

### **Guideline for Implementation of the University of North Carolina Phased Retirement Program**

I. Purpose. The University of North Carolina Phased Retirement Program (the “Program”) provides an opportunity for eligible full-time tenured faculty members to make an orderly transition to retirement through half-time (or equivalent) service for a predetermined period in return for half-time compensation. The Program is completely voluntary and is available when agreed to and entered into by a mutual written agreement between an Eligible Faculty Member and his or her employing institution.

Eligible Faculty members or faculty members who later become eligible may elect annually to seek to participate in the Program during the enrollment life of the Program, with active participation to commence with the start of the next academic year following acceptance by the Eligible Faculty Member’s employing institution. Enrolling Eligible Faculty Members may elect to begin receiving the benefits they have accrued under either the N.C. Teachers’ and State Employees’ Retirement System (“TSERS”) or the UNC Optional Retirement Program (the “OPR”), but they are not required to do so. However, so long as an Eligible Faculty Member does not receive a monthly retirement benefit, he or she will not receive university paid State Health Plan benefits.<sup>1</sup>

#### II. Eligibility

A. The Program is available only to full-time tenured faculty members. Non-tenured and tenure-track faculty are not eligible for the Program.

B. Except as set forth in Section III, below, the Program is available to all full-time tenured faculty members who:

1. Have at least five years of full-time service at the constituent institution of the University of North Carolina (“the University”) at which he or she is currently employed (“the Institution”);
2. Are age 62 or older for members of TSERS or 59½ or older for participants in the OPR; and
3. Are eligible to receive retirement benefits through either TSERS or the OPR, as applicable.

C. The Program contemplates actual retirement and reemployment of participating faculty on a part-time basis for a limited period. For purposes of the Program, “normal retirement age” is 62 years of age for TSERS members and 59½ for participants in the OPR. When a faculty member has achieved the above-listed age for his or her applicable participating retirement program, he or she will have reached “normal retirement age” and, therefore, need not undertake a break in service prior to entering the Program.

D. Tenured faculty occupying full-time administrative positions are not eligible to participate in the Program until they vacate such positions. Thus, only individuals under faculty appointment involving teaching, research and service are eligible to participate in the Program.

E. Individual faculty members are responsible for providing to their Institution all information necessary for it to determine their eligibility as to age, service at the Institution, and retirement benefit eligibility within either TSERS or the ORP. For these purposes, the Institution shall determine an applicant's age and service longevity with reference to the August 1 that follows submission of an application for participation.

F. As set forth in Section III, Eligible Faculty Members do not have an absolute right to participate in the Program. Rather, departments, schools or Institutions may limit participation in the Program based on various conditions. However, if an Eligible Faculty Member and the Institution tentatively agree to an Eligible Faculty Member's participation and "work plan" as described below, the final decision to enter or not enter the Program rests with the Eligible Faculty Member.

G. Once made, a decision to enter the Program (signified by the Eligible Faculty Member's signing and non-revocation of the Phased Retirement Application and Reemployment Agreement and Release described in Section VI.E.) is binding.

### III. Limitations and Eligibility

A. Institutions may limit participation in the Program as follows:

1. An Institution may establish departmental, school and/or institutional caps or limits on the number of Eligible Faculty Members who may participate in the Program.

2. A department, school, or Institution may deny an application to participate in the Program in response to a bona fide finding that financial exigencies of the Institution prohibit further enrollment in the Program. This finding must be based on quantifiable budget constraints of the affected Institution, consistent with Section 605 A. of *The Code*.

3. A department, school, or Institution may also deny an application to participate in the Program upon a finding that granting the application would substantially weaken academic quality or disrupt program sequence in the department, school or Institution. This finding must be supported by external measures of academic quality, such as accreditation standards. (See Section IV.B.3., below.)

B. Phased retirement under the Program may be for a period of at least one but not greater than five years. Each Institution will set the length of phased retirement for its faculty. However, all Eligible Faculty Members at each Institution must have the same participation period of phased retirement.

C. Upon entering the Program, Eligible Faculty Members give up tenure. They terminate full-time employment and contract for a period of half-time (or equivalent) service to their Institution. Half-time responsibilities may vary by Institution and among departments in the same Institution. In addition, half-time service may consist of full-time work for one-half of a year (e.g., full-time work for one semester of an academic year) or half-time work for a year (e.g., half-time work in each of the two semesters of an academic year).

D. Under either pattern, the enrollment period for the Program begins with the fall semester, with actual participation to commence at the start of the next academic year

(provided an Eligible Faculty Member's application is approved). (See Section VI.A., below.) Teaching, research and service assignments during the period of phased retirement are individually negotiated by the Eligible Faculty Member and the appropriate supervisors and/or personnel committee(s). The details of such half-time service (a "work plan") must then be set forth in a University of North Carolina Phased Retirement Program Application and Reemployment Agreement, as described in Sections VI.D., and E., below.

E. Participating Faculty Members will remain subject to *The Code* and Policies of the University and their respective campus. In addition, without expressly or constructively terminating any Agreement, an Institution may place a Participating Faculty Member on temporary leave with pay and/or reassign a Participating Faculty Member's duties during or as a result of any investigation or disciplinary action involving the Participating Faculty Member. Such authority shall be invoked only in exceptional circumstances when the Participating Faculty Member's department or division head determines that such action is in the best interests of the Institution. Further, nothing in the Program or these guidelines shall in any way be interpreted to provide a Participating Faculty Member with greater rights, claims or privileges against his or her Institution and/or the University regarding continued employment than otherwise provided in *The Code* and Policies of the University and their respective campus.

#### IV. Institutional Program Guidelines

A. Each Institution must develop Institutional Guidelines for its implementation of the Program ("Institutional Guidelines").

B. Each set of Institutional Guidelines shall include, or be accompanied by, an official description of any of the following Program participation policies, *to the extent adopted by and applicable to the Institution*:

1. A detailed description of any caps on Program participation, referencing the level (department, school, or Institution) to which a cap pertains. A cap should be applied with reference to predetermined, non-subjective criteria such as length of service or percentage of faculty. The cap of an Institution and/or a department or school must be applied consistently to all Eligible Faculty Members timely seeking to commence enrollment in the Program for a given academic year. (See Sections V. and VI.A. and C., below.) A cap may be an absolute number or a formula that produces a number. In addition, the cap should be consistent over a substantial period of years, not less than five.

2. A detailed description of any limitations the department, school, or Institution places on Program participation because of financial exigencies. The description should include specific references to the budget constraints that prohibit participation and to the means for determining that such exigencies exist. The limitation with respect to financial exigencies of an Institution and/or a department or school must be applied consistently to all Eligible Faculty Members timely seeking to commence enrollment in the Program for a given academic year. (See Sections V. and VI.A. and C., below.)

3. A detailed description of any departmental, school, or institutional limitations on the number of eligible faculty who can participate in the Program based on preservation of academic quality and/or program sequencing. The description should include reference to objective factors that require limitations on participation such as a shortage of professors in a department or school, the required number of faculty necessary for the department or Institution to operate, or student/faculty ratios. These

factors should not be based in any way on age or the expected retirement date of specific faculty members. The limitation with respect to preservation of academic quality or program sequencing of an Institution and/or a department or school must be applied consistently to all Eligible Faculty Members timely seeking to commence enrollment in the Program for a given academic year. (See Sections V., and VI.A., and C., below.)

C. In addition, each set of Institutional Guidelines shall include, or be accompanied by, the following:

1. A number of academic years that participants will be allowed to remain on phased retirement. One uniform time period must be adopted by the Institution with the same number of years for all participants, between one and five, and may not vary by department or school within the Institution. Participation in the Program may not be extended or renewed beyond completion of those years.
2. A detailed description of the procedures that the Institution will use to ensure that Eligible Faculty Members are informed about the Program.
3. A detailed description of the procedures the Institution will use to receive, review, and approve applications for participation in the Program.
4. A schedule of potential services to be provided by a Participating Faculty Member for the Institution (or for each department or school if they differ among departments or schools). The services that comprise a faculty member's individual work plan under the Program will be drawn from this schedule. A typical work plan will likely call for services to be rendered over the two regular-term semesters of the academic year. The work plan may call for services over all 12 months of the participation year, as often occurs under research professorships. However, no work plan may include duties incident to summer school curricula.

V. Distributing Information on the Phased Retirement Plan

A. The following materials should be prepared and distributed (in hard copy or electronic form) to every tenured Faculty Member who appears eligible for likely to become eligible for the Program.

- The University of North Carolina Phased Retirement Program Policy (UNC Policy Manual 300.7.2)
- A letter announcing the Program.
- A copy of the Model University of North Carolina Phased Retirement Application and Reemployment Agreement.
- A copy of the Model University of North Carolina Phased Retirement Program Release.
- A Chart reflecting information regarding persons who are eligible and those who are ineligible for potential participation in the Program. (See example at Section VI.E.4., below.)

B. At the time of each distribution of Program materials to faculty, the Institution should place a notice of the Program in an institutional newsletter or other organ of general circulation among faculty (including electronic publications) that invite faculty who believe they may be eligible to inquire at an identified Institution office about their Program eligibility.

C. The Institution should distribute Program materials by September 1 of the calendar year preceding the academic year in which it appears that a Faculty Member could first apply to participate in the Program.

## VI. Application Procedures

### A. Time Periods and General Process.

1. An application to enter the Program must be made at least six (6) months but not more than eleven (11) months before the commencement of the first semester of an Eligible Faculty Member's requested participation in the Program, to begin at the start of the next academic year.

For purposes of this Program, a semester will be deemed to commence on the date that a faculty member rendering services under an individual work plan is required to begin performing services with respect to the pertinent semester.

2. An application to enter the Program must be submitted to the Eligible Faculty Member's department or division head. An application is subject to final approval by the Institution's Chief Academic Officer following evaluation of the conditions outlined in Sections II and III above and the development of a mutual "work plan" with the Eligible Faculty Member as outlined in Section VI.D., below.)

3. If an Eligible Faculty Member and the employing institution tentatively agree to the faculty member's participation and a mutual "work plan" that addresses the same, the decision to enter or not enter the Program then rests with the Eligible Faculty Member. Once made, a decision to enter the Program (signified by the Eligible Faculty Member's signing and nonrevocation of the Phased Retirement Application and Reemployment Agreement and Release described in Section VI.E.) is binding.

B. Meetings. Faculty group meetings should be held or at least made available at each Institution for all persons eligible to apply for Program participation. Persons who plan to apply to participate in the Program should meet with the officials appointed or designated by their Institution to answer questions about the Program. Faculty may then approach their respective department or division head or school dean to negotiate participation and their half-time "work plan" for the phased retirement period.

C. Participation Limits or Caps. As described in Sections III.A., and IV.B.1., above, some departments, schools or Institutions may have approved limits or caps on the number of Program participants independent of limitations based on financial exigency or academic quality. If the department, school or Institution receives more qualified applications for the Program than it has available spaces, it should select participants based on non-subjective criteria, such as an applicant's employment start date at the Institution (that is, by institutional seniority, with the qualified person having the most institutional seniority being selected first).

Applications to participate in the Program will be taken in two different formats, depending on the situation.

1. Where There Are Openings Available Under a Quota or Openings Without Limitation.

In Institutions, departments or schools with openings available under a preset participation limit or cap larger than the number of applicants or which do not have a limitation on the number of participants, timely applications will be accepted on a first

come, first eligible basis. When an Eligible Faculty Member submits an application for the Program, the application shall be processed in the manner described in Sections VI.D., and E., below.

2. Where the Number of Applicants Exceeds Openings Available Under a Quota or Other Institutional Limitation After Announcement of Such Limitation.

Where the pertinent Institution, department or school has established, pursuant to Sections III., and IV., above, a limitation on Program participation by means of a cap, a bona fide finding of restricting financial exigency, or the need to deny participation to preserve academic quality or program sequence integrity, the Institution shall limit its consideration of applications for positions in such restricted positions to those applications timely submitted as required under Section VI.A., above.

If, under these conditions, more timely applications are received than spaces are available, the Institution shall cease accepting applications for the pertinent positions and shall announce to all Eligible Faculty members who had timely submitted a relevant application that each is to have a period of two weeks (14 calendar days) from the date of the institutional announcement to submit the Eligible Faculty Member's written response, conveying a determination to continue pursuing or to cease pursuing the corresponding phased retirement position. (The date of institutional announcement and the date of faculty response shall each be determined with reference to their date of physical delivery to the addressed party, their postmark date, or the date of receipt for postal handling, whichever is earliest.)

The Institution shall promptly and appropriately acknowledge its receipt of all faculty responses. The seniority procedures established pursuant to this Section VI.C., shall then be used with respect to all applications that continue to be viable.

D. Work Plans

1. The Program permits Eligible Faculty Members to work half-time (or its equivalent) for half-time compensation. Each Institution is responsible for developing an individual half-time "work plan" with Eligible Faculty Members who wish to participate in the Program. These agreements should be between an institutional officer designated for this purpose (such as a dean or department or division head) and the Eligible Faculty Member.

2. Before beginning discussions with Eligible Faculty Members, each Institution should devise a half-time schedule of potential services. (See Section IV.C.4., above.) The schedule may vary by department or school but should cover the complete range of contracted faculty activities (for example, teaching, research and creative activities, service, advising, writing of grants, and publications). The schedule should be as detailed as possible and may be used as an attachment to the agreements with Eligible Faculty Members accepted to participate in the Program.

3. Once the duties and arrangements with an Eligible Faculty Member are fully determined, the agreement to participate in the Program must be stated in writing in a formal Phased Retirement Application and Reemployment Agreement and signed by the head of the employing department, dean of the school or division, and the Chief Academic Officer.

4. In cases where the Institution and the Eligible Faculty Member cannot agree on a half-time work plan, the Eligible Faculty member will not be allowed to participate in

the Program. Conversely, once made, a decision to enter the Program is binding. That decision is signified by the Eligible Faculty Member's signing and non-revocation of the Phased Retirement Application and Reemployment Agreement and Release described in Section VI.E., below. However, after an Agreement is finalized, the parties may still terminate the Agreement at any time upon mutual written agreement.

5. Each Institution should strive to make the Phased Retirement Application and Reemployment Agreements as uniform as possible within each department or school. The Agreements must be based on the objective needs of the employing department, school or Institution. Under no circumstances should "deals" be made to encourage faculty members to accept the Program. Likewise, each Institution must not take unjustifiably harsh positions to dissuade an Eligible Faculty Member from participating.

E. Agreement and Release

1. Procedure. The last step in the application process is to obtain a signed, completed Phased Retirement Application and Reemployment Agreement (the "Agreement") and Release (the "Release") from the electing Eligible Faculty Member. The requirements for a valid release are set out in detail under the Age Discrimination in Employment Act ("ADEA") and, thus, it is mandatory that each Institution follow the steps outlined below:

a. When negotiation of a "work plan" has been completed, the electing Eligible Faculty Member should be provided a completed Agreement, which has been signed by the Institution's administrators, and a Release for review and signature.

b. The Agreement and Release package should contain:

(1) The letter announcing the Program;

(2) The Program Summary;

(3) The Agreement;

(4) The Release; and

(5) A job title and age Chart for the Institution and the department or school, as described in Section VI.E.4., below.

It is essential to the validity of the Agreement and the Release that this entire Package be provided to the Eligible Faculty Member when he or she is offered the completed Release for execution.

2. Consideration period.

a. As required by the ADEA, the Eligible Faculty Member must be offered at least forty-five (45) calendar days to execute and return the Agreement and Release to the Institution. The forty-five day period begins with the date of the final offer, which is the date on which the Institution physically delivers to the Eligible Faculty Member the completed, signed Agreement and the separate Release. If the final offer is not hand delivered to the Eligible Faculty Member, it must be sent by a method of delivery that requires a signature for delivery, as described in UNC Policy 101.3.3.

b. The Eligible Faculty Member should be encouraged to use the full 45 days and to consult an attorney, if he or she desires. Under no circumstances

should the Eligible Faculty member be requested or pressured to return the package in a shorter period. However, the Eligible Faculty Member may sign the Agreement and Release before the end of the 45-day period, if he or she so chooses.

3. Revocation option.

a. Once an Eligible Faculty Member signs the Agreement and Release, he or she also has the right under the ADEA (if he or she so chooses) to revoke the Agreement and the Release at any time within seven (7) calendar days of the date both documents are fully executed by the parties.

b. An election to participate in the Program does not become final until after the seven-day revocation period has passed without the Eligible Faculty Member's revocation. Consequently, if an Eligible Faculty Member uses his or her entire 45-day consideration period, his or her Agreement may not be binding until almost two months after he or she receives the Agreement and the Release to sign.

c. Revocations must be in a writing personally signed by the Eligible Faculty Member and received by the official to whom prior application to participate in the Program had been submitted.

d. Revocation may be effected by personal delivery of the revocation, or by submission of it for postal delivery. (The date of revocation is the date on which the faculty member physically delivers the revocation to the appropriate institutional officer or office or the date on which the revocation is posted to that officer or office; the postmark date or date of receipt for postal handling of the revocation shall be prima facie evidence of the date of the revocation.)

e. If an Eligible Faculty Member elects to revoke the Agreement and Release within the seven-day revocation period, the Agreement is void. Moreover, in such circumstances, the Eligible Faculty Member will continue in his or her same full-time employment status as the Faculty Member held immediately prior to the execution of the Release.

4. Job title and age list.

a. The ADEA requires that for a release of age discrimination claims to be valid, the release must include the job titles and ages of all individuals in the same job classification or organizational unit eligible for the Program, and the ages of all individuals in the same job classification or organizational unit who are not eligible. The Chart each Institution must attach to the Agreement and Release Package is meant to satisfy this requirement.

b. Each Institution is responsible for preparing this Chart, showing eligibility/ineligibility for the Institution as a whole by department or school. Such chart should specifically:

- Contain a list by faculty position, age and department (but without name) of those faculty eligible and those ineligible to participate in the Program.
- Include as persons eligible to participate those tenured faculty members who would be eligible to participate if they resigned their

current full-time administrative positions (including both faculty and administrative titles).

- Include as persons ineligible to participate those tenured faculty members who meet the eligibility requirements but who are disqualified for one of the reasons identified under the Program (other than current employment in an administrative position), as well as tenured faculty members who do not meet the basic eligibility requirements.

c. Faculty members remain individually responsible for providing to the Institution age and service data needed to determine their particular Program eligibility.

d. The Chart should be in the format of the Example set forth below. Data appearing initially on the Chart were required to reflect projected age and service as of August 1, 1998. The Chart should then be updated each year as of August 1, reflecting projected age and service as of the next August 1, to the extent known or reasonably predictable.

e. The Chart should be prepared by individuals not involved in any other aspect of the institution’s implementation of the Program. The age data used to prepare the Chart should not be made available to any person who is involved in determining limits on participation in the Program or who is developing individual agreements under the Program. This information is highly sensitive and should be treated accordingly.

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<u>Example</u>			
Job title*	Age*	Number Eligible*	Number Ineligible*
History Professor	60	2	1
History Professor	59	0	1
[This age 59 professor is under admin. appointment, so also give admin. title.]			
Assoc. History Professor	51	0	1
Assoc. History Professor	43	0	2
Assoc. History Professor	41	<u>0</u>	<u>1</u>
<b>Subtotal (History Dept.)</b>		2	6
Latin Professor	<u>62</u>	<u>1</u>	<u>0</u>
<b>TOTAL (Institution)</b>		3	6

This Chart is based upon current institutional information. However, if any error or omission is detected, it should be promptly reported to the appropriate academic department or school. Faculty members are individually responsible for providing age and service data needed to determine their Program eligibility.

In addition, tenured faculty occupying full-time administrative or staff positions are deemed potentially eligible on the assumption that, prior to accepting early retirement, they must voluntarily resign/vacate their administrative appointment.

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5. Data updates. Prior to an Eligible Faculty Member receiving a final Agreement and Release package, the chart and data discussed in Section VI.E.4., above, must be updated for the Application and Release to remain valid. The Chart's revision date should appear in the upper right hand corner. A Chart will be deemed current with respect to an application if the Chart has been updated as of the August 1 next proceeding the date on which the application is timely received from a faculty member.

## VII. Questions and Answers

A. There are sure to be numerous questions about the Program. Each Institution shall designate specific officials who will be the only persons authorized to respond to these questions. They will likely be Human Resource personnel, such as the campus Benefits Officer or other Personnel Department staff. The number of individuals appointed for this purpose should be kept to a minimum. The more individuals an Institution authorizes to answer questions, the greater the risk that an Institution's answers to questions will not be uniform.

B. Each Institution must ensure that the information provided to faculty members is accurate and generally consistent. This may be aided by presentations at scheduled Program orientations, like the faculty group meetings suggested in Section VI.B., above. These faculty and administrative personnel designated to provide Program information should be told not to respond to interpretive policy questions about the operation of the Program and, instead, advised to refer such questions to a single designated official of the Institution.

C. Institutions may seek assistance from representatives in the UNC General Administration Divisions of Academic Affairs, Legal Affairs, or Human Resources. This assistance is intended to be a source of information for each Institution's Program officials, not a hotline for faculty members.

D. A frequent question will likely be, "Should I apply to participate in the Program?" Faculty members should be advised that the decision to seek entry into the Program is a personal one and one they will have to make on their own. An Institution SHOULD NOT advise a faculty member to seek or not seek to participate in the Program. For example, a Program officer should not say, "If I were in your shoes, I would seek to participate," or "I think this is a good opportunity for you since you are close to retirement age."

E. The following do's and don'ts also may be helpful:

### DO

- Spend as much time with the faculty member as necessary to fully explain the Program.
- Answer any question the faculty member has about the operation of the Program or the eligibility and disqualification provisions of the Program.

### DON'T

- Provide an opinion to a faculty member on whether he or she should seek to participate in the Program.

- Indicate to a faculty member that anything about his or her current position and work at the Institution will change if he or she does not seek to participate in the Program.
- Give out names of faculty members who are participating or not participating in the Program.
- Discuss the effect that a faculty member's decision may have on another faculty member's opportunity to participate in the Program.
- Discuss or mention in any fashion or form the protected statuses included in Section 103 of *The Code*. These circumstances should play no part in information the Institution provides regarding the Program.

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<sup>4</sup>If a faculty member does not elect to receive a monthly retirement benefit from TSERS or ORP, upon entering phased retirement he/she may continue participation in the State Health Plan as a permanent half-time employee on a fully contributory basis. In that case, the faculty member would not be eligible to receive the University contribution.