

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE



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SANTA BARBARA • SANTA CRUZ

Mary Croughan
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*Chair of the Assembly and the Academic Council
Faculty Representative to the Board of Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200*

November 6, 2008

**PRESIDENT MARK YUDOF
UNIVERSITY OF CALIFORNIA**

Re: Policy on Reemployment of Retired Employees

Dear Mark:

At its meeting on October 22, Academic Council discussed the policy on reemployment of retired employees adopted by The Board of Regents in September. Prior to the discussion, nine Divisions (UCB, UCD, UCLA, UCM, UCR, UCSB, UCSC, UCSD, and UCSF) and three systemwide committees (UCAP, UCFW, and UCPB) submitted written comments. One Division (UCI) submitted written comments after the discussion. All comments are attached. Almost all objected to the adoption of this policy without formal Senate review. The majority also took issue with one or more parts of the policy, although a minority expressed support for its goals and agreed in principle that rehiring retirees as a routine practice should be discouraged and carefully regulated in order to protect the pension fund.

Eight Divisions provided critical comments; one considered the policy acceptable (UCR), and one had no comment (UCSF). All committee comments were critical. The substantive critiques concern: 1) the requirement for and definition of exigent circumstances; 2) the limitation on duration of reemployment; 3) the restriction of appointment percentage greater than what is required by applicable Federal statutes; 4) discrimination in eligibility for reemployment into career appointments based on a retiree's personal choice of how he or she takes his or her pension; 5) the likely frequency of exceptions; and 6) the institutional impact of the policy. Following is a summary of the comments related to each of these areas.

Exigent Circumstances. Raising the bar for rehiring retired UC employees to "exigent circumstances" suggests that such hires should be exceptional when the conditions listed in the policy--such as filling vacancies in positions pending recruitment--are examples of normal business operations for any complex institution. The policy creates excessive and onerous administrative

burdens for demonstrating the need to rehire (UCM, UCSC). The level of approvals required is unreasonable (UCLA).

Duration of reemployment and appointment percentage. No rationale is given for the 12-month limitation on reemployment (UCI, UCLA, UCFW). The policy should not impose restrictions that exceed what is required by the IRS and Medicare (UCD, UCI, UCFW), i.e., the limitation to 43% time should not apply to retirees who are ineligible for Medicare (UCLA, UCFW, UCPB). Moreover, these limitations need clarification (UCLA, UCSC, UCSD, UCFW, UCPB), such as defining the period for which the 43% limitation will be calculated.

Reemployment into career appointments. Several Divisions and committees felt strongly that a retiree should not later be prohibited from returning to work at the University in a career appointment due to their choice of retirement payout. At least two Divisions felt that this distinction is arbitrary and discriminates against those who may be concerned about their life expectancy and therefore chose a lump sum cash-out (UCB, UCSD). No rationale for this provision was presented (UCB, UCLA).

Policy exceptions. The policy makes it likely that exceptions will become the norm, given the frequency of circumstances in which departments find it cost-effective to hire retirees in temporary or part-time positions (UCB). It is preferable that the policy outline the correct approval procedures for the most common situations so that the need for exceptions is reduced to a minimum; clearly explain the situations in which recalls are permissible (UCD, UCFW); and more clearly define exigent circumstances (UCSB). UC Santa Cruz recommends that the policy be revised to include a set of allowable criteria for rehire such as staffing transitions, family and other approved leaves, and covering temporary workload issues.

Institutional impact on the University. The policy has the potential to damage the University in multiple ways: 1) it may cause potential retirees to stay employed longer at higher salaries and benefit costs, rather than creating openings for lower paid entering employees with updated skills (UCSC); 2) it may cause departments to leave temporary positions open, impeding the smooth functioning of the University, or departments may ignore the policy or engage in sham searches (UCSC, UCFW, UCPB,); 3) it may cause hardship for UC Merced, which relies heavily on retirees' knowledge of the University, as well as for small departments and new ventures (UCM, UCSC); 4) it could impair the University's flexibility in a period of budgetary challenges (UCB, UCD, UCSB).

Other concerns. Other notable concerns include: 1) the policy does not explicitly state that it does not apply to the recall of faculty to academic appointments (UCLA, UCSD, UCFW); 2) the policy does not address the status of retirees who are currently reemployed (UCSD); 3) the requirement that a retiree must be reemployed either in a different department or in a position requiring different skills makes little sense, since the value of such employees lies in their specific skills and experience (UCSD); and 4) enforcement mechanisms are not addressed (UCLA).

Senate review. Finally, the Senate is gravely concerned by the lack of opportunity for proper Senate review prior to the policy being recommended to the Regents. The Senate views this circumvention of process as "a failure of shared governance." (UCM, UCSC, UCSD, UCAP, UCPB)

The item presented to The Board of Regents' Committee on Compensation states that after systemwide review, "the final version may incorporate clarifications and additional guidance that

will support compliance.” Given the improvements in wording necessary to clarify the policy, in addition to the significant substantive changes recommended by Senate Divisions and committees, my staff is preparing a proposed revised version of the policy, which the Senate hopes will achieve the intent of the policy while preventing the negative effects described above. We believe that these changes will facilitate compliance.

We ask that you consider the Senate’s revision for recommendation to The Board of Regents. We further request that the intended January 1 implementation date be delayed so that The Regents can fully consider the Senate’s proposed alternative.

We appreciate the opportunity to share our views. Please do not hesitate to contact me if you have any questions or concerns regarding the Academic Senate’s comments.

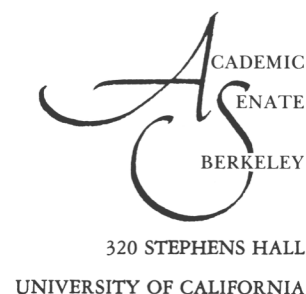
Sincerely,

A handwritten signature in black ink that reads "Mary Croughan". The script is fluid and cursive, with the first name "Mary" and last name "Croughan" clearly legible.

Mary Croughan, Chair
Academic Council

Copy: Academic Council
Martha Winnacker, Senate Director

Encl. 2



October 21, 2008

MARY CROUGHAN
Chair, Academic Council

Subject: Retiree rehire policy adopted by the Regents September 18, 2008

Dear Mary,

On October 20, 2008, the Divisional Council (DIVCO) of the Berkeley Division discussed the policy cited above, informed by the comments of the divisional committees on Faculty Welfare (FWEL) and University-Emeriti Relations.

The discussion in DIVCO echoed FWEL:

We are concerned that it [the policy] appears to rule out or make exceptionally difficult to adopt a variety of recall actions that can be useful to the university and which might be undertaken for entirely legitimate reasons ... We recommend that the policy be revised to allow for the option of a 100% recall for both staff and SMG and for a multi-year recall to the SMG. The faculty has an interest in the efficient functioning of the various units on campus, and this goal can at times be effectively met by--for example--the recall of an MSO at 100% time for several months. Similarly, retired faculty may serve the university in one or more SMG positions that cumulatively extend beyond the time frames in the policy.

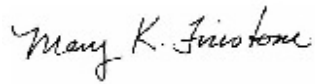
While the policy currently excludes faculty recalls to faculty positions, both divisional committees expressed concern about future moves to align the faculty recall policy with this policy. DIVCO agreed with the reporting committees that such a move should be strongly resisted by the Senate.

One provision of the new policy generated considerable, and at times impassioned discussion in DIVCO. The provision that prohibits retirees who took the lump sum cash out from returning to career positions is viewed as being discriminatory against those who are concerned about their life expectancy (and therefore have taken the lump sum cash out rather than an annuity). Furthermore, with little justification given for the provision, the basis for its

inclusion is unclear. DIVCO encourages Academic Council to take a strong stand against this provision.

DIVCO questions the wisdom of enacting a policy that will certainly result in the widespread need for exceptional approvals. In closing, DIVCO noted that during difficult financial times on campus, increased flexibility is needed, and this policy runs counter to that.

Sincerely,

A handwritten signature in cursive script, reading "Mary K. Firestone".

Mary K. Firestone
Chair, Berkeley Division of the Academic Senate
Professor, Environmental Science, Policy and Management

Cc: Yale Braunstein, Chair, Committee on Faculty Welfare
Calvin Moore, Chair, Committee on University-Emeriti Relations
Adrienne Banner, Senate Assistant, Committee on Faculty Welfare, and
Committee on University-Emeriti Relations



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October 14, 2008

MARY CROUGHAN, CHAIR

Assembly of the Academic Senate
Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607

Re: UC Policy on Reemployment of Retirees into Senior Management and Staff Positions

The subject proposal was distributed to all of the Davis Division standing committees and the Faculty Executive Committees of the schools and colleges. Comments were received from the Committees on Planning and Budget Faculty Welfare and Academic Personnel-Oversight. Please note that the Davis Division Committee on Faculty Welfare has replied that "the policy at issue was approved by the Regents at their September meeting. The University Committee on Faculty Welfare (UCFW) reviewed and responded to the policy. The Davis Division Faculty Welfare Committee is satisfied with the UCFW's response."

We believe the new policy should provide maximum flexibility and limit restrictions to those required by laws and regulations imposed by state and federal programs .

The new policy should aim to minimize the use of exceptions to policy. It is preferable that the policy itself outlines the correct approval procedures for the most common situations so that the need for exceptions is reduced to a minimum. Alternate approval mechanisms for certain cases is a possibility and should not be presented as an "exception per policy", which is an unusual concept; e.g., as currently written the policy states that the duration of rehire should not exceed 12 months (page 7), and later states that approval from OP is required for longer terms (page 13), and further exceptions are made in paragraph 5 on page 13.

Finally, the policy should be revised to reduce ambiguity, in particular regarding the distinctions between retirees who elected the lump sum cash-out from the retirement system versus those who did not.

In closing, we are concerned at the lack of time provided for comment. Distribution at the beginning of the fall quarter when committees have yet to meet and faculty are focused on restarting instruction impeded our ability to thoughtfully consider this policy and hence we provide only the briefest comments. This policy will seriously impact the University's ability to fill temporary gaps with qualified retirees. The impact may be severe given the impending budget difficulties being experienced by our State the economic crisis facing our Nation. We should seriously consider the potential long-term impediments to having possible tools for dealing with budget shortfalls thta this policy will create. At the same time, we do support the implementation of an aggressive policy to mitigate potential recurrences of significant infractions.

Sincerely,

A handwritten signature in black ink, reading "R.L. Powell".

Robert L. Powell III, Chair
Davis Division of the Academic Senate and
Professor and Chair, Department of
Chemical Engineering and Materials Science



Office of the Academic Senate
2300 Berkeley Place South
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November 5, 2008

Mary Croughan, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: SYSTEMWIDE REVIEW OF THE RETIREE REHIRE POLICY

At its meeting of November 4, 2008, the Irvine Division Academic Senate Cabinet reviewed the proposed Retiree Rehire Policy. The policy constrains the process for rehiring individuals who have retired from UC; it does not prohibit the rehire but does raise the bar for the approval process, and asks for evidence of "exigent circumstances." Appointments at greater than 43% time or for a period longer than 12 months require special high-level approvals as exceptions to policy.

The policy was reviewed and discussed in the Council on Faculty Welfare, the Council on Academic Personnel, and the Council on Planning and Budget. It appears unusual that the University should make a general policy to address a specific incidence (at Berkeley earlier this year). Furthermore, it is unclear why the new UC policy should be stricter than standard IRS rules, and why multi-year recalls should be treated so inflexibly. The Cabinet also registered its concern that the policy was adopted by The Regents before the Academic Senate had a chance to review and comment.

The Irvine Division appreciates the opportunity to comment.

A handwritten signature in black ink, reading "Jutta Heckhausen".

Jutta Heckhausen, Senate Chair

C: Martha Kendall Winnacker, Executive Director, Academic Senate

October 10, 2008

TO: Michael Goldstein
Chair, Academic Senate

FR: Joseph Bristow
Chair, Council on Planning and Budget

RE: Response to the Retiree Rehire Policy

Dear Professor Goldstein:

Thank you for the opportunity for the Council on Planning and Budget to review the Retiree Rehire Policy. The documents pertaining to this issue were distributed to members of the Council and were discussed at the Council's meeting on Monday, October 6, 2008.

The members reviewed the documents and addressed the article in the *San Francisco Chronicle*, which reported specifically on the agreement between UC Berkeley and Police Chief Victoria Harrison who retired, took a lump sum payout, and was then rehired at a higher compensation. Under the UC policy, it was reported that an employee is not retired if he or she takes the lump sum payout.

The council members had strong feelings that the policy is being put in place after the fact and specifically in response to the arrangement between UC Berkeley and the campus police chief. Some council members wished to know how many staff employees were likely to be affected by this new policy.

Council members agreed that most of the details that were referred to as scandal are not covered in the guidelines and that it is a mistake to adopt policy in response to an emergency relating to a single case. For this reason, it was recommended that the approved policy with regard to rehiring staff employees be rescinded.

Please feel free to contact me if you have any questions.

cc: Jaime Balboa, Chief Administrative Officer, Academic Senate
Robin Garrell, Vice Chair, Academic Senate
Linda Mohr, Assistant Chief Administrative Officer, Academic Senate



MEMORANDUM

Academic Senate Executive Office
Los Angeles Division
3125 Murphy Hall
140801

October 15, 2008

To: Michael Goldstein
Academic Senate, Chair

From: Mitch Wong
Faculty Welfare Committee, Chair

Re: Senate Item for Review: Retiree Rehire Policy

The Faculty Welfare Committee reviewed and discussed the Retiree Rehire Policy at their meeting on October 14, 2008. The Committee's concerns are very much in line with those expressed by the UC Faculty Welfare Committee.

1. Executive Summary: The Policy needs to explicitly state that the recall of faculty into academic appointments is not covered by this policy.
2. Section C-1 Exigent Circumstances: This process presents an obstacle for departments, which might result in the department not recalling a highly qualified individual or disregarding the policy by rehiring without approval.
3. Section C-3 Appointment Percentage: The limitation of 43% time should not apply to those retirees who are ineligible for Medicare. In addition, 43% time is not specific. The measure of *time* needs to be included.
4. Section C-4 Duration of Reemployment: An explanation for 12-month limitation on reemployment is not present.
5. Section C-5 Reemployment into Career Appointments: A retiree should not be prohibited to work at the university due to their choice of retirement payout. An explanation for the prohibition was not presented.

We thank you for the opportunity to participate in this process.



OFFICE OF THE ACADEMIC SENATE
MARTHA CONKLIN, CHAIR
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October 13, 2008

SENATE CHAIR MARY CROUGHAN

RE: Retiree Rehire Policy Adopted by The Regents September 18, 2008

Please note that in order to meet the requested response deadline of October 15, 2008, the above referenced document was not distributed beyond Merced's Divisional Council. Council members were united in their concern that this revised policy found its way to The Regents without the benefit of the normal Senate review process. As to the policy itself, the revisions may result in an unintended hardship to UC Merced. From the beginning UC Merced has benefitted from the service of retired UC administrators, staff and faculty. Placing a 12-month lifetime limitation on their service and lowering the appointment percentage from 46% to 43% are aspects of the revised policy that this campus would like to see modified. The Senate is also concerned that the new requirements for approval and reporting are unnecessarily onerous.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martha Conklin".

Martha Conklin, Chair

cc: UCM Divisional Council
Martha Winnacker, Executive Director
Nancy Clarke, Merced Senate Director



CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
UNIVERSITY COLLEGE BUILDING, RM 225

ANTHONY W. NORMAN
DISTINGUISHED PROFESSOR OF BIOCHEMISTRY
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October 15, 2008

Mary Croughan
Professor, Obstetrics, Gynecology, and Reproductive Sciences
Chair, UC Systemwide Academic Senate
1111 Franklin St., 12th Floor
Oakland, CA 94607

Dear Mary:

Re: Retiree Rehire Policy Adopted by the Regents September 18, 2008

The appropriate committees have reviewed the above policy and the members all thought it was acceptable as written and noted that it will change over time as new cases emerged.

Yours faithfully,

A handwritten signature in blue ink that reads "Anthony W. Norman". The signature is stylized with a large, sweeping initial 'A' and a horizontal line at the end.

Anthony W. Norman
Distinguished Professor of Biochemistry and
Biomedical Sciences; and
Chair of the Riverside Division



ACADEMIC SENATE
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Joel Michaelsen, Chair
Deborah Karoff, Executive Director

October 15, 2008

Mary Croughan, Chair
Academic Senate

RE: Retiree Rehire Policy

Dear Mary,

The Executive Council of the Santa Barbara Division has reviewed the Retiree Rehire Policy as adopted by the Regents on September 18, 2008. We agree with the basic principle that rehiring retirees should be firmly discouraged and carefully regulated in order to protect the pension fund from inappropriate withdrawals. However, the revised policy seems to be an overreaction to a "bad" judgment made on one campus and is so rigid that it could end up making exceptions even more common. Parts of the policy seem overly bureaucratic such as the requirement to post recruitment announcements prior to filling a position with a retired employee or the twelve month limit on rehires. In our view, maximum flexibility is needed to staff the operational needs of the entire system given the budgetary challenges on each of the campuses and expected retirements (and loss of institutional memory) throughout the UC system. Therefore, we question the overall wisdom of adopting a policy that establishes greater obstacles to hiring retired employees. The IRS and Medicare regulations provide clear limits on major issues, such as separation requirements and maximum percent time that could be combined with clear criteria on what defines exigent circumstances to provide a more useful set of policies for employing retired individuals.

Sincerely,

A handwritten signature in cursive script, reading "Joel Michaelsen".

Joel Michaelsen, Chair
Santa Barbara Division



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SANTA CRUZ, CALIFORNIA 95064

Office of the Academic Senate
SANTA CRUZ DIVISION
125 CLARK KERR HALL
(831) 459 - 2086

October 15, 2008

Mary Croughan, Chair
Academic Council

RE: UCSC Response to Retiree Rehire Policy Adopted by the Regents September 18, 2008

Dear Mary,

Moving from a general set of guidelines to a UC policy on retiree rehire is a laudable effort. However, there is clearly not time for adequate divisional review given the policy's effective date of January 1, 2009. This failure of shared governance should be addressed by the Academic Council. It is unfortunate that the policy was designed without the insights and perspectives which would have come from a proper review. Since the Regents have acted hastily and already approved the policy, Council should consider asking for revision in two key areas: C.1 Exigent Circumstances, by creating a category of allowable criteria for rehire; and C.4 Duration of Employment by changing the limit from 43% employment in 12 months, cumulative, to 43% in any calendar year.

The new policy fails to recognize that the existing retiree rehire guidelines have benefited the University in maintaining an extremely experienced and low cost temporary work force. This work force allows the University to move smoothly through staffing transitions and peak work periods by employing experienced individuals on a part time temporary basis. If there are abuses of existing guidelines, then it would be more effective to deal with those cases than to create global changes that disadvantage the University by hampering access to experienced and inexpensive labor.

C.1 Exigent Circumstances creates excessive paperwork for demonstrating need for re hire even on a part time, temporary basis. The policy raises the bar for rehire to "exigent circumstances" when in fact those conditions listed in the policy, such as filling vacancies in positions pending recruitment, are examples of normal business operations for any complex institution. This policy should include a set of allowable criteria for rehire such as: staffing transitions, family and other approved leaves, and covering temporary workload issues. It is ironic that during a time of Regental outcry for streamlining of processes that the Regents themselves have approved a policy that creates paperwork and an elaborate process of justification. Executive officers, in following this policy, will have to concern themselves with the problems that will emerge in covering the standard three month family leave of an administrative assistant in their unit—we fear that in many instances, the new policy will provide a significant hurdle that executive officers will

choose not to deal with, and will instead sacrifice the smooth functioning of their unit to avoid a major administrative burden.

C.1 Exigent Circumstances This change lacks justification. It dictates a twelve month cumulative limit (in one or more multiple positions) that prevents the university from tapping into experienced retirees that could potentially be available over the course of a decade post-retirement. Indeed, many recruitments can take up to 6 months, and even after this, a training period may well be needed. The university will get only one or two such opportunities for any given employee under this policy. This policy also disadvantages new campuses like Merced and other nascent efforts, including new research units. Furthermore, denying retirees the ability to work at UC on a temporary basis may well significantly disadvantage the University. Given recent nationwide statistics that the average person works until they are in their late 60's, this policy has the potential to cause potential retirees to stay employed longer at higher salaries and benefit costs, rather than creating openings for lower paid entering employees with updated skills. In this sense, the policy may actually impede rejuvenation of the work force, while making it more difficult for retirees with experience to be deployed in situations advantageous for the University.

Summary of UCSC recommendations –

- Eliminate needless paperwork by creating a category of allowable criteria for rehires that falls within the routine operations at the university, which include:
 - the need to recruit and train
 - the ability to cover family and other approved leaves
 - the ability to cover “peak seasons” or other temporary work load issues
- Replace 12 month cumulative limit with a limit of 43% in a calendar year.

Again, I reiterate that the University has not been well served by the rapidity of this policy's placement before the Regents: the Academic Council should urge the President to make key changes necessary in order to retain the flexibility gained from this unique work force.

Sincerely,

A handwritten signature in black ink, appearing to read "Quentin Williams". The signature is fluid and cursive, with the first name "Quentin" written in a larger, more prominent script than the last name "Williams".

Quentin Williams, Chair
Academic Senate
Santa Cruz Division



OFFICE OF THE ACADEMIC SENATE

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October 14, 2008

Professor Mary Croughan
Chair, Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

SUBJECT: Regental Policy on Reemployment of University of California Retired Employees

Dear Chair Croughan:

In response to your request of September 29, the San Diego Division sought and received comment from the appropriate Divisional committees on the Regental Policy on Reemployment of University of California Retired Employees. The Divisional Senate Council considered the Policy at its meeting on October 6.

It was apparent to all reviewers that the revised Regental Policy contains major changes. *Significantly, the San Diego Division notes that the revised policy does not apply to faculty recalled to academic duties under APM 200; if it did, the negative effects on the University's missions of teaching and research would be far-reaching and incalculable.* Nonetheless, the policy changes will have ramifications for research, teaching, and administrative activities on every campus, all of which directly affect the faculty. Thus, it was particularly unfortunate that such a far-reaching policy change was not thoroughly discussed with the appropriate Senate bodies in advance of its transmittal to the Regents. Some reviewers were reluctant to discuss the details of the revised policy because the abbreviated time frame made a careful evaluation of the complexities and possible unintended consequences unrealistic and impractical. All reviewers emphasized the importance of consultation with the Academic Senate *prior to implementation* of policy changes, rather than after the fact.

Specific comments from reviewers at the San Diego Division include the following:

III.A. Scope

- The policy does not address the status of current, return-to-service employees.

III.B. IRS Restrictions for Preserving the Tax-Qualified Status of UCRP

- "The employee and the employer did not engage in discussions regarding reemployment before the employee's separation from service." This is the only item required by the IRS. Most of the others seem to tie the hands of campus administrators and, possibly, open the campuses to lawsuits.
- "Both the employer and the employee intended that a separation from service occur and that it be permanent." How could a UC administrator ever justify recalling a SMG or staff member within 90 days if the administrator and the employee both really believed and intended the separation to be permanent? How do campuses, The Regents, or the courts determine intent?
- "The employee is reemployed into a position that requires different skills from those used in his or her prior position or is with a different department or supervisor." Would it not be quite unusual to want to rehire someone, even temporarily, unless it was to a position they were known to have the unique skills for?

III.C.1. Exigent Circumstances

- The statement regarding recruitment is vague, and the rationale for recruiting for some positions and not for others is not clear. If “a Retired Employee is not reemployed into the same position held before retirement or another vacant position”, what type of position could he or she be reemployed into?

III.C.3. Appointment Percentage

- The Policy requires that retired employees be rehired with no more than a 43% appointment due to potential Medicare complications. This is a sweeping policy statement that would apply regardless of whether or not employees are eligible for Medicare. Many of the employees that will be affected by this Policy will be under the age of 65 and not eligible for Medicare.

○

III.C.4. Duration of Reemployment

- “Reemployment in one or multiple positions must not exceed a total of 12 months.” While some reviewers read this statement as clearly setting a lifetime limit of 12 months on return-to-service, others noted that the term “multiple positions” was undefined. Does “12 months” mean “12 calendar months”? For example, retirees might be asked to serve multiple times in multiple years, where the cross-product of service could add up to more than 12 months and the appointments would take more than 12 calendar months. Does a longer appointment at a smaller percentage of time count the same as a shorter appointment at a larger percentage of time? Does a request for exception have to be made every time 12 months is reached for each position or for all of the multiple positions?
- While it is clearly more desirable to recruit new people into positions vacated by retirees, this major policy change could have detrimental effects should new recruits not be available or should the retirees’ skills be unique. Nonetheless, it would sensible to review the appointments every 12 months, as is done for faculty.

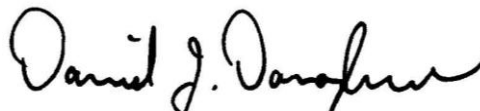
III.C.5. Reemployment into Career Appointments

- The prohibition on retirees who take a lump sum payout seems arbitrary and discriminatory. Clearly, they need to be prevented from participating in UCRP a second time, but should not be prevented from contributing to the UC workforce at more than 43% time and/or for longer than 12 months if that is desirable by both sides.

In response to one lawful but publically embarrassing decision, policy discretion is removed from the campuses and given to UCOP and The Regents. The rationale for such a broad, sweeping change is not clear. Rather than removing policy discretion from the campuses, administrators should be given guidance and then held accountable for staffing decisions. Some of the policy changes here are quite sensible, but broader discretion is needed or the University will lose access to the skills and knowledge of its best retirees. Additionally, changes in incentives such as reemployment after retirement may cause earlier separations; some reviewers could imagine earlier losses of employee talent to other universities or other sectors.

Finally, while acknowledging the circumstances that led to the Senate’s review after Regental approval, reviewers were concerned that this flawed process not set a precedent for the future.

Sincerely,



Daniel J. Donoghue, Chair
Academic Senate, San Diego Division

cc: W. Hodgkiss



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San Francisco

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David Gardner, MD, Chair
Elena Fuentes-Afflick, MD, MPH, Vice Chair
Mary J. Malloy, MD, Secretary
Jean Olson, MD, Parliamentarian

COMMUNICATION FROM THE SAN FRANCISCO DIVISION

October 9, 2008

Mary Croughan, PhD
Professor and Chair, Academic Council
University of California Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

Re: Review of the Policy on Reemployment of University of California Retired Employees into Senior Management Group and Staff Positions

Dear Chair Croughan:

Thank you for the opportunity to review the [Policy on Reemployment of University of California Retired Employees into Senior Management Group and Staff Positions](#), adopted by the Regents on September 18, 2008.

After careful review of the policy, we have no further comment.

Should you have questions or need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, which appears to read "David Gardner". The signature is fluid and cursive.

David Gardner, MD
Chair, UCSF Academic Senate



UNIVERSITY COMMITTEE ON ACADEMIC PERSONNEL (UCAP)
Steven Plaxe, Chair
splaxe@ucsd.edu

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October 15, 2008

MARY CROUGHAN, CHAIR
ACADEMIC COUNCIL

Re: Retiree Rehire Policy Adopted by The Regents

Dear Mary,

UCAP reviewed the Retiree Rehire Policy recently adopted by The Regents. The committee has no opinion about the substance of the policy.

Several committee members expressed concern, and displeasure, regarding the nonstandard process applied to this matter. The committee recognizes that, in rare circumstances, an issue may be sufficiently pressing to justify an unusually rapid response; however, it is not immediately apparent that implementation of the Retiree Rehire Policy met that standard.

Sincerely,

Steven Plaxe, Chair
UCAP



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Helen Henry, Chair
helen.henry@ucr.edu

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October 15, 2008

**MARY CROUGHAN, CHAIR
ACADEMIC SENATE**

RE: Rehired Retirees Policy

Dear Mary,

During the past summer UCFW, chaired by Jim Chalfant, reviewed the Retiree Rehiring policy and provided informal feedback directly to Randy Scott (August 20, 2008 (enclosed)). That policy, with editorial changes but little substantive change in response to our comments, was subsequently approved by the Regents at their September meeting with the provision that the **“final version may incorporate clarifications and additional guidance that will support compliance”** (paragraph 3, Executive Summary). At its October 10, 2008, meeting, UCFW reviewed the policy approved by the Regents. The concerns in the August 10 letter that were not addressed prior to the Regents’ approval are included here along with those arising from our October 10 discussion.

1. Who is Covered: Since our last review of this policy, in this paragraph (preceding CONTENTS), the governing documents for academic appointees have been expanded beyond the Academic Personnel Manual to include the *Guidelines for Rehire of UC Retirees*. Since these *Guidelines* comprise what is being replaced by the policy under review and since recall of faculty into academic appointments is not covered by the policy under review, this sentence should be changed to read as it originally did: “Recall appointments for academic appointees are governed by Academic Personnel Manual 200-22”.
2. Paragraph C-1: Exigent Circumstances: This portion of the policy seems likely to discourage many recalls at the departmental level, including those that make perfect sense for academic departments and the employees who might be recalled. It is also not clear why we are applying this restriction to people who have reached normal retirement age. By placing so much emphasis on exigency, the policy creates incentives for departments to engage in sham searches guaranteed to fail, so that they can justify a recall which is, in all other ways, in everyone’s best interest.

Another undesirable outcome of this emphasis on exigency is that departments may simply not ask for exceptions, and either not proceed with an otherwise beneficial recall or proceed with recalls without getting approval. Clearly, neither outcome is the intent of the policy, nor is either helpful to the University.

As an example, if a department wishes to recall a former MSO for more than one year or at greater than 43% time, it would be more sensible for the policy to simply spell out what they should do, not indicate that such an action is prohibited and therefore it would be an exception to policy requiring a failed search in order to proceed.

3. Paragraphs C-3 and C-4: Appointment Percentage and Duration: We understand the necessity for limiting the appointment to 43% for retirees who are eligible for Medicare, but we do not see why it should apply to those who are not yet eligible. Furthermore, the denominator for the 43% determination is not specified – is it 43% of each day? Week? Month? Year? Or is the *income* to be received no more than 43% of an annual appointment? If this information is located in another policy, it should be re-stated in this one.

Similarly, we are not persuaded that a 12-month limitation, which we take to be per lifetime, on non-career appointments, is either necessary or desirable. The rationale for this is not presented, and we can easily imagine instances when a longer employment window, even for individuals who have taken a lump sum cash-out, may be beneficial for the University as well as the individual.

In both of these restrictions, strictly prohibitive language is followed (in one case in the very next sentence) by language describing the process for approving exceptions to the policy. It would be far better to frame the policy by stating the goal of the restrictions (e.g., to encourage succession planning), then frame the policy along the lines of “in order to achieve this goal, normally X will not be permitted. However, in some cases with Y justification, an exception may be granted...”. Of the suggested changes that would lead to **clarification and additional guidance that will support compliance**, we believe that this would be one of the most fruitful.

4. Paragraph C-5: Effect of Policy on those who elect to retire with a Lump Sum Cash-out: We understand that individuals who take a lump sum cash-out cannot stop monthly payments in order to pursue a career appointment, as do those who have elected monthly payments. However, we believe that the way that one chooses to take one’s benefit ought not be driven by this restriction. Two individuals may have equal commitment and value to the University if rehired, but one may, for personal financial reasons, be better served with a lump sum cash-out than the monthly payment. In such a case, the ability of the individual to work for the University, and of the University to hire her or him, should not be prohibited by policy.

In any case, there is such considerable confusion among readers of this policy around the issue of retirees who take a lump sum cash-out, that an additional paragraph (C-6) specifying the effects of such a decision on future recall options would be beneficial.

We thank you for the opportunity to review this important policy.

Sincerely,

A handwritten signature in black ink, reading "Helen L. Henry". The signature is written in a cursive, flowing style.

Helen Henry, UCFW Chair

Copy: UCFW

Martha Winnacker, Executive Director, Academic Senate

Encl.



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August 20, 2008

**RANDY SCOTT, EXECUTIVE DIRECTOR
UCOP HUMAN RESOURCES AND BENEFITS, POLICY AND PROGRAM DESIGN**

RE: UCFW Recommendations for Retiree Re-employment (SMG/Staff)

Dear Randy,

As promised, this letter plus the attachment conveys comments from a subset of UCFW concerning the Retiree Re-employment policy. Helen Henry and I have collaborated on this letter, and we would both be glad to work with you in addressing these comments. I'm sure that's also true of Bob Anderson, who contributed many comments, or others on UCFW, should this conversation extend into the fall.

We understand the motivation for the policy, and support the broader goals, but recommend a substantial rewrite and review prior to taking this to the Regents. It seems to us that the policy won't avoid the more highly publicized instances of recall, and while it specifies approval authority and requirements clearly, it doesn't change the fundamental nature of these recalls. We have few significant concerns here, but would write things differently. Instead of calling anything an exception to policy, we'd prefer that the policy simply specify various levels of approval required for each particular re-employment circumstance. We do not understand writing a policy that "requires" something and then outlines the ways around the requirement.

More broadly, the policy seems likely to discourage many recalls, including those that make perfect sense for academic departments and the employees who might be recalled, although those recalls are not really the focus of the policy. We're concerned with the fact that the policy ties our hands with regard to individuals who would not rise to the level of *San Francisco Chronicle* interest, but whose recall would be beneficial to both them and their departments. We think the specification of exactly what is needed to avoid problems with the IRS is important, but beyond that, we don't want to add anything that discourages departments and staff from considering recalls. Furthermore, by placing so much emphasis on exigency, the proposed policy, as written, creates incentives for departments to engage in sham searches guaranteed to fail, so that they can more easily justify a recall. This is not in anyone's interest, and we ought rather to simply specify conditions under which recalls are permissible. This will also help avoid the situation in which departments simply do not ask for exceptions, and either do not proceed with an otherwise beneficial recall or proceed with recalls but without getting approval. Clearly neither outcome is the intent of the policy and both are harmful to UC.

The attachment contains an older draft than the one you sent me, but our comments seemed mostly to be related to points other than those that have since been amended. One particular recent change worth noting, though, is that the addition of the ability to delegate the approval authority further (from the chancellor to a dean, say) at the campus level might reduce some of the disincentives departments face. We think this is a very positive improvement. It might be easier to communicate directly with the dean concerning a recall. This delegation still leaves open the possibility that we noted, where the pattern of recalls might be quite different across even colleges, let alone campuses, due to different standards being applied. Collecting data on the pattern of recalls will help, but it won't reflect the recalls no one asked about because they thought the burden of proof was too great to justify the trouble. We'd like to see even more material concerning delegation of authority.

We're aware that Michael Brown has indicated that a systemwide Senate review is needed. Personally, we'd be happy now with a collaboration between UCFW and HR&B to rewrite this policy before it goes forward, whether to such a review or "fast-tracked" to the Regents. We agree with Michael, though, that the policy as written is not ready for action at the September Regents meeting.

I don't want to close without noting our appreciation for the substantial revision of the language in the previous draft that seemed to suggest that faculty recall policy would be "aligned" with this policy. As you know, our concern is that the multi-year recalls faculty can negotiate presently should be preserved. While this policy does not really address that subject, we remain concerned that there will be pressure to reverse the positive changes we've made in allowing more flexible recall policy in recent years, and that staff will perceive that faculty are receiving a different deal than they have. We don't see why it makes for good management practice to tie our hands beyond what is required legally, concerning staff, and this is why we prefer rewriting the policy.

We have heard suggestions that some faculty are retiring at age 60 and then being recalled on external grants. This clearly benefits the University, saving salary costs while continuing research and grad student support. We don't want to see anything that makes this harder to achieve. Even if the salaries on recall are from UC funds, it must be the case that the department agreeing to the recall over several years sees some long-term benefit, and we don't want to limit options here.

We think 100% recalls for faculty, and perhaps multi-year recalls at smaller percentages, will be harder to maintain if this policy is adopted for staff/SMG. That would delay some faculty retirements, which harms the operating budget and helps UCRP. Unfortunately, it's the operating budget that is our biggest worry these days.

Along exactly the same line of reasoning, as noted in one of our comments, do we really think that we never will want a department to recall its MSO, for instance, for more than one year or at greater than 43% time? If this makes sense to the department and the MSO, we'd want the policy to simply spell out what they should do, not indicate it's required that this not occur, and that it would be an exception to policy requiring a failed search.

Thanks for considering these comments. UCFW would be delighted to continue to work with you or others at HR&B in redrafting this policy.

Best regards,

Sincerely,

A handwritten signature in black ink that reads "James A. Chalfant". The signature is written in a cursive style with a large, stylized initial "J".

James A. Chalfant, Chair
UCFW



UNIVERSITY COMMITTEE ON PLANNING AND BUDGET (UCPB)

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October 15, 2008

MARY CROUGHAN, CHAIR
ACADEMIC COUNCIL

Re: Policy on Reemployment of University of California Retired Employees

Dear Mary,

At its October 2008 meeting, the University Committee on Planning and Budget (UCPB) reviewed the new Regents policy on the Reemployment of University of California Retired Employees, which was adopted by The Regents in September 2008 without Senate review but with a promise from the President to circulate the policy to the UC community for review after its adoption. Due to several concerns described below, UCPB cannot fully endorse the policy at this time.

We understand that the new policy prohibits retirees who take the “lump sum” retirement option from returning to work at UC as a full time employee (they can return at 43% time for up to 12 months) without special, high-level approval for both the appointment and for any exception to the 12 month limit. Such approval would involve senior level personnel on the campus for staff; presidential approval for SMG positions; and Regents approval for other very high level positions. Employees who take the monthly payment option have a choice of either giving up their pension and returning to work full time, or remaining retired with their pension and returning for up to 12 months at 43% time. Retired faculty returning to a faculty position under APM 200 are exempt. The policy also requires evidence of “exigent circumstances” for an exception.

UCPB members expressed several reservations about the policy. First, the method by which it was approved is of particular concern to us. The unusual step of bypassing a rigorous Senate review is troubling, and UCPB faculty hope this was a rare exception that does not set a precedent for future policy proposals and discussions. The Regents’ executive summary notes that the final version of the policy will incorporate, *ex post facto*, clarifications and additional guidance from the Senate and other reviewers. While it is unclear to us what effect the Senate’s comments may actually have at this stage, we hope there is a possibility that they may still have a significant impact on the final outcome depending on the consensus of the faculty.

The policy comes after a public outcry in May 2008 over an arrangement that allowed the UC Berkeley Police Chief to retire with a \$2.1 million package and then return to the same job immediately at a higher salary. We do agree with the need to prevent future situations like this one at Berkeley, which not only seemed to push the boundaries of ethical practice, but was also embarrassing to the University. There were concerns in UCPB, however, that the University is making general policy to address a specific incident, and that the new policy still leaves the door open to the possibility of a Berkeley-like situation being repeated. In particular, we anticipate that exceptions to policy may still be made for highly paid employees, while those whose salaries, and perhaps pensions, would not attract public scrutiny will not be granted exceptions, even when both the individual employee and UC would benefit from the recall.

We believe the new policy may not really prevent future embarrassing incidents because, although the policy includes language like “shall” and “must,” these statements tend to be followed by explanations of how exceptions to policy are granted. The requirements for exigent circumstances and documentation regarding a failed search likely will cause some departments to decline to seek a recall, to ignore the policy altogether or perhaps to engage in a search that is guaranteed to fail, in order to meet the requirements for a recall. None of these outcomes serves the University’s interest. Thus, the policy imposes costs on UC and its employees, while doing nothing about the culture of exceptions to policy for highly paid employees that led to the public scrutiny in the first place. While establishing a protocol for policy exceptions is sensible, it is unclear that adding more bureaucracy and oversight without an outright prohibition on such practices that took place at Berkeley will have the desired effect.

The new policy exceeds IRS requirements by imposing on employees too young to receive Medicare a Medicare-related restriction that retired employees be rehired with no more than a 43% appointment. This sweeping change would apply to people whether or not they are eligible for Medicare. In addition, page three lists several factors supporting a determination that a true separation from service has occurred for an employee who has not reached normal retirement age, but only the first is required by the IRS. The third point in the list – “Both the employer and the employee intended that a separation from service occur and that it be permanent” – also seems particularly vague and unenforceable. Many employees affected by the policy will be under the age of 65 and re-employable outside the university. Why should UC do more than required by law, instead of just assigning approval authority to each particular kind of recall? The UC policy for rehiring retirees should have broader discretion and flexibility, including the ability to commit to multiple-year recalls, or we will risk losing some of our best people to other universities or other sectors. We can imagine that for younger retirees particularly this policy will cause too much uncertainty and wait time and they will simply leave the University for better alternatives.

The provision that reemployment in “multiple positions” not exceed a total of 12 months is also vague and undefined. Retired staff can be asked to serve multiple times in multiple years at a rate less than 43%. Does the policy intend that a request for exception be made each time 12 calendar months is reached, and does that apply to each position or for all of the multiple positions (can they hop from one position for eleven months to another positions for eleven months and so forth without violating the rules)? We could think of several meanings, and it should be clear what is being ruled out here.

In the end, the policy removes discretion from the divisions and gives it to UCOP and the Regents. Many UC employees are eligible to retire at a relatively young age and gain employment elsewhere, and given the rules under our retirement program, it is perfectly rational for them to do so. The policy may create onerous requirements for small departments, which as a result will fail to take sensible actions, now written into policy, to retain a valuable employee – an MSO, for instance. Therefore, it is possible that the policy will allow a police chief at Berkeley to be rehired through a high level exception, but will discourage and obstruct a small department from taking steps to retain their MSO.

Thus, UCPB does not think this policy serves the University well. Any positive contributions to UC's image, as was intended in passing this policy so quickly in July, will pale in comparison to the adverse publicity from further exceptions to policy. This is an overreaction to a situation that was legal, but embarrassing. A balance needs to be struck between having a clear policy in place to manage negative publicity, and allowing flexibility and authority for decisions to retain or recall employees at the appropriate level when needed by the University. UCPB would welcome a more clearly stated policy that outlines the possibilities for recall and the required justification.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Patricia Conrad', written in a cursive style.

Patricia Conrad
UCPB Chair

cc: UCPB
Martha Winnacker, Senate Executive Director