave accrued prior to the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave which the faculty member had accrued prior to the date of layoff and for which the faculty member has not received payment.
 5. A nonfaculty employee who has been laid off and who accepts reinstatement in the same position will be credited with any sick leave the employee had accrued prior to the date of layoff, be paid a salary commensurate with the length of previous service, and be credited with any annual leave which the employee had accrued prior to the date of layoff and for which the employee has not received payment.
- J. Periodic Reports to the Board of Higher Education During a Major Financial Crisis or Financial Exigency
1. After the Board of Trustees or Board of Higher Education, respectively, has declared a condition of major financial crisis or financial exigency at Southern Utah University, the President shall provide the Board of Trustees and the Board of Higher Education with progress reports, as requested by the Board of Higher Education, to inform the Board of Higher Education, as appropriate, concerning the University's procedures, decisions and recommendations relating to the major financial crisis or financial exigency.
 2. Termination of the Declaration of Major Financial Crisis or Financial Exigency

The Board of Trustees or the Board of Higher Education, respectively, will terminate a declaration of major financial crisis or financial exigency when in its judgment the conditions described in Sections III. A through J, or no longer exist.



SOUTHERN UTAH UNIVERSITY
Policies and Procedures

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3. Staff Due Process in Case of Appeal Resulting From a Major Financial Crisis or Bona Fide Financial Exigency

If, as a result of a major financial crisis or financial exigency, a staff member is laid off by the decision to discontinue or reduce a nonacademic or academic program, the staff member may appeal the decision under conditions in the SUU Personnel Policies and Procedures, 8.4 (Employment Grievances)

4. Faculty Due Process in Case of Appeal For Faculty Layoffs Resulting From a Major Financial Crisis or Bona Fide Financial Exigency (See SUU Policy 6.22, XXIV, XXV.).