**Policy: PAc-35**

**Subject: Termination of Faculty for Financial Exigency or for Program Reduction or Discontinuance**

Approval Date:  
Revision Date: 

**PART 1: FINANCIAL EXIGENCY**

**I. GENERAL CONSIDERATIONS**

A. Purposes  
At times, certain social and economic conditions affect colleges and universities adversely. Falling enrollments, reduced funding, externally imposed curricular or program restrictions, and other factors induce significant changes in an institution. Any substantial decline in the state and national economies usually incurs reductions in the financial support of colleges and universities as well as other social institutions and their services. When the economic decline and accompanying reductions in support of an institution reach critical proportions, a magnitude that drastically impairs the operations and functioning of the University, serious measures are demanded to meet the emergency intelligently and effectively.

B. Preparation and Purposes of the Policy  
Foresight and preparation before such measures are actually needed to address critical financial conditions help to lessen harmful effects on people and the University and to insure an orderly and fair process. The fundamental preparation for any emergency measures consists of the formulation of policies and procedures through which a critical cutback in funding can be met. In this formulation three purposes are to be served:

1. to maintain essential instructional and research services at a satisfactory level of quality;
2. to protect those faculty and staff who must deliver such services and the students who receive them; and
3. to preserve a capability of the University as a whole for continuance of services.

C. Academic Values and Tenure  
Beyond these three purposes are certain academic values that must guide both policy and procedure development and their subsequent application when extraordinary financial stringencies are imposed upon the University. Of these academic values, a fundamental one undergirding several others is that of safeguarding tenure. Tenure protects more than simply the right of individual faculty to a position or a property right. It insures that ideas, concepts, and doctrines may be examined without fear or favor; that fact and truth may be pursued in research without dictation; that teaching may be done without reprisals. In short, tenure protects the exercise of the basic functions of the University and the reasons for its being.
D. Responsible University Means

Any respectable university will, in its policies and procedures, provide means for faculty to express their personal and professional concerns and have due process. Moreover, any responsible university will invoke a state of exigency only after other means have been taken through the regular organizational and administrative structures to minimize a financial urgency. If dire cutbacks are faced unexpectedly, other appropriate university policies and procedures would be implemented simultaneously for all segments of the university. In the case of Morehead State University, before the policy and process outlined subsequently are activated, other policies and processes of the University normally will have been exercised, including a review of non-academic programs and termination of non-faculty positions in accordance with the MSU Personnel Policy and Procedures Manual.

E. Continual and Periodic Analyses

The University maintains continual analyses and periodic examinations of all fiscal matters of the institution. These and other records will be immediately available to the Financial Exigency Committee (as defined in Paragraph II. C, below) should the activation of these policies and procedures become necessary.

II. DEFINITIONS

A. “Termination for Financial Exigency” means the cessation of employment of a faculty position before the end of the appointment period for reasons of financial exigency. The non-reappointment of a faculty member on a specified term appointment is not a termination for financial exigency, and no objection to a non-reappointment may be filed under this procedure. The use of “termination” in this policy (PAC-35) means termination for financial exigency unless otherwise stated.

B. “Financial Exigency” means any imminent and extraordinary decline in the University’s financial resources that compels a reduction in the current operating budget to the extent that the University would be unable to meet existing financial obligations that include, but are not limited to, contractual obligations.

C. “Financial Exigency Committee” is a special committee, the purpose of which is to provide independent guidance and advice to the President and the Board of Regents on a declaration of financial exigency and alternative approaches in alleviating said exigency, to be formed in accordance with Section IV., Establishment and Operation of the Financial Exigency Committee.

D. Except as otherwise specifically provided herein, “day” means every day including Saturdays and Sundays but shall not include official University holidays.

III. PRELIMINARY STATEMENT AND DETERMINATION OF FINANCIAL EXIGENCY

A. Board Authorization

If the President determines that circumstances indicate the University faces a financial exigency, he/she shall take immediate action to apprise the Board of Regents of the nature and extent of the financial crisis. He/she shall also present a general plan for how the exigency can be alleviated. The statement to the Board shall outline in terms as
specific as the circumstances permit, the options readily apparent at the time. The
President’s statement to the Board shall include a request for authorization to investigate
further the necessity for a declaration of financial exigency. The statement shall also
include the nature and extent of conditions and an outline of expenditure categories and
major department areas to be examined in projecting a course of action that would meet
such an emergency. Once Board authorization has been secured, the President shall
proceed in accordance with the procedures outlined in this policy.

IV. ESTABLISHMENT AND OPERATION OF THE FINANCIAL EXIGENCY
COMMITTEE

A. Committee Composition
The President shall, within five (5) days after the Board has authorized such action,
establish a Financial Exigency Committee. The committee shall consist of ten (10)
members representing various segments of the University and selected in the following
manner and consistent with the University’s Affirmative Action policies:

(1) Five (5) faculty members who are either tenured or tenure-track faculty to be
appointed by the President of the University from an existing pool of eight (8)
faculty, who shall serve two-year terms (1 July to 30 June), chosen from all
eligible faculty by an election conducted by the Governance Committee of the
Faculty Senate. The President shall in his/her selection ensure a broad
representation of programs and departments. [The Faculty Senate is authorized
to constitute the eight (8) elected faculty members as a continuing committee of
the Senate to study the University’s financial condition when a funding crisis may
be imminent and to assess possible ways of meeting such a crisis.]

(2) Three (3) administrative employees, one of whom is an academic chair, shall be
appointed by the President.

(3) One (1) staff representative shall be appointed by the President after consultation
with Staff Congress.

(4) One (1) student representative shall be appointed by the President after
consultation with the Student Government Association.

(5) A chair of the committee shall be appointed by the President from the ten (10)
committee members.

B. Committee Charge
The Financial Exigency Committee shall make recommendations regarding:

(1) whether a declaration of exigency is warranted;
(2) a review of expenditure categories and the major department areas as outlined in
the President’s statement to the Board of Regents; and
(3) alternative considerations in the area of academic affairs.

C. Committee Process
(1) Once the committee has been formed pursuant to subsection a., but no later than
five (5) days subsequent to the Board of Regents’ action, the President shall
submit to the committee the statement that outlines the necessity for a
declaration of financial exigency, including establishment of a specific dollar
amount necessary to alleviate the emergency, and a general plan indicating means
by which the emergency can be alleviated. This statement shall include efforts
already undertaken by the University in response to the financial emergency.
Upon receipt, the committee shall evaluate the statement and plan, and prepare a
recommendation for the President’s review.

(2) The committee shall review the information presented by the President and shall
recommend whether a declaration of financial exigency is necessary. The
committee shall also review the major departments, each department’s
percentage of the budget, and any general reductions proposed by the President
in his/her statement. This review may include an examination of alternate
approaches to alleviating the emergency including, but not limited to, increases in
revenue, reallocation of current revenue, and use of University reserves to phase
out activities. The committee may review the various expenditures of the
University, including academic and non-academic departments and activities. The
committee may also review alternative considerations.

(3) The committee shall present its report and recommendations to the President
within fifteen (15) days after receipt of the President’s plan.

V. PRESIDENT’S ACTION

Upon receipt of the report and recommendations of the committee, the President shall
transmit the report and recommendations, any committee minority reports, and any
recommendations or comments he/she has to the Board of Regents for action. The
President shall, upon receipt, also make this report available to the University
community.

VI. BOARD ACTION

The Board of Regents shall consider such recommendations as it receives from the
committee, from any committee minority reports, and from the President. Faculty,
students, staff, and others may request in writing permission to address the Board
regarding any recommendations concerning financial exigency. The written request to
address the Board shall contain a statement of the purpose and reasons for the address.
Within fifteen (15) days after it receives the report and recommendations of the
committee, any committee minority reports, and the report and recommendations of the
President, the Board shall determine if a declaration of financial exigency is necessary.
Upon a declaration of financial exigency, the Board shall direct the President to act.

VII. UNIVERSITY ACTION UPON DECLARATION OF FINANCIAL
EXIGENCY

Upon receipt of the Board of Regents’ declaration of financial exigency, the President
shall submit his decision and the reduction needed to alleviate the exigency to the
departments to be affected. The department chair shall in collaboration with the
department’s tenured and tenure-track faculty shall recommend to the appropriate dean
ways in which the required savings shall be effected in that department; the dean shall
review this recommendation and submit his/her recommendation to the Provost.
Similarly, the Dean of Libraries, after consulting with his/her staff, shall submit a
recommendation to the Provost. The Provost shall review all recommendations and
shall submit his/her recommendation to the President. The President shall review and
consider all recommendations in making the final decision for termination of faculty positions for submittal to the Board. The final decision for termination of faculty positions for purpose of exigency shall be made by the Board of Regents.

VIII. TERMINATION OF FACULTY POSITIONS

A. Consideration/Obligation to Faculty

(1) If termination of faculty positions becomes necessary, due consideration shall be given to:

(a) the missions of the University;
(b) the criteria for faculty evaluation as established in PAc-27; PAc-30
(c) normal attrition of faculty;
(d) program review documents;
(e) cost analyses; and
(f) the Affirmative Action policies of the University.

(2) Morehead State University recognizes that tenure constitutes a property right. Every effort shall be made to preserve the positions of tenured faculty.

(a) Tenured faculty members will have preference of retention over non-tenured faculty members. If no tenured faculty are to be terminated, then tenure track faculty shall be considered pursuant to the same criteria as would be used for tenured faculty.
(b) A faculty member who has attained tenure prior to another faculty member will have preference of retention.
(c) If the time of tenured service is equal, then tenured faculty of superior academic rank will have preference of retention.
(d) If service and rank considerations are the same for two faculty members, the faculty member with the longer period of employment at the University will have preference of retention.

(3) The full teaching load of a terminated faculty position shall not be assumed by part-time faculty.

(4) The University shall make reasonable efforts to provide support for retraining, re-education, and/or reassignment within the University of a faculty member identified for termination.

(5) At the request of a terminated faculty member, the University shall provide reasonable and timely re-employment assistance.

(6) The University may not fill a position in a discipline in which a tenured faculty member who has been terminated is qualified to teach and/or perform the job for a period of three (3) years from the date of the termination, unless the position is first offered to that faculty member. The University may not fill a position in a discipline in which a non-tenured faculty member who has been terminated is qualified to teach and/or perform the job for a period of two (2) years from the date of termination, unless the position is first offered to that faculty member. The offer shall be made by certified mail, restricted delivery, return-receipt requested, and the acceptance of such offer must be made in writing. Each faculty member is responsible for providing the University with a current address. The address on file in the office of the Provost shall be deemed the current address for mailing notices required by this procedure. Failure to accept the offer in writing within fifteen (15) calendar days of receipt of the offer...
or rejection of the position eliminates the re-employment rights of the faculty member to the position. Such acceptance or rejection must be made in writing.

(7) A faculty member who is recalled within the specified three- (3) year period for tenured faculty or two- (2) year period for tenure-track faculty shall have restored all sick leave accrued on the effective date of layoff. Tenured faculty shall be recalled with full tenure, and non-tenured faculty shall be recalled with the number of years of prior service at the University counting as part of the probationary period. Further, the salary for such positions filled through recall of terminated faculty shall be negotiable but in no case shall the faculty member receive less than he/she was paid at the time of termination.

B. Notice to Individual Faculty

If the Board of Regents’ final action includes the termination of faculty, the President or his/her designee shall give written notice of that fact by certified mail, restricted delivery, return-receipt requested, to the faculty to be terminated. The notices shall include a statement of the conditions requiring termination of employment, a general description of the procedures followed in making the decision, and a disclosure of pertinent financial or other data upon which the decision was based. A faculty member receiving such notice may request clarification. The President and the Board shall make every reasonable effort to ensure that notice to tenured or tenure-track faculty be given not less than seventy-five (75) calendar days before the effective date of termination. In addition, reasonable effort shall be made to ensure that no faculty appointment is terminated before the end of the academic year in which the financial exigency occurs.

C. Unemployment Compensation

Any faculty terminated shall be eligible for unemployment compensation if he/she meets the conditions of qualification for benefits defined in Chapter 341 of the Kentucky Revised Statutes. (See especially KRS 341.350.) Benefits are calculated in accordance with KRS 341.380 et seq.

IX. REVIEW OF INDIVIDUAL TERMINATIONS

A. Request for a Hearing

(1) Within ten (10) days after receiving a notice of termination, a tenured or tenure-track faculty member may request a review of the action by the Board of Regents. Review may be had solely to determine whether the decision to terminate was made in accordance with established procedures with respect to that individual. The request for review must be in writing and addressed to the chair of the Board with a copy to the President. It must specify the grounds on which it is contended that the established procedures were abridged, and must include a short, plain statement of facts that the faculty member believes supports the contention.

(2) Submission of such a request constitutes on the part of the faculty member, first, a representation that he/she can support this contention by factual proof, and, second, an agreement on the part of the faculty member that the University may offer in rebuttal any relevant data in its possession. The Board shall consider the request upon the transmission of the request by the President and shall grant a hearing if it determines that a prima facie case is presented by the statement. A denial of the request finally confirms the decision to terminate, and the Board
shall so notify the faculty member. If the request is granted, a hearing shall be held within ten (10) days after the request is received; the faculty member shall be given at least (5) days notice of the hearing.

B. Conduct of the Hearing

(1) The hearing shall be conducted informally and in private, with only the members of the Board, the faculty member, the President, and such witnesses as may be called, in attendance. During the hearing, the faculty member and/or the President will be permitted to have an adviser who may give advice to that party but may not otherwise represent the party. A quorum for purposes of the hearing is a simple majority of the Board's total membership. If the faculty member asks for a transcript of the proceeding, the transcript shall be made and one copy provided to the faculty member free of charge. The Board may consider only such evidence as is presented at the hearing, and it need consider only the evidence that it considers fair and reliable. All witnesses may be questioned by the Board members, the faculty member, and the President.

(2) Except as herein provided, the conduct of the hearing shall be under control of the chair of the Board of Regents. The hearing shall begin with the faculty member's presentation of contentions, limited to those grounds specified in the request for a hearing and supported by such proof as he/she desires to offer. The burden is on the faculty member to satisfy the Board by a preponderance of evidence that the procedures used to reach the decision to terminate were abridged. When this presentation is concluded, the Board shall recess to consider whether the proof offered in support of the contention establishes the contention, unless it is not rebutted. If it determines that the contention has not been so established, it shall notify the parties and conclude the proceedings. If it determines that rebuttal is desirable, it shall so notify the parties and the hearing shall proceed. The President may then present, in rebuttal of the faculty member's contention or in general support of the decision to terminate, such testimonial or documentary proofs as he/she desires to offer, including his/her own testimony. After the President completes his/her presentation, the Board shall consider the matter in executive session.

C. Procedure After Hearing

If the Board determines that the faculty member's contention has not been established, it shall issue a simple statement to notify the faculty member and the President. If the Board determines that the faculty member's contention has been established, it shall so notify him/her and the President by a written notice that states what corrective action must be taken.

X. TERMINATION OF FINANCIAL EXIGENCY

The financial exigency terminates when the University has, under the directions of the Board of Regents given to the President, reformulated the University budget to meet the specified financial constraints that imposed the emergency.

PART 2: PROGRAM REDUCTION AND DISCONTINUANCE
A. PURPOSE:
Given the complex and interlocking nature of University academic programs, it is possible at times that a program will need to be reduced or discontinued and provisions made for reassignment, or other arrangements, of the program faculty. This policy deals with the initiation of the process and the mechanisms for accomplishing it. For purposes of this section, a program will be defined as any group of courses taught by University faculty. The program can be within an existing department or stand as an independent unit.

B. DETERMINING WHETHER TO REDUCE OR DISCONTINUE A PROGRAM:
The basis for recommending program reduction or discontinuance can arise from several possible sources of information including, but not limited to:
(a) relevant trends or priorities for program graduates;
(b) lack of course offerings by the program on a timely basis;
(c) a history of courses being dropped from the schedule of classes because of low enrollment.

The initial request to reduce or discontinue a program may come from any of several sources, including the program faculty, the program chair, the Faculty Senate, the appropriate dean of the program, the Provost, the President, or the Board of Regents. Regardless of the initial source of the request to reduce or discontinue a program, it will be the dean, the Provost, or the President who formulates the request in writing. The originator of the written request will formulate the request after consultation with the program faculty and the program chair. The request will not constitute a decision to reduce or discontinue but will be a compilation of the various sources of information used as the basis for the request. The sources of information must include at least the following:
(a) reasons for the request, including any data used to support these reasons;
(b) the procedures for terminating or reassigning faculty;
(c) the timetable for completing the reduction or discontinuance, taking into account the time necessary to retrain or otherwise adjust the program faculty and to allow any current majors in this program to complete their studies in a reasonable time;
(d) projections as to whether program reduction or discontinuance may be achieved through the normal attrition process of retirement, resignation, or early retirement.

The President will convene a seven-member ad hoc Committee on Program Review to report on the effects that the reduction or discontinuance of the program will have on University curricula. The ad hoc Committee on Program Review will consist of the two college representatives on the appropriate graduate or undergraduate University curriculum committee from the College in which the program is located; two members from the Academic Policies Committee of the Faculty Senate elected by the Faculty Senate; two faculty members (tenured, if possible) from the affected program elected by faculty within the program; and the Dean of the College in which the program is located who will serve as Chair. The program Chair(s) may serve as nonvoting, ex officio member(s) of the committee. The ad hoc Committee on Program Review will prepare and submit its finished report within 30 days to the President with a copy to the Faculty Senate Chair and
Faculty Regent. The appropriate graduate or undergraduate University curriculum committee and the Faculty Senate shall also prepare separate reports and recommendations for the President.

If the Committee on Program Review recommends that reduction or discontinuance of the program and its faculty positions is in the best interest of the University based essentially upon educational considerations, and if the appropriate University curriculum committee, the Faculty Senate, and the President concur in this recommendation, the President will ask the Provost to implement the reduction or discontinuance plan recommended by the Committee on Program Review.

If either the Committee on Program Review, the appropriate University curriculum committee, or the Faculty Senate do not agree that the reduction or discontinuance of the program is in the best interest of the University, and if the President feels that the need for a program reduction or discontinuance exists, the President may proceed to develop a full report to the Board of Regents regarding program reduction or discontinuance. The report will include, but not be limited to, information and reports from the Faculty Senate, the appropriate University curriculum committee, and the ad hoc Committee on Program Review; and a recommended procedure to be followed regarding the termination and due process rights of tenured faculty affected by the program reduction or discontinuance. If the Board of Regents approves, then the President will ask the Provost to implement the plan as approved by the Board of Regents.

C. FACULTY REDUCTION FOR PROGRAM REDUCTION OR DISCONTINUANCE:

If normal attrition will fail to bring about a sufficient reduction, then the University shall offer economic incentives (e.g. contract buy-outs or paid leave for retraining). The University shall offer reassignment or paid leave for retraining to tenured faculty affected by the program reduction or discontinuance, and shall make every reasonable effort in the case of untenured faculty. In both reassignment and retraining, every effort should be made to utilize the past training and expertise of the faculty in question. The duration and term of a paid leave for retraining shall be negotiated with the Provost, taking into account such factors as:

(a) credentials (education and experience);
(b) faculty rank; and
(c) consistency in the application of this policy.

In all reassignment decisions, tenure shall be heavily weighed. To maintain the proper balance in curriculum offerings, however, it may be necessary to reassign faculty without regard to tenure.

If the desired reduction in the number of faculty is still not achieved, then the dean, based on recommendation from the program faculty and chair, shall consider the following factors in preparing a list of professors to be terminated:

(a) tenure, rank, and seniority in that order of importance;
(b) faculty performance over the last three years;
(c) affirmative-action guidelines;
(d) particular specialties of faculty and the continued needs of the program.

Every reasonable effort shall be made to preserve the positions of tenured faculty through reassignment or paid leave for retraining as outlined elsewhere in this policy.
Given the University’s commitment to tenure, tenured faculty will not be terminated for program reduction or discontinuance except as provided below.

The University shall offer reassignment to other academic programs, or offer a paid retraining leave to tenured faculty. If such reassignment or retraining leave is refused, then the faculty so refusing may be terminated. Tenured faculty would be terminated in accordance with the requirements of the Kentucky Revised Statutes.

The President and the Board shall ensure that notice to tenured or tenure-track faculty be given prior to December 1 in the academic year prior to the effective date of termination. In addition, reasonable effort shall be made to ensure that no faculty appointment is terminated before the end of the academic year in which the program reduction or discontinuance decision occurs. Terminated faculty shall be notified in writing and have the right to appeal the decisions to the Faculty Rights and Responsibilities Committee as provided in PAC-18.