



TRANSMITTAL LETTER

The University of North Carolina
Office of the President

Transmittal Number 38
March 23, 2005

Subject: 300.2.13. Supplemental Pay Policy for Employees Exempt from the State Personnel Act (EPA)

300.7.3. Implementation of Phased Retirement Program (Repealed)

400.4.1. Licensing Nonpublic Institutions to Conduct Post-secondary Degree Activity in North Carolina

400.4.1[R]. Regulations Governing Review of Licensure for Nonpublic, Post-secondary Institutions Proposing to Open Additional Campuses or Sites in North Carolina to Offer Degree Programs that have been Previously Licensed by the Board of Governors

500.6. University Equity Acquisition Policy

600.3.4. Granting of Management Flexibility to Appoint and Fix Compensation

This letter transmits two newly adopted policies, two amended policies, one repealed policy, as well as one newly adopted regulation:

300.2.13. Supplemental Pay Policy for Employees Exempt from the State Personnel Act (EPA). This policy was adopted by the Board of Governors at its meeting on March 18, 2005. Please contact Gretchen Bataille, Senior Vice President for Academic Affairs, at 919-962-4614 with any questions.

300.7.3. Implementation of Phased Retirement Program. This policy was repealed by the Board of Governors at its meeting on February 11, 2005. Please contact Gretchen Bataille, Senior Vice President for Academic Affairs, at 919-962-4614 with any questions.

400.4.1. Licensing Nonpublic Institutions to Conduct Post-secondary Degree Activity in North Carolina. This amended policy was approved by the Board of Governors at its meeting on

December 11, 2004. Please contact Bobby Kanoy, Senior Associate Vice President for Academic and Student Affairs, at 919-962-4907 with any questions.

400.4.1[R]. Regulations Governing Review of Licensure for Nonpublic, Post-secondary Institutions Proposing to Open Additional Campuses or Sites in North Carolina to Offer Degree Programs that have been Previously Licensed by the Board of Governors. This regulation was approved by the President on March 23, 2005. Please contact Bobby Kanoy, Senior Associate Vice President for Academic and Student Affairs, at 919-962-4907 with any questions.

500.6. University Equity Acquisition Policy. This policy was adopted by the Board of Governors at its meeting on January 14, 2005. Please contact Alan Mabe, Vice President for Academic Planning, at 919-962-4589 with any questions.

600.3.4. Granting on Management Flexibility to Appoint and Fix Compensation. This amended policy was approved by the Board of Governors at its meeting on February 11, 2005. Please contact Gretchen Bataille, Senior Vice President for Academic Affairs, at 919-962-4614 with any questions.

Supplemental Pay Policy for Employees Exempt from the State Personnel Act (EPA)

I. This policy addresses supplemental payments to faculty and non-faculty EPA employees. UNC GA/OP and each constituent institution must have policies or regulations in place that clearly address the requirements and procedures for special payments.

The Supplemental Pay Policy is intended to address two situations:

- A. Temporary increases in responsibility during the employee's normal work hours or contract period.
- B. Extra duties performed outside the employee's job description and outside of normal work hours or that add extra work hours in addition to those spent on normal job duties.

Supplemental pay is not a bonus for performance. Employees who are eligible for overtime under FLSA regulations must not be given supplemental pay in lieu of overtime.

II. The Supplemental Pay Policy should address the following:

- A. Types of assignments, including faculty overloads, special or temporary administrative assignments, and non-faculty EPA teaching assignments.
- B. Procedures for requesting temporary pay.
- C. Limits on overload time or length of assignment.
- D. Compensation guidelines, including any limits on the amount of pay.

III. The following steps must be completed and documented before a supplemental payment can be made:

- A. The employee's supervisor must submit a written request stating the justification for supplemental pay in advance of the start of the special assignment.
- B. The request must clearly identify the activities covered, the relationship of the activities to normal job responsibilities, the expected duration, and the basis for determining the one-time or periodic supplemental payment.
- C. The request must be made to the appropriate administrator (Provost/Vice Chancellor, Department Head, Dean, Vice President, etc.)
- D. The approved request must be submitted to Human Resources or EPA Personnel Administration for final review and processing.
- E. Documentation of supplemental payments must be maintained in the employee's personnel file.

IMPLEMENTATION OF PHASED RETIREMENT PROGRAM

WHEREAS, the Board of Governors on March 14, 1997, approved a report of the Committee on Personnel and Tenure recommending the adoption of a comprehensive phased retirement program (the "Program") to be implemented on a five-year trial basis; and,

WHEREAS, the University retained the services of private counsel versed in the particulars of employment, tax, and other laws relating to phased retirement programs, to assist the University in preparing legally sound University policies and instruments of participation for the Program; and,

WHEREAS, the University, using the guidance of private counsel, has instructed the constituent institutions to prepare certain supplemental procedures and standards to implement the Program; and,

WHEREAS, the board desires that the Program be implemented at the constituent institutions in early 1998 so that individual faculty can participate in the Program commencing fall term 1998;

NOW, THEREFORE, the board hereby authorizes and directs the president to effect the Program in accordance with the said report, (1) issuing appropriate University policies and materials and (2) reviewing and approving for implementation all institutional standards and procedures consistent with the Program and applicable law.

400.4.1

Adopted 02/08/74
Amended 02/13/76
Amended 09/13/85
Amended 10/09/98
Amended 11/11/04

**POLICY ON LICENSING NONPUBLIC INSTITUTIONS TO
CONDUCT POST-SECONDARY DEGREE
ACTIVITY IN NORTH CAROLINA**

[These rules have been published in a separate pamphlet, copies of which are available at UNC Office of the President. The document can also be accessed online at <http://intranet.northcarolina.edu/docs/aa/licensure/rulesandstandards.pdf>]

Regulations governing review of licensure for nonpublic, postsecondary institutions proposing to open additional campuses or sites in North Carolina to offer degree programs that have been previously licensed by the Board of Governors.

1. An institution proposing to open an additional campus or site in North Carolina to offer degree programs that have been previously licensed by the Board of Governors should send a letter of intent to the Office of the President indicating the degree programs it proposes to offer and the city and proposed location for offering them.
2. The institution shall provide an application for the proposed campus or site documenting that the institution is in compliance with, or intends to be in compliance with, the Rules and Standards at the proposed new campus or site. This application should be presented at least six months prior to the date the institution proposes to open a campus or site in a new city or locality.
3. The Office of the President will review the application for the proposed campus or site.
4. If appropriate, the Office of the President will respond in writing that the institution may proceed with its plans to open the new campus or site to offer the proposed postsecondary degree programs that have been previously approved by the Board of Governors. The Office of the President requires a site visit, within a calendar year of the date of the letter of approval, by a Team of Examiners with expertise in the field to ascertain the institution's compliance with the Rules and Standards at the new campus or site.
5. A report of the site visit by the Team of Examiners will be forwarded to the Office of the President for review and recommendation to the President.
6. The institution must comply with the Rules and Standards to maintain its license to offer the degrees at the additional site.

UNIVERSITY EQUITY ACQUISITION POLICY

I. Introduction

Constituent Institutions occasionally have the opportunity to acquire equity in companies in relation to inventions. Usually, equity agreements are structured to enhance technology transfer whenever cash reserves for new companies are not available for payment of intellectual property rights as the result of licensing or other transfer of technology.

Acceptance of equity for constituent institution intellectual property rights presents issues considerably different from fee-generating licensing transactions and therefore should be treated differently within the framework of the UNC Patent and Copyright Policies, in regard to distribution of equity and/or earnings on equity to inventors.

This policy has been designed to limit the issues of institutional conflicts of interest and conflicts of interest of inventors, departments, schools and technology transfer offices and officers. Decisions on when to convert equity into earnings should be made at “arms length” from the technology development and licensing offices to limit securities exchange violations.

II. Policy

A. Conditions for Receipt of Equity

Equity in a company may only be received by a constituent institution in the UNC system as partial or full consideration for a technology license or transfer of technology, as negotiated by the technology transfer office or by the Chief Research Officer, Chief Academic Officer, or University Counsel. Constituent institutions should designate the unit responsible for effecting such negotiations and the unit responsible for receiving and managing such equity. Without the approval by a constituent institution’s Chancellor, no other unit of the constituent institution, including affiliated foundations, may acquire equity in a company from which the constituent institution has received or is negotiating to receive equity in conjunction with a licensing or transfer of technology transaction, except as provided in Section II(F) of this Policy. Acceptance of equity will be based upon similar principles of constituent institution fee-generating licensing where transactions occur in an atmosphere of openness, objectivity and fairness, placing education, research and public service before institutional or individual gain. Equity transactions will be conducted in accordance with other University policies such as: the Policy on Conflicts of Interest and Commitment, the Policy on Ethics in Research, the Policy on External Professional Activities for Pay, and other related University policies and guidelines.

B. Negotiations, Founder’s Shares, Voting Representation

1. **Negotiations.** Except as expressly approved by the constituent institution's Chief Research Officer, there shall be no negotiation on behalf of a constituent institution independent of the appropriate technology transfer office (or other responsible unit, as designated by constituent institution) by any constituent institution inventor regarding any constituent institution license with or on behalf of a licensee, including a licensee company founded in whole or in part by that inventor. Independent negotiations by an inventor regarding personal consulting contracts with the potential licensee are permissible, provided the inventor complies with the Policy on External Professional Activities for Pay, the Policy on Conflicts of Interest and Commitment, the Patent and Copyright Policies, and other applicable University policies.
2. **Founder's Shares.** Any constituent institution inventor who is a Founder of a company shall not be eligible to be a recipient of equity or the proceeds of equity accepted on behalf of the constituent institution. For the purposes of this Policy, a "Founder" shall be any person who has received, receives or is likely to receive a substantial economic benefit as a result of acting as a founder, originator, or promoter of a company.
3. **Voting Representation.** No constituent institution or its assigns will seek or accept voting representation on the board of directors of a licensee company that provided equity as consideration for a license from the constituent institution, regardless of the level of its equity received as consideration for a license. Constituent institution employees may accept appointments to boards of directors and scientific advisory boards of licensees in their individual capacities and not as constituent institution representatives, but are still subject to all applicable university policies in doing so.

C. Constituent institution Employee or Officer Equity Ownership

Other than a founder or inventor, no officer or employee of a constituent institution will be allowed to hold or acquire equity in a company with which the constituent institution has negotiated or is negotiating a license agreement if that license agreement includes the transfer of equity to the constituent institution as either partial or complete consideration for the license agreement and if the officer or employee is engaged in or has access to or knowledge of the negotiation between the company and the constituent institution.

D. Equity Terms and Minority Ownership

1. **Equity Terms.** The terms of any equity-based technology licensing transaction, with the exception of the form of consideration, shall be consistent with constituent institution licensing transactions for comparable technologies.

2. **Minority Ownership.** Neither constituent universities nor their assigns will accept more than a minority ownership share in a licensee as consideration for a license.

E. Timing and Nature of Distribution

Where there is a proposal for equity in a company to be accepted by the constituent institution or its assign as consideration for a technology licensing transaction, the constituent institution technology transfer office or other designated responsible unit may elect either:

1. **Distribution at Licensing.** Arrange for inventor(s) other than Founder(s) to receive in the aggregate a one time distribution of no less than 15% of the total shares due to the constituent institution or its assign directly from the licensee upon execution of the relevant agreement, including provisions relating to restrictions, if any, on transfer or disposition of inventor(s) equity, in which case the inventor will be responsible for retaining his/her own business advisors, legal counsel and tax counsel and will be responsible for all financial, tax and legal consequences related to the equity he/she receives; or
2. **Distribution After Licensing.** Arrange for all equity, including shares attributable to the inventor(s) other than Founder(s), to be issued in the name of and held by the constituent institution or its assign. The inventor(s)' sole right under these circumstances is the receipt of no less than 15% in the aggregate of the total shares, or the pro-rata total shares, or cash equivalent, of equity held by the constituent institution or its assign that become unrestricted and have market value. The inventor will be responsible for retaining his/her own business advisors, legal counsel and tax counsel and will be responsible for all financial, tax and legal consequences related to the equity or cash equivalent he/she receives.

F. Management of Equity

1. **Independent Management Decisions.** The constituent institution or its assign shall make decisions regarding the management and disposition of equity it receives pursuant to this Policy based upon sound business judgment, which may include a decision that it is in the best interests of the constituent institution to establish a certain date of liquidation of equity, and publicly available information. Such decisions shall be made independent of any undue influence by the inventors, the technology transfer office, or any other campus licensing unit.

2. **Limited Additional Investment.** Under no circumstances shall the constituent institution or its assign make any direct investment in any licensee in which equity has been accepted by the constituent institution or assign in consideration for license pursuant to this Policy unless and until the licensee company is publicly traded or until licensee's equity is priced by unrelated and independent means.

III. Institutional Policies

Each constituent institution may adopt internal policies, procedures, and guidelines consistent with this Policy. The internal policies, procedures, and guidelines may include a provision that recognizes the unique nature of equity acquisition and allows the constituent institution's Chancellor to approve exceptions to certain provisions of this Policy, in extraordinary individual cases, where those exceptions comply with all University of North Carolina and constituent institution policies, relevant laws, regulations, and ethical requirements.

GRANTING OF MANAGEMENT FLEXIBILITY TO APPOINT AND FIX COMPENSATION

A. Purpose

Pursuant to the provisions of Chapter 116 of the General Statutes of North Carolina and in an effort to enhance the administrative efficiency of the University, the Board of Governors hereby delegates to the Boards of Trustees for institutions designated as Special Responsibility Constituent Institutions with management flexibility the authority to administer personnel actions as described in this policy. The authority granted by the Board of Governors is subject to the *Code* of the University of North Carolina, policies of the Board of Governors and all applicable federal and state laws, policies, regulations, and rules. This provision requires each Special Responsibility Constituent Institution to comply with, along with other rules, all rules and regulations concerning equal employment opportunity, to act in recognition of funding availability and constraints within each institution's budget, and to take into account the actions of the Governor, the Office of State Budget and Management, and the General Assembly.

B. Institutional Plans For Management Flexibility For Personnel Appointments

The Board of Governors shall review and approve plans for management flexibility for personnel appointments. Upon approval the Board of Trustees of a Special Responsibility Constituent Institution¹ shall have the authority delegated by this policy. An institutional plan shall include the following:

1. Policies and procedures for the recruitment and selection of senior academic and administrative officers. A campus policy for promotion and tenure² that complies with the *Code* of the University of North Carolina and current federal law, provides for periodic pre-tenure, tenure and promotion review at multiple levels, and provides clear requirements for promotion and the conferral of permanent tenure.
2. A schedule and process for periodic review of promotion and tenure policies and a process for amending promotion and tenure policies that includes a review by the Office of the President.
3. Salary ranges, based on relevant data, for vice chancellors, provosts, deans, and other similarly situated administrators³ that are not included in the annual Board of Governors' study establishing salary ranges.
4. Evidence of comprehensive salary studies that establish salary ranges for tenured faculty within different disciplines based on relevant data.⁴

¹ In order for an institution to have management flexibility for personnel appointments, the institution must be designated and maintain the status of a Special Responsibility Constituent Institution.

² As applied to the North Carolina School of the Arts, the terms "tenure policy" or "policy for promotion and tenure," as used herein, refer to the institution's policy governing the appointment of faculty.

³ This would include directors of major administrative, educational, research, and public service activities.

⁴ When used in this policy, the phrase "relevant data" indicates that the institution shall draw comparisons to peer institutions as approved by the Board of Governors. Data from peer institutions will be used when available except in instances in which a campus can demonstrate legitimate labor market differences that justify the use of a supplemental or alternative set of peer institutions.

5. Policies governing the compensation of faculty and non-faculty EPA (exempt from the State Personnel Act) from non-state sources such as grants, endowment funds, practice plan funds, etc.
6. Policies governing any non-salary compensation of faculty and non-faculty EPA.
7. Documentation that the campus has not had audit findings related to personnel practices, salary or payroll for the previous three years or evidence that any findings have been remedied.
8. Evidence of appropriate accountability procedures in the event that the Board of Trustees delegates the authority granted pursuant to this policy to the chancellor.

C. Delegation of Authority to Boards of Trustees of Institutions With Management Flexibility

1. Simultaneous with approval by the Board of Governors of an institution's plan for management flexibility in personnel, the Board of Trustees of an institution with management flexibility is delegated the authority, which it may not delegate until further action by the Board of Governors, to:⁵
 - a. Upon recommendation of the chancellor, appoint⁶ and fix the salary and non-salary compensation⁷ for all vice chancellors and senior academic and administrative officers (as defined in Section I.A. of policy 300.1.1 titled "Senior Academic and Administrative Officers") for which the Board of Governors establishes salary ranges. Any salary set by the Board of Trustees shall be established consistent with the salary ranges and the policies of the Board of Governors and the regulations and guidelines established by the Office of the President. Once appointed, all vice chancellors and senior academic and administrative officers will be responsible to the chancellor or the chancellor's designee and will serve at the pleasure of the chancellor.
 - b. Upon recommendation of the chancellor, establish salary ranges for deans and other similarly situated administrators that are not included in the annual Board of Governors' study establishing salary ranges. These salary ranges must be based upon available relevant data.
 - c. [Deleted]
 - d. Upon recommendation of the chancellor and consistent with the approved tenure policies and regulations of each institution, confer permanent tenure.

⁵ The delegation authorized by this policy is in addition to the delegation by the Board of Governors to the Boards of Trustees contained in the Appendix to the *Code of the University of North Carolina*.

⁶ For the purpose of this policy the term "appoint" means the initial appointment, reappointment, or an appointment that constitutes a promotion or a significant change in position responsibilities.

⁷ Throughout this policy, all actions of a Board of Trustees of a Special Responsibility Constituent Institution to "fix the compensation" of employees are subject to the limitations contained in Section D of this policy, the policies of the Board of Governors, guidelines and regulations established by the Office of the President, and institutional plans, policies and procedures.

2. Simultaneous with approval by the Board of Governors of an institution's plan for management flexibility in personnel, upon recommendation of the chancellor and consistent with the approved tenure policies and regulations of each institution, the Board of Trustees is delegated the authority set forth below. Any of the authority set forth below may be delegated to the chancellor.

- a. Establish salary ranges within different disciplines based on relevant data, and fix the compensation for faculty with permanent tenure;
- b. Appoint and fix the compensation for faculty awarded the designation of Distinguished Professors.
- c. Appoint and fix salary of deans and other similarly situated administrators that are not included in the annual Board of Governors' study establishing salary ranges. These salary ranges must be based upon available relevant data. The compensation shall be consistent with established ranges, equity studies, and relevant policies, regulations, and guidelines.
- d. Award compensation from non-state sources consistent with policies established by the Board of Governors.

3. The Board of Trustees of each institution with management flexibility:

- a. Shall, prior to the effective date of implementation, file with the Office of the President the salary ranges and relevant documentation for the administrators for whom the campus has authority for setting ranges or salaries. Such documentation shall be based on relevant data.⁸
- b. Shall provide an annual summary to the Board of Governors on personnel actions covered by this delegation. That annual report shall include information regarding:
 - i. The EPA appointments of all:
 - a. vice chancellors and provosts
 - b. senior academic and administrative officers for which the Board of Governors establishes salary ranges
 - c. deans, and other similarly-situated administrators
 - ii. The conferral of tenure;
 - iii. The salary and non-salary compensation for all positions listed in subpart C.(3)(b)(i) above;
 - iv. The most recent analysis of equity issues relevant to the employment of faculty and administrators;
 - v. Audit findings related to weaknesses in the internal control structure, deficiencies in the accounting records, and noncompliance with rules and regulations or any other instances where significant findings are identified. The report should specifically detail any findings regarding personnel practices,

⁸ See footnote 4.

salary or payroll for the previous year and remedial action taken in response to audit findings.

- c. Shall submit to the Board of Governors for review, at least 30 days prior to a regularly scheduled meeting, all new or modified compensation policies and salary ranges established for faculty with permanent tenure and senior academic and administrative officer positions.

D. Responsibility of the Board of Governors and the President

1. In consultation with the President, the Board of Governors shall:

- a. Issue a resolution each year interpreting legislative action regarding salaries. Annually set salary ranges for chancellors, vice chancellors, and members of the Office of the President senior staff. These ranges will be based upon relevant available data.
- b. Establish the salary range of any new vice chancellors. Any significant changes in the organizational structure of a constituent institution, such as re-organization resulting in the creation of a new vice-chancellor, dean or equivalent administrative position, shall be approved by the President.
- c. Annually review the salaries set by the medical schools at the University of North Carolina at Chapel Hill and East Carolina University to ensure that the salaries are coordinated and are consistent with relevant data in a national medical labor market.
- d. Review and approve proposed salary increases in instances in which the salary of any employee exempt from the State Personnel Act or faculty member (1) exceeds the established salary range or (2) exceeds the salary in effect at the end of the last fiscal year both by ten thousand dollars or more and by fifteen percent or more.⁹
- e. Establish chancellors' salaries and salaries of the President's senior staff based on recommendations from the President.
- f. Provide periodic faculty salary studies based on peer data.
- g. Approve contracts for the chancellors and the President.
- h. Consistent with the Board of Governor's responsibility for ensuring accountability, conduct performance audits on policies, practices, and other matters related to Management Flexibility implementation and operation at constituent institutions to which this flexibility has been granted.

2. For institutions designated as institutions with management flexibility the President and

⁹ Except to current employees appointed to a new position after a competitive process or to current employees promoted to higher rank consistent with campus policies or conversion from nine (9) months to a longer annual term.

the Board of Governors shall have the same responsibilities and authority as set forth in the policy on Selection Criteria and Operating Guidelines for Special Responsibility Constituent Institutions.¹⁰

3. The Personnel and Tenure Committee of the Board of Governors reserves the right to withdraw the granting of management flexibility to any institution that does not adhere to the policies and procedures set forth in this policy. Should this occur, the Board of Governors will notify the institution of the discrepancies, and if they are not adequately addressed, in the judgment of the Board of Governors, then the management flexibility shall be withdrawn. This will mean another review process will have to be conducted and flexibility reinstated under the original procedure.

E. Implementation of the Delegated Authority

1. Special Responsibility Constituent Institutions seeking to obtain management flexibility may submit a plan to the Senior Vice President for Academic Affairs for review and approval by the Board of Governors or the Personnel and Tenure Committee of the Board on any date after March 1, 2002.

2. The delegation authorized by this policy is not effective until the date set upon the approval of the institution's plan for management flexibility for personnel appointments.

3. The Personnel and Tenure Committee of the Board of Governors is hereby authorized to approve plans submitted by a Special Responsibility Constituent institution and to grant management flexibility for personnel appointments. The committee shall report to the Board of Governors, prior to the effective date of the delegation, those institutions approved for management flexibility for personnel appointments by the Committee.

¹⁰ See §600.3.1 of the University of North Carolina Policy Manual and in particular §600.3.1.A.2.