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4 **REPORT TO COMMITTEE A ON ACADEMIC FREEDOM AND TENURE FROM ITS**  
5 **SUBCOMMITTEE ON FINANCIAL EXIGENCY, PROGRAM DISCONTINUANCE,**  
6 **AND TERMINATION OF TENURED FACULTY APPOINTMENTS**  
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9 **THE ROLE OF THE FACULTY IN CONDITIONS OF FINANCIAL**  
10 **EXIGENCY**

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## EXECUTIVE SUMMARY

In recent years, American institutions of higher education have begun closing programs that should be part of any serious educational institution's curricular portfolio, and implementing policies that further erode the ranks and the discretionary power of the tenured professoriate. Program closures on the scale we have recently witnessed represent a massive transfer of power from faculty to administration over curricular matters that affect the educational missions of institutions, for which the faculty should always bear the primary responsibility; in most cases the decisions to close programs are not only unilateral and therefore procedurally illegitimate, but also driven by criteria that are not essentially educational in nature and therefore substantively illegitimate as well. Increasingly, administrators are making unilateral budgetary decisions that profoundly affect the curricula and the educational missions of their institutions; rarely are those decisions recognized as decisions about the curriculum, even though the elimination of entire programs of study (ostensibly for financial reasons) has obvious implications for the curricular range and the academic integrity of any university.

This report responds to this state of affairs in two ways: one, by strengthening shared governance and faculty consultation with regard to program closure, and two, by addressing the gap between Recommended Institutional Regulation 4c on financial exigency and Recommended Institutional Regulation 4d on program discontinuance.

*First*, as to governance and consultation, this report insists that faculty members must be involved in consultation and deliberation at every stage of the process, beginning with a

1 determination that a state of financial exigency exists. We offer specific recommendations for  
2 such faculty involvement:

3 1. Before any proposals for program discontinuance on financial grounds are made or  
4 entertained, the faculty should have the opportunity to render an assessment in writing on the  
5 institution's financial condition.

6 2. The faculty body may be drawn from the faculty senate, or elected as an ad hoc  
7 committee by the faculty; it should not be appointed by the administration.

8 3. Faculty should have access to, at minimum, five years of audited financial statements,  
9 current and following year budgets, and detailed cash flow estimates for future years.

10 4. In order to make informed proposals about the financial impact of program closures,  
11 faculty need access to detailed program, department, and administrative unit budgets.

12 5. Faculty should determine whether "all feasible alternatives to termination of  
13 appointments have been pursued," including expenditure of one-time money or reserves as  
14 bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages,  
15 deferral of nonessential capital expenditures, and cuts to non-educational programs and  
16 services, including expenses for administration.

17 6. Faculty members in a program being considered for discontinuance because of  
18 financial exigency should be informed in writing that it is being so considered, and given at least  
19 thirty days in which to respond. Both tenured and nontenured faculty should be involved in  
20 these determinations.

21 *Second*, this report proposes a more detailed and specific definition of "financial  
22 exigency" that will extend the standard of exigency to situations not covered by our previous

1 definition. As set forth in the introduction, our new definition names a condition less dramatic  
2 than that in which the very existence of the institution is immediately in jeopardy, but is  
3 significantly more serious and threatening to the educational mission and academic integrity of  
4 the institution than ordinary (short-term and long-term) attrition in operating budgets.  
5 Financial exigency can legitimately be declared only when substantial injury to the institution's  
6 academic mission will result from prolonged and drastic reductions in funds available to the  
7 institution, and only when the determination of the institution's financial health is guided by  
8 generally accepted accounting principles. In proposing this new definition, however, we insist  
9 that financial exigency is not a plausible complaint from a campus that has shifted resources  
10 from its primary missions of teaching and research toward employing increasing numbers of  
11 administrators or toward unnecessary capital expenditures.

12         The AAUP has long acknowledged that a college or university can discontinue a program  
13 of instruction, but our standard has been that if the discontinuation is not undertaken for  
14 financial reasons, it must be shown to enhance the educational mission of the institution as a  
15 whole; we have long acknowledged that programs can be cut in times of financial exigency, but  
16 only if an appropriate faculty body is involved in the decisionmaking process from the very  
17 beginning, with the determination of whether an institution is experiencing bona fide financial  
18 exigency. But by and large, the program closings of recent years do not meet any of these  
19 standards. That is why they represent a violation of the principles on which American higher  
20 education should operate, and that is why they must be contested by a vigorous, principled,  
21 and informed faculty.

22

# I. INTRODUCTION

The past forty years have witnessed a decisive shift in power in American colleges and universities.<sup>1</sup> Increasingly, institutions that were once governed jointly by faculty and administrators have become overwhelmingly or wholly dominated by their administrations, as the faculty senates at these institutions have withered into insignificance. For the most part, faculty members retain jurisdiction over the system of peer review and the protocols of scholarly communication, but astonishingly, they have begun to lose control over the one central aspect of higher education where they have long been presumed to have invaluable expertise—the curriculum. Administrators are making unilateral budgetary decisions that profoundly affect the curricula and the educational missions of their institutions; rarely are those decisions recognized *as* decisions about the curriculum, even though the elimination of entire programs of study (ostensibly for financial reasons) has obvious implications for the curricular range and the academic integrity of any university.

As decision-making power has shifted to administrators, public universities have felt intensified financial pressures because of the dramatic reduction in and even withdrawal of state support for higher education, especially in the wake of the financial crisis of 2008. Because the effects of the crisis have been especially pronounced for state budgets, public universities from coast to coast have seen severe if not draconian cuts in state appropriations and corresponding increases in tuition. States have been gradually shifting costs from state funding to tuition payments for a generation, but the new pressures have arrived at a time

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<sup>1</sup> In this report we will henceforth use the term “universities” interchangeably with “institutions,” though we are aware that the term often applies to institutions that would ordinarily be designated as “colleges.”

1 when public and legislative complaints about college tuition are on the rise, and concerns over  
2 student debt have become national news. The perfect storm thus generated—declining  
3 financial support combined with rule to a larger degree by administrative fiat—affords  
4 university administrations the potential to manufacture a sudden “crisis” where none exists.  
5 For example: shifting costs from state revenues to student tuition payments does not in itself  
6 constitute an immediate financial crisis. We believe doing so is bad public policy, but it is a way  
7 of avoiding a funding shortfall, not creating one. Similarly, although many university  
8 endowments suffered substantial losses during the recession, very few institutions actually rely  
9 on endowment income for a major portion of their budgets. For that matter, endowments  
10 have by now largely recovered, as have the markets on which they are dependent. Claims of  
11 financial crisis based on the performance of the market should thus be met with especial  
12 skepticism.

13 As the AAUP discovered in its investigation of how New Orleans institutions responded  
14 to the effects of Hurricane Katrina, public perception of a crisis opens a window of opportunity  
15 for campus managers to make some of the cuts and programmatic changes they have in fact  
16 long wanted to make.<sup>2</sup> An institution’s desire to shift priorities is not the same as a fiscal crisis,  
17 and one should not mistake the former for the latter. As we will detail below, claims that a  
18 campus is facing either a crisis or a form of slow fiscal starvation need to be investigated  
19 thoroughly, and neither faculty nor staff can conduct such an investigation without access to  
20 detailed financial data. There are widely accepted metrics for analyzing an institution’s  
21 financial health, metrics that make objective, reliable conclusions possible. We stress *objective*

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<sup>2</sup> “Report of an AAUP Special Committee: Hurricane Katrina and New Orleans Universities,” *Academe* 93,3 (May-June 2007) 59-125.

1 conclusions, because administration assertions about financial challenges cannot always be  
2 accepted at face value. That is not to say that small liberal arts colleges and some public  
3 institutions are not facing real financial pressures. It is to say that all members of the university  
4 community deserve to participate in relevant discussions of those pressures— and to do so on  
5 the basis of sound and detailed information.

6         The immediate occasion of this report is that some university administrations have  
7 decided to cut costs by eliminating entire programs— and terminating the positions of tenured  
8 faculty in those programs. The University at Albany, State University of New York, has been the  
9 best-known example, having made international news in 2010 when it announced the closing of  
10 its French, Italian, Russian, classics, and theater degree programs; the AAUP had begun an  
11 investigation but suspended it after two potentially affected French professors agreed to retire  
12 and the closing of the several degree programs was not followed by the involuntary termination  
13 of any tenured faculty appointments. Though it received much less national attention at the  
14 time, Southeastern Louisiana University also eliminated its undergraduate French majors (in  
15 French and French Education) in 2010, dismissing the program’s three tenured professors with  
16 a year’s notice— and then offering one of them a temporary instructorship at a sharply reduced  
17 salary. In April 2012, an AAUP investigating committee’s report on the University of Louisiana  
18 System, with its focus on Southeastern Louisiana University and Northwestern State University,  
19 was published online, and Committee A presented statements on these two institutions in the  
20 nine-university system to the 2012 Annual Meeting which imposed censure. In addition to the  
21 discontinuance of the French majors at Southeastern, with the resulting action against the  
22 three tenured professors, the chemistry major at the University of Louisiana at Monroe was

1 discontinued but without notification of termination to anyone among five threatened  
2 chemistry professors; and the discontinuance of the doctoral program in cognitive sciences at  
3 the University of Louisiana at Lafayette, while followed by notification to two tenured  
4 professors of appointment termination, resulted in steps to avoid implementation. At  
5 Northwestern State, however, a wide range of programs suffered discontinuance and more  
6 than twenty tenured professors suffered termination of appointment through the ending of  
7 programs, including economics, German, journalism, philosophy, and physics. The sweeping,  
8 across-the-board actions were shortly followed by news of massive cuts at the University of  
9 Northern Iowa, which announced the elimination of more than fifty programs in March 2012.  
10 An AAUP investigation at Northern Iowa has resulted in a report being published online in  
11 November. Massive layoffs at National Louis University, a private institution in Chicago, also  
12 triggered an appointment of an AAUP investigating committee, which conducted its site visit in  
13 October. Likewise, the Nevada system is under severe duress: state general fund  
14 appropriations have been cut by more than 30 percent since 2009, representing over \$200  
15 million in annual support lost. At the University of Nevada, Reno, the system's oldest campus,  
16 twenty-three degree programs have been closed and dozens of faculty members have been  
17 released, including nearly twenty tenured faculty. At the University of Nevada, Las Vegas,  
18 president Neal Smatresk contemplated seeking a declaration of financial exigency in the spring  
19 of 2011 when state cuts appeared to be even more severe. (Since 2010, UNLV has lost \$73  
20 million in annual state support, eliminated over 300 total positions and cut eighteen degree  
21 programs but avoided layoffs of tenured professors and of most faculty members with  
22 appointments probationary for tenure.)

1           Those institutions, however, have by and large declined to issue declarations of financial  
2 exigency. The sole recent exception is Southern University, Baton Rouge, where the AAUP is  
3 currently investigating a declaration of financial exigency that led to the termination of the  
4 appointments of at least ten professors with tenure. It has therefore become clear that the  
5 AAUP needs to address program closures that are made in the absence of declarations of  
6 exigency, and to revisit our *Recommended Institutional Regulations on Academic Freedom and*  
7 *Tenure* accordingly.

8           The current Recommended Institutional Regulation 4c sets a very high bar for  
9 terminations on grounds of financial exigency:

10           Termination of an appointment with continuous tenure, or of a probationary or special  
11 appointment before the end of the specified term, may occur under extraordinary  
12 circumstances because of a demonstrably bona fide financial exigency, i.e., an imminent  
13 financial crisis that threatens the survival of the institution as a whole and that cannot  
14 be alleviated by less drastic means.

15 Recommended Institutional Regulation 4d, by contrast, provides procedures for tenure  
16 terminations as a result of program closings not mandated by financial exigency: “Termination  
17 of an appointment with continuous tenure, or of a probationary or special appointment before  
18 the end of the specified term, may occur as a result of bona fide formal discontinuance of a  
19 program or department of instruction.” Regulations 4d(1) and 4d(2) set out the conditions for  
20 discontinuing programs and tenure commitments:

1           (1) The decision to discontinue formally a program or department of instruction  
2 will be based essentially upon educational considerations, as determined primarily by  
3 the faculty as a whole or an appropriate committee thereof.

4           [Note: “Educational considerations” do not include cyclical or temporary  
5 variations in enrollment. They must reflect long-range judgments that the educational  
6 mission of the institution as a whole will be enhanced by the discontinuance.]

7           (2) Before the administration issues notice to a faculty member of its intention to  
8 terminate an appointment because of formal discontinuance of a program or  
9 department of instruction, the institution will make every effort to place the faculty  
10 member concerned in another suitable position. If placement in another position would  
11 be facilitated by a reasonable period of training, financial and other support for such  
12 training will be proffered. If no position is available within the institution, with or  
13 without retraining, the faculty member’s appointment then may be terminated, but  
14 only with provision for severance salary equitably adjusted to the faculty member’s  
15 length of past and potential service.

16           [Note: When an institution proposes to discontinue a program or department of  
17 instruction, it should plan to bear the costs of relocating, training, or otherwise  
18 compensating faculty members adversely affected.]

19           Neither of these regulations appears adequate to the situation in which many  
20 institutions now find themselves. In part that is because the standard of “exigency” was initially  
21 drawn from small, private, impecunious institutions, not large state universities, few of which  
22 can plausibly be said to have faced imminent crises that threaten their very existence. In recent

1 decades, and especially in recent years, colleges and universities in the public sector are more  
2 commonly experiencing intermediate conditions that may have significant impact on aspects of  
3 the academic mission of the institution but do not threaten the survival of the institution as a  
4 whole. Thus most colleges and universities are not declaring financial exigency even as they  
5 plan for widespread program closings and terminations of tenured and nontenured faculty  
6 appointments. They are refusing to do so for ostensibly good reasons (namely, that their  
7 financial conditions are not so dire as those invoked by Regulation 4c, or that a declaration of  
8 financial exigency would itself worsen the institution's financial condition) and for arguably bad  
9 reasons (namely, so that they can operate in severe-financial-crisis mode, bypassing AAUP  
10 standards of faculty consultation and shared governance without the bad publicity of declaring  
11 exigency). This report seeks to address this phenomenon, and to propose sound procedures for  
12 program review under conditions captured neither by Regulations 4c nor 4d as they are  
13 currently written.

14 As we note in more detail below, this report is in some respects a continuation of a  
15 debate begun in the mid-1970s, the last era of major retrenchment in American higher  
16 education. Then, W. Todd Furniss, a staff officer of the American Council on Education, had  
17 criticized the gap between Regulations 4c and 4d, writing, "good sense tells us that in the real  
18 world there are far more conditions between imminent bankruptcy on the one hand and, on  
19 the other, program change that would 'enhance' the 'educational mission of the institution as a  
20 whole' in the absence of a financial emergency."<sup>3</sup> At the time, AAUP Committee A chair and  
21 former president Ralph S. Brown had replied that "'discontinuance' may be invoked in hard

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<sup>3</sup> W. Todd Furniss, "The 1976 AAUP Retrenchment Policy," *Educational Record* 57.3 (1976), 135.

1 times as a substitute, perhaps a subterfuge, for an exigency crisis that cannot be convincingly  
2 asserted.”<sup>4</sup> The relevance of Furniss’s and Brown’s concerns to current conditions is obvious.  
3 But the widespread and systemic nature of the challenges facing American universities in the  
4 second decade of the twenty-first century compels us to revisit and revise the terms of the  
5 debate begun a generation ago. We are therefore proposing a new definition of “financial  
6 exigency” that is more responsive to actual institutional conditions, and that will extend the  
7 standard of exigency to situations not covered by our previous definition. Under this new  
8 definition, an institution need not be on the brink of complete collapse in order to declare  
9 exigency. Rather, it needs to demonstrate that substantial injury to the institution’s academic  
10 mission will result from prolonged and drastic reductions in funds available to the institution,  
11 and it needs to demonstrate dispositively that the determination of its financial health is guided  
12 by generally accepted accounting principles.

13 Our definition of “financial exigency” is as follows:

14 ***Financial exigency*** names a severe financial crisis that threatens the academic mission of  
15 *the institution as a whole and that cannot be alleviated by less drastic means.*

16 Below, we will expand on this definition and provide detailed recommendations for the faculty  
17 deliberations necessary for a legitimate declaration of exigency that warrants program closure.

18 But we want to make it clear at the outset that many current “crises” represent shifts in  
19 priorities rather than crises of funding. Financial exigency is not a plausible complaint from a  
20 campus that has shifted resources from its primary missions of teaching and research toward  
21 employing increasing numbers of administrators or toward unnecessary capital expenditures. A

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<sup>4</sup> Ralph S. Brown, Jr., “Financial Exigency,” *AAUP Bulletin* (Spring 1976), 13.

1 campus that can reallocate resources away from teaching and research is not a campus that can  
2 justify cuts in its core mission on financial grounds. Discussions of a campus’s financial state  
3 cannot be fairly or responsibly conducted without faculty consultation about budgetary  
4 priorities. Cuts in teaching and research must be a last resort, after, *inter alia*, the  
5 administrative budget is reviewed and reduced and supplements for athletics and other  
6 nonacademic programs are eliminated. Moreover, colleges and universities need more  
7 objective, quantitative standards for claiming financial exigency– such as an index that uses  
8 ratios that incorporate institutional debt level and reserves, along with other data, to come up  
9 with a composite score to assess and establish institutional financial health. The Ohio Board of  
10 Regents, for example, uses such an index and requires that the composite score fall below a  
11 certain level for two consecutive years before classifying an institution as being in serious  
12 financial difficulty. (Appendix II to our report describes the components of an index that is  
13 similar to the OBR index and can be used to guide determinations of an institution’s financial  
14 condition.)

15         The report that follows provides guidance for how legitimate claims of financial exigency  
16 can be reviewed and substantiated, and how institutions should proceed with program closures  
17 under such conditions. Nothing in this report weakens academic freedom, tenure, and shared  
18 governance as they are now understood and protected in the AAUP’s current *Recommended*  
19 *Institutional Regulations*. On the contrary, this report urges that institutions increase the level  
20 of faculty consultation and deliberation at every stage of the process, beginning with the  
21 guideline that is currently a note to Regulation 4c(1), stipulating that “there should be a faculty  
22 body that participates in the decision that a condition of financial exigency exists or is

1 imminent, and that all feasible alternatives to termination of appointments have been  
2 pursued.”

3           To close this introduction, we want to make explicit the reasons why the faculty should  
4 be centrally involved in deliberations about exigency. Certainly this is not the model in the  
5 corporate world, where downsizings and layoffs are simply announced and severance packages  
6 issued; why then should academe be any different? The answer goes to the heart of the  
7 rationale for tenure as the basis for academic freedom, and indeed to the heart of the rationale  
8 for institutions of higher education. As Matthew Finkin and Robert Post have written,  
9 “institutions of higher education serve the public interest ... they promote the common good.  
10 The common good is not to be determined by the arbitrary, private, or personal decree of any  
11 single individual; nor is it to be determined by the technocratic calculation of rational and  
12 predictable profit incentives. *Faculty, by virtue not only of their educational training and*  
13 *expertise but also of their institutional knowledge and commitment, have an indispensable role*  
14 *to play in the debate.”*<sup>5</sup> Program closures are matters of curriculum, central to the educational  
15 missions of colleges and universities—missions over which the faculty should always have  
16 primary responsibility. Closures ordered by administrative fiat, even— or especially— when they  
17 are ordered by administrators who believe they have done due diligence in program review—  
18 are therefore inimical not only to the educational mission of higher education but also to the  
19 social contract according to which faculty expertise, academic freedom, and tenure serve the  
20 public good.

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<sup>5</sup> Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of Academic Freedom* (New Haven: Yale University Press, 2009), 125. Emphasis added.

1           We believe it is crucial to keep the larger picture in view. After World War II, the United  
2 States embarked on the world’s most extensive experiment in mass higher education. That  
3 experiment was a success, if one measures success by the fact that the American system of  
4 higher education was commonly described, over the ensuing decades, as the envy of the rest of  
5 the world; and it was a success as an expansion of the promise of democracy, as well. But in  
6 recent years the social contract underwriting that experiment has been largely rewritten.  
7 Tenure has been eroded by the growth of the ranks of non-tenure-track faculty, and it is no  
8 coincidence that academic decision-making has moved more and more emphatically into the  
9 hands of administrations. Tenure itself has increasingly been understood as a private,  
10 individual affair, a merit badge guaranteeing that a faculty member has undergone peer review  
11 and is entitled to academic freedom in his or her teaching and research; few in academe or out  
12 appreciate the broader principle that tenure serves the public good by allowing for  
13 independence of inquiry and an incentive to intellectual exploration. At the same time, state  
14 legislatures have steadily disinvested in institutions of higher education, offloading costs onto  
15 individuals and families and characterizing education as a private investment rather than a  
16 public good.

17           The recent wave of program closures represents the confluence of all these long-term  
18 trends: the erosion and redefinition of tenure, the massive growth in the ranks of contingent  
19 faculty outside the tenure system, and the nationwide disinvestment in public higher  
20 education. It is time for faculty members to reclaim and reassert their proper roles as the  
21 stewards and guardians of the educational missions of their institutions— for the good of  
22 American higher education, and for the greater good of all.

## II. THE HISTORY OF THE FINANCIAL EXIGENCY CLAUSE

### *Origins and Context*

The Association's seminal 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* provided the groundwork for the system of academic tenure in American higher education. It proceeded from the standpoint of high principle and practical application but was not concerned with the relationship of tenure to institutional financing. A decade later, the American Council on Education sponsored a conference in Washington devoted to the formulation of a set of shared principles. In addition to the Council, representatives from the American Association of University Professors, the Association of American Colleges, the Association of American Universities, the Association of Governing Boards, the Association of Urban Universities, the Association of Land Grant Colleges, the National Association of State Universities, and the American Association of University Women took part. The bases for discussion were drafts prepared by the Association of American Colleges (AAC) in 1922 and 1923; the conference participation was weighted heavily on the side of academic administration. The resulting 1925 *Conference Statement* set forth the following provisions on "Academic Tenure" pertinent to the issue before us:

Termination of permanent or long-term appointments because of financial exigencies should be sought only as a last resort, after every effort has been made to meet the need in other ways and to find for the teacher other employment in the institution. Situations which make drastic retrenchment of this sort necessary should preclude expansions of the staff at other points at the same time, except in extraordinary

1 circumstances.

2 Concerns about the inadequacies of the 1925 document within the AAUP ran deep.

3 According to the leading historian of the subject, the very manner of its promulgation was  
4 viewed by AAUP leaders as a “charade.”<sup>6</sup> But these reservations ran to issues other than the  
5 financial exigency clause which, as will be seen momentarily, was understood by Committee A  
6 to be all of a piece with the provision in the succeeding jointly formulated 1940 *Statement*.

7 Negotiations with the Association of American Colleges on a successor document began  
8 in 1937, not only in the wake of the Great Depression, but also in light of an intensive study of  
9 higher education’s response to the Depression commissioned by the AAUP which appeared that  
10 year.<sup>7</sup> The study surveyed the universe of institutions that comprised higher education at the  
11 time: most were private, small, under denominational or local control, and penurious.<sup>8</sup>  
12 Institutional mortality was common. “[E]ven in prosperous times,” five to ten colleges

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<sup>6</sup> Walter P. Metzger, “The 1940 Statement Principles on Academic Freedom and Tenure,” in *Freedom and Tenure in the Academy* 3, 27 (William Van Alstyne ed., 1993).

<sup>7</sup> Malcolm Willey et al., *Depression, Recovery, and Higher Education* (1937).

<sup>8</sup> This was set out in tabular form:

Colleges by Size of Student Body and Faculty 1931–1932

<i>Student body size</i>	<i>No. of institutions</i>	<i>% of total</i>	<i>No. of faculty</i>	<i>% of total</i>	<i>Enrollment</i>	<i>% of total</i>
I (1–499)	514	55.2	13,348	14.8	129,496	12.6
II (500–999)	204	21.9	12,065	13.4	141,232	13.8
III (1,000–2,499)	131	14.1	19,262	21.3	208,288	20.3
IV (2,500 up)	82	8.8	45,557	50.5	545,723	53.3
Total	931	100.0	90,232	100.0	1,024,739	100.1

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Source: (Willey et al., *id.* at 10)

1 “normally disappear or merge each year.”<sup>9</sup> The mortality rate accelerated as the Depression  
2 deepened; in 1935, twenty-nine colleges closed.

3 The authors of the study were not fazed by the prospect of institutional closure,<sup>10</sup> but  
4 they were by strategies for institutional survival, especially in the aggregate effect:

5 Are the ultimate purposes of higher education best served by adjusting institutional  
6 finances to depression circumstances through the process of decreasing the numbers of  
7 young men and women at the lowest ranks, and at the same time restricting the  
8 entrance into the profession of other young men and women who would normally come  
9 up through the rank of instructor? The faculty of tomorrow depends upon the recruits  
10 of today. Temporarily the problems of diminishing budgets may be solved by releasing  
11 some of the young men and appointing but few others. The older men carry on, and  
12 institutional prestige is maintained. But will this prove to be sound procedure in the  
13 end?<sup>11</sup>

14 “The alternative,” the authors quickly added, “is not the discharge of older men, in favor of  
15 instructors.”<sup>12</sup>

16 The AAUP-commissioned study summarized institutional response to the Depression as  
17 follows:

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<sup>9</sup> *Id.* at 211.

<sup>10</sup> *Id.* at 171–72: “The . . . data raise a question concerning the justification of seeking to maintain colleges and universities, of any size, that may finance themselves with minimum adequacy in prosperity periods, but cannot do so during years of depression. . . . Why should two neighboring, financially weak schools each attempt to offer the same programs? Competition for students may have brought the duplication, but it is apparent that sooner or later many of these inadequately supported institutions will be compelled to face the facts of economic existence more realistically, and to examine them in terms of social need as well as in connection with the obligation to the student.”

<sup>11</sup> *Id.* at 34.

<sup>12</sup> *Id.*

1           The character of educational institutions has changed in the past thirty years.  
2           Business, professional, and vocational interests have assumed a more important place.  
3           An aura of practicality hangs over the campus. The educational institution is more of  
4           the world than ever before. . . . As all the data thus far have shown, the ups and downs  
5           of the world of business have their counterpart in academic matters. Men are hired or  
6           dropped, salaries are raised or cut, and tenure is more or less secure as general  
7           economic conditions fluctuate between prosperity and depression.<sup>13</sup>

8           The authors called for greater “faculty cohesion”—and, presumably, institutional cohesion as  
9           well—on “principles they regard as essential to the welfare of higher education.”<sup>14</sup>

10           The drafters of the 1940 *Statement* sought to achieve just that cohesion, but the final  
11           text, on its face, was actually less instructive on this issue than its 1925 predecessor. The 1940  
12           *Statement* provided in its entirety that: “Termination of a continuous appointment because of  
13           financial exigency should be demonstrably bona fide.” Even so, a gloss of meaning is supplied  
14           in the remarks of the AAC’s lead negotiator, Henry Wriston, president of Brown University, in  
15           presenting the document for AAC adoption. On the clause itself, he remarked:

16           The plain fact is that dismissals directly due to financial emergency are really very rare.  
17           Speaking now as an administrative officer, it is much easier for me to say “no” to a man  
18           by pleading the exigencies of the budget than by denying a request on the merits. The  
19           displacement of a teacher on continuous appointment should not be merely an  
20           “economy move” but should be done only because of a genuine emergency involving  
21           serious general retrenchment. . . . It is a reminder that purity of purpose is no defense

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<sup>13</sup> *Id.* at 452.

<sup>14</sup> *Id.* at 451.

1 in the public eye, unless the purity is demonstrable. The provision is a protection to the  
2 administrative officer because it reminds him to establish the record so clearly that the  
3 exigency is as obvious to the public as it is to him.<sup>15</sup>

4 And on the larger, cohesive purpose of the document he echoed and emphasized its stated  
5 premises:

6 Tenure is a means to certain ends; specifically: (1) freedom of teaching and research  
7 and of extra-mural activities, and (2) a sufficient degree of economic security to make  
8 the profession attractive to men and women of ability. Upon freedom and economic  
9 security, and hence upon tenure, depends the success of an institution in fulfilling its  
10 obligations to its students and to society. There is a statement of the philosophy of  
11 tenure. *Tenure is not an end in itself.*<sup>16</sup> (Emphasis added.)

12 Fast upon the adoption of the 1940 *Statement*, the AAUP investigated two institutions in  
13 light of the newly fashioned financial exigency clause. This early engagement anticipates the  
14 Association's thinking later on; it treats administrative behavior that has recurred over the  
15 years.

16 The first investigation concerned the decision by the president of New York's Adelphi  
17 College in 1939 to dismiss five senior faculty members, all department heads.<sup>17</sup> The institution  
18 was in bankruptcy. There was no question of an existing state of financial exigency and the  
19 AAUP's committee of investigation said as much: "Manifestly, financial difficulty had become  
20 such as to compel consideration of the necessity of faculty dismissals." Faculty salaries had

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<sup>15</sup> Bulletin of the Association of American Colleges (March, 1939).

<sup>16</sup> *Id.* at 113.

<sup>17</sup> "Adelphi College," *AAUP Bulletin* 27.4 (October 1941), 494-517, 494.

1 been reduced by 25 percent since 1930. But more had to be done. A special committee of the  
2 board of trustees, on which the president served, reviewed the unit cost of those departments  
3 giving academic credit, but also considered the president’s plan for future curricular  
4 development and for the direction of the college. The result was the dismissal of the highest  
5 paid person in each department sharing the highest unit cost, but not quite. The chair of the  
6 Department of Sociology and Economics was dismissed even as his department ranked  
7 fifteenth in unit costs.

8         The investigating committee was critical of the use of unit cost as the sole metric<sup>18</sup> and  
9 was especially critical of the educational consequence of removing the most senior and  
10 experienced members of the faculty. It noted that the faculty had proposed other economies  
11 with which recommendations the administration did not seriously engage. Several members of  
12 the faculty argued that courses in art, dance, and music should be eliminated before reductions  
13 in the liberal arts, but these courses apparently were in keeping with the president’s vision for  
14 the direction of the college. And the actual saving to the college was less than the sum of the  
15 salaries of those dismissed as the result in part of the appointment of a dean, an office  
16 heretofore vacant. The committee concluded that, “[N]ot all permissible alternatives short of  
17 dismissal had been explored and given full consideration.”<sup>19</sup> And the committee found that  
18 “factors other than financial were influential”: that the degree to which faculty members did  
19 not agree with the administration played a role in singling them out for release. None of those  
20 dismissed was provided a hearing.

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<sup>18</sup> *Id.* at 515 *citing* University Unit Costs, *U.S. Office of Education Bulletin* No. 21 (1937) (emphasizing the complexities of interpreting unit costs).

<sup>19</sup> *Id.* at 516.

1           The second investigation dealt with the decision of the president of Memphis State  
2 College in 1942 to terminate the appointments of two professors of long service—one in a  
3 history, one in English—as “an economy measure” after having stated to the faculty that the  
4 college was facing a “financial emergency.”<sup>20</sup> The college had experienced a 27 percent drop in  
5 enrollment with a consequent loss of tuition revenue only half of which would be made up out  
6 of reductions in the operational budget. The president argued that the instructional budget  
7 would have to be reduced by 14% to make up the shortfall, but a salary reduction of that  
8 dimension would fall disproportionately on the lower paid. The State Board of Education  
9 approved the terminations even as it approved the appointment of two new teachers in  
10 English; in addition, a football coach was hired who had no team to coach but who taught  
11 courses on a part-time basis that had been deemed “redundant” in the release of one of the  
12 faculty members.

13           The Association’s general secretary had written to the president suggesting measures  
14 that might be taken to avoid the terminations; these the administration rejected out of hand.  
15 The investigating committee took them up: A “proportional and equitably graduated  
16 reduction” of professional and administrative salaries, save those in the lowest brackets;  
17 redistribution of teaching duties without filling vacancies; termination of temporary and short-  
18 term appointments; or some combination of these. Without denying the existence of the  
19 shortfall, the investigating committee doubted that the dismissals were driven by the  
20 administration’s concern for economy. In the case of one of the dismissed faculty members,  
21 the investigating committee agreed that her department was “overstaffed,” but, it opined,

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<sup>20</sup> “Academic Freedom and Tenure: Memphis State College,” *AAUP Bulletin* 29.4 (October, 1943), 550-580, 550.

1 If dismissals were necessary in this department, they should have been made of those  
2 most recently appointed, but the evidence shows that these recent appointees were  
3 “flexible” (one of them doubled in coaching football and the other directed intramural  
4 sports).<sup>21</sup>

5 As in the Adelphi case, there was incontrovertible evidence that faculty members were  
6 singled out for release because of presidential displeasure—for their having been  
7 “uncooperative” and critical of the administration. Again, no hearing was provided; nor were  
8 the faculty’s views solicited or considered.

9 These early applications of the financial exigency clause evidence the temptation to  
10 justify a dismissal of an out-of-favor faculty member as an “economy move.”<sup>22</sup> But more

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<sup>21</sup> *Id.* at 572.

<sup>22</sup> A decade and a half later, Texas Technical College would dismiss three tenured faculty members who had displeased the institution’s board of directors because of their political or civic activities. The appointment of one faculty member was terminated after the program he led, in adult education, supported by outside funds, was discontinued for “reasons of economy.” “Texas Technical College,” *AAUP Bulletin* 44.1 (March 1958), 170-187, 170, 174. This might well be the AAUP’s first reported case of release of a tenured professor on grounds of program discontinuance. A member of the board was quoted in the press as follows:

It was the further view of the Board that the so-called adult education program as formerly sponsored by the Ford Foundation was of little academic importance, considering the need for money in other vital and well-established fields. Hence, the adult education program, largely suspect of genuine academic value by many patrons of Texas Tech and by the most distinguished segments of the faculty, should be discontinued. Personally, I’ve always viewed it as a bit of plush academic boondoggling that any institution genuinely dedicated to the great academic traditions, and the really consecrated teachers who pursue it, can ill afford. In keeping with its duties established by law, the Board decided to terminate it permanently.

*Id.* at 181. In response to this, the investigating committee observed:

Persons with whom the committee talked treated with skepticism the claim of economy, pointing out that only about one-third of one per cent of the total College budget was involved, and that the money taken from the Adult Education Program was simply transferred to the general account and not to some other pressing need. Neither is the claim of economy consistent with the fact that the next ranking person on the staff of the Program, who had the title of Executive Assistant, was not affected in the same manner as Professor Stensland [the released faculty member], but is still retained on the faculty.

1 importantly, they underline the need to explore alternatives to a financial shortfall, to retain  
2 experienced faculty of long service, and to ventilate the ground of discharge in a hearing. The  
3 investigating committees' emphasis on the educational unwisdom in terminating the services of  
4 senior (tenured) faculty, while adjunct, part-time, or junior faculty are retained, even as those  
5 terminated might be the higher paid, be less "flexible," circles back to the 1940 *Statement's*  
6 justification for tenure: that the academic profession cannot be made attractive to the most  
7 promising if, after passing a lengthy and exacting period of probation in which their academic  
8 merit has been made manifest, the security of the academic post is to be made contingent on  
9 possibly evanescent shifts in student enrollment or arbitrary redirection of resources or  
10 programmatic restructuring, undertaken by administrative fiat lacking any faculty participation  
11 or review and so lacking the critical element of transparency argued as essential by Brown's  
12 President Wriston.<sup>23</sup> As he contended and as the 1940 *Statement* makes clear, these elements  
13 are a matter of public policy, not of special solicitude for the tenured.

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### 15 ***The 1970s and the Era of Retrenchment***

16 Regulation 4 was initially drafted in 1957 but did not become the focus of extended  
17 discussion until the 1970s, when the Association witnessed a wave of cases involving  
18 declarations of financial exigency. Former AAUP Committee A chair and president David  
19 Fellman summarized the phenomenon in a 1984 essay for *Academe*:

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<sup>23</sup> At both Adelphi and Memphis State, for example, the dismissals were effected while the presidents were attempting to effect significant reorganizations of their own devising to which the released faculty members were not sympathetic.

1           As the national economic recession of the 1970s gathered momentum, the  
2           administrations of many colleges and universities began to invoke pleas of financial  
3           difficulty, in some cases defined by them as “financial exigency,” to justify terminating  
4           the appointments of tenured faculty members and persons in probationary status  
5           before the end of their terms. Beginning with Bloomfield College in New Jersey in 1973,  
6           a steady stream of serious cases has come to the attention of the Association. From the  
7           spring of 1974 until March 1984, ten cases involving issues relating to financial exigency  
8           that were investigated by *ad hoc* committees led to reports published under the  
9           auspices of Committee A in the Association’s journal....

10           Retrenchment has taken many forms, but the release of tenured and  
11           nontenured faculty members has presented the academic profession with its most  
12           acute problem.<sup>24</sup>

13           The Association’s last sustained analyses of the financial exigency clause stem from that era,  
14           and most of the findings of those analyses remain relevant today. Then as now, the financial  
15           crisis was real– and deep: it was a time when the nation’s largest city came close to declaring  
16           bankruptcy. But time and again, Committee A investigations found that institutional authorities  
17           declared financial exigency under circumstances that bordered on the ludicrous. At Bloomfield  
18           College, infamously, the administration abolished the tenure system and dismissed a large  
19           proportion of the tenured faculty while simultaneously hiring a similar number of nontenured  
20           new faculty, and the president’s determination that the college had a net worth of \$12,000,000  
21           did not take into account the college’s ownership of two golf courses valued at \$15,000,000. At

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<sup>24</sup> Fellman, “The Association’s Evolving Policy on Financial Exigency,” *Academe* (May-June 1984), 14.

1 Sonoma State University in California, “the investigating committee noted that while the  
2 [twenty-four] layoffs were occurring a new presidential assistant was appointed with a  
3 substantial salary and two new associate deanships were created without consulting the  
4 faculty.”<sup>25</sup> At Metropolitan Community Colleges in Missouri, “where sixteen full-time tenured  
5 faculty members were laid off, the investigating committee stressed that the local faculty  
6 hearing committee had concluded that the alleged financial crisis was only ‘a projected or  
7 hypothetical one based on predicted events which never occurred.’”<sup>26</sup> Then as now, “crises”  
8 were announced as pretexts for decisions that effectively eroded the institution of tenure; then  
9 as now, those decisions were made almost entirely without faculty input or consultation. “In  
10 most of the cases reported by Committee A for publication,” Fellman concluded, “faculty  
11 involvement was either nonexistent or grossly inadequate.”<sup>27</sup>

12           However, noting that declared emergencies were often not real emergencies, and  
13 pointing out that faculty were largely ignored in administrators’ responses to such  
14 “emergencies,” merely kicks the can down the road. Such faculty determinations need to be  
15 made— and this report strongly recommends that faculty be intimately involved in the initial  
16 determinations of the extent of their institution’s financial conditions— but a structural problem  
17 remains with Regulations 4c and 4d. That problem was first pinpointed in W. Todd Furniss’s  
18 critique, “The 1976 AAUP Retrenchment Policy,” in which Furniss cites his March 28, 1975,  
19 letter to AAUP general secretary Joseph Duffey. Speaking for the Commission on Academic  
20 Affairs of the American Council on Education, Furniss had written:

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<sup>25</sup> *Id.* at 16.

<sup>26</sup> *Id.* at 17.

<sup>27</sup> *Id.* at 20.

1 The definitions of financial exigency and the conditions for programmatic change given  
2 in the regulation are, in the view of the Commission, too skimpy to be useful.... [T]he  
3 definitions as written imply that termination for financial exigency is legitimate *only*  
4 when an entire institution is on the brink of bankruptcy, and those for program change  
5 *only* when there are no financial considerations (which would require the procedures  
6 for financial exigency). Good sense tells us that in the real world there are far more  
7 conditions between imminent bankruptcy on the one hand and, on the other, program  
8 change that would “enhance” the “educational mission of the institution as a whole” in  
9 the absence of a financial emergency.<sup>28</sup>

10 Ralph S. Brown’s important essay, “Financial Exigency” (to which Furniss was partly  
11 responding), acknowledges that program discontinuance

12 meshes only imperfectly with financial exigency terminations. Recognition of it has  
13 developed independently, and without any explicit foundation in the 1940 *Statement of*  
14 *Principles*....

15 The imperfect fit of discontinuance with financial exigency comes from an  
16 impractical desire to keep the two wholly separated. This desire arises from the  
17 observation that “discontinuance” may be invoked in hard times as a substitute,  
18 perhaps a subterfuge, for an exigency crisis that cannot be convincingly asserted. A  
19 little redefinition here, a showing of declining enrollments there, and— presto— the

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<sup>28</sup> W. Todd Furniss, “The 1976 AAUP Retrenchment Policy,” *Educational Record* 57.3 (1976), 133-139, 135.

1 Professor of Italian is terminated, because the Italian program in the Romance  
2 Languages Department has been discontinued.<sup>29</sup>

3 Brown's concerns remain our concerns, which is why we remain so vigilant about the possibility  
4 that any attempt to devise Association guidelines for bridging the gap between 4c and 4d will  
5 be taken as license to grease the skids for program closings in hard times. But we note that  
6 Brown immediately added, "it is entirely natural that the educational value of fields of  
7 instruction or research should be viewed with a colder eye in bad times than in good. The only  
8 way to keep the process from getting out of hand is to insist on good faith educational  
9 judgments, and to hope that the faculty, exercising its primary responsibility in such matters,  
10 will make them."<sup>30</sup> Furniss's criticism of Regulation 4 includes the objection that the phrase  
11 "primary responsibility" is ambiguous ("the Commission found itself questioning whether  
12 'primary' means 'initial,' 'chief,' or 'exclusive,' and requested that Committee A modify the  
13 phrase or define it");<sup>31</sup> similarly, it will not escape anyone's attention that "good faith  
14 educational judgments" is also a phrase that invites a wide range of interpretations. Indeed, as  
15 we noted in the introduction, it is plausible to read this report as an attempt to address the  
16 arguments made more than thirty years ago by Brown and Furniss, and to offer guidance  
17 regarding the lingering ambiguities of the terms of Regulations 4c and 4d. The task is rendered  
18 only more urgent by the seismic changes in the academic workforce between the mid-1970s  
19 and today— namely, the end of mandatory retirement and the explosive growth in the number  
20 of contingent, non-tenure-track faculty members, the latter of whom can be seen as the legacy

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<sup>29</sup> Ralph S. Brown, Jr., "Financial Exigency," *AAUP Bulletin* 62.1 (Spring 1976), 5-16, 13.

<sup>30</sup> *Id.*

<sup>31</sup> Furniss, 137.

1 of the era of retrenchment, as retiring tenured faculty were increasingly replaced with various  
2 forms of adjunct (including full-time non-tenure-track) positions. Additionally, the need to  
3 revise AAUP guidelines on financial exigency and program discontinuance is complicated by the  
4 fact that over the past four decades the political climate has become markedly more hostile to  
5 the institution of tenure at all levels, with a fair amount of the hostility coming from university  
6 administrators. Last but not least, as we have noted above, over the past four decades the  
7 practice of shared governance has been weakened considerably in much of American higher  
8 education. This report hinges on, and emphatically advocates, a reversal of that trend, and a  
9 reassertion of the fundamental principle that the faculty should play the primary role in  
10 determining the educational mission of their institutions.

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### 1 **III. RECOMMENDATIONS FOR INSTITUTIONS EXPERIENCING FINANCIAL EXIGENCY**

#### 2 ***Determination of the Financial Condition of the Institution***

3           In what follows, we review AAUP policy on the role of faculty members in the  
4 determination of their institutions' financial condition. We believe that our policy documents  
5 and reports provide decisive guidance in these matters, and we note at the outset that it seems  
6 to be increasingly difficult to find institutions in which faculty have been afforded the primary  
7 responsibility— or, since that phrase is ambiguous, *any* responsibility— to conduct those  
8 determinations. Once again, this is not to say that the crises facing many institutions are not  
9 real; it is to say only that the critical protocol established in a note to Regulation 4c(1),  
10 stipulating that “there should be a faculty body that participates in the decision that a condition  
11 of financial exigency exists or is imminent, and that all feasible alternatives to termination of  
12 appointments have been pursued,” is often being ignored. Frequently, a crisis is simply  
13 declared and steps are taken to meet it— steps that sometimes, but not regularly, involve  
14 substantial consultation with an appropriate faculty body. In too many cases, “faculty  
15 consultation” seems to consist merely of informing faculty what will be done to them.

16           The 1966 “Statement on Government of Colleges and Universities” was jointly written  
17 with the American Council on Education (ACE) and the Association of Governing Boards of  
18 Universities and Colleges (AGB). The AAUP adopted the document as official policy, and the  
19 other two organizations commended it to the attention of their membership. The statement  
20 recognizes a division of labor among trustees, presidents, and faculty members, and offers the  
21 following recommendation with regard to budgeting:

1 The allocation of resources among competing demands is central in the formal  
2 responsibility of the governing board, in the administrative authority of the president,  
3 and in the educational function of the faculty. Each component should therefore have a  
4 voice in the determination of short- and long-range priorities, current budgets and  
5 expenditures, and short- and long-range budgetary projections.<sup>32</sup>

6 The statement further specifies that the judgment of the faculty “is central to general  
7 educational policy.” Although that passage speaks of “faculty status and related matters” such  
8 as “appointments, reappointments, decisions not to reappoint, promotions, the granting of  
9 tenure, and dismissal,”<sup>33</sup> we hold that program closure is very much a matter of educational  
10 policy and that the faculty should therefore be accorded an *initial and decisive* role— to answer  
11 Furniss’s question about the meaning of “primary”— in any deliberations over program closure  
12 and release of tenured faculty members.

13 Additionally, our statement on “The Role of the Faculty in Budgetary and Salary  
14 Matters,” adopted in 1972, reads as follows:

15 The faculty should participate both in the preparation of the total institutional budget  
16 and (within the framework of the total budget) in decisions relevant to the further  
17 apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical  
18 plant and grounds, and so on). The soundness of resulting decisions should be  
19 enhanced if an elected representative committee of the faculty participates in deciding  
20 on the overall allocation of institutional resources and the proportion to be devoted  
21 directly to the academic program. *This committee should be given access to all*

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<sup>32</sup> AAUP Policy Documents and Reports, 10<sup>th</sup> edition (Washington, DC: AAUP), 137.

<sup>33</sup> *Id.* at 139.

1           *information that it requires to perform its task effectively, and it should have the*  
2           *opportunity to confer periodically with representatives of the administration and*  
3           *governing board.*<sup>34</sup> (Emphasis added.)

4   Established AAUP policies therefore provide clear and unambiguous support for the position  
5   that faculty consultation and participation should be integral to the budget process, quite apart  
6   from any consideration of the financial status of the institution. Faculty consultation and  
7   participation in budget matters should simply be part of the ordinary course of business, in  
8   good times or in bad. In other words, we are not proposing a radical new platform of  
9   emergency measures whereby faculty committees are summoned to review university budgets  
10   only when institutions are experiencing financial exigency; we are reaffirming the principles  
11   that inform policies in place for forty years and more, recommending that faculty participate in  
12   the budget process at every stage– even as we acknowledge that on many campuses, these  
13   policies would in fact lead to radical changes in business as usual.

14           But AAUP policy also speaks specifically to occasions on which institutions are  
15   experiencing financial exigency and in response to which emergency measures are  
16   contemplated. The first recommendation in its statement, “On Institutional Problems Resulting  
17   from Financial Exigency: Some Operating Guidelines,” reads as follows:

18           There should be early, careful, and meaningful faculty involvement in decisions relating  
19           to the reduction of instructional and research programs. The financial conditions that

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<sup>34</sup> *Id.* at 149.

1 bear on such decisions should not be allowed to obscure the fact that instruction and  
2 research constitute the essential reasons for the existence of the university.<sup>35</sup>

3 Although the call for “early, careful, and meaningful faculty involvement” might seem to be  
4 clear on its face, we believe that recent developments with regard to program closures have  
5 rendered it necessary for us to specify “faculty involvement” in greater detail. We therefore  
6 propose the following procedures for “faculty involvement” in program closures.

7 Before any proposals for program discontinuance on financial grounds are made or  
8 entertained, the faculty must be afforded the opportunity to render an assessment in writing  
9 on the institution’s financial condition. The faculty body may be drawn from an elected faculty  
10 senate, or elected as an ad hoc committee by the faculty; it should not be appointed by the  
11 administration. At institutions governed by collective bargaining agreements, the leadership of  
12 the union is an elected body of its faculty members, and should have a role in the assessment  
13 as well. (Should the faculty refuse to participate in a process that might result in faculty layoffs,  
14 they effectively waive their right to do so.) We recommend, in order to make those  
15 determinations, that the faculty should have access to, at minimum, five years of audited  
16 financial statements, current and following year budgets, and detailed cash flow estimates for  
17 future years. Beyond that, in order to make informed proposals about the financial impact of  
18 program closures, faculty need access to detailed program, department, and administrative  
19 unit budgets; but *the determination of the financial position of the institution as a whole must*  
20 *precede any discussion of program closures.* As in Regulation 4c(1), faculty should determine  
21 whether “all feasible alternatives to termination of appointments have been pursued,”

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<sup>35</sup> *Id.* at 147.

1 including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts,  
2 deferred-compensation plans, early-retirement packages, and cuts to non-educational  
3 programs and services.

4 We note ruefully that this recommendation speaks to practices to which few institutions  
5 now adhere, and will doubtlessly be read as a radical departure from business as usual— even  
6 though it follows clearly from AAUP principles. We anticipate, as well, that it will meet with  
7 resistance from some administrators who will claim that faculty members do not have requisite  
8 expertise in these matters. We acknowledge that faculty members who engage in detailed  
9 consultation of this kind will necessarily have to be or become literate in budgetary matters.  
10 But there are two critical points that need to be considered. The first is that every institution of  
11 higher education that offers a full curriculum of instruction necessarily includes faculty  
12 members who specialize in accounting, finance, and economics more generally. Their expertise  
13 is directly relevant to the determination of financial exigency. The second is that outside the  
14 disciplines of accounting, finance, and economics, faculty members long experienced in the  
15 analysis of complex data relevant to their particular disciplines as well as to their own  
16 departments and schools can be expected to bring seasoned judgment to bear on institutional  
17 finances and their impact on the future of educational programs.

18 However, when we speak of “the financial position of the institution as a whole” we are  
19 not simply returning to the standard of “an imminent financial crisis that threatens the survival  
20 of the institution as a whole and that cannot be alleviated by less drastic means” than the  
21 termination of appointments. Again, we are proposing a new definition of “financial exigency,”  
22 which we believe corresponds more closely to the facts on the ground for most institutions of

1 higher education. Financial exigency can be catastrophic and corrosive even when it does not  
2 threaten (as it rarely does) the survival of the institution as a whole. But because this definition  
3 of “financial exigency” does not require that an institution be faced with the prospect of  
4 immediate closure and bankruptcy, it must be accompanied by greater safeguards for faculty  
5 members and more stringent guarantees that it will not be abused.

6         Neither Regulation 4c nor 4d requires an institution to consult with or seek input from  
7 faculty members in programs slated for termination. This seems to us a significant oversight,  
8 particularly since our guidelines on institutional problems resulting from financial exigency  
9 insist that such consultation is imperative: “Given a decision to reduce the overall academic  
10 program, it should then become the primary responsibility of the faculty to determine where  
11 within the program reductions should be made. Before any such determination becomes final,  
12 those whose life’s work stands to be adversely affected should have the right to be heard.”<sup>36</sup> It  
13 may be objected that the results of such a recommendation would be predictable, insofar as  
14 very few affected faculty members would argue for their own program’s elimination and/or  
15 their own release. However, some arguments for a program’s elimination or preservation are  
16 better than others, and we believe that faculty must be entrusted with the right to make and  
17 assess those arguments. Regulation 4c(2) affords a faculty member whose position is  
18 terminated “the right to a full hearing before a faculty committee,” and Regulation 4d(3)  
19 provides that a faculty member whose position is terminated for reasons other than exigency  
20 “may appeal a proposed relocation or termination resulting from a discontinuance and has a  
21 right to a full hearing before a faculty committee.” But there is no provision for consultation

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<sup>36</sup> *Id.*

1 with such faculty members before the decision is made. In the future, we propose, faculty  
2 members in a program being considered for discontinuance because of financial exigency  
3 should be informed in writing that it is being so considered, and given at least thirty days in  
4 which to respond. We recommend that Regulations 4c and 4d be revised accordingly.

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### 6 ***Another Suitable Position***

7 Regulation 4d(2) states as follows:

8 Before the administration issues notice to a faculty member of its intention to  
9 terminate an appointment because of formal discontinuance of a program or  
10 department of instruction, the institution will make every effort to place the faculty  
11 member concerned in another suitable position. If placement in another position would  
12 be facilitated by a reasonable period of training, financial and other support for such  
13 training will be proffered. If no position is available within the institution, with or  
14 without retraining, the faculty member's appointment then may be terminated, but  
15 only with provision for severance salary equitably adjusted to the faculty member's  
16 length of past and potential service.

17 This provision is key to determining whether a program is being discontinued for sound,  
18 legitimate educational reasons, or whether it is being discontinued simply in order to shed its  
19 tenured faculty: an institution that makes no substantial effort (or, as is often the case, no  
20 effort at all) to find "another suitable position" for faculty affected by program closure is  
21 effectively using program closure as a convenient way to terminate tenured appointments.

1           The problem, of course, lies in specifying what “another suitable position” might be. It  
2 is obviously beyond the capacity of this subcommittee to imagine every kind of possible  
3 program discontinuance and the potentially suitable positions for which affected faculty should  
4 be considered; the challenge lies in developing overarching principles that can have  
5 innumerable specific applications. The question is further complicated when one considers the  
6 case of *Browzin v. Catholic University*, as Ralph Brown explained in 1976:

7           What is a program? What is a department? Here also we must rely on good faith, and  
8 on faculty involvement. An example of questionable judicial definition, albeit to a good  
9 end, is found in the *Browzin* case.... The issue was whether an adequate attempt had to  
10 be and had been made to place Professor Browzin in another suitable position. The trial  
11 in the lower court had concentrated on financial exigency. An ambiguity in the 1968 RIR  
12 seemed to relate the obligation to seek a suitable position only to cases of  
13 abandonment of program. Judge Wright, striving to give effect to what he thought were  
14 underlying goals, concluded that “financial exigency is in the case, but so is  
15 *abandonment of a program of instruction*” (italics Judge Wright’s). Since courses in Soil  
16 Mechanics and Hydrology, “Browzin’s particular responsibility,” were given up, “The  
17 University did discontinue Browzin's program of instruction “. If the issue had been  
18 solely whether Browzin could be terminated because of a program discontinuance, I do  
19 not think we would want to accept this notion of a one-man program. The case would  
20 then seem to be a simple breach of tenure, in the absence of financial exigency.

21           Why then is a larger carnage acceptable? Only because it does not seem to be  
22 right to require a university to maintain a program, and the people in it, when a serious

1 educational judgment has been made, in the language of [Regulation 4d (1)'s] note, that  
2 "the educational mission of the institution as a whole will be enhanced by the  
3 discontinuance."<sup>37</sup>

4 We see no reason to abandon or revise the AAUP's longstanding position on one-person  
5 programs, which seem to us administrative devices for cherry-picking tenured faculty members  
6 for release. In the AAUP's 1983 report on Sonoma State University, for instance, the  
7 investigating committee commented decisively on that institution's use of "Teaching Service  
8 Areas" to define individual faculty members as one-person programs. "Through the device of  
9 the Teaching Service Area," the committee wrote, "the newly engaged nontenured faculty  
10 members may be reappointed while the appointment of a tenured professor with many years  
11 of service may be terminated. The administration need only decide to reduce the 'biology'  
12 Teaching Service Area by one person and leave 'microbiology' and 'molecular biology' alone."<sup>38</sup>  
13 The committee therefore found, and we concur, that such a procedure "is prone to abuse by  
14 the administration and serves to undermine academic freedom, tenure, and due process."<sup>39</sup>  
15 Whatever name such procedures go under (or, as is more likely, when they carry no official  
16 designation at all), we hold that they are not "program closures" as we understand the term,  
17 but, rather, an illegitimate means for targeting and terminating individual faculty appointments.  
18 We therefore want to try to answer Brown's question— *what is a program?*— without  
19 relying exclusively on good faith and faculty involvement (though both are clearly necessary).

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<sup>37</sup> Brown, *id.* at 13, citing *Browzin v. Catholic University of America*, 527 F.2d 843, 174 U.S. App. D.C. 60.

<sup>38</sup> "Academic Freedom and Tenure: Sonoma State University," *Academe* 69.3 (May-June 1983), 8.

<sup>39</sup> *Id.* at 9.

1 First and foremost, programs cannot be defined *ad hoc*, at any size; programs must be  
2 recognized academic units that existed prior to the declaration of financial exigency. The term  
3 “program” should designate a related cluster of credit-bearing courses that constitute a  
4 coherent body of study within a discipline or set of related disciplines. Ideally, the term should  
5 designate a department or similar administrative unit that offers majors and minors; at the  
6 University of Northern Iowa in 2012, by contrast, the administration’s definition of “program  
7 area” was not agreed to by United Faculty, the local AAUP collective bargaining unit, and was  
8 indeed so fluid and capricious as to allow for multiple cherry-picking operations. One important  
9 way to determine whether a program closure is bona fide is to ask whether the courses in the  
10 program continue to be offered after the program is “closed,” as was the case at Southeastern  
11 Louisiana University after it “closed” its majors in French and French Education. In other words,  
12 the elimination of a major or minor in a course of study is, of itself, no excuse for the release of  
13 tenured faculty members if courses are still on the books (presumably to be taught instead by  
14 non-tenure-track faculty, or by faculty members who have been stripped of tenure).<sup>40</sup>

15 As the court in *Browzin* held,  
16 [T]he obvious danger remains that “financial exigency” can become too easy an excuse  
17 for dismissing a teacher who is merely unpopular or controversial or misunderstood— a  
18 way for the university to rid itself of an unwanted teacher but without according him his  
19 important procedural right. The “suitable position” requirement would stand as a  
20 partial check against such abuses. An institution motivated only by financial

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<sup>40</sup> This is not to say that a faculty member should be guaranteed the same courses he or she taught prior to the declaration of financial exigency. If the elimination of a major or minor entails the elimination of advanced courses in a subject, so be it. We will not seek to uphold the right of a Spanish professor to continue teaching small seminars on Cervantes instead of lower-division language-instruction courses. We are concerned here only with preserving the positions of tenured faculty members, not with dictating the content of their course loads.

1           considerations would not hesitate to place the tenured professor in another suitable  
2           position if one can be found, even if this means displacing a nontenured instructor.<sup>41</sup>

3 We note, however, that in the years since *Browzin*, and Brown’s response thereto, academic  
4 programs themselves have undergone substantial transformation. This represents both a  
5 danger and an opportunity. First, the meaning of “another suitable position” has changed  
6 radically since the 1930s with the post-World War II expansion of American higher education.  
7 Second, and more specifically, since the 1970s, in every field of intellectual endeavor, from the  
8 arts and humanities to the social, speculative, and applied sciences, colleges and universities  
9 have heralded the virtues of interdisciplinarity– and have created a wide variety of innovative  
10 inter-departmental programs, centers, and institutes in order to encourage interdisciplinary  
11 research, teaching, and collaboration. On the one hand, this transformation of the curricular  
12 landscape would appear to make it easier for administrations to define “programs” whose  
13 proposed discontinuance is simply a means of terminating one troublesome tenured professor.  
14 But on the other hand, the expansion or redefinition of the traditional disciplines, together with  
15 the creation of new interdisciplinary programs, should also make it easier for institutions to find  
16 “another suitable position” for faculty members in discontinued programs.

17           Two examples will help illustrate what we are suggesting. At SUNY-Albany, the tenured  
18 faculty in French, Italian, Russian, and classics could very well have been consolidated in a  
19 department of languages and literatures that would also include Spanish and lesser-taught  
20 other languages. If the SUNY-Albany administration did not consider this possibility, it would be  
21 but one of many ways in which the standards of the AAUP were ignored. At Pennsylvania State

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<sup>41</sup> *Browzin v. Catholic University*, 527 F.2d 843 (U.S. App. D.C.) at 847 (footnote omitted).

1 University, the termination of the university’s Science, Technology, and Society program– itself  
2 the creation of faculty from the colleges of Earth and Mineral Sciences, Engineering, Liberal  
3 Arts, and Science in 1969-70– affected five tenure-track faculty members working on a wide  
4 variety of subjects, such as the history of autism and networks created by families with autistic  
5 children, the politics of food security, and the history of Chinese ecological science and  
6 environmental governance, with a focus on climate policy and urban development. The faculty  
7 members involved clearly can be housed in any number of academic units, from the traditional  
8 Department of Human Development and Family Studies to newer interdisciplinary units such as  
9 the Huck Institutes of the Life Sciences, the Penn State Institutes of Energy and the  
10 Environment, and the International Center for the Study of Terrorism.<sup>42</sup> American universities  
11 have found many ways of creating such centers and institutes, using them as devices for  
12 establishing new areas of research and teaching, and for engaging new faculty members. We  
13 are aware that few of these centers and institutes were created with the intention that they  
14 would include faculty lines for tenured faculty and those probationary for tenure. But because  
15 we hold that tenure is held in the institution rather than any department, college, program, or  
16 other subdivision within the institution, we believe that it is incumbent upon institutions to be  
17 at least as creative in finding ways to relocate faculty members whose programs have been  
18 discontinued.<sup>43</sup> In some cases, this may involve provost-level negotiations, if for instance a

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<sup>42</sup> Penn State conducted its program closures, which were announced in 2011, by means of a “Core Council” that included minimal faculty input, none of which concerned the financial state of the university. There was no attempt to find “another suitable location” for the probationary faculty in the Science, Technology, and Society program until after its closure had been decreed, though arrangements were eventually made for some– not all– of the faculty members affected.

<sup>43</sup> See, e.g., “Comments by the AAUP on ‘Facing Change: Building the Faculty of the Future,’ A Report Issued by the American Association of State Colleges and Universities,” January 12, 1999, particularly the following:

1 faculty member's line is to be transferred between colleges. But in all cases, the first sentence  
2 of Regulation 4d(2) must be observed: the institution must make every effort to place the  
3 faculty member concerned in another suitable position *before the administration issues notice*  
4 *to a faculty member of its intention* to terminate an appointment because of formal  
5 discontinuance of a program or department of instruction. The effort to find another suitable  
6 position must *precede* the announcement of an institution's *intent* to terminate a program; it  
7 cannot follow the announcement as faculty and administrators scramble to put together a  
8 Plan B.

9         If an undergraduate major or a graduate program is eliminated but lower-level courses  
10 continue to be offered (as is the case with many reductions of foreign language programs), the  
11 professor who is reassigned from upper-level courses to lower-level courses is not considered  
12 to be relocated "elsewhere." Tenure rights enable the professor to assume the teaching of  
13 lower-level courses that have been taught by nontenured faculty members; departments and

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The [AASCU] report recommends that "institutions should establish [the] locus of tenure upon hiring tenure-track faculty and should consider varying the locus of tenure for faculty, appropriate to differences in discipline/assignment and institutional need." The report adds that institutions may wish to "rethink" the locus of tenure to "increase flexibility," and that "varied loci of tenure within a single institution may be desirable." Questions about the locus of tenure typically arise when administrations move to terminate faculty appointments for financial or programmatic reasons. Under Association standards, administrations are expected to make every effort to place faculty members elsewhere in the institution before actually terminating an appointment on grounds of financial exigency or program or department discontinuance not mandated by financial concerns. Why make every effort? Because tenure is held in the institution and not in one's department or academic specialty, and, as one court has held, the "university's obligation is not discharged unless it has considered other departments and schools" as well as the displaced teacher's. [The quoted language is from *Browzin*, note 7 to paragraph 14.] Obviously, if the locus of tenure is not the institution but some part of it, then the obligation to make every effort at relocation is correspondingly diminished. Indeed, the obligation may disappear completely, for the AASCU report opens the way to having a single faculty position identified as the locus of tenure. If the individual's appointment is terminated, the locus vanishes and the administration's obligation to make every effort is lost, too. There is also the concern that a malleable locus of tenure will leave faculty members vulnerable to an administration's discretion to narrow or expand the locus, thus diminishing their sense of security to the detriment of academic freedom.

1 colleges should not assume that if upper-level courses are eliminated, the tenured faculty  
2 members who taught them need to be released as well. All relocations of tenured faculty  
3 members should allow those faculty members to retain their tenure rights, including eligibility  
4 for service on department, college, and institution-wide committees; no relocated professor  
5 should suffer a reduction in his or her salary, unless across-the-board salary reductions are part  
6 of an institution's response to its financial condition, and no relocated professor should suffer  
7 demotion from his or her previously earned academic rank.

8         Again, the AAUP holds that the locus of tenure is in the institution as a whole, not in any  
9 subdivision (department, college, program) thereof. Therefore, the elimination of a program in  
10 which a faculty member has tenure does not entail the elimination of that faculty member's  
11 tenure rights; that is why he or she retains the right to be relocated.

12         We note also that an increasingly common justification for program closure is "low  
13 completion rates," that is, low numbers of graduates per year. We believe that gauging  
14 enrollment simply by counting the number of student majors is especially inimical to sound  
15 academic judgments. Often, modern languages such as French and German are unduly  
16 penalized by such calculations, because they discount the number of students who meet  
17 language requirements by taking courses in French and German without majoring in those  
18 subjects; but in the University of Louisiana System and at the University of Northern Iowa, this  
19 kind of bean-counting affected the sciences as well, as when UNI slated a physics program for  
20 closure without considering how many majors in the other sciences needed to take courses in  
21 physics. So-called "data-driven" program closures should be eschewed in favor of  
22 comprehensive, orderly reviews of the full profile of an institution's curricular offerings, reviews

1 that are guided not solely by enrollment numbers but also by sound, rational, and justifiable  
2 determinations of the intellectual strengths and weaknesses of each program.

3 Lastly, we reaffirm the provisions of Regulations 4d(2) and 4d(3), requiring institutions  
4 to offer a reasonable period of training for faculty members affected by program  
5 discontinuance; financial and other support for such training; severance pay equitably adjusted  
6 to the faculty member's length of past and potential service; the right to appeal a proposed  
7 relocation or termination; and the right to a full hearing before a faculty committee.

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### 9 ***Personnel Priorities***

10 Regulation 4c(1) states that "judgments determining where within the overall academic  
11 program termination of appointments may occur involve considerations of educational policy,  
12 including affirmative action, as well as of faculty status, and should therefore be the primary  
13 responsibility of the faculty or of an appropriate faculty body. The faculty or an appropriate  
14 faculty body should also exercise primary responsibility in determining the criteria for  
15 identifying the individuals whose appointments are to be terminated. These criteria may  
16 appropriately include considerations of length of service." In earlier versions, this clause read  
17 "considerations of age and length of service," but was revised to conform to the Age  
18 Discrimination Employment Act of 1967. Since the end of mandatory retirement in academe,  
19 this issue has become only more complex, and it is complicated still further by the multiple  
20 demographic changes in the academic workforce over the past four decades: the professoriate  
21 contains far more women and minorities than it did in 1970 (a development we welcome), and  
22 far fewer tenured faculty as a proportion of all faculty (a development we deplore). Forty years

1 ago, roughly three-quarters of all faculty were tenured or probationary for tenure; today,  
2 roughly three-quarters of all faculty do not have, and have little hope of gaining, the  
3 protections of tenure.

4         When programs are discontinued and faculty members face relocation or release,  
5 priority must be given to the tenured, or tenure itself will lose meaning. It is worth reviewing  
6 this imperative with regard to the consideration of “seniority” in our revised definition of  
7 financial exigency. Thanks to the dramatic expansion and institutionalization of the nontenured  
8 ranks, it is possible to find non-tenure-track faculty members with significant seniority—  
9 amounting even to decades—over newly tenured members of the faculty. Similarly, our  
10 operating guidelines on institutional problems resulting from financial exigency state that “as  
11 particular reductions are considered, rights under academic tenure should be protected. The  
12 services of a tenured professor should not be terminated in favor of retaining someone without  
13 tenure who may at a particular moment seem to be more productive.”<sup>44</sup>

14         However, Regulation 4c(3) complicates matters somewhat:

15         The appointment of a faculty member with tenure will not be terminated in favor of  
16 retaining a faculty member without tenure, *except in extraordinary circumstances where*  
17 *a serious distortion of the academic program would result.*

18 Matters are complicated still further by AAUP policy holding that non-tenure-track faculty  
19 members who have at least seven years of service acquire the protections of tenure and are  
20 considered to be in the cohort of the tenured. All full-time faculty members who have  
21 exceeded seven years of service are considered to be within the cohort of the tenured,

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<sup>44</sup> *Id.* at 147.

1 regardless of whether they have undergone formal tenure procedures. As such, their rights to  
2 the protections of academic due process that accrue with tenure are identical to those of  
3 faculty who have undergone formal tenure procedures. It is only for the purpose of defining  
4 professional standards for relocating or releasing tenured faculty in programs facing  
5 discontinuance that we draw a distinction between these categories. In every event, the  
6 institutions must make every effort to relocate both formally and informally tenured faculty to  
7 other academic programs. What should be strictly forbidden, in any case, are decisions to  
8 terminate faculty appointments based on quantitative or otherwise reductive assessments that  
9 do not consider the breadth and versatility of a faculty member's research and teaching, since  
10 these determinations effectively create a system of punishment and reward that does not  
11 answer to essentially educational considerations, and is easy to manipulate by appeal to  
12 evanescent fluctuations in enrollments and research funding, or evanescent fluctuations in the  
13 productivity of individual faculty members.

14 Further, we want to enhance the role of all full-time faculty in decisionmaking just as we  
15 want to enhance the role of all faculty. We call attention to a critical passage in the AAUP  
16 statement, "The Role of the Faculty in Budgetary and Salary Matters," which grants to them a  
17 key role in the determination of financial exigency, consonant with the role we recommend for  
18 tenured faculty:

19 Circumstances of financial exigency obviously pose special problems. At institutions  
20 experiencing major threats to their continued financial support, the faculty should be  
21 informed as early and as specifically as possible of significant impending financial  
22 difficulties. The faculty— *with substantial representation from its nontenured as well as*

1            *its tenured members, since it is the former who are likely to bear the brunt of any*  
2            *reduction*— should participate at the department, college or professional school, and  
3            institution-wide levels in key decisions as to the future of the institution and of specific  
4            academic programs within the institution.<sup>45</sup>

5    The reference to faculty being “informed as early and as specifically as possible” is potentially  
6    misleading; although administrators have a fiduciary responsibility to alert the campus to  
7    impending challenges, in a properly collaborative and consultative environment, faculty would  
8    have a detailed and ongoing sense of the institution’s financial health. In a similar vein, AAUP  
9    operating guidelines on institutional problems resulting from financial exigency specify that  
10   “the granting of adequate notice to nontenured faculty should also be given high financial  
11   priority.” We propose that “adequate notice” be understood in relation to a non-tenure-track  
12   faculty member’s length of service. For instance, in Regulation 13e(1), the following provision  
13   is made for “part-time faculty members who have served for three or more terms during a span  
14   of three years”:

15            (1) Written notice of reappointment or nonreappointment will be issued no later than  
16            one month before the end of the existing appointment. If the notice of reappointment is  
17            to be conditioned, for example, on sufficiency of student enrollment or on financial  
18            considerations, the specific conditions will be stated with the issuance of the notice.

19    We propose that this provision be extended to all non-tenured faculty members who are  
20    released as a result of a declaration of financial exigency; non-tenured faculty with more than  
21    seven years of service have longstanding affiliations with an institution, and they may have to

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<sup>45</sup> *Id.* at 150; emphasis added.

1 make major life changes— switching careers, moving families— in order to seek new positions.  
2 Non-tenured faculty with three or more years of service but less than seven should be granted  
3 six months of additional appointment after notice of termination on the same grounds.  
4 Tenured faculty, if they are released on the grounds that they are not as qualified to execute  
5 the fullest possible range of the program’s educational and institutional mission as others in  
6 their cohort, should be provided with an additional year of appointment after they have been  
7 given notice of termination for financial considerations.<sup>46</sup> We note that this provision is  
8 especially germane to our revised definition of financial exigency, insofar as a campus that is  
9 not experiencing an imminent financial crisis that threatens the survival of the institution as a  
10 whole (but, rather, a *severe* financial crisis that threatens the *academic mission* of the  
11 institution as a whole) presumably will have the time and resources necessary to give its long-  
12 serving faculty adequate long-term notice of termination. As noted, non-tenured faculty with  
13 three or more years of service but less than seven should, by the same rationale, be granted six  
14 months of additional appointment after notice of termination.

15 Finally, there is the question of how departments should prioritize terminations of  
16 tenured faculty appointments with regard to educational considerations. Particularly in fields  
17 that have undergone substantial intellectual transformations in recent decades, these decisions  
18 can pit established fields against emerging fields— to the detriment of the former, if too much  
19 weight is given to recent developments in a discipline, or to the detriment of the latter, if too  
20 much weight is given to traditional areas and forms of scholarship. This committee finds it

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<sup>46</sup> We find it exceptionally vexing to have to set a standard for providing adequate notice of nonreappointment for non-tenure-track faculty members with more with seven years of service when our policies do not recognize the legitimacy of an institution’s having any full-time faculty members in this category. But we want to provide some protection for the full-time faculty members in this category even where we do not accept the legitimacy of their positions off the tenure track.

1 exceptionally difficult to recommend specific courses of action in such cases; we cannot say, as  
2 a general rule, whether (to take a salient example from the Furniss-Brown exchange) a  
3 department should prefer to keep its three senior tenured scholars of European history or  
4 terminate one of them in favor of keeping the younger tenured scholar in Asian studies. Such  
5 decisions will be wrenching regardless of their outcomes, and may lead to substantial  
6 redefinition of a department's or program's core educational mission. We propose, therefore,  
7 that any decisions about the priority of subfields within a discipline be made with respect to the  
8 long-term health and viability of the discipline as an educational enterprise, as this should be  
9 determined by deliberations in good faith, balancing the virtues of both established and  
10 emerging fields and asking which areas of study, and which methodologies, will best serve the  
11 discipline and prospective student populations for the foreseeable future.

12         There are good reasons for our hesitation in this matter. We do not wish to compel, or  
13 to give administrators the right to compel, individual departments to accept refugees from  
14 closed programs. We consider it illegitimate to try (for example) to force a chemistry  
15 department to appoint a pharmacist from a discontinued program, or for law schools or  
16 economics departments to accept business professors who teach law or economics if the law  
17 school and/or economics department in question deems those professors to be unqualified for  
18 appointment. However, *every good faith effort must be made to find another suitable position*  
19 *for displaced faculty members with tenure*, and if one department blocks an appointment, it  
20 must provide a written statement of its rationale. Whenever a department refuses the  
21 reappointment of a faculty member, the burden remains on the administration to try to find  
22 another plausible department as a home. Every presumption should be in favor of preserving

1 the tenured position; as we noted above, interdisciplinary programs, centers, and institutes  
2 might well accommodate displaced faculty members, particularly if their work crosses  
3 disciplinary boundaries. No invidious reasons should be accepted for a department's decision  
4 not to accept a displaced faculty member; a department cannot insist that it does not want to  
5 hire another woman, or demur on ideological grounds that would violate a faculty member's  
6 academic freedom. If a faculty member believes that his or her rejection by a proposed  
7 relocation department is invidious, spurious, or in violation of AAUP principles, that faculty  
8 member should have the right to appeal to an appropriate faculty committee. But that  
9 committee's recommendation should be advisory, not binding; and we do not grant deans and  
10 provosts the right to override the wishes of departments if those departments' decisions are  
11 based on legitimate educational and intellectual grounds.

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### 13 ***Proposed Changes for Individual Institutions***

14 At institutions not covered by collective bargaining agreements, the foregoing policy  
15 statements, like all AAUP guidelines, are recommendations: they represent our careful  
16 consideration of best practices for colleges and universities, and they offer a definitive measure  
17 by which institutions can gauge their adherence to the standards that should govern American  
18 higher education. Faculty and administrations at institutions not governed by collective  
19 bargaining should therefore work together to include the report's policy statements and  
20 recommendations in their institutional regulations and faculty handbooks.

21 Collective bargaining institutions that incorporate some or all of AAUP's previous  
22 recommendations related to this report into their collective agreements, or which seek in the

1 future to negotiate new or revised agreements that incorporate these recommendations,  
2 should provide also that disputes regarding the interpretation and enforcement of the policies  
3 and procedures may be resolved through a grievance process that includes binding arbitration.  
4 In the best cases the enforceable procedures that result include an opportunity for faculty,  
5 acting through the union and/or the faculty senate, to participate in the determination of  
6 whether a bona fide financial exigency exists. In such cases, the parties may need to determine  
7 whether to continue with their existing understanding of “financial exigency” or to adopt our  
8 revised recommendation. , Similarly, those institutions whose agreements specifically include  
9 AAUP-recommended program review and closure procedures that entail faculty participation in  
10 these decisions, or incorporate such AAUP recommended procedures by reference, should  
11 update their agreements to incorporate these revised recommendations. Further, we  
12 recommend that collective bargaining institutions take special care to ensure that faculty  
13 members without tenure are granted the right to participate in determinations of financial  
14 exigency and program discontinuance, since they are likely to bear the brunt of program  
15 closures and layoffs.

16 Too often, however, faculty collective bargaining agreements fall short of the faculty  
17 involvement that constitutes best practice, due to the imposition of excessively narrow  
18 interpretations of negotiable terms and conditions of employment. Contracts that do not  
19 provide the safeguards provided by faculty participation in decisions respecting financial  
20 exigency and program closure typically must then rely entirely on layoff and recall provisions to  
21 protect academic integrity and faculty rights. In view of the flexibility provided by the vast  
22 increase in instruction by part-time and short-term appointees, and the deleterious

1 consequences for academic freedom and educational quality that may be expected to result,  
2 there is no excuse for layoff procedures that permit routine reliance on the layoff of faculty  
3 within the term of their appointments in order to meet short-term financial or enrollment  
4 concerns. Where proposed layoffs involve dismissal of faculty with tenure or tenure-like  
5 positions, or term appointees within the term of their appointments, agreements should adopt  
6 at minimum AAUP recommended procedures regarding the order of layoff, the length of  
7 notice, fair consideration for alternative suitable positions, and severance pay. These  
8 agreements ought particularly to ensure, through seniority provisions and appeal procedures,  
9 that layoffs cannot be based on considerations inconsistent with academic integrity and  
10 academic freedom.

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## IV. CONCLUSION

This report has sought to address the gap between Regulation 4c on financial exigency and Regulation 4d on program discontinuance by redefining “financial exigency.” As we set forth in the introduction, our new definition names a condition less dramatic than that in which the very existence of the institution is immediately in jeopardy, but is significantly more serious and threatening to the educational mission and academic integrity of the institution than ordinary (short-term and long-term) attrition in operating budgets. Financial exigency can legitimately be declared only when substantial injury to the institution’s academic mission will result from prolonged and drastic reductions in funds available to the institution, and only when the determination of the institution's financial health is guided by generally accepted accounting principles. In proposing this new definition, however, we insist again that financial exigency is not a plausible complaint from a campus that has shifted resources from its primary missions of teaching and research toward employing increasing numbers of administrators or toward unnecessary capital expenditures.

In order to ensure that our definition of “financial exigency” not become an excuse for program elimination and the termination of tenured faculty positions when less drastic responses to institutional crisis are available, this report urges that faculty members be involved in consultation and deliberation at every stage of the process, beginning with a determination that a state of financial exigency exists. We offer specific recommendations for such faculty involvement:

- 1 1. Before any proposals for program discontinuance on financial grounds are made or  
2 entertained, the faculty should have the opportunity to render an assessment in writing  
3 on the institution's financial condition.
- 4 2. The faculty body may be drawn from the faculty senate, or elected as an ad hoc  
5 committee by the faculty; it should not be appointed by the administration.
- 6 3. Faculty should have access to, at minimum, five years of audited financial statements,  
7 current and following year budgets, and detailed cash flow estimates for future years.
- 8 4. In order to make informed proposals about the financial impact of program closures,  
9 faculty need access to detailed program, department, and administrative unit budgets.
- 10 5. Faculty should determine whether "all feasible alternatives to termination of  
11 appointments have been pursued," including expenditure of one-time money or  
12 reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-  
13 retirement packages, deferral of nonessential capital expenditures, and cuts to non-  
14 educational programs and services, including expenses for administration.
- 15 6. Faculty members in a program being considered for discontinuance because of financial  
16 exigency should be informed in writing that it is being so considered, and given at least  
17 thirty days in which to respond. Both tenured and nontenured faculty should be  
18 involved in these determinations.

19 We reaffirm the AAUP's longstanding opposition to the elimination of "one-person" programs,  
20 which allows for selective, arbitrary termination of tenured faculty members; and we reaffirm  
21 the principle that tenured faculty members hold tenure in the institution as a whole, not in any  
22 college, department, program or other subdivision thereof. We also affirm longstanding AAUP

1 policy that all full-time faculty who have taught at an institution for over seven years are  
2 considered to be within the cohort of the tenured, whether or not they have undergone formal  
3 tenure procedures. It is precisely because tenure resides in the entire institution that tenured  
4 faculty members have the right to another suitable position within the institution, and we urge  
5 institutions to be creative in finding ways to relocate faculty members whose programs have  
6 been discontinued. Above all, we reiterate that the institution must make every effort to place  
7 the faculty member concerned in another suitable position *before* the administration issues  
8 notice to a faculty member of its intention to terminate his or her appointment because of  
9 formal discontinuance of a program or department of instruction. We reaffirm the principle  
10 that tenured faculty must not be released and then replaced with nontenured faculty. And we  
11 recommend that faculty without tenure who are released as a result of program closure be  
12 given notice of nonreappointment commensurate with their length of service to the institution.  
13 Finally, we recommend that current and prospective collective bargaining units adopt the  
14 recommendations of this report to the fullest extent possible.

15 We affirm these principles and make these recommendations not as a rearguard  
16 measure, not as a last-ditch attempt to keep the flickering flame alive before the forces of  
17 austerity engulf American higher education. We do believe that the forces of austerity are  
18 threatening to engulf American higher education; certainly this is why institutions are closing  
19 programs that should be part of any serious educational institution's curricular portfolio and  
20 implementing policies that further erode the ranks and the discretionary power of the tenured  
21 professoriate. But we do not issue this report in a defensive mode. On the contrary, we  
22 believe that the erosion of the ranks and of the discretionary power of the tenured

1 professorate is not only bad for American higher education but also bad for the future of the  
2 United States and society as a whole. Program closures on the scale we have recently  
3 witnessed represent a massive transfer of power from faculty to administration *over curricular*  
4 *matters that affect the educational missions of institutions*, for which the faculty should always  
5 bear the primary responsibility; in most cases the decisions to close programs are not only  
6 unilateral and therefore procedurally illegitimate, but also driven by criteria that are not  
7 essentially educational in nature and therefore substantively illegitimate as well. Moreover,  
8 program closures on this scale appear to reflect– and to implement– a widespread belief that  
9 when finances are tight, educational programs should be among the *first* things to cut from the  
10 budget, not the last. This belief seems to rest in turn on a belief that faculty and instructional  
11 costs are the first expenditures an institution should seek to trim, as opposed to expenditures  
12 on administration or capital projects.

13         We cannot say this strongly enough: the widespread closure of academic programs,  
14 when undertaken by administrations unilaterally or with only a fig leaf of faculty participation,  
15 represents a significant threat to the foundations of American higher education. These  
16 initiatives essentially transform colleges and universities from educational to managerial  
17 institutions, in which instruction in a course of study is simply another deliverable and where  
18 programs are so many inventory items to be discounted, downsized, or discontinued according  
19 to a reductive logic of efficiency and the imperative to lower labor costs whenever possible.  
20 We are not opposed to program closures as a rigid matter of principle. The AAUP has long  
21 acknowledged that a college or university can discontinue a program of instruction, but our  
22 standard has been that if the discontinuation is not undertaken for financial reasons, it must be

1 shown to enhance the educational mission of the institution as a whole; we have long  
2 acknowledged that programs can be cut in times of financial exigency, but only if an  
3 appropriate faculty body is involved in the decisionmaking process from the very beginning,  
4 with the determination of whether an institution is experiencing bona fide financial exigency.  
5 But by and large, the program closings of recent years do not meet any of these standards.  
6 That is why they represent a violation of the principles on which American higher education  
7 should operate, and that is why they must be contested by a vigorous, principled, and informed  
8 faculty.

9

# APPENDIX I

## Proposed New Recommended Institutional Regulations 4 And 8

### American Association of University Professors

## Recommended Institutional Regulations on Academic Freedom & Tenure

#### 4. Termination of Appointments by the Institution

a. Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may be effected by the institution only for adequate cause.

b. If termination takes the form of a dismissal for cause, it will be pursuant to the procedures specified in Regulation 5.

#### C. Financial Exigency<sup>1</sup>.

c. (1) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency, i.e., a severe financial crisis that threatens the academic mission of the institution as a whole and that cannot be alleviated by less drastic means.

[Note: Each institution in adopting regulations on financial exigency will need to decide how to share and allocate the hard judgments and decisions that are necessary in such a crisis.

As a first step, there should be a faculty body that participates in the decision that a condition of financial exigency exists or is imminent, and that all feasible alternatives to termination of appointments have been pursued, including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to non-educational programs and services, including expenses for administration.<sup>2</sup>

Judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body.<sup>3</sup> The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty. The allocation of this responsibility may vary according to the size and character of the institution, the extent of the terminations to

be made, or other considerations of fairness in judgment.]

The case of a faculty member given notice of proposed termination of appointment will be governed by the following procedures.

(2) Before any proposals for program discontinuance on grounds of financial exigency are considered or made, the faculty or an appropriate faculty body will have opportunity to render an assessment in writing on the institution's financial condition.

[Note: Academic programs cannot be defined *ad hoc*, at any size; programs must be recognized academic units that existed prior to the declaration of financial exigency. The term "program" should designate a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines. When feasible, the term should designate a department or similar administrative unit that offers majors and minors.]

(i) The faculty or an appropriate faculty body will have access to at least five years of audited financial statements, current and following year budgets, and detailed cash flow estimates for future years.

(ii) In order to make informed proposals about the financial impact of program closures, the faculty or an appropriate faculty body will have access to detailed program, department, and administrative unit budgets.

(iii) Faculty members in a program being considered for discontinuance because of financial exigency will promptly be informed of this in writing and provided at least thirty days in which to respond. Nontenured as well as tenured faculty

members will be invited to participate in these deliberations.

(3) If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:

(i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.

(ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.

(iii) Whether the criteria are being properly applied in the individual case.

(4) If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

(5) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

(6) In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary not less than as prescribed in Regulation 8.

(7) In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and at least thirty days in which to accept or decline it.

#### **4d. Program review for Educational Reasons<sup>4</sup>**

Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur as a result of bona fide formal discontinuance of a program or department of instruction. The following standards and procedures will apply.

(1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.

[Note: “Educational considerations” do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of

the institution as a whole will be enhanced by the discontinuance.]

(2) Faculty members in a program being considered for discontinuance for educational considerations will promptly be informed of this in writing and provided at least thirty days in which to respond. Nontenured as well as tenured faculty members will be invited to participate in these deliberations.

[Note: Academic programs cannot be defined *ad hoc*, at any size; programs must be recognized academic units that existed prior to the decision to discontinue them. The term “program” should designate a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines. When feasible, the term should designate a department or similar administrative unit that offers majors and minors.]

(3) Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member’s appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member’s length of past and potential service which should go beyond but not be less than as prescribed in Regulation 8.

[Note: When an institution proposes to discontinue a program or department of

instruction based essentially on educational considerations, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

(4) A faculty member who contests a proposed relocation or termination resulting from a discontinuance has a right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in Regulation 4c. In such a hearing a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

#### **4e. Termination Because of Physical or Mental Disability**

WITHDRAWN (see "Accommodating Faculty Members Who Have Disabilities," 2012 *Bulletin of the AAUP*, 30)

#### **4f. Review**

In cases of termination of appointment, the governing board will be available for ultimate review.

#### **8. Terminal Salary or Notice<sup>5</sup>**

If the appointment is terminated, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior

to the expiration) of the first year of probationary service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of probationary service; at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure. This provision for terminal notice or salary need not apply in the event that there has been a finding that the conduct which justified dismissal involved moral turpitude. On the recommendation of the faculty hearing committee or the president, the governing board, in determining what, if any, payments will be made beyond the effective date of dismissal, may take into account the length and quality of service of the faculty member.

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#### **NOTES**

**1** See "The Role of the Faculty in Conditions of Financial Exigency." The definition of "financial exigency" offered in that report and adopted here is intended to be more responsive to actual institutional conditions, and intended to extend the standard of exigency to situations not covered by our previous definition.

**2** See "The Role of the Faculty in Budgetary and Salary Matters," *Policy Documents and Reports*, 149–52, especially the following passages:

The faculty should participate both in the preparation of the total institutional budget and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal

divisions (salaries, academic programs, tuition, physical plant and grounds, and so on). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources and the proportion to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board. . . .

Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and specifically as possible of significant impending financial difficulties. The faculty—with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of the reduction—should participate at the department, college or professional school, and institution-wide levels in key decisions as to the future of the institution and of specific academic programs within the institution. The faculty, employing accepted standards of due

process, should assume primary responsibility for determining the status of individual faculty members.

**3** See “[Statement on Government of Colleges and Universities](#),” *Policy Documents and Reports*, 135–40, especially the following passage:

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy.

**4** When discontinuance of a program or department is mandated by financial exigency of the institution, the standards of Regulation 4c above will apply.

**5** For renewable term appointments not specifically designated as probationary for tenure, see “The Applicability of the ‘Standards for Notice of Nonreappointment’ to All Full-Time Faculty on Renewable Term Appointments,” *Academe: Bulletin of the AAUP* 81 (September–October 1995): 51–54.

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## **APPENDIX II**

### **Measuring Financial Distress**

5           The purpose of this appendix is to provide faculty with some guidance in understanding  
6 the financial condition of their institution. The composite index developed in this appendix is  
7 meant to be an indicator financial distress, but no one number can capture the entire financial  
8 condition of an institution. What this index does is to give an indication of whether an  
9 institution may be facing a condition of financial distress.

10           This index is useful in comparing how the financial condition of an institution has  
11 changed over time and can also be used to compare similar institutions. If the index falls below  
12 the threshold discussed in this appendix, it may indicate that the institution is facing financial  
13 exigency. However, just because the index is below the threshold does not automatically  
14 indicate that a state of financial exigency exists. If the composite index is below the threshold,  
15 it tells us is that an institution is experiencing financial distress. Therefore, this index should be  
16 seen as a necessary but not sufficient to declare that a state of severe financial distress exists at  
17 an institution. Even if an institution's composite index falls below the level which could indicate  
18 that a state of severe financial distress exists, the faculty committees as well as administrators  
19 at an institution should examine financial statements and other budget material with great care  
20 to insure that the factors causing the index to fall to a level that indicates financial distress are  
21 real and not transient.

22           The index that is described below is a variant of the index used by the Ohio Board of  
23 Regents to assess the financial health of public institutions of higher education in Ohio. The

1 index uses four ratios a solvency ratio, an activity ratio and two margin ratios. A solvency ratio  
2 measures the ability of an institution to meet its debt obligations. An activity ratio measures  
3 the ability of an institution to cover its operating expenses. Finally, margin ratios measure the  
4 relationships between the inflow and outflow of resources from an institution.

5         There are several differences between how reserves, cash flow and net assets are  
6 measured at public and private institutions. The Governmental Accounting Standards Board  
7 (GASB) governs financial statements for public institutions whereas the Financial Accounting  
8 Standards Board (FASB) governs financial statements for private institutions.

9         The solvency ratio to be used in the index is known as the viability ratio that measures  
10 the ratio of reserves to the institution's long-term debt. In public institutions, reserves are  
11 defined as unrestricted net assets plus restricted expendable net assets. At private institutions,  
12 reserves are defined as unrestricted net assets plus temporarily restricted net assets. If a  
13 private institution does not separately show net assets invested in plant net of related debt,  
14 then the value of assets invested in plant net of accumulated depreciation minus the liability for  
15 long-term debt should be subtracted from unrestricted net assets. In addition, at institutions  
16 that offer post-retirement benefits, the liabilities for these post-retirement benefits should be  
17 subtracted from unrestricted net assets. The viability ratio shows the percentage of the  
18 institutions debt that could be paid off using reserves and is a primary indicator of solvency.

19         The activity ratio used in the composite index is known as the primary reserve ratio. It is  
20 the ratio of reserves (as defined in the previous paragraph) to operating expenses plus interest  
21 on capital asset related debt. The primary reserve ratio shows how many months an institution  
22 could continue its operations even if it had no sources of revenue.

1           The first margin ratio used in the composite index is the cash flow ratio, which is the  
2 ratio of operating cash flow to total revenue. Institutions of higher education use accrual  
3 accounting, which means that they have certain “non-cash” expenses such as depreciation and  
4 the losses on the disposal of assets. In addition, unrealized changes in the value of assets can  
5 either result in gains that are booked as income or losses that are booked as expenses. The  
6 existence of non-cash expenses and unrealized gains and losses on investments means that the  
7 income or (losses) before other revenues (net income) is not always a reliable indicator of net  
8 resources gained or lost by an institution. The operating cash flow ratio is therefore at times a  
9 better indicator of the inflow and outflow of resources that can support operations. At public  
10 institutions, operating cash flow is the sum of net cash used by operations and net cash  
11 provided by non-capital financing activities minus interest paid on capital debts and leases. At  
12 private institutions, operating cash flow is net cash provided by operating activities minus  
13 interest payments on capital debts and leases.

14           The second margin ratio is the net asset ratio, which is the change in net assets divided  
15 by the Total Revenue. The change in net assets is the most comprehensive indicator of the  
16 difference between revenues and expenses and is therefore one of the primary performance  
17 indicators for institutions.

18           To create a composite index, each of the ratios listed above is converted into a  
19 continuous score between 0 and 5 using ranges from Table 1 and the piecewise linear function  
20 shown in the equation below. (If one wishes, an index can be calculated with a step function  
21 simply by assigning scores for the various ratios using the table below and then taking a  
22 weighted average of those scores using the weights in Table 2.) The advantage of using the

1 piecewise linear function  $s(X)$  is that it results in a score for each ratio that changes  
 2 continuously as each underlying ratio changes. Without the piecewise linear function, a very  
 3 small change in a ratio can lead to a large change in the score when the underlying ratio crosses  
 4 a threshold.

5

6

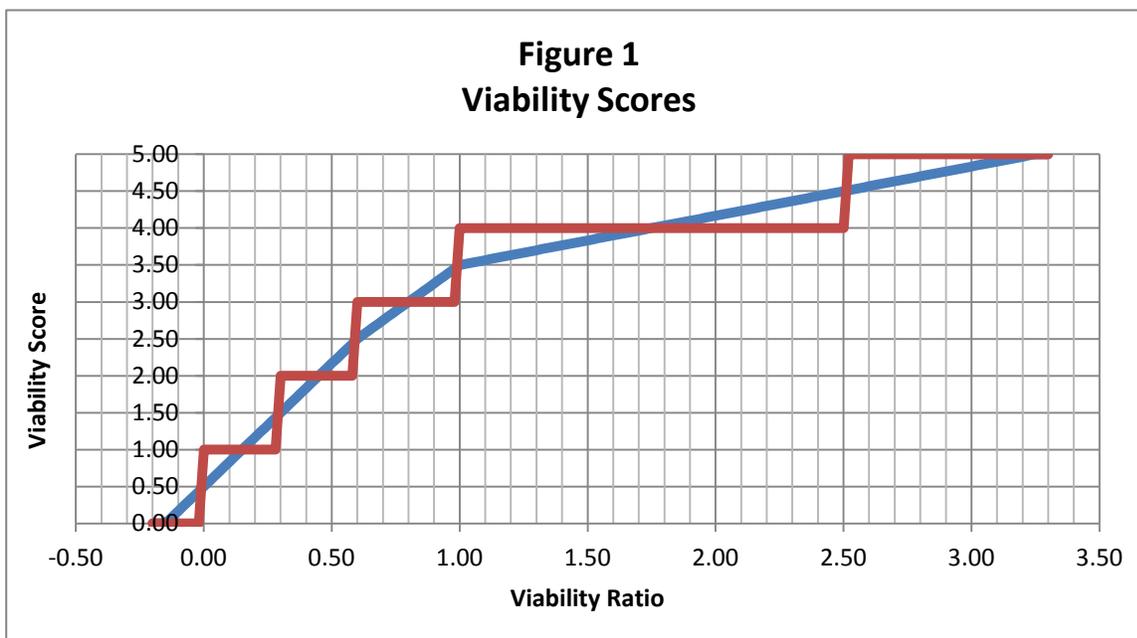
Table 1 Ratio Scores						
	0	1	2	3	4	5
Viability Ratio	< 0	0 to .29	.30 to .59	.6 to .99	1.0 to 2.5	> 2.5 or N/A
Primary Reserve Ratio	< -.1	-.1 to .049	.05 to .099	.10 to .249	.25 to .49	.5 or greater
Cash Flow Ratio	< -.05	-.05 to 0	0 to .009	.01 to .029	.03 to .049	.05 or greater
Net Asset Ratio	< -.05	-.05 to 0	0 to .009	.01 to .029	.03 to .049	.05 or greater

7

8 The following piecewise linear function creates a continuous score by using a linear function  
 9 between the points where the  $a_0 \dots a_4$  represent the viability, primary reserve and cash flow and  
 10 net asset ratios:

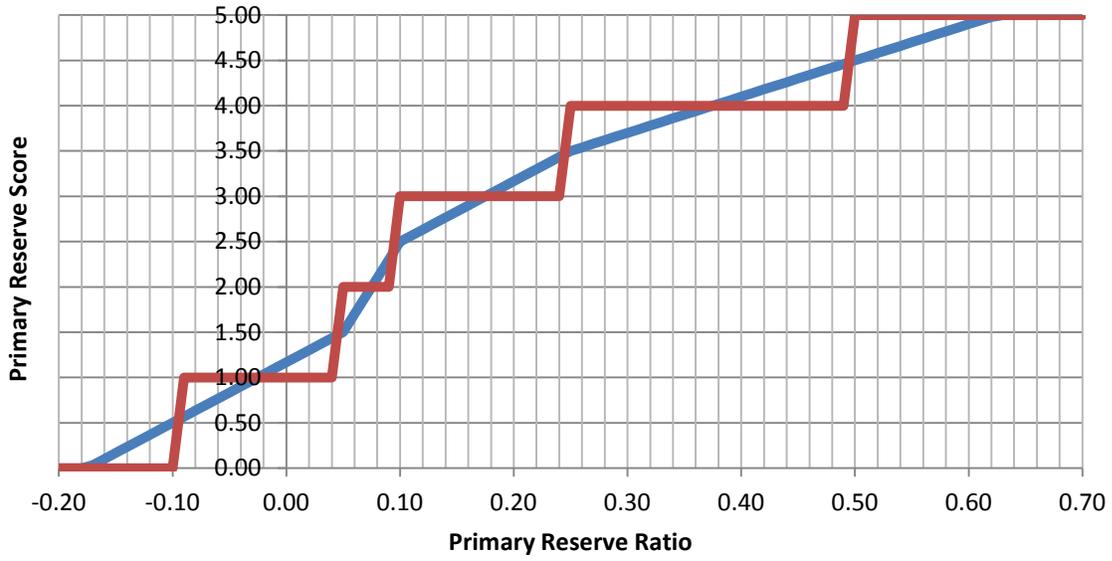
$$s(X) = \begin{cases} 0 & \text{if } X \leq a_0 - \frac{a_1 - a_0}{2} \\ \frac{X - a_0}{a_1 - a_0} + 1.5 & \text{if } a_0 - \frac{a_1 - a_0}{2} \leq X \leq a_1 \\ \frac{X - a_1}{a_2 - a_1} + 1.5 & \text{if } a_1 \leq X \leq a_2 \\ \frac{X - a_2}{a_3 - a_2} + 2.5 & \text{if } a_2 \leq X \leq a_3 \\ \frac{X - a_3}{a_4 - a_3} + 3.5 & \text{if } a_3 \leq X \leq a_4 + \frac{a_4 - a_3}{2} \\ 5 & \text{if } X \geq a_4 + \frac{a_4 - a_3}{2} \end{cases}$$

1  
2 Figures 1-4 illustrate how this function works compared to a simple step function. The  
3 horizontal axis shows a ratio (viability ratio, primary reserve ratio, cash flow ratio and net asset  
4 ratio); moving up vertically to the line and then left to the vertical axis translates the ratio into a  
5 score.



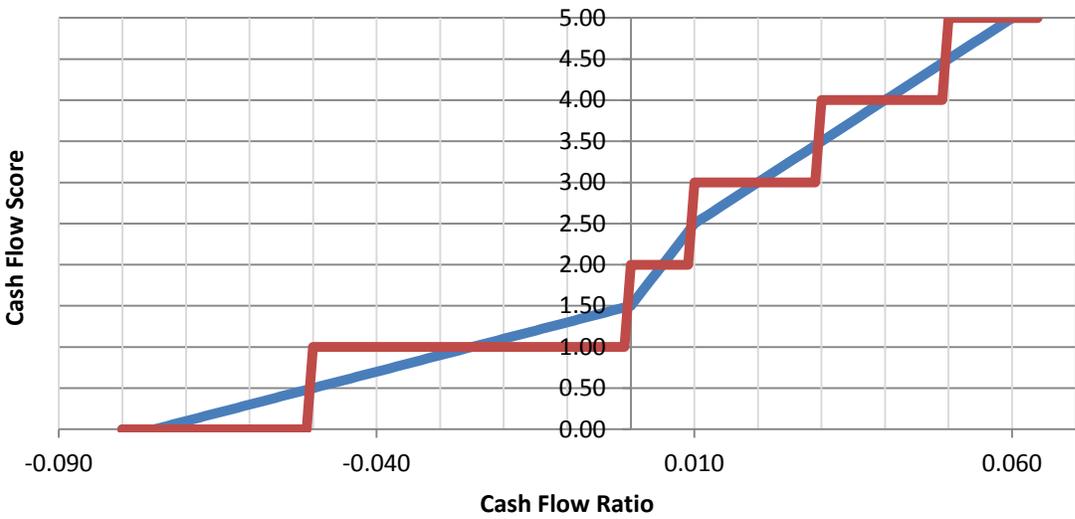
6

**Figure 2**  
**Primary Reserve Scores**

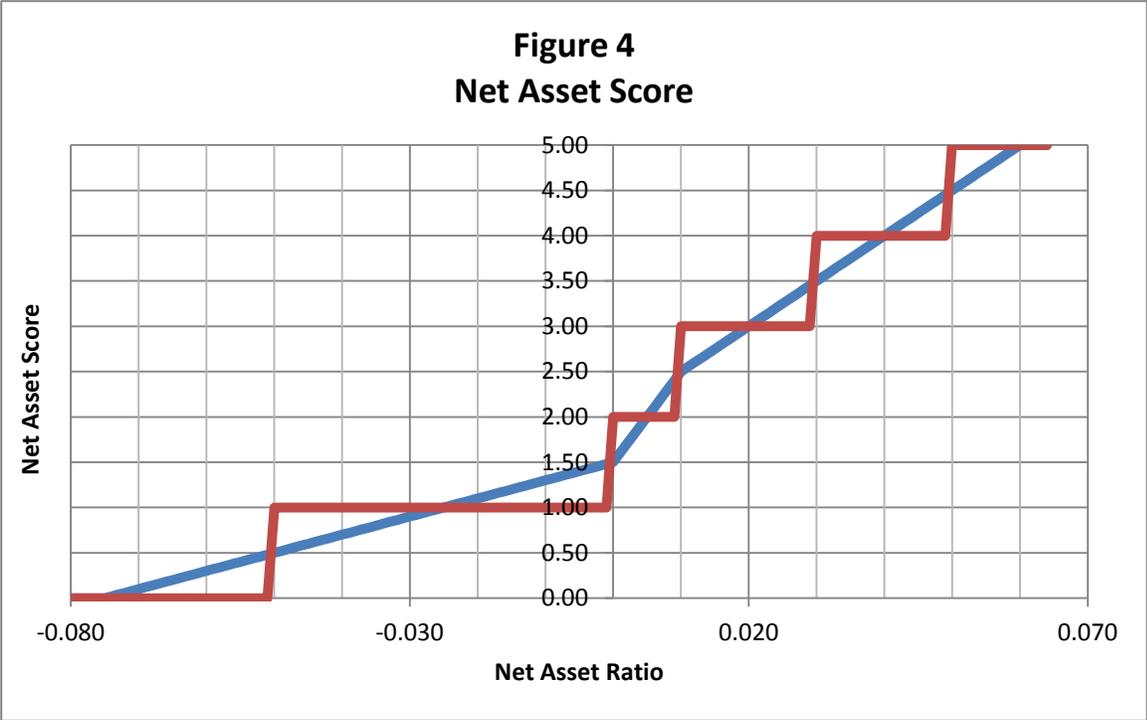


1

**Figure 3**  
**Cash Flow Score**



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The scores generated for each of the ratios using the either the piecewise linear

3

function or the step function are then weighted as follows:

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Table 2 Weights	
Score	Weight
Viability Score	0.225
Primary Reserve Score	0.4
Cash Flow Score	0.25
Net Asset Score	0.125

7



1 *What the ratio tells us:*

2 Is the institution generating sufficient cash flows to meet obligations? Cash from operating  
3 activities includes cash inflows from tuition, grants and contracts and sales and outflows for  
4 compensation, payments to suppliers and payments for scholarships and fellowships. Cash  
5 flows from noncapital financing activities include state appropriations, grants for noncapital  
6 purposes (e.g. Pell grants) and gifts. This ratio gives us a pure measure of cash flows.

7

## 8 **Net Asset Ratio**

9 Definition: Change in net assets divided by total revenues

10 *What the ratio tells us:*

11 The change in net assets is total revenues less total expenses, so this ratio tells us if there was a  
12 “profit” or “loss” during the year.

13

14 Technical Definitions:

15

16 *Unrestricted net assets* are those for which the institution has financial freedom and  
17 flexibility. There is not a pot of cash sitting around, but if there are unrestricted net assets,  
18 then the institution has liquid assets (cash, investments, receivables) that can be tapped into.

19 *Restricted expendable net assets* are reserves that have been set aside for a particular  
20 purpose, such as payments for future debt obligations. The institution cannot use these  
21 reserves for any other purpose, but they are much better off having a fund set aside to cover  
22 future obligations than not to have one.

1            *Temporarily restricted net assets* are donations made that have a time component; for  
2 example, a donor states that the principal of a gift cannot be used for ten years; after the ten  
3 years have elapsed, the principal can be used.

4            *Debt* is interest-bearing debt.

5            *Public sector operating cash flows* consist of net cash (used) by operating activities, plus  
6 net cash provided by noncapital financing activities (mostly the state appropriation), minus  
7 interest expense.

8            *Private sector operating cash flows* consist of cash flows from operations minus interest  
9 expense.

10

11

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13