

ADMINISTRATIVE MEMORANDUM

SUBJECT Initiation of Phased Retirement Program

NUMBER 378

DATE January 22, 1998

On January 9, 1998, the Board of Governors authorized and directed the President to effect the Phased Retirement Program of The University of North Carolina. In doing so, the President is to issue policies and materials needed to put in place the Program adopted by the Board. (See Administrative Memorandum Number 370, dated May 16, 1997, for a statement of the adopted program.) Further, the President is to review and approve supplemental procedures and standards (guidelines) drafted by the constituent institutions for use incident to their offering the Program to eligible University faculty.

Pursuant to the Board's actions I am providing with this Administrative Memorandum five attachments which, with the minutes of the Board of Governors that were appended to Administrative Memorandum Number 370, contain the substance of the University's Phased Retirement Program. In successive draft versions these five attachments had earlier been provided to the institutions to facilitate their drafting institutional guidelines. As now provided with this Administrative Memorandum, the five attachments are official policies and materials of the Phased Retirement Program. Though in clear text, each attachment has the same substance as the engrossed text of an amended draft previously distributed. Each clear-text attachment (now a Program document), its corresponding draft version, and the means by which that draft had been distributed, are identified as follows:

Attachment A- **Proposed Letter to Eligible Faculty Announcing the Phased Retirement Program** (December 19, 1997, draft; sent by Carroll memorandum of same date)

Attachment B- **Summary: University of North Carolina Phased Retirement Program** (December 19, 1997, draft; sent by Carroll memorandum of same date)

Attachment C- **University of North Carolina Phased Retirement Application and Reemployment Agreement** (December 19, 1997, draft; sent by Carroll memorandum of same date)

Attachment D- **University of North Carolina Phased Retirement Program General Release** (December 19, 1997, draft; sent by Carroll memorandum of same date)

Attachment E- **Administrative Policies for Implementation of The University of North Carolina Phased Retirement Program** (January 6, 1998, draft; sent by Carroll letter through which annotated institutional draft guidelines were returned to the institution)

At this time all institutions' drafts of their guidelines have been reviewed, annotated, and returned by this office for revision. Upon an institution's resubmission to General Administration of its revised guidelines and following clearance of the institution's revised draft, the Office of the President will send a notice to the corresponding institution for it to proceed with announcing and implementing the Phased Retirement Program for fall term 1998.

I wish to thank the Chancellors and their staff for the patience they have demonstrated in this difficult but important process.



Molly Corbett Broad

Attachments

cc: Dr. Judith Stillion
Ms. Kitty McCollum
Mr. David Edwards
The Vice Chancellors for Academic Affairs
The Senior Human Resources Administrators
The Benefits Representatives

**PROPOSED LETTER TO ELIGIBLE FACULTY
ANNOUNCING THE PHASED RETIREMENT
PROGRAM**

_____, 19__

[Eligible Faculty Member]
123 Campus Drive
University, North Carolina 12345

Dear *[Eligible Faculty Member]*:

I am pleased to announce the establishment of the University of North Carolina Phased Retirement Program (the "Program"). Our records suggest that you are now eligible to participate in the Program or will be eligible on or before August 1, 1998. This letter sets out in summary fashion the details of the Program. We have enclosed for your review a Program Summary, a sample UNC Phased Retirement Application and Reemployment Agreement, a Release, and a list (both departmental and institutional in scope) of individuals, by faculty rank, who appear eligible or ineligible for the Program.

Only tenured faculty who meet certain age and service requirements ("Eligible Faculty Members") may participate in the Program. Eligible Faculty Members are individuals who are at least age 60 with five years of contributory service, or at least age 50 with 20 years of contributory service in either the Teachers' and State Employees' Retirement System ("TSERS") or the Optional Retirement System (the "ORP"). In addition, an Eligible Faculty Member must

have at least five years of full-time service at his or her current institution.

Should you decide to participate in the Program, you would give up tenure and terminate your current full-time position. In return, [name of institution] would contract with you for half-time reemployment for a period of [the one-to-five-year period specified for all participating faculty]. You will negotiate individually with [name of department/institution] to determine your specific teaching duties and the time frame for fulfilling them. For example, you may be contracted to teach a full schedule for either fall or spring semester each year or teach a half schedule for both semesters. Half-time responsibilities and duties may vary among departments, but all enrollments in the Program commence with the fall semester and do not include summer school duties.

You would be compensated at a salary equal to fifty percent (50%) of the salary you received during your last nine- or twelve-month term of employment incident to full-time service. Your salary would be paid over a twelve-month period. Upon entering the Program, you would continue to be subject to performance reviews. Subject to any limitations imposed under the State Retirement System, you would be eligible for salary increments and merit pay based on annual evaluations.

The Program will be offered during the five-year period February 1, 1998, through January 31, 2002, with respect to the academic years 1998, 1999, 2000, 2001, and 2002. Subject to certain enrollment caps and annual application "windows," you may apply during this five-year period to participate in the Program commencing with the fall semester that follows the date of your application. If you begin your phased retirement by fall semester 2002, you will be allowed to complete your period of phased retirement.

You do not have an absolute right to participate in the Program. [Name of institution] may limit participation in the Program in response to a *bona fide* finding that financial exigencies prohibit enrollment in the Program or that further enrollment will substantially weaken academic quality or disrupt program sequence.

[Name of institution] may also set caps to limit the number of Eligible Faculty Members who may participate in the Program.

If you choose to enroll in the Program, you may participate in all employee benefit programs for which you are eligible. These programs include *[list specific programs for which the individual would be eligible such as health insurance, life insurance, etc.]*

If you decide to participate in the Program, you will be asked to sign a release as a condition of your entering the Program. You are encouraged to consult with your attorney and financial advisors before making a decision to enter the program. A decision to enter the Program is irreversible once made. The period of phased retirement may be terminated at any time if you and *[name of institution]* both agree.

You are encouraged to attend an informational meeting on *[date]* at *[time]*. The meeting will be held at *[location]*. At this meeting officers who have been designated to provide information to Eligible Faculty Members will be available to answer any questions you might have about the Program. The officers will also be available as a resource at any time.

We know that decisions regarding retirement are both emotional and difficult. The Program is intended to make the process easier and to facilitate difficult decisions by allowing one to continue to participate in academic life and the mentoring of students while preparing for the future. We hope you will agree that the Program is a beneficial one.

[NAME OF INSTITUTION]

By _____
(Title)

Enclosures

SUMMARY
UNIVERSITY OF NORTH CAROLINA
PHASED RETIREMENT PROGRAM

I. PURPOSE.

The University of North Carolina Phased Retirement Program (the "Program") is designed to provide an opportunity for eligible full-time tenured faculty members ("Eligible Faculty Members") to make an orderly transition to retirement through half-time (or equivalent) service. The goals of the Program are to promote renewal of the professoriate in order to ensure institutional vitality and to provide additional flexibility and support for individual faculty members who are nearing retirement. The Program is entirely voluntary and will be entered into by a written agreement between an Eligible Faculty Member and the institution. The effective date of the Program is February 1, 1998, subject to there being in place supplemental procedures and participation standards ("guidelines") at the employing institution. Enrolling Eligible Faculty Members may elect to begin receiving the benefits they have accrued under either the Teachers' and State Employees' Retirement System ("TSERS") or the Optional Retirement System (the "ORP"), but they are not required to do so.

II. ELIGIBILITY AND APPROVAL.

A. The Program is available only to full-time tenured faculty members. Non-tenured and tenure-track faculty are not eligible for the Program. Faculty must be at least age 60 and have at least five years of contributory participation in either TSERS or the ORP, or be at least age 50 and have at least 20 years of contributory participation in either TSERS or the ORP as of the August 1 that follows application for the Program. In addition, he or she must have at least five years of full-time service at his or her current institution. Faculty are individually responsible for providing to the

institution age and service data needed to determine their Program eligibility. Faculty who occupy full-time administrative or staff positions are not eligible for the Program until they vacate the administrative or staff position. Thus, services rendered while in phased retirement will be only those teaching and administrative duties under faculty appointment.

B. Once made, a decision to enter the Program is irreversible.

C. Generally, the decision to enter or not enter the Program rests entirely with Eligible Faculty Members. An application to enter the Program must be made at least six (6) months but not more than eleven (11) months before the effective date of participation in the phased retirement period. However, this deadline is at least four (4) months prior to participation with respect to applications for retirement periods to commence with fall term 1998.

D. Eligible Faculty Members do not have an absolute right to participate in the Program. Departments, schools, or institutions may limit participation in the Program based on three conditions. One condition is the finding that financial exigencies prohibit enrollment in the Program. The second condition is that further enrollment in the Program will substantially weaken academic quality or disrupt program sequence. Further, a department or school or an institution may each establish a cap or limit on the number of Eligible Faculty Members who may enter the Program.

E. An application to enter the Program must be submitted to the Eligible Faculty Member's Department or Division Head. It is subject to final approval by the Chief Academic Officer.

F. The Program will be offered for a period of five years. Eligible Faculty Members may elect to enter the Program at any time during this five-year period for the number of years specified by the employing institution for all its participating faculty.

III. TERMS AND CONDITIONS.

A. Phased retirement under the Program is subject to the following terms and conditions:

1. Upon entering the Program, Eligible Faculty Members give up tenure. They terminate full-time employment and contract for a period of half-time service to their institution. Half-time responsibilities may vary by institution and among departments in the same institution. 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). Under either pattern the Program enrollment period begins with the fall semester. 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 the half-time service ("work plan") must be set forth in a UNC Phased Retirement Application and Reemployment Agreement (the "Agreement").

2. In conjunction with the Agreement executed under the Program an Eligible Faculty Member must execute a waiver of rights and claims under the Age Discrimination in Employment Act (the "ADEA") and other laws (the "Release"). The Release has to fully comply with the requirements for knowing and voluntary waivers as provided in the ADEA. After the Agreement is drafted, it must be delivered to the Eligible Faculty Member and the Eligible Faculty Member has no less than forty-five (45) days within which to consider the Release. Eligible Faculty Members are encouraged to consult an attorney prior to executing the Release. The Release does not become effective and enforceable for a period of seven (7) calendar days following its execution, and during such period the Eligible Faculty Member may unilaterally revoke the Release. If the Eligible Faculty Member elects to revoke the Release within the seven (7)-day period, the Eligible Faculty Member must immediately be restored to the same full-time employment status as the faculty member held prior to execution of the Release, and the Agreement becomes null and void. Revocations must be in a writing personally signed by the affected faculty member and must be effected by personal delivery or posting by United States Mail to the office or official to whom the prior application to participate in the Program had been submitted.

3. Participating Faculty Members receive a salary equal to fifty percent (50%) of the salary they received during their last nine- or twelve-month term of employment incident to full-time service. Compensation is paid over twelve (12) months irrespective of the pattern of duties under the Faculty Member's work plan. Subject to any limitations imposed under the State Retirement System, Eligible Faculty Members are eligible for salary increments and merit pay based on annual evaluations.

4. Participating Faculty Members will remain subject to The Code of The University of North Carolina.

5. 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. All Eligible Faculty Members at each institution will have the same participation period of phased retirement.

B. Eligible Faculty Members who elect into the Program will retain their professorial rank and the full range of responsibilities, rights, and benefits associated with it, except for tenured status. (The employing institution, though, will keep records of participation so as to note those faculty who are in Phased Retirement [PR].) Eligible Faculty Members participating in the Program are eligible to participate in the following employee benefit plans or programs: *[List specific benefits available to Eligible Faculty Members]*.

IV. GENERAL PROVISIONS.

A. Nothing in the Program precludes a participating Faculty Member from terminating his or her phased retirement at any time upon the mutual agreement of the parties.

B. Eligible Faculty Members participating in the Program do not enjoy the benefits of tenure. They may not serve on committees if applicable procedures require that members be tenured. Otherwise, participants have the same academic freedoms and responsibilities as other faculty members and have access to all grievance and appeal procedures available to non-tenured members of the faculty who are not participating in the Program.

C Participating Faculty Members are expected to maintain high levels of professional commitment to their institution.

**UNIVERSITY OF NORTH CAROLINA
PHASED RETIREMENT APPLICATION
AND REEMPLOYMENT AGREEMENT**

EMPLOYEE NAME _____

EFFECTIVE DATE OF TERMINATION _____ DATE REEMPLOYED _____

REEMPLOYMENT OBLIGATION FROM _____ TO _____

INSTITUTION _____

DEPARTMENT _____

AGE ___ YEARS OF SERVICE _____ RETIREMENT PLAN _____

To participate in the University of North Carolina Phased Retirement Program (the "Program"), I understand that I must terminate my employment with The University of North Carolina ("UNC") and give up my tenured status. I further understand that I may elect to start receiving the benefits I have accrued under either the Teachers' and State Employees' Retirement System ("TSERS") or the Optional Retirement Plan ("ORP") but am not required to do so. Furthermore, all retirement benefits for which I am eligible shall be determined in accordance with the applicable Plan. I understand and acknowledge that my decision to participate in this Program is voluntary and irreversible.

Upon the acceptance of my application to participate in the Program, [*name of institution*] is obligated to offer me reemployment for a term of [*at least one but not greater than five, as prescribed by the institution for all participants*] years. My reemployment shall be on a half-time basis (or the equivalent thereof). Compensation during the period of reemployment shall be one-half the salary I was

earning during my last 9- or 12-month term of full-time employment prior to entering the Program. I will continue to be subject to performance reviews on reemployment. Subject to any limitations imposed by the State Retirement System, I will be eligible for salary increments and merit pay increases based on annual evaluations.

The specific duties which I shall perform under this agreement are as follows:

I understand that, unless I have attained my normal retirement age under the applicable plan, if I elect to start receiving the benefit I have accrued under TSERS or the ORP, I must, in order to validate such election, not be employed by The University of North Carolina or the institution for 30 days immediately following the effective date of my retirement or termination of employment.

At the conclusion of the *[at least one but not greater than five]* -year reemployment period neither *[name of institution]* nor The University of North Carolina has any obligation to offer me additional employment.

I may participate in all state or institutional employee benefit programs for which I am eligible as a half-time employee or retiree. Those programs include *[List specific programs that would be available to the Eligible Faculty Member, such as dental insurance, life insurance, etc.]*.

I will remain subject to The Code of The University of North Carolina.

This Agreement may be terminated at any time upon the mutual written agreement of the parties.

Signed _____ Date _____
Eligible Faculty Member

Signed _____ Date _____
Department Head

Signed _____ Date _____
Dean of School

Signed _____ Date _____
Chief Academic Officer

ATTACHMENT D

UNIVERSITY OF NORTH CAROLINA PHASED RETIREMENT PROGRAM GENERAL RELEASE

I, _____, in accordance with the University of North Carolina Phased Retirement Program (the "Program") and the Reemployment Agreement between the [*name of constituent institution*], a constituent institution of The University of North Carolina [*short name of constituent institution*] and me, dated _____, [1998, 1999, 2000, 2001, or 2002], entered into in conjunction herewith, hereby **release, acquit, and forever discharge** the State of North Carolina; The University of North Carolina; [*short name of constituent institution*]; their employee benefit plans; all current and former officers, agents, and employees of the above-named entities (in both their official and individual capacities); and all successors of the above-named entities (all hereinafter referred to as "Releasees") from any and all claims, actions, causes of action, demands, rights, damages, costs, sums of money, accounts, covenants, contracts, promises, attorney fees, and all liabilities of any kind or nature whatsoever at law, in equity, or otherwise which I or my heirs, personal representatives, executors, administrators, successors, or assigns (as to whom this Release is also binding) ever had, now have, or may have against any of the Releasees for all events and occurrences from the beginning of the world to the date on which I have signed this Release. I do not, however, release or waive any Claims that may arise after the date this Release is executed.

I understand that this Release includes any and all Claims, whether such claims are now known or later discovered, I may have relating in any way to my employment by [*short name of constituent institution*] or the conclusion of that employment, including without limitation any Claims under the law of contract or tort; the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. §§ 621 et. seq.), including the Older Workers

Benefit Protection Act of 1990; Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000e et. seq.), including the Civil Rights Act of 1991 and the Civil Rights Acts of 1866, 1870, and 1871 (42 U.S.C. §§ 1981 et. seq.); the Fair Labor Standards Act (29 U.S.C. §§ 201 et. seq.); the Americans with Disabilities Act (42 U.S.C. §§ 12101 et. seq.); and the Rehabilitation Act of 1973; or any other federal, state, or local statutory or common laws relating to employment discrimination or employment.

I also acknowledge that I have been provided with a notice, as required by the Older Workers Benefit Protection Act of 1990, that contains information about individuals covered under the Program, eligibility factors for participation in the Program, time limits applicable to the Program, the job titles and ages of the employees designated as eligible to participate in the Program, and the ages of all individuals in the same job classification who have not been designated as eligible to participate in the program.

I understand and acknowledge that, as provided in the Older Workers Benefit Protection Act of 1990, I have the right, and that I have been encouraged, to consult with an attorney before entering into this Release. I understand that I have at least forty-five (45) days in which to consider whether to execute this Release and the Reemployment Agreement and may revoke this Release and the Reemployment Agreement within seven (7) calendar days after signing the Release. The Reemployment Agreement and this Release will not be effective or enforceable until the expiration of this seven-day period.

I understand that, as used in this agreement, references to The University of North Carolina include all the University's constituent institutions, present and former members of the Board of Governors and the Boards of Trustees of the constituent institutions, faculties, employees, agents, successors, and assigns. I also understand that references to the State of North Carolina include all of the State's political subdivisions, administrative agencies, employees, agents, representatives, successors, and assigns.

By executing this Release, I acknowledge that I understand all of its terms and that I have executed it voluntarily and without duress of any kind, and with full knowledge and understanding of its significance. I also acknowledge that I am entering into this Release in exchange for consideration in addition to anything of value that I am otherwise entitled to receive. I further agree that should a portion of this Release be held void, the remainder shall continue in full force and effect.

Date

Employee Signature

STATE OF _____)
)
COUNTY OF _____)

I, a Notary Public in and for the aforesaid state and county, hereby certify that _____ appeared before me this ____ day of _____, ____ and executed the foregoing General Release.

Notary Public

My Commission Expires: _____

**ADMINISTRATIVE POLICIES
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 service (or its equivalency) for a predetermined number of years. It is completely voluntary and the terms of an Eligible Faculty Member's participation will be implemented by written agreement between the enrolling faculty member and The University of North Carolina ("the University"). The Program will be available for a period of five years, and Eligible Faculty Members or faculty members who become eligible may elect annually to enter the Program during this five-year period, effective with the fall semester following the election.

II. ELIGIBILITY.

Except as set out in Part III, below, the Program is available to all full-time tenured faculty members who have five years of full-time service at the constituent institution of the University at which he or she is currently employed ("the Institution") and who (1) are age 60 or older and have at least five years of contributory participation in the Teachers' and State Employees' Retirement System ("TSERS") or in the Optional Retirement System ("ORP") or (2) are age 50 or older and have at least 20 years of contributory participation in TSERS or the ORP. Full-time tenured faculty occupying full-time administrative or staff positions are not eligible to participate in the Program until they vacate such positions. Thus, services rendered while in phased retirement will be only those teaching and administrative duties under faculty appointment.

The Phased Retirement Program contemplates actual retirement and reemployment of participating faculty on part-time status for a limited period. For those who have not yet reached "normal retirement age" retirement must be demonstrated by a clear break in service of at least 30 days between cessation of full-time employment and return to

institutional employment under the Program. For participants in the Optional Retirement Program (ORP) "normal retirement" is the later of one's 65th birthday and the date on which one completes five years of service. For those in the Teachers' and State Employees' Retirement System (TSERS) "normal retirement" is the age at which the participating faculty member first satisfies an age-and/or-service requirement for "service" (unreduced) retirement. Under TSERS unreduced retirement is available if one is age 60 with 25 years of credited service time, if one is age 65 with five years of credited service, or if one has 30 years of credited service, at whatever age.

It is the individual faculty member's responsibility to insure that the Institution has all information necessary for it to determine the eligibility of the applicant both as to service at the Institution and service 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.

III. LIMITATIONS ON ELIGIBILITY.

The Program provides that the institutions may limit participation in the Program as follows:

- (1) An institution may establish departmental or school and/or institutional caps on faculty participation 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 employing institution prohibit further enrollment in the Program. This finding must be based on quantifiable budget constraints of the affected institution.
- (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. This finding should be supported by external measures of program quality such as accreditation standards.

All enrollments in the Program shall commence with the fall semester of the first academic year of contracted employment under the

Program whether or not services are performed during the fall semester.

IV. INSTITUTIONAL PROGRAM GUIDELINES.

Each institution must develop Institutional Guidelines for its implementation of the Program ("Institutional Guidelines"). Once developed, each institution's Institutional Guidelines must be forwarded to the President of The University for her approval.

Each entity's Institutional Guidelines should include or be accompanied by the following:

- (1) a list of any caps on 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 also be applied consistently to all eligible faculty seeking to commence enrollment in the Program the same fall semester. A cap may be an absolute number or a formula that produces a number; the cap should be consistent over the duration of the Program trial period.
- (2) 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. The description should include reference to objective factors which require limitations on participation; e.g., shortage of professors in a department or school, required number of faculty necessary for the department or institution to operate, student/faculty ratios, etc. These factors should not be based in any way on age or the expected retirement of specific faculty members.
- (3) a detailed description of any limitations the department, school, or institution places on participation because of financial exigencies. This section should include specific references to the budget constraints which prohibit participation and to the means to determine that such exigencies exist.
- (4) A list by faculty rank, age, and department (but without name) of those faculty eligible and those ineligible to participate in the Program. This list should include those faculty ineligible to

participate because they currently occupy full-time administrative positions; their listing should include both faculty and administrative title. Faculty are individually responsible for providing to the institution age and service data needed to determine their Program eligibility.

- (5) the number of academic years that participants will be allowed to remain on phased retirement. The time period adopted by the institution must be 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.
- (6) a detailed description of the procedures that the institution will use to ensure that Eligible Faculty Members are informed about the Program.
- (7) a detailed description of the procedures the institution will use to receive, review, and approve applications.
- (8) a **schedule of potential services** for the institution or, if different, for each department or school. 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 workplan may include duties incident to summer school curricula.

V. DISTRIBUTING INFORMATION ON THE PHASED RETIREMENT PLAN.

Each institution should distribute the following materials to every tenured Faculty Member who appears that he or she will have satisfied both the age and service requirements for eligibility on or before August 1, 1998:

- A letter announcing the Program (Attachment A)
- The Program Summary (Attachment B)

- A copy of the Model University of North Carolina Phased Retirement Application and Reemployment Agreement (Attachment C)
- A copy of the Model Phased Retirement Release (Attachment D)
- A Chart reflecting information regarding persons who are eligible and those who are ineligible for the Program. (See example at p. 11, below.)

This information should not be distributed until an Institution has received approval of its procedures and standards and, in any event, **not earlier than February 1, 1998**. Each institution should provide the above information in subsequent years on or about September 1 to Faculty Members for the following year who appear that they will have satisfied the age and service requirements for eligibility as of the following August 1.

At the time of each distribution of the 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 that invites faculty who believe they may be eligible, to inquire at an identified institutional office about their Program eligibility.

A faculty member may apply for the Program not earlier than eleven (11) months prior to commencement of the first semester of Program participation and not later than six (6) months prior to that semester. (Applications for participation commencing fall semester 1998 may be submitted only after the later of [1] February 1, 1998, and [2] the President's approval of the institution's guidelines; applications for fall semester 1998 must be submitted at least four [4] months prior thereto.)

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

VI. APPLICATION PROCEDURES.

A. Time Periods.

At the present time the University intends to announce the Program on February 1, 1998. It will remain open for individual enrollment that commences with any fall semester from 1998

through 2002. After the Program is announced, group meetings should be held or at least made available at each institution for all persons eligible to elect into the Program. Persons who plan to elect 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 chair or school dean to negotiate their half-time work plan for the phased retirement period. When this negotiation is complete, the electing Eligible Faculty Member will be provided a completed Phased Retirement Application and Reemployment Agreement (the "Agreement") and a completed release (the "Release") to consider and sign. As required by the Age Discrimination in Employment Act ("ADEA"), the person will have at least forty-five (45) days to return the Agreement and the Release. Persons electing to participate in the Program also have the right under the ADEA to revoke the Agreement and the Release anytime within seven (7) days of the date they are fully executed by the parties. An election to participate in the Program does not become final until after that date. Revocations shall be in a writing personally signed by the affected faculty member and shall be effected by personal delivery or posting by United States Mail the revocation to the office or official to whom the prior application to participate in the Program had been submitted. If the Agreement and the Release are revoked, the Agreement is void.

B. Questions and Answers.

There are sure to be numerous questions about the Program. Each institution should 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. Each institution must ensure that the information provided faculty members is accurate and consistent. Faculty and administrative personnel designated to provide Program information should be told not to respond to questions about the operation of the Program and told to instruct faculty members to direct their questions to an appropriate official.

To help each institution, the Office of General Administration has designated the following persons to respond to questions about the Program: Dr. Judith Stillion, Associate Vice President for Academic Affairs; Mrs. Kitty McCollum, Assistant Vice President for Finance and University Benefits Officer; and Mr. David Edwards, Special Assistant to the President (for Legal Affairs). Their function is to be a source of information for each institution's Program officials, **not** to act as a hotline for faculty members.

Each institution should make its Program officers available to answer questions. It may also be effective for the officers to make presentations at scheduled Program orientations.

Many of the questions that the institutions will receive are likely to be in the nature of whether "I should elect to participate in the Program." Faculty members should be advised that the decision to elect 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 accept or refuse to participate in the Program. For example, a Program officer should not say, "If I were in your shoes, I would elect to participate," or "I think this is a good opportunity for you since you are close to retirement age."

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.

DO NOT

- Provide an opinion to a faculty member on whether he or she should elect 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 elect 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 age, race, gender, national origin, or religious affiliation. These circumstances should play no part in information a Committee member provides regarding the Program.

C. Participation Limits or Caps.

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 compromise of academic quality. If the department, school, or institution receives more applications for the Program than it has available spaces, it should select participants based on non-subjective criteria; e.g., their start date at the Institution; i.e., by institutional seniority, with the person having the most institutional seniority being selected first.

D. Work Plans.

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 faculty 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 chair) and the Eligible Faculty Member.

Before beginning discussions with Eligible Faculty Members, each institution should devise a half-time schedule of potential services. The schedule may vary by department or school and should cover the complete range of faculty activities, for example, teaching, research and creative activities, service, advising, writing of grants, publications, etc. The schedule should be as detailed as possible and may be used as an attachment to the agreements with Eligible Faculty Members who elect to participate in the Program.

Once the arrangements with an Eligible Faculty Member are complete, the agreement to participate in the Program must be

stated in writing in a formal Agreement (see Attachment C) and co-signed by the faculty member, the chair of the employing department, dean of the school or division, and the Chief Academic Officer. In cases where the Institution and the Eligible Faculty Member cannot agree on a half-time plan, the Eligible Faculty Member will not be allowed to participate in the Program. Once an Agreement is finalized, the parties by mutual agreement may terminate the Agreement at any time.

Each institution should strive to make the 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 unacceptably harsh positions to dissuade a faculty member from participating.

E. Agreement and Release.

(1) Procedure.

The last step in the application process is to obtain a Release from the electing Eligible Faculty Member. The requirements for a valid release are set out in detail under the ADEA and, thus, it is mandatory that each institution follow the steps outlined below:

- a. After an Agreement is completed and executed, the electing Eligible Faculty Member should also execute a Release. Both documents should be retained as part of the Agreement and Release Package.
- b. The Agreement and Release Package should contain:
 - (i) The initial letter to faculty (Item 1);
 - (ii) The Program Summary (Item 2);
 - (iii) The Agreement (Item 3);
 - (iv) The Release (Item 4); and
 - (v) The job title and age Chart for the institution and the department or school (Item 5).

It is essential to the validity of the Agreement and the Release that all of this information has been provided to the Eligible Faculty Member when he or she is offered the completed Release for execution.

- c. The Eligible Faculty Member has at least forty-five (45) days from the time he or she receives the Agreement and Release Package to execute the Release. The Eligible Faculty Member should be encouraged to use the full 45 days and to consult an attorney. Under no circumstances should the Eligible Faculty Member be requested or pressured to return the package in a shorter period.
- d. The Eligible Faculty Member may sign the Release before the end of the 45-day period if he or she so desires. Again, the Eligible Faculty Member should be encouraged by the institution to utilize the full 45-day period. **[With respect to the initial Program announcement, it may be appropriate to say that no applications for the Program will be accepted before March __, 1998, in the event participation limits or caps are an issue.]**
- e. Once the Eligible Faculty Member signs the Agreement and the Release, he or she has seven (7) days to revoke them. Consequently, an Eligible Faculty Member's Agreement may not be binding until almost two months after he or she receives the Agreement and the Release to execute.

(2) The Job Title and Age List.

The ADEA requires that for the release of age discrimination claims to be valid the Release must include the job titles and ages of all individuals 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.

Each institution will be responsible for preparing this Chart, showing eligibility/ineligibility for the institution as a whole by department or school. The Chart should be in the format of the Example set forth below. The Chart must reflect the faculty members by job title and age. The Chart should also 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, as well as tenured faculty members who do not meet the basic eligibility requirements. Data appearing initially on the Chart should reflect projected age and service as of August 1, 1998. Once completed, the Chart should be forwarded to General Administration for review. The Chart should 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.

Example

Job title*	Age*	Number Eligible*	Number Ineligible*
History Professor	60	2	0
" "	59	0	1
[This age 59 professor is under admin. appoint. so also give admin. title.]			
Assoc. History Professor	51	1	1
" " "	43	0	2
" " "	41	<u>0</u>	<u>1</u>
<u>Subtotal</u> (History Dept.)		3	5
 Latin Professor	 62	 1	 0

TOTAL (Institution)		<hr/> 103	<hr/> 237

* 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 are individually responsible for providing age and service data needed to determine their Program eligibility.

This 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 very sensitive and should be treated accordingly.

VII. ONGOING IMPLEMENTATION OF THE PROGRAM.

The Board of Governors has instituted the Program for a five-year period and will study and monitor the Program to determine whether it should continue after that time. If no action is taken to extend the Program, applications will not be received after January 31, 2002.

A. Applications.

As described in these Policies, the initial offer of the Program is to be made February 1, 1998. After the Program is announced, further applications to participate in the Program will be taken in two different formats, depending on the situation.

(1) Openings Available Under a Quota.

In departments or schools with openings available under a preset participation limit or cap or which do not have a limitation on the number of participants, applications will be accepted on a first come, first eligible basis. When an Eligible Faculty Member signs up for the Program, his or her application should be processed in the manner described in Sections VI.D. and E., above.

(2) No Openings Available Under Quota After Initial Announcement.

In this situation, if more than one Eligible Faculty Member is eligible for a new opening on the date the opening becomes available, a two-week window will be allowed for those Eligible Faculty Members to determine whether to apply for the Program. If more applications are received than spaces available, the seniority procedures established in Section VI.C., above, should be used.

B. Data.

The data discussed in Section VI.E.(2), above, must be updated for the Application and the 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 preceding the date on which the application is timely received from a faculty member.