

II – 8.0 UMCES Policy on Faculty Retrenchment

These policies were reviewed for legal sufficiency and approved by the Office of the Attorney General (1/5/96). They were approved for implementation by UM System Chancellor Donald N. Langenberg on 16 January 1996.

I. Policy

The UMCES Retrenchment Policy has been adopted under authority set forth in the University System of Maryland *Policy on the Appointment, Rank, and Tenure of Faculty* as implemented by the *Policy on Faculty Retrenchment* of the Board of Regents.

Consistent with the trans-disciplinary philosophy that is fundamental to its administration, UMCES does not have the departmental structure that is characteristic of most academic institutions. UMCES Retrenchment Policy reflects this fact and is therefore program- rather than department- or Laboratory-based. Procedures for the definition of and assignment of faculty members to specific programs are provided in UMCES Organizational Policy I-6.00.1.

Pursuant to the *Policy on Faculty Retrenchment* of the Board of Regents of the University System of Maryland, UMCES is authorized to reduce or reallocate its faculty at various times and for various reasons in order to fulfill its role and mission and to make optimal use of its faculty resources.

A. The term "retrenchment" means the termination of a faculty appointment as authorized in the 29 November 1990 University System of Maryland (UM System) Board of Regents *Policy on Faculty Retrenchment* (II-8.00).¹

B. In order to insure the protection of rights of faculty members and consistency with the internal governance structure of UMCES, the retrenchment procedures specified under sections within this policy shall be followed.

II. Applicability

These retrenchment procedures are applicable only to all persons appointed to a rank identified or permitted under the UM System *Policy on the Appointment, Rank, and Tenure of Faculty* (II-1.00) of the UM System *By-Laws, Policies and Procedures of the Board of Regents*.

The UM System Retrenchment Policy and these retrenchment procedures are in addition to and not in limitation of other UM System and UMCES policies and procedures concerning faculty appointments, nor are they in limitation of any UM System or UMCES policies on academic program review.

¹ For the purposes of these procedures, "restricted funding as used in the UM System Policy on Faculty Retrenchment shall mean as applicable i) the lack of appropriations or other funds with which to support the appointment, as set forth in the University System of Maryland Policy on Appointment, Rank, and Tenure of Faculty, section I.C.9, or ii) such other meaning set forth in corresponding sections of earlier faculty appointment agreements still in effect.

III. Presidential Authority and Implementation

A. The President of UMCES has final authority over any decision or determination under these retrenchment procedures.

1. In addition to the advice of the committees established under retrenchment procedures, the President may seek the advice of any individual, group, or office within UMCES or outside the institution.

a. The President may adopt recommendations from any committee identified in the retrenchment procedures, adopt them with modifications, or reject them and make substitutions for them.

2. The President shall have the right to adjust any schedule referenced in the retrenchment procedures except for those pertaining to the notice for termination and to the appeal process.

a. An effort shall be made to give advance notice of any such adjustment; however, failure to comply with such schedules shall not be grounds for appeal under these retrenchment procedures.

B. Before effecting the termination of faculty appointments, the President of UMCES may take other actions including, but not limited to: elimination or reallocation of positions following normal attrition; reduction in the proportion of State support for any position(s); reassignment within UMCES to other positions; terminal leave; and early retirement.

1. The appointments of tenured faculty shall only be terminated after alternative actions have been considered, but appointment termination shall not be conditioned upon first taking such alternative actions.

C. Implementation of these retrenchment procedures shall not focus on individual faculty members, but rather shall be guided by and be consistent with fulfilling the mission of UMCES and the quality and requirements of the institution's programs.

1. The units of retrenchment shall be programs.

a. A "program" within which a retrenchment action may occur under these procedures shall be a focused area of research, education, or public service in which two or more faculty members participate at the time such action is initiated.

b. Specific programs shall be defined, identified by name, and faculty members appropriately assigned to such programs, according to procedures in I-6.00.1 of the UMCES Policies.

c. Program definitions and faculty assignments to programs shall have been effected in advance and independently of the initiation of retrenchment action.

d. In the event that programs have not been defined and all faculty assignments made when a retrenchment action is initiated, the units of retrenchment shall be the individual UMCES Laboratories.

2. Program review is a part of routine institution planning.

a. While such reviews may be motivated in part by broad financial considerations, they normally occur as part of the ongoing management of the institution.

b. Resulting program eliminations provide a basis for faculty terminations without the necessity of showing a lack of appropriations.

D. Where the lack of appropriation is the basis for faculty retrenchment, the retrenchment plan may take into consideration such non-financial factors as institutional mission, long-range research planning, and may call for program reductions and/or program eliminations.

1. A lack of appropriations exists when, in the President's judgment, there is a fiscal that threatens or endangers the institution's ability to carry out its mission as defined in the most recent mission statement approved by the Board of Regents, and the termination of tenured or tenure-track faculty appointments will be substantially less detrimental to the institution's ability to fulfill its mission than other forms of budgetary curtailments available to the institution.

2. The President's determination that a fiscal crisis exists is subject to review by the Board of Regents.

3. In the event the Board elects to review such a determination, the President shall provide documentation to the Board in support of his/her action.

4. The Board may receive comments from the President, representatives of institutional and faculty governance bodies, and other interested persons.

E. UMCES shall not undertake any action in implementing these procedures that is inconsistent with the policies of the University System of Maryland and the laws and policies of the State of Maryland.

1. UMCES and University System of Maryland Equal Employment/Affirmative Action policy shall not be compromised through any such action.

2. These procedures shall be consistent with Sections I.C.9, I.C.10, I.C.13, and I.C.17 of the 1989 *Policy on Appointment, Rank, and Tenure of Faculty* of the Board of Regents of the University System of Maryland.

F. Because faculty retrenchment actions have major consequences for faculty and for the capacity and direction of research, education, and service programs within the institution, this policy shall be implemented under the principle of open consultation with the UMCES Faculty and with due consideration of faculty rights and responsibilities.

1. However, consistent with applicable law, deliberations about specific personnel decisions of any committee shall be confidential.

G. Prior to making a decision as to the necessity of initiating retrenchment procedures, the President shall convene a special Retrenchment Evaluation Committee to develop recommendations concerning alternative administrative actions, up to and including retrenchment in specific programs, that may be available in response to current or anticipated circumstances and priorities.

1. The Retrenchment Evaluation Committee shall be composed of seven (7) members drawn from members of the UMCES Faculty and Administration.

a. Three (3) members shall be faculty members, one from each of the three UMCES Laboratories, elected by majority faculty vote at the respective Laboratory.

b. Three (3) members shall be faculty members appointed by the President.

c. One (1) member from the UMCES Administration shall be appointed by the President.

d. Should a Laboratory faculty decline to elect a faculty member in a timely manner, the committee member for that Laboratory shall be appointed by the Chair of the UMCES Faculty Senate unless the Chair declines to make such appointment, in which case the President of UMCES shall do so.

IV. Initiation of Retrenchment Action

The President has the sole authority within UMCES, subject to the authority of the Board of Regents, to initiate retrenchment.

A. The President shall initiate retrenchment when the President determines that retrenchment is necessary, consistent with the UM System and UMCES policies on Appointment, Rank and Tenure.

B. Retrenchment actions shall be initiated and completed by the President under the following circumstances and by applying the subsequent procedures:

1. restrictions in funding that require downsizing or discontinuation of programs or units;
2. requirements of the Board of Regents of the University System of Maryland; or
3. when, in consideration of UMCES' mission, and consistent with emerging areas of emphasis and de-emphasis identified in the Center's latest Strategic Plan as developed in a collegial manner by the UMCES Administration and Faculty, discontinuation of a program is appropriate in order that resources may be allocated to support changing program directions.

C. Except where fiscal limitations make more prompt retrenchment action necessary, the President shall notify the Faculty in writing that retrenchment is being considered and apprise it of other budgetary and operational actions which have been taken or considered, including reduction and alternative funding of administrative and research support services, Laboratory operations and maintenance, and personnel costs.

1. The notification shall include a response to the recommendations contained in the report of the Retrenchment Evaluation Committee, or shall provide explanation as to why the report of such committee is not under consideration.

D. The President may discontinue a retrenchment process at any time during its implementation when in his/her judgment the changing conditions so warrant.

E. The President shall initiate action under these procedures by convening a special meeting of the Laboratory Directors with the Faculty Senate, such meeting to be open to all faculty members, to afford an opportunity to consult and advise in the decision to implement retrenchment actions.

1. The President may also solicit and consider other written recommendations from faculty members and administrators unable to attend such a meeting.

F. After considering the recommendations offered in the meeting and any written submissions, the President shall notify the Faculty as to the implementation of retrenchment action, the factors leading to this decision, and a proposed timetable for completing any such procedures.

V. Program Discontinuation or Downsizing

The President of UMCES shall formulate a retrenchment plan that identifies specific programs to be discontinued or to be retained with fewer faculty members (*i.e.*, downsized) and the scope of the reduction of faculty positions.

A. Where retrenchment is initiated solely because of a change in academic priorities and not because of insufficient appropriations, program discontinuation but not program downsizing may be effected.

1. Discontinuation of programs for reallocation of resources to support changing program directions shall be consistent with the mission of UMCES and with emerging areas of emphasis and de-emphasis described in the latest Strategic Plan for UMCES, as provided in *Section III.B.* above.

B. Insofar as circumstances permit, the President shall consult with the Laboratory Directors, the UMCES Faculty Senate, and the UMCES Faculty as a whole prior to formulating the retrenchment plan.

1. The President may employ any means he/she deems appropriate under the circumstances to obtain advice and information.

C. Once formulated, the President shall convey the retrenchment plan through confidential memorandum to the Laboratory Directors, Vice-Presidents, and Chair of the UMCES Faculty Senate.

1. Insofar as circumstances permit, and at the discretion of the President, these individuals shall have not longer than fourteen (14) calendar days to submit written requests for specific modification(s) of the retrenchment plan, during which time the President may meet privately with any or all of them for further discussion.

2. The President shall then formulate a final retrenchment plan, which shall be conveyed in writing to the institution as a whole.

VI. Identification of Appointments to be Terminated

The President of UMCES shall identify the specific programs to be discontinued or downsized as a result retrenchment action.

A. Program discontinuation shall result in the termination of all Faculty appointments in each identified program.

B. Program downsizing shall result in the termination of all faculty appointments *in each rank level* as established by the following order of termination:

Faculty Research Assistant
Associate Agent
Assistant Research Scientist
Associate Research Scientist
Senior Research Scientist
Research Assistant Professor

Assistant Professor/Agent
Research Associate Professor
Research Professor
Associate Professor/Senior Agent
Professor/Principal Agent.

1. Deviations from the order of termination may be made only when the termination of the appointment of the faculty member would significantly impede the ability of UMCES or the program affected by retrenchment to fulfill its mission and goals, or to fulfill commitments under grants and contracts.

C. The President of UMCES shall, by confidential memorandum to the Laboratory Directors, Vice Presidents, and Chair of the UMCES Faculty Senate, identify all faculty members, tenure track and non-tenure track, whose appointments will be directly affected by the action(s).

1. The reason and basis for making a decision to deviate from the order of termination set forth above shall be clearly documented and included in this communication.

a. The communication shall also include a timetable for any faculty appointment termination(s) and the reallocation of resources.

b. Each recipient shall hold the contents of the communication in strictest confidence.

D. Termination of any Faculty appointment under these procedures shall not take effect prior to the notification requirements specified in Section VII that Follows.

E. For the purpose of these retrenchment procedures, the applicable termination notice period is determined by the status of the faculty member at the time the notice of termination is given.

1. Tenured faculty members shall be given notice as set forth in *UM System Policy on Appointment, Rank, and Tenure of Faculty*, Section I.C.9., or corresponding sections of earlier faculty appointment agreements still in effect, as applicable.

2. Non-tenured, tenure track faculty members shall be given notice of termination not less than one (1) year prior to the date of termination of appointment.

3. Non-tenure track faculty, as defined in the *UM System Policy on Appointment, Rank, and Tenure of Faculty*, shall be given written notice of up to one (1) year but not less than thirty (30) days prior to the date of termination of appointment as the result of a retrenchment action.

4. If an untenured faculty member's current appointment agreement specifies a termination date sooner than the date specified in the official written notification, the termination date in such appointment agreement shall stand.

VII. Notification of Faculty Members

The President of UMCES shall give written notice of termination to each faculty member whose appointment is to be terminated pursuant to these retrenchment procedures.

A. The termination notice shall include the following:

1. notification that the appointment is being terminated pursuant to these retrenchment procedures;
2. the applicable notice period for appointment termination;
3. the effective date of termination;
4. statement that the action does not reflect any evaluation of the professional contribution made to UMCES by the faculty member;
5. a statement that UM System Administration shall send, for a period of one (1) year, written notice of faculty openings within the UM System to the last address that the faculty member has on record with UMCES;
6. notification of the right of the faculty member to appeal the termination of appointment;
7. a copy of these retrenchment procedures;
8. if applicable, a statement that deviation was made from the order of termination and the circumstances of the deviation.

B. The termination notice shall also invite each faculty member to meet with the President within thirty (30) calendar days of the date of notification to discuss appointment termination action.

1. At the discretion of the faculty member, such meeting may include the individual's Laboratory Director.
2. If circumstances permit, faculty members on leave or otherwise absent for an extended period may have this meeting postponed until their return to their home Laboratory.
3. This meeting shall not extend the time required for filing a formal appeal of the retrenchment action, or for any other purpose set forth in these procedures.

C. Notice of appointment termination shall be effective on the date the notice is mailed by U.S. certified or registered mail, return receipt requested, to the last address that the terminated faculty member has on record with UMCES.

VIII. Appeal of Retrenchment Action

A faculty member whose appointment is terminated under these retrenchment procedures shall have a right to appeal in accordance only within these procedures.

A. No other appeal procedures with UMCES shall be applicable.

B. Faculty members who have received notification of termination pursuant to these procedures may file written appeal with the President of UMCES within ten (10) working days² of the effective mailing date of the notice of termination.

1. At the discretion of the President, the deadline for filing an appeal may be extended to thirty (30) working days if a faculty member is on approved leave of absence or if a faculty member's duties and responsibilities would otherwise justify delay in filing such appeal.

2. Faculty members in the same program(s) may file a joint appeal, but no faculty member may file an appeal on behalf of another.

3. An appeal shall be addressed in writing to the President of UMCES.

a. The faculty member(s) must include all grounds for appeal in the written request for appeal.

4. The filing or consideration of a request for appeal shall not alter the effective date of termination of the appointment, unless the final decision of the President is to revoke the notice of termination.

C. Grounds for appeals are limited to the following allegations:

1. procedural error;

2. error in the application of the order of termination of appointment;

3. insufficiency of notice of termination;

4. whether any deviation from the order of termination was made without reasonable grounds; and/or,

5. the termination was otherwise unlawful.

² Working days are defined as Monday through Friday, inclusive, exclusive of holidays recognized by UMCES.

D. The President of UMCES shall establish a Retrenchment Appeals Committee pursuant to UM System Board of Regents *Policy on Faculty Retrenchment* (29 November 1990, II-8.00).

1. The Committee shall consist of seven (7) members drawn from members of the UMCES Faculty and administration.

a. Three (3) members shall be faculty members, one from each of the three UMCES Laboratories, elected by majority faculty vote at the respective Laboratory.

b. Three (3) members shall be faculty members appointed by the President.

c. One (1) member from the UMCES Administration shall be appointed by the President.

d. Should Laboratory faculty decline to elect a faculty member in a timely manner, the Committee member for that Laboratory shall be appointed from the Laboratory faculty by the Chair of the UMCES Faculty Senate unless the Chair declines to make such appointment, in which case the President of UMCES shall do so.

e. Faculty members of the Committee shall be selected from individuals who are not subject to the retrenchment action(s) being appealed.

f. Neither the President of UMCES nor the Laboratory Directors shall serve on the Committee.

g. The Committee shall elect its Chair from its membership.

2. The President shall transmit a copy of the retrenchment plan under which appointment termination has been initiated, a copy of each appeal and background information relating to the termination of the individual bringing the appeal to the Chair of the UMCES Retrenchment Appeals Committee within five (5) working days following his/her receipt of the appeal.

E. The Chair shall schedule a hearing on each retrenchment appeal, such hearing to commence between thirty (30) and forty-five (45) calendar days after receipt of the appeal in question by the President, and shall inform in writing the faculty member bringing the appeal, the President, and the members of the Committee of the hearing date, time, and location not later than ten (10) working days after the President's receipt of the appeal.

1. Postponement of the hearing may be granted at the discretion of the Committee upon the written request of the faculty member making the appeal.

2. Not less than five (5) working days prior to the hearing date, the faculty member(s) bringing the appeal shall file with the Chair a statement of facts on which the appeal is based, a list of persons who will be called as witnesses, and a list of documents to be introduced at the hearing.

3. UMCES will be represented by the Office of the Attorney General or a designee of that office at the hearing.

4. The faculty member may be represented by legal counsel throughout the appeal proceedings at the faculty member's expense.

5. The faculty member's failure to appear at the hearing shall be deemed a voluntary dismissal of the appeal.

a. Representation solely by his/her designated legal counsel at the hearing shall not be deemed failure to appear by a faculty member.

b. The Chair may reschedule the hearing if, in his/her judgment and upon receipt of a written request to do so, a faculty member's failure to appear was due to medically certified illness or documented family emergency.

6. The faculty member and the institution may call witnesses and present documentary evidence at the hearing.

7. Each member of the Committee shall have the right to call and question witnesses, to question all witnesses who appear before it, and to request the presentation of documentary evidence.

a. While the Committee shall not have the power of subpoena, the UMCES Administration will make every attempt to comply with reasonable requests for information and interviews by the committee and the faculty member.

8. The formal rules of evidence and of judicial procedures shall not apply to the appeal hearing; however, the Committee may exclude irrelevant or repetitious testimony.

9. The hearing shall be audio tape recorded and a copy of the tape shall be made available upon the faculty member's request.

10. The Retrenchment Appeals Committee must make its decision based on the record.

F. The UMCES Retrenchment Appeals Committee shall submit to the President a separate written report for each appeal not later than ten (10) working days after the date of the conclusion of each respective hearing.

1. Each report shall present the Committee's recommendation to reverse or uphold the appointment termination, explain the basis for such recommendation, and provide all material considered by or submitted to the Committee.

a. The basis for recommending a reversal of appointment termination shall be limited to those grounds set forth above.

b. In the event that there is not unanimity, a minority report or section may be filed.

G. The President shall review each report of the Retrenchment Appeals Committee and shall elect to accept or reject the recommendation made therein.

H. Within ten (10) working days after receipt of the Committee's recommendation, the President shall issue a final decision and mail a copy to the faculty member by U.S. certified or registered mail, return receipt requested.

1. The decision of the President shall be final.

2. The President shall also send a copy of the decision to the Laboratory Directors, Vice Presidents, and Chair of the UMCES Faculty Senate.

I. In the event an appointment termination notice is revoked pursuant to an appeal, the President, at his/her discretion, shall have the right to determine additional retrenchment actions in accordance with these procedures.

IX. Eligibility for New Appointment Following Retrenchment

Tenured, tenure track, and non-tenure track faculty members whose appointments have been terminated according to these retrenchment procedures shall be eligible to apply for appointment for Faculty vacancies at UMCES, subject to applicable search and appointment procedures.

A. Candidates for reappointment shall be given full consideration for any UMCES Faculty position for which they have applied and for which they are qualified.

B. Under these policies, a former UMCES faculty member, whose appointment has been terminated as a result of retrenchment action, may be considered for appointment in a programmatic area or at an UMCES Laboratory different from that in which he/she was previously assigned.

C. UMCES shall offer to a tenured or tenure-track faculty member whose appointment has been terminated during the previous three (3) years pursuant to these retrenchment procedures any new positions with equivalent duties and responsibilities within the same retrenchment unit prior to hiring any other person.