April 29, 2011

Dr. Steven Leslie
Executive Vice President and Provost
MAI 201 (G1000)

Mrs. Patricia Ohlendorf
Vice President for Legal Affairs
MAI 102 (G4800)

Dear Steve and Patti:

The Faculty Council has submitted to President Powers the enclosed “Proposed Revisions to UT Austin’s HOP 3.16 Threatened Faculty Retrenchment,” Documents of the General Faculty 8624-8628. This legislation was approved by the Faculty Council at its meeting on April 11, 2011, and by the General Faculty on a no-protest basis on April 28, 2011. Prior to making his decision, the president would like to receive from each of you a written recommendation regarding this legislation. If you have any questions, please do not hesitate to contact me.

Thanking you for your help, I remain

Sincerely yours,

[Signature]

Charles A. Röeckle
Deputy to the President

CAR/am

Enclosure

cc: President William Powers, Jr.
Dr. Gretchen Ritter, Vice Provost for Undergraduate Education and Faculty Governance
Dr. Sue Greninger, Secretary of the General Faculty and Faculty Council
Ms. Debbie Roberts, Executive Assistant, Office of the General Faculty
Ms. Candice Fischbach, Program Manager, University Policy Office
DOCUMENTS OF THE GENERAL FACULTY

PROPOSED REVISIONS TO UT AUSTIN'S HOP 3.16 THREATENED FACULTY RETRENCHMENT

On behalf of the Faculty Council Executive Committee, Professor Janet Staiger (past Council chair, radio-television-film) submitted the following revised proposal, recommending changes to the University's Financial Exigency Policy. The Faculty Council approved the original legislation (D 8009-8012) on May 10, 2010, and the General Faculty approved it on a no-protest basis on May 25, 2010. On June 1, 2010, the president requested a written recommendation from the provost and the vice president for legal affairs regarding this legislation. Provost Leslie responded to the president on June 17, 2010, recommending disapproval stating

I am concerned that this legislation departs substantially from UT System guidelines. It reduces excessively the decision-making authority of the president as it relates to selection of the faculty committee, and I recommend that this legislation not be approved.

In a letter dated September 15, 2010, President Powers concurred with the concerns expressed by Provost Leslie and returned the proposal to the Faculty Council for reconsideration. Since that time, Janet Staiger has been working with the administration to revise the proposal, which is presented below.

The secretary has classified this as emergency major legislation. It will be presented to the Faculty Council at its meeting on April 11, 2011. Upon approval, the legislation will be presented to the General Faculty on a no-protest basis. Final approval of this legislation resides with UT-System.

Sue Alexander Greninger, Secretary
The Faculty Council and General Faculty

Posted on the Faculty Council web site (http://www.utexas.edu/faculty/council/) on March 31, 2011.
PROPOSED REVISIONS TO UT AUSTIN'S HOP 3.16 THREATENED FACULTY RETRENCHMENT

CURRENT POLICY
CHAPTER 3 - FACULTY AND ACADEMICS
Sec. 3.16. Threatened Faculty Retrenchment

Whenever there is reason to anticipate that the University is sufficiently threatened by financial exigency, declines in enrollment, or changes in educational needs to endanger the continuance of the University's obligations to faculty members with tenure or those on regular academic appointments, the President at the earliest date possible shall inform the President's Advisory Council, the Faculty Council, the Committee of Counsel on Academic Freedom and Responsibility, and all potentially affected budgetary units about the threatening problem.

The President shall consult with these faculty groups to determine the nature and seriousness of the problem, the most appropriate of the possible courses of action to be taken, and the means of safeguarding faculty rights and interests, including tenure rights.

The Committee of Counsel on Academic Freedom and Responsibility shall advise, monitor, and make recommendations with respect to the protection of the rights of faculty members throughout the process of planning and affecting the solution to the problem.

In solving such a problem, The University shall make every reasonable effort to reassign affected faculty members to other suitable work and to aid them in finding other employment.

PROPOSED POLICY
Chapter 3—Faculty and Academics
Sec. 3.16 Abandonment of Academic Positions or Programs

I. GENERAL POLICY
Regents Rule 31003, Abandonment of Academic Positions or Programs, calls for development of institutional procedures for an in-depth review to inform and guide decisions on these matters. The following are procedures for The University of Texas at Austin beyond those indicated in Regents Rule 31003.

Regents Rule 31003, abandonment of academic positions or programs, will be interpreted in the light of Rule 40101 which gives faculty a "major role" in regard to "general academic policies and welfare" and related matters and in the light of the further provisions that assign these faculty responsibilities to the faculty governance organization and require that the organization and procedures of the governance organization be set out in the university Handbook of Operating Procedures and subject to governance review and approval.

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1 On April 12, a preamble was deleted because it was not included in the presentation of the legislation that the Faculty Council approved at its meeting on April 11, 2011. It was not presented because the preamble in the circulated legislation at D 8009-8012 was placed before both the current and proposed legislation and should not have been included in that document.
II. ABANDONMENT OF ACADEMIC PROGRAMS OR POSITIONS FOR ACADEMIC OR BUDGET REASONS

An academic program under consideration for abandonment or an academic position held by a tenured faculty member or a tenure-track or non-tenure-track faculty member before the end of a contract that is under consideration for elimination for bona fide academic or budget reasons should be reviewed in depth through a procedure determined by the President in consultation with the Faculty. The President shall consult with the Faculty Council and the affected budgetary units to determine the most appropriate of the possible courses of action to be taken and the means of safeguarding faculty rights and interests, including tenure rights.

Upon determining the existence of the need to reduce academic programs or faculty positions, or both, the President, in consultation with the Faculty Council Executive Committee, shall appoint a Review Committee composed of faculty and administrative personnel to make recommendations to the President as to which academic positions and/or academic programs should be eliminated. The Review Committee will be composed of at least half faculty members including, unless otherwise agreed to, the Chair of the Faculty Council.

Faculty in a program that is under consideration for abandonment or in academic positions that are under consideration for elimination will be notified and afforded an opportunity to contribute to the review process.

Upon completion of the review process, a recommendation with supporting rationale shall be submitted by the Review Committee to the President for review and recommendation. If the President determines that an academic program shall be abandoned, the President will submit a request for approval with supporting documentation to the appropriate Executive Vice Chancellor.

A faculty member who wishes to appeal for reconsideration of a termination decision shall make this request within 30 days of notification of termination. The hearing process shall proceed as outlined in Section IV of this policy.

III. ABANDONMENT OF ACADEMIC POSITIONS OR PROGRAMS BECAUSE OF AN INSTITUTIONAL FINANCIAL EXIGENCY

Financial exigency is, as defined in the Regents' Rules, "a demonstrably bona fide financial crisis that adversely affects the institution as a whole and that, after considering other cost-reducing measures, including ways to cut faculty costs, requires consideration of terminating appointments held by tenured faculty" (RR 31003, 3). Whenever reason exists to anticipate the University is sufficiently threatened by financial exigency, declines in enrollment, or changes in educational needs to endanger the continuance of the University's obligations to faculty members with tenure or those on regular academic appointments, the President at the earliest date possible shall inform the Faculty Council and all potentially affected budgetary units of the problem.

PROCEDURE FOR ELIMINATING PROGRAMS OR POSITIONS

"Upon determining the existence of a financial exigency and the need to reduce academic positions or academic programs or both, the president . . . shall appoint a committee composed of faculty and administrative personnel . . . At least one-half of the total committee membership shall be faculty members and at least one-half of the faculty members on the committee shall be appointed from recommendations submitted to the president from the [Faculty Council]" (RR 31003.3.1). The formation of the Exigency Committee shall include the general criteria the committee should apply in making its recommendations.

It is recommended that at least a majority of the faculty appointed will be tenured. Any appointed non-tenured or tenure-track faculty should be senior faculty with substantial experience in the university. The nominations should seek to represent the University as a whole, not just programs initially slated to be reduced or just those not so slated, and at least some of the faculty should have served on faculty
governance review committees for recommendations on promotion and tenure for academic personnel. Unless otherwise specified, the committee shall complete its work in a period of time no longer than 60 days from the appointment of the Exigency Committee.

For Regents' Rule section 3.2, Assessment of Academic Programs, the Exigency Committee will provide a written report of its analysis of programs and recommendations. As stated in the Rule, "The committee will review and assess the academic programs of the institution and identify those academic positions that may be eliminated with minimum effect upon the degree programs that should be continued and upon other critical components of the institution's mission. The review will include, but not be limited to, as relevant: (a) an examination of the course offerings, degree programs, supporting degree programs, teaching specialties, and semester credit hour production; (b) an evaluation of the quality, centrality, and funding of research activities; and/or (c) an assessment of the productivity, community service, and quality of clinical services (in relation to teaching, healthcare delivery, and scholarly activity)."

For Regents' Rule sections 3.3, Review Consideration, and 3.4, Tenure Preference, the Exigency Committee should recommend specific positions to be eliminated in its written report. The recommendations should be related to the Exigency Committee's assessment of programs. If other officers of the university, such as deans or program chairs, are involved in identifying individuals whose appointments are to be terminated, the process for obtaining these recommendations should be described in the report. The Exigency Committee will have available the personnel records of those being considered including current curriculum vitae, recent annual reports, promotion committee reports and recommendations, and results of periodic performance reviews. It will have access to full personnel files. 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. Faculty whose positions would be jeopardized by the proposed actions will be provided the opportunity to contribute meaningfully to the Committee's review process, including the ability to respond in writing to the recommendations.

"Upon completion of its review, the committee shall promptly recommend in writing to the president those persons who may be terminated, ranked in order of priority, with the reasons for their selection. The president shall, after consultation with institutional administrative officers as the president may deem appropriate, determine which academic positions are to be eliminated because of the financial exigency and shall give the holders of these positions written notice of the decision" (RR 31003, 3.5, "Recommendation").

IV. PROCEDURE FOR APPEAL
A faculty member whose position has been eliminated due to academic or budget reasons or institutional financial exigency is entitled to use the Faculty Grievance Procedure (HOP 3.18) to appeal the decision, subject to the requirements of Regents' Rules 31003, 3.7 and 3.8.

Following Regents' Rules, "the appeal for reconsideration shall be in writing and addressed to the president" who will send a copy of the appeal to the chair of the Grievance Committee and the Committee of Counsel on Academic Freedom and Responsibility (HOP 3.18). "A faculty member who appeals . . . shall be given a reasonably adequate written statement of the basis for the initial decision to reduce academic positions and, upon request of the person, shall be given all written data or information relied upon in arriving at such a decision" (RR 31003, 3.7).

"The burden shall be upon the appellant to show by a preponderance of credible evidence that: (1) Financial exigency was not in fact the reason for the initial decision to reduce academic positions; or (2) The decision to terminate the appellant as compared to another individual in the same discipline or teaching specialty was arbitrary and unreasonable based upon the evidence presented" (RR 31003, 3.8, (d), (1) and (2)).

A faculty member who is terminated shall be given a reasonable amount of time to close down his/her research and related facilities in a non-destructive way.
During this period of employment and for two additional years, the terminated faculty member shall have right to first consideration for any vacancies occurring in their field of teaching (RR 31003, 3.6).

V. NO CONCURRENT REPLACEMENTS
"If appointments are terminated, the University will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic or clinical program would otherwise result. Similarly, 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 or clinical program would otherwise result" (RR 31003, IV).