

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004**

TAB	DESCRIPTION	ACTION
1	OPTIONAL RETIREMENT PROGRAM (ORP) Supplemental Retirement Plan	Motion to approve
2	FIRST READING GOVERNING POLICIES AND PROCEDURES Section II.B.3 Appointment Authority and Procedures	Motion to approve

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BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004

INSTITUTION / AGENCY AGENDA
COLLEGE AND UNIVERSITIES OF THE STATE BOARD

SUBJECT

Adopt a supplemental retirement plan for employees whose income exceeds the amount allowable by Internal Revenue Code Section.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section II.K.2

Idaho Code 33-107A, 33-107B

Internal Revenue Code Section 401(a)(17) and IRC Section 415(d)

BACKGROUND

The State Board of Education currently provides retirement benefits for all employees of the Institutions through the Optional Retirement Program (ORP¹) and Public Employee Retirement System of Idaho (PERSI). At the time the existing plans were created the income limits did not apply to government plans. Subsequent Federal law changes have placed income limits on government plans, including the ORP and PERSI.

The ORP and PERSI are 401(a) plans, which provide for annual mandatory employer and employee contributions, are both based on a percentage of the employee's annual compensation. Currently, employers contribute 7.81% and the employee contributes 6.97%. The current employee compensation that currently can be considered in making the ORP or PERSI contributions is \$205,000. This limit is established by Section 401(a)(17) of the Internal Revenue Code.

The college and universities expect that in the future certain individuals will have compensation that exceeds the 401(a)(17) cap. The employer's objective is to provide a "make whole" mechanism that will enable these individuals to receive the same benefits they would receive if the ORP and PERSI had no cap.

DISCUSSION

At the advice of retirement benefit experts, the Board, on behalf of the institutions, proposes to establish and maintain a separate supplemental retirement plan for those state employees whose annual compensation exceeds the 401(a)(17) cap. The logistics of the new plan are illustrated on Exhibit A attached hereto. Another attachment to this agenda includes Exhibit B, the supplemental retirement benefit plan.

¹ The State Board of Education currently provides additional retirement plans that are employee salary deferral only plans. Those plans remain and are unaffected by the proposed new supplemental retirement plan.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004**

**INSTITUTION / AGENCY AGENDA
COLLEGE AND UNIVERSITIES OF THE STATE BOARD - continued**

The supplemental retirement plan would enable eligible participants to accumulate funds for their retirement in an amount at least equal to the amounts they would have received for retirement under the ORP if the 401(a)(17) cap did not apply. It should be noted that other institutions and agencies that report to the State Board of Education are subject to the same requirements.

IMPACT

For calendar year 2004, there will be no fiscal impact because the state employers involved have already budgeted for this expenditure as if the 401(a)(17) limit did not apply. In future years, the fiscal impact will be based on the budgeted salaries, which may or may not exceed IRS limits.

STAFF COMMENTS AND RECOMMENDATIONS

Because this agenda item deals with complex tax issues, the Office of the State Board of Education retained outside counsel who specializes in employee compensation matters. The Board retained the same counsel to review for IRS compliance a change in the base Optional Retirement Plan that was enacted in December 2003.

BOARD ACTION

A motion to adopt a supplemental retirement plan to expand the capacity of the existing Optional Retirement Program and PERSI for employees whose income exceeds the amount allowable by Internal Revenue Code Section 401(a)(17).

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004**

Exhibit A

**Retirement Benefit Analysis (On An Annual Basis) For An Employee With
\$300,000 In Annual Compensation**

Plan	Desired Contribution	Actual Contribution Due to 401(a)(17) Limit	Difference	Contributions After Adoption of New Plan
1. ORP				
a. Employer - 7.81% of comp.	23,430	16,010	7,420	16,010
b. Employee - 6.97% of comp.	20,910	14,288	6,622	14,288
2. Proposed New Plan				
a. Employer	n/a	n/a	n/a	7,420
b. Employee	n/a	n/a	n/a	6,622
Total Benefit	44,340	30,298	14,042	44,340

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**THE IDAHO STATE BOARD OF EDUCATION
SUPPLEMENTAL RETIREMENT BENEFIT PLAN**

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**ARTICLE 1
INTRODUCTION**

1.1 The Board hereby establishes pursuant to this document the Idaho State Board of Education Supplemental Retirement Benefit Plan. This Plan has been established and shall be maintained in such manner as to meet the requirements of Sections 403(b) and other applicable sections of the Internal Revenue Code of 1986, as amended.

1.2 The purpose of this Plan is to provide the benefits of a tax-sheltered annuity plan for the exclusive benefit of the Participants, former Participants and their Beneficiaries; and this Plan shall be administered and interpreted in accordance with such purpose.

1.3 It is intended that this Plan will not be subject to the requirements of ERISA under Department of Labor Regulation Section 2510.3-2(f).

ARTICLE 2 DEFINITIONS

Certain terms of this Plan have defined meanings which are set forth in this Article and which shall govern unless the context in which they are used clearly indicates that some other meaning is intended.

2.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.

2.2 **Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in Sections 415(1)(2) and 419A(d)(2) of the Code, if any.

2.3 **Beneficiary** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at the Participant's death.

2.4 **Board** means the Idaho State Board of Education and Board of Regents of the University of Idaho as defined in Idaho Code Section 33-101.

2.5 **Code** means the Internal Revenue Code of 1986, as amended.

2.6 **Compensation** means the amount reported as wages on the Participant's Form W-2, excluding compensation not currently included because of the application of Code Sections 125 or 403(b).

2.7 **Distribution** means distribution of any benefit from a Finding Vehicle to or for the benefit of a Participant, Beneficiary or other person entitled to benefits as provided in this Plan.

2.8 **Effective Date** shall mean _____, 2004.

2.9 **Eligible Employee** means any participant in the ORP or PERSI that has Compensation in excess of the annual compensation limit imposed by Code Section 401(a)(17) and who is subject to the limitations imposed by Code Section 401(a)(17).

2.10 **Entry Date** means the later of the Effective Date of the Plan or the Eligible Employee's Date of employment or reemployment.

2.11 **ERISA** means Public Law No. 93-406, the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

2.12 **Funding Vehicles** means the annuity contracts or custodial accounts issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

2.13 **Fund Sponsor(s)** means Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF) and Variable Annuity Life Insurance Company (VALIC).

2.14 **Institution** means the Board and employment units under its jurisdiction, namely:

The Office of the Idaho State Board of Education;
Boise State University;
Idaho State University;
University of Idaho;
Lewis-Clark State College;
Eastern Idaho Technical College;
College of Southern Idaho; and
North Idaho College.

2.15 **Institution Plan Contributions** means contributions made by the Institution under this Plan.

2.16 **Normal Retirement Date** means the date a Participant attains age sixty-five (65).

2.17 **ORP** means the Optional Retirement plan as established by the Board effective July 1, 1990.

2.18 **Participant** means an Eligible Employee of the Institution who participates in the Plan as provided in Article 3 and Article 4.

2.19 **Permanent Disability** means a disability that renders the Participant unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. The term "Permanent Disability" shall be interpreted in accordance with Code Section 72(m)(7) and the Treasury Regulations thereunder.

2.20 **Participant Plan Contributions** means contributions made by a Participant under this Plan. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.

2.21 **PERSI** means the Public Employee Retirement System of Idaho.

2.22 **Plan** means this instrument together with any subsequent amendments hereto.

2.23 **Plan Contributions** means the combination of Participant Plan Contributions and Institution Plan Contributions.

2.24 **Plan Year** shall be the calendar year. However, the first Plan Year shall be the period beginning _____ and ending December 31, 2004.

2.25 **Retirement** means the Termination of Employment of a Participant on or after his Normal Retirement Date.

2.26 **Termination of Employment** means that an Employee has ceased to be employed by the Institution for any of the following reasons:

- (i) Voluntary resignation from service of the Institution; or

- (ii) Discharge from the service of the Institution by the Institution; or
- (iii) Retirement; or
- (iv) Death; or
- (v) Permanent Disability;

Provided, however, that an Eligible Employee who ceases Employment by reason of an Authorized Leave of Absence shall not be considered as having incurred a Termination of Employment.

2.27 **Treasury Regulation** means regulations pertaining to certain sections of the Code as issued by the Secretary of the Treasury.

2.28 **Defined Terms.** A defined term, such as "Retirement," will normally govern the definitions of derivatives therefrom, such as "Retire," even though such derivatives are not specifically defined and even if they are or are not initially capitalized. The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary. Singular and plural nouns and pronouns shall be interchangeable as the factual context may allow or require. The words "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan and not to any particular provision or Section.

ARTICLE 3 PARTICIPATION

3.1 Notification. The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.

3.2 Enrollment in Plan - One Time Irrevocable Election. To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms within thirty (30) days of receipt of the enrollment form(s) will be deemed to have waived all of his or her rights under the Plan. That is, an Eligible Employee is given a one time option to participate in the Plan. Once an Eligible Employee has elected to participate in the Plan, the Eligible Employee, as a condition of continued employment, may not withdraw from participation in the Plan.

3.3 Reemployment. A former employee who was an Eligible Employee before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.

3.4 Termination of Participation. A Participant will continue to be eligible for the Plan until one of the following conditions occur:

- he or she ceases to be an Eligible Employee;
- the Plan is terminated.

Furthermore, if a Participant begins to receive retirement benefits from the Accumulation Account(s) arising from Plan Contributions under this Plan before termination of employment, he or she will cease to be eligible and no further Institution Plan Contributions will be made on his or her behalf.

ARTICLE 4 CONTRIBUTIONS

4.1 Contributions. Plan Contributions will be made for Eligible Employees as follows:

Each Institution shall contribute an amount equal to seven and eighty-one hundredths percent (7.81%), reduced by any amount necessary, if any, to provide contributions to a total disability program, but in no event less than five percent (5%), of the portion of each Participant's Compensation that exceeds the annual compensation limits of Code Section 401(a)(17); and

Each Participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of the portion of the Participant's Compensation that exceeds the annual compensation limits of Code Section 401(a)(17).

Plan Contributions are considered to be credited to Participants no later than the last day of the Plan Year for which the Plan Contributions are made.

4.2 When Contributions are Made. Plan Contributions will begin when the Institution has determined that the Participant has met or will meet the requirements of Article 3. Any part of a year's Plan Contributions not contributed before this determination will be included in contributions made for that year after the determination. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor(s) at least annually. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor(s) as soon as it is administratively feasible for the Institution to segregate contributions, but in any event, within the time required by law. For the period beginning on the Effective Date and ending upon completion of the Plan Year, Participant Plan Contributions shall be prorated over such period.

4.3 Allocation of Contributions. A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100%. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) according to the administrative procedures of the Fund Sponsor(s). A Participant may direct contributions to only one Fund Sponsor at any given time. However, a Participant may change Fund Sponsors once per calendar year by completing the appropriate forms provided by the Institution.

4.4 Leave of Absence. During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave of absence.

4.5 Transfer of Funds from Another Plan. The Fund Sponsor shall accept contributions that are transferred directly from any other plan qualified under sections 401(a) or 403(a) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to Institution and Employee contributions and the earnings thereon and accompanied by instructions showing the respective amount attributable to Institution and Employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.

4.6 Acceptance of Rollover Contributions. If a Participant is entitled to receive a distribution from another plan qualified under sections 401(a) or 403(a) of the Code that is an eligible rollover distribution under section 402 of the Code, the Fund Sponsor will accept such amount under this Plan provided the rollover to this Plan is made (1) directly from another plan; or (2) by the Participant within 60 days of the receipt of the distribution.

4.7 Uniformed Services. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with § 414(u) of the Code.

4.8 Maximum Plan Contributions. Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

For the purpose of calculating the limits of Code Section 415, compensation means a Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Institution and excluding the following: (a) Institution contributions to a plan of deferred compensation that are not includable in the Participant's gross income for the taxable year in which contributed, or Institution contributions under a simplified employee pension plan to the extent such contributions are deductible by the Participant, or any distributions from a plan of deferred compensation; and (b) other amount that received special tax benefits, or contributions made by the Institution (whether or not under a salary reduction agreement towards the purchase of an annuity described in Code Section 403(b) (whether or not the amounts are actually excludable from the gross income of the Participant). For years beginning after December 31, 1997, compensation shall include any elective deferral (as defined in Code § 401(g)(3)) and any amount which is contributed or deferred by the Institution at the election of the Participant and which is not includable in the gross income of the Participant by reason of Code § 125 or 457. For purposes of applying the limitations described in this section of the Plan, compensation shall include elective amounts that are not includable in the gross income of the Participant by reason of Code § 132(f)(4).

To the extent permitted by Code Section 415 and the regulations promulgated thereunder, if the Annual Additions exceed the Section 415 limitations, the excess amounts will be disposed of as follows: (a) any Participant Plan Contributions (plus any gain attributable to the excess), to the extent they would reduce the excess amount, will be returned to the Participant; and, to the extent necessary, (b) if, after the application of (a) an excess still exists, the excess will be held unallocated in a suspense account and will be applied to reduce Institution Plan Contributions in succeeding limitation years.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for Code Section 415 purposes, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

**ARTICLE 5
VESTING AND DISTRIBUTIONS**

5.1 Vesting. Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

5.2 Commencement of Benefits. A Participant shall be entitled to receive distributions in accordance with the terms of the Funding Vehicles. However, the Participant's Funding Vehicles shall provide the following:

(a) In no event shall any benefit be distributed to a Participant prior to the Participant's Termination of Employment, attainment of age 59½ or financial hardship.

(b) No benefit shall be distributed prior to the Participant's Normal Retirement Date or death without the Participant's consent. Notwithstanding the preceding sentence, benefits shall be distributed without the Participant's consent if a distribution is required under Section 6.7.

(c) No portion of Funding Vehicle shall be distributable on account of financial hardship unless the hardship distribution provisions of such Funding Vehicle comply with the requirements of the Code and ERISA.

(d) Participants cannot direct the Fund Sponsors to distribute or otherwise dispose of Funding Vehicles. Only the Institution may direct the Fund Sponsors with respect to the commencement of benefits or other disposition of Funding Vehicles.

5.3 Application for Benefits. The Institution may require a Participant or Beneficiary to complete and file with the Institution certain forms as a condition precedent to the payment of benefits. The Institution may rely upon all such information given to it, including the Participant's current mailing address. It is the responsibility of all Participants to keep the Institution informed of their current mailing addresses.

5.4 Distributions Pursuant to Qualified Domestic Relations Orders. Notwithstanding anything to the contrary in this Plan, a "qualified domestic relations order," as defined in Code Section 414(p), may provide that any amount to be distributed to an alternate payee may be distributed immediately even though the Participant is not yet entitled to a distribution under the Plan. The intent of this Section 5.4 is to provide for the distribution of benefits to an alternate payee as permitted by Treasury Regulation 1.401(a)-13(g)(3).

5.5 Distribution of Funding Vehicles. All benefits payable under this Plan will be paid or provided solely from the applicable Funding Vehicles. After the Institution directs the Plan Sponsors to distribute such Funding Vehicles in accordance with the terms of the Plan, the Institution shall be free from all liability, individual, joint or several, with respect to payment of benefits attributable to such Funding Vehicles.

ARTICLE 6 FORM OF PAYMENT

6.1 Funding Vehicles Will Comply With Article 6. Each Funding Vehicle will provide for distributions in accordance with the provisions of this Article 6.

6.2 Retirement Benefits. A Participant who has terminated employment may elect to receive retirement benefits under any of the forms of benefit, as provided below.

Forms of Benefit. The forms of benefit are the benefit options offered by the Funding Vehicles available under this Plan. These forms are equally available to all Participants choosing the Funding Vehicle. The forms of benefit available under this Plan include:

- Single life annuities as provided under the Funding Vehicle contract.
- Joint and survivor annuities as provided under the Funding Vehicle contract.
- Cash withdrawals (to the extent the Funding Vehicle permits and subject to the limitations in the "Cash Withdrawal" section of this Article).
- Fixed period annuities, as permitted by the Funding Vehicle contract.
- Retirement Transition Benefit.
- Such other annuity and withdrawal options as provided under the Funding Vehicle contract.

6.3 Cash Withdrawals. A Participant who has terminated employment may withdraw Participant Plan Contributions or receive benefits in any form the relevant Funding Vehicle permits, including a cash withdrawal. However, only an employee who has terminated employment and has attained age 55 may withdraw Institution Plan Contributions or receive benefits in any form the relevant Funding Vehicle permits, including a cash withdrawal.

Except, following retirement or termination of employment prior to age 55, if total accumulation is less than or equal to \$10,000, both Participant and Institution Plan Contributions are available in a cash withdrawal subject to any restrictions of the Funding Vehicles of the Fund Sponsor.

6.4 Retirement Transition Benefit. Unless the Minimum Distribution Annuity, or the Limited Periodic Withdrawal Option is elected, a Participant may elect to receive a one time lump-sum payment of up to ten percent (10%) of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one such payment from each TIAA contract and/or CREF account(s) doesn't exceed ten percent (10%) of the respective Accumulation Account(s) being converted to retirement income.

6.5 Survivor Benefits. If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary(ies) under the options offered by the Funding Sponsors. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

6.6 Application for Benefits. Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary(ies) by the Fund Sponsor.

6.7 Minimum Distribution Requirements. The requirements of this Section shall apply to any distribution of a Participant's Account and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder.

(a) Time and Manner of Distribution.

(i) Required Beginning Date. The Participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

(ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection (a)(ii), other than subsection (a)(ii)(1), will apply as if the surviving spouse were the Participant.

For purposes of subsections (a)(ii) and (c), unless subsection (a)(ii)(4) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (a)(ii)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (a)(ii)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (a)(ii)(1), the date distributions are considered to begin is the date distributions actually commence.

(iii) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions shall be made in accordance with subsections (b) and (c) of this Article 6. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

(b) Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(i) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(1) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(ii) Lifetime Required Minimum Distribution Through Year of Participant's Death. Required minimum distributions will be determined under this subsection (b) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(c) Required Minimum Distributions After Participant's Death.

(i) Death On or After Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(a) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving

spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(c) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) Death Before Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in subsection (i).

(2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (a)(ii)(1), this subsection (c)(ii) shall apply as if the surviving spouse were the Participant.

(d) Definitions.

(i) Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-1, Q&A-4.

(ii) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year

which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (a)(ii). The required minimum distribution for the Participant's first distribution calendar year shall be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.

(iii) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.

(iv) Participant's Account Balance. The Participant's account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated to the Participant's account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Participant's account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(v) Required Beginning Date. The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70½ or if later, April 1 following the calendar year in which the Participant retires.

(e) Election to Allow Participant, Former Participants or Beneficiaries to Elect 5-Year Rule. Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in subsections (a)(ii) and (c)(ii) applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under subsection (a)(ii), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with subsections (a)(ii) and (c)(ii).

(f) Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions. A designated Beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

6.8 Small Sum Payments. A Participant's accumulations may be received in a single sum if certain conditions are met. If a Participant in this Plan terminates employment with the Institution and requests that the Fund Sponsor pay his or her Group Retirement Annuity accumulation in a single sum, the Institution will approve such request if, at the time of the request, the following conditions apply:

- (a) The total Accumulation Account is \$2,000 or less.

(b) The total Accumulation Account attributable to Plan Contributions is not more than \$4,000.

Upon request for the small sum payment, the total Accumulation Account will be payable by the Fund Sponsor to the Participant in a lump sum and will be in full satisfaction of the Participant's rights and his or her spouse's rights to retirement or survivor benefits.

6.9 Direct Rollovers. This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

For this section, the following definitions apply:

(a) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and, for any distributions after 12/31/99, any hardship distribution described in Code Section 401(k)(2)(b)(i)(iv).

(b) Eligible Retirement Plan. An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement described in section 408(b) of the Code, or a qualified retirement plan described in Code Section 401(a) or 403(a) of the Code, that accepts the distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(c) Distributee. A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(d) Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

ARTICLE 7 ADMINISTRATION

7.1 Plan Administrator. The Idaho State Board of Education, located at 650 W. State Street, Boise, Idaho 83720, is the administrator of this Plan and has designated the chief financial officers of each of the Institutions as responsible for enrolling Participants, sending Plan contributions for each Participant to the Fund Sponsor(s) selected by a Participant, and for performing other duties required for the operation of the Plan.

7.2 Authority of the Institution. The Institution has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Institution shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Institution will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Institution may employ attorneys, agents, and accountants, as it finds necessary or advisable to assist it in carrying out its duties. The Institution, by action of the Board, may designate a person or persons other than the Institution to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.

7.3 Action of the Institution. Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance with Section 7.2 "Authority of the Institution," may be taken by a majority of the members of the Board, by vote at a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Institution under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by the Board, as having authority to execute the documents on its behalf, or (ii) a person who becomes authorized to act for the Institution in accordance with the provisions of Section 7.2 "Authority of the Institution." Any action taken by the institution that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Institution, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Institution.

7.4 Indemnification. Subject to the limits of the Idaho Tort Claims Act, Idaho Code § 6-901, et seq., the Institution will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Institution is delegated pursuant to Section 7.2 "Authority of the Institution" (other than the Fund Sponsors) arising out of any action (or inaction) relating to this Plan. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or bylaws of the Institution, under any provision of law, or under any other agreement.

7.5 No Reversion. Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made, at the option of the Institution.

7.6 Statements. The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution's payment.

7.7 Reporting. Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.

**ARTICLE 8
AMENDMENT AND TERMINATION**

8.1 Right to Amend. The Institution intends for the Plan to be permanent so long as it exists; however, it reserves the right to modify, alter, or amend this Plan from time to time, to any extent that it may deem advisable, including, but not limited to any amendment deemed necessary to insure the continued compliance under Section 403(b) of the Code or to insure compliance with the Act; provided, however, that the Institution shall not have the authority to amend this Agreement in any manner which will:

(a) Permit any part of a Funding Vehicle (other than such part as is required to pay taxes and administrative expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries;

(b) Cause or permit any portion of a Funding Vehicle to revert to or become the property of the Institution.

8.2 Termination and Discontinuance of Contributions. The Institution shall have the right at any time to terminate this Plan (hereinafter referred to as "Plan Termination") Upon Plan Termination, the administrator shall direct the Fund Sponsor(s) with reference to the disposition of Funding Vehicles. The Fund Sponsor(s) shall, when directed by the administrator, distribute all Funding Vehicles held by it to the Participants and others entitled to such Funding Vehicles. In the event that this Plan is partially terminated, then the provisions of this Section 8.2 shall apply, but solely with respect to the Participants affected by the partial termination.

**ARTICLE 9
MISCELLANEOUS**

9.1 Plan Non-Contractual. Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.

9.2 Claims of Other Persons. The provisions of the Plan will not be construed as giving any Participant or any other person, firm, entity, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

9.3 Merger, Consolidation, or Transfers of Plan Assets. In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.

9.4 Non-Alienation of Retirement Rights or Benefits. No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.

9.5 Governing Law. Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Idaho.

Employer Identification Number: _____
Plan Number: _____

(signature of Plan Administrator)

 Amendment 1

**AMENDMENT OF THE IDAHO STATE BOARD OF EDUCATION
SUPPLEMENTAL RETIREMENT PLAN FOR EGTRRA**

IN WITNESS WHEREOF, the Idaho State Board of Education herein amends the Idaho State Board of Education Supplemental Retirement Plan, as follows:

A. PREAMBLE

1. Adoption and effective date of amendment. This amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first plan year beginning after December 31, 2001.
2. Supersession of inconsistent provisions. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

B. LIMITATIONS ON CONTRIBUTIONS

Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

- (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
- (b) 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an annual addition.

C. INCREASE IN COMPENSATION LIMIT

1. Annual Compensation Limit. The annual compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12 month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a

calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

2. Plan Definition of Compensation. To the extent the Plan's definition of Compensation includes compensation not currently includable because of the application of Code Section 125 or 403(b), this definition is amended to include compensation not currently includable because of the application of Code §§ 132(f)(4) and 457.
3. Special Rule for Governmental Plans. Notwithstanding the above, employees of governmental Institutions who became Participants in the Plan before the first day of the plan year beginning after December 31, 1995, will be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.

D. DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS

1. Effective date. This section shall apply to distributions made after December 31, 2001.
2. Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in Article 6 of the Plan, an eligible retirement plan shall mean a qualified retirement plan described in section 401(a) or section 403(a), of the Code, a tax sheltered annuity plan described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.
3. Modification of definition of eligible rollover distribution to exclude hardship distributions. For purposes of the direct rollover provisions in Article 6 of the Plan, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.
4. Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in Article 6 of the Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is

includible in gross income and the portion of such distribution which is not so includible.

E. ROLLOVERS FROM OTHER PLANS

1. Direct Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution from:
 - a. A qualified plan described in section 401(a) or 403(a) of the Code including after-tax employee contributions.
 - b. A tax sheltered annuity plan described in section 403(b) of the Code, excluding after-tax employee contributions.
 - c. An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
2. Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an eligible rollover distribution from:
 - a. A qualified plan described in section 401(a) or 403(a) of the Code.
 - b. A tax sheltered annuity plan described in section 403(b) of the Code.
 - c. An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
3. Participant Rollover Contributions from IRAs. The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

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REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES

Subsection: K. Retirement Programs-All Employees

April 2002

K. Retirement Programs – All Employees

1. Classified Employees

All classified and University of Idaho classified employees shall participate in the Public Employee Retirement System of Idaho (PERSI).

2. Optional Retirement Program (*reference Idaho Code 33-107A, 33-107B*)

The Board is authorized to establish a retirement program under which contracts providing retirement and death benefits may be purchased for members of the faculty and nonclassified staff of the University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, Eastern Idaho Technical College, the College of Southern Idaho, North Idaho College and the Office of the State Board of Education. The Board provides for the administration of the Optional Retirement Program in accordance with the Idaho State Board of Education Optional Retirement Plan (hereinafter “the Plan”), a copy of which is on file at the Office of the State Board of Education and at the institutions mentioned above. The Plan may be amended from time to time in accordance with its terms and applicable regulations of the Internal Revenue Service.

- a. Designation Of Contract Providers - The Board shall designate companies from which contracts are to be purchased under the optional retirement program.
- b. Eligible Employees - Eligible employees are those active faculty and nonclassified employees initially hired or appointed on or after July 1, 1990. Vested members of PERSI may make a one time, irrevocable election to remain in PERSI if made within the time limited allowed in state law. Eligible employees shall participate in the Optional Retirement Program. “Eligible employees” shall exclude classified employees, employees whose employment is expected to be less than five (5) months, and employees whose employment is incidental to their status as students at the institution.

REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY - continued

Idaho Statutes

TITLE 33
EDUCATION
CHAPTER 1
STATE BOARD OF EDUCATION

33-107A. BOARD MAY ESTABLISH AN OPTIONAL RETIREMENT PROGRAM.

(1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of the university of Idaho, Idaho state university, Boise state university, Lewis Clark state college and the state board of education who are hired on or after July 1, 1993; provided, however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho. The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

- (a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;
- (b) The relation of such rights and benefits to the amount of contributions to be made;
- (c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and
- (d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

- (a) Eligible employees are:
 - (i) Those faculty and nonclassified staff initially appointed or hired between July 1, 1990 and June 30, 1993; and
 - (ii) Those teaching staff and officers initially appointed or hired on or after July 1, 1993.

All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004

- (b) Vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to remain a member of that retirement system. The election shall be made in writing, within sixty (60) days of the date of initial hire or appointment or the effective date of this act, whichever occurs later. It shall be filed with the administrative officer of the employing institution.
- (c) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.
- (d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.
- (4) (a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:
- (i) To the designated company or companies, an amount equal to seven and eighty-one hundredths percent (7.81%) of each participant's salary, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits or any combination thereof, but in no event less than five percent (5%) of each participant's salary; and
 - (ii) To the public employee retirement system, an amount equal to three and three one-hundredths percent (3.03%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2015, and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code.
- (b) Each participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of the participant's salary. Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.
- (c) Payment of contributions authorized or required under this subsection shall be made by the financial officer of the employing institution to the designated company or companies for the benefits of each participant.
- (5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.
- (6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY - continued

Idaho Statutes

TITLE 33
EDUCATION
CHAPTER 1
STATE BOARD OF EDUCATION

33-107B. BOARD MAY ESTABLISH AN OPTIONAL RETIREMENT PROGRAM FOR COMMUNITY COLLEGES AND POSTSECONDARY PROFESSIONAL-TECHNICAL EDUCATION INSTITUTIONS.

(1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of community colleges and postsecondary professional-technical education institutions, including north Idaho college, college of southern Idaho and eastern Idaho technical college, hired on or after July 1, 1997; provided however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho. The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

- (a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;
- (b) The relation of such rights and benefits to the amount of contributions to be made;
- (c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and
- (d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

- (a) Eligible employees are the teaching staff and officers initially appointed or hired on or after the effective date of this chapter. All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004**

retirement program.

(b) Eligible employees who are vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to transfer to the optional retirement program. The election shall be made in writing and within sixty (60) days of the date of initial hire or appointment, or one hundred fifty (150) days after the effective date of this chapter, whichever occurs later. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(c) Teaching staff and officers employed by the institution the day before the effective date of this chapter may make a one (1) time irrevocable election to participate in the optional retirement program. The election shall be made in writing and within one hundred fifty (150) days after the effective date of this chapter. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.

(e) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(4) (a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to seven and eighty-one hundredths percent (7.81%) of each participant's salary, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits, or any combination thereof, but in no event less than five percent (5%) of each participant's salary; and

(ii) To the public employee retirement system, an amount equal to three and eighty-three hundredths percent (3.83%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2011 and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code.

(b) For the purposes of section 59-1322, Idaho Code, the term "projected salaries" shall include the sum of the annual salaries of all participants in the optional retirement program established pursuant to this section.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004**

(c) Each participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%). Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY – continued

Internal Revenue Code

SUBTITLE A--INCOME TAXES (Sections 1 to 1564)

CHAPTER 1--Normal taxes and surtaxes (Sections 1 to 1400...

SUBCHAPTER D--Deferred Compensation, etc. (Section...

PART I--Pension, Profit-Sharing, Stock Bonus...

SUBPART A--General Rule (Sections 401 ...

Sec. 401. Qualified Pension, Pro...

401(a) Requirements For Qualif...

401(a)(17) Compensation Limit...

(17) Compensation Limit. --

(A) In General. --

A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed \$200,000.

(B) Cost-of-living Adjustment.--

The Secretary shall adjust annually the \$200,000 amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000.

REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY – continued

Internal Revenue Code

SUBTITLE A--INCOME TAXES (Sections 1 to 1564)

CHAPTER 1--Normal taxes and surtaxes (Sections 1 to 1400...

SUBCHAPTER D--Deferred Compensation, etc. (Section...

PART I--Pension, Profit-Sharing, Stock Bonus...

SUBPART B--Special Rules (Sections 410...

Sec. 415. Limitations On Benefit...

415(d) Cost-of-living Adjustment..

(d) Cost-of-living Adjustments.--

(1) In General.--

The Secretary shall adjust annually--

(A) the \$160,000 amount in subsection (b)(1)(A),

(B) in the case of a participant who separated from service, the amount taken into account under subsection (b)(1)(B), and

(C) the \$40,000 amount in subsection (c)(1)(A), for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

(2) Method.--

The regulations prescribed under paragraph (1) shall provide for--

(A) an adjustment with respect to any calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period, and

(B) adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

(3) Base Period.--

For purposes of paragraph (2)

(A) \$160,000 Amount.--

The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning July 1, 2001.

(B) Separations After December 31, 1994.--

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer after December 31, 1994, is the calendar quarter beginning July 1 of the calendar year preceding the calendar year in which such separation occurs.

(C) Separations Before January 1, 1995.--

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer before January 1, 1995, is the calendar quarter beginning October 1 of the calendar year preceding the calendar year in which such separation occurs.

(D) \$40,000 Amount.--

The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning July 1, 2001.

(4) Rounding.--

(A) \$160,000 Amount.--

Any increase under subparagraph (A) of paragraph (1) which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000. This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.

(B) \$40,000 Amount.--

Any increase under subparagraph (C) of paragraph (1) which is not a multiple of \$1,000 shall be rounded to the next lowest multiple of \$1,000.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004

INSTITUTION / AGENCY AGENDA
AGENCIES AND INSTITUTIONS OF THE STATE BOARD

SUBJECT

First Reading – Amendment of Board Policy II.B.3 – Vacant Positions

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures Section I.A.4. and 5.

BACKGROUND

Positions that are vacant for several years in the state payroll system must be reestablished by the Division of Financial Management (DFM) before being filled by the institution. Some of these positions have been brought before the Board for reauthorization, even though the position may have remained in the institution's operating budget while vacant while others have not.

The filling of positions has been reported inconsistently in the past. Currently, some new positions are individually itemized in the Board meeting agenda, some in the operating budgets, while others may not be reported at all.

DISCUSSION

Board policy states, "(A)ny permanent new position, regardless of funding source, requires Board approval."

Institutions have vacant positions that are no longer listed on the state employee information system because that position has been vacant for several years. However, many of these positions are displayed in the institution's operating budgets. When the institutions wish to reactivate these positions (onto the state payroll system), a new set-up action is required. The President's Council and Executive Director, working with DFM, have agreed to seek Board authorization to reactivate any position if a new position set-up document is required to reestablish the position.

A related item is the Board practice of approving institutional operating budgets each June. The budgets presented to the Board are for General Education only and do not include all funding sources (such as auxiliary and local funds, which do fund a large number of positions). Through the budget approval process, institutions receive authorization for numerous new positions that may not have been individually identified for Board consideration. Therefore, positions in the institutional operating budgets should only include those that have been previously approved by the Board. Positions that have been vacant more than three (3) years should not be included in institutional operating budgets, as these positions need to be reinstated separately by Board approval.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004**

INSTITUTION / AGENCY AGENDA

AGENCIES AND INSTITUTIONS OF THE STATE BOARD - continued

IMPACT

The suggested change will result in better communication and review between institutions, the Board and DFM.

STAFF COMMENTS AND RECOMMENDATIONS

This issue is being brought before the Board in an effort to bring closure to a long-standing situation regarding how positions are reported on the state payroll system vs. at the institution level. The President's Council has agreed to seek Board approval for the positions that have been vacant for more than three (3) years.

Board staff and the Financial Vice President's group have had several discussions of this issue and are ready to proceed per Board approval.

BOARD ACTION

A motion to approve the first reading of amendments to Board Policy II.B.3., a process by which the institutions will request specific reauthorization from the Board to fill any position that has been vacant and requires a new "set-up" action. As part of this motion, institutions agree to not include any position in their operating budget if that position has been vacant for more than three (3) years.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 2, 2004**

FIRST READING

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

SUBSECTION B: Appointment Authority & Procedures

~~August, 2002~~ January or March, 2005

B. Appointment Authority and Procedures

3. Specifically Reserved Board Authority

(Note: This is not an exclusive or exhaustive list and other reservations of Board authority may be found in other areas of these policies and procedures.) Board approval is required for the following:

a. Position Authorizations

- (1) (1) Any permanent new position (including a reactivated position when vacant more than three (3) years), regardless of funding source, requires Board approval.

Agenda Item Format: Requests for new position authorizations must include the following information:

- (a) position title;
- (b) type of position;
- (c) FTE
- (d) Term of appointment;
- (e) Effective date;
- (f) approximate salary range;
- (g) funding source;
- (h) area or department of assignment;
- (i) a description of the duties and responsibilities of the position; and
- (j) a complete justification for the position

- (2) Any permanent position being deleted. The affected position should be identified by type, title, salary, area or department of assignment, and funding source.

- b. The initial appointment of all employees to any type of position at a salary that is equal to or higher than 75% of the chief executive officer's annual salary.
- c. The employment agreement of any head coach or athletic director (at the institutions only) longer than one year, and all amendments thereto.

FIRST READING - continued

- d. The criteria established by the institutions for initial appointment to faculty rank and for promotion in rank, as well as any additional faculty ranks and criteria as may be established by an institution other than those provided for in these policies (see subsection G.) Any exceptions to the approved criteria also require Board approval.
- e. The procedures established for periodic performance review of tenured faculty members. (see subsection G.)

REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: I. GENERAL GOVERNING POLICIES AND PROCEDURES

Subsection: A. Policy-Making Authority

4. Conformance with State and Federal Law

All Board Governing Policies and Procedures and the internal policies and procedures of its institutions, agencies and school will comply with and be in conformance to applicable laws.

5. Adoption, Amendment, or Repeal of Board Policies

a. Board policies may be adopted by majority vote at any regular or special meeting of the Board. The adoption, amendment, or repeal of a Board policy may be requested by any member of the Board, the executive director, or any chief executive officer. Persons who are Board employees, or students or student groups, must file a written request with the chief executive officer of an institution, agency or school, or his or her designee, to receive Board consideration. An Idaho resident, other than those described above, may file a written request with the executive director for Board consideration of a proposal. Regardless of the source, a statement of the proposed adoption, amendment, or repeal must be presented to the executive director for transmittal to the Board. If the subject matter of the presentation concerns an agency, institution, school, or department of the Board, the executive director will also notify the appropriate chief executive officer of the nature of the request.

b. Board action on any proposal will not be taken earlier than the next regular or special meeting following Board approval for first reading. During the interim between the first reading and Board action, the chief executive officers will seek to discuss and review the proposal with faculty, staff, or other Board employees and students or student groups, as appropriate. The chief executive officers will transmit summaries of oral statements and written comments on the proposal to the executive director. After thorough consideration, the proposal will be presented by the executive director to the Board for action.

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