

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011**

TAB	DESCRIPTION	ACTION
1	AMENDMENT TO BOARD POLICY Sections II.A., C., F., G., H., and P – Second Reading	Motion to approve
2	AMENDMENT TO BOARD POLICY Section II.G.1.b. – First Reading	Motion to approve
3	AMENDMENTS TO OPTIONAL RETIREMENT PLAN DOCUMENT	Motion to approve
4	BOISE STATE UNIVERSITY Retirement Plan Revisions – Chris Peterson	Motion to approve
5	UNIVERSITY OF IDAHO Multi-Year Contract for Clinical Law Instructor and Associate Dean for Boise Programs	Motion to approve

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**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011**

SUBJECT

Board Policy, Section II. Subsections A., C., F., G., H. and P. – Second Reading

REFERENCE

October 2011 Board approved first reading to Board policies II. A., C., F., G., H. and P.

APPLICABLE STATUTES, RULE OR POLICY

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

BACKGROUND / DISCUSSION

In October 2011 the Board approved the first reading to amend Board policy subsections referenced above.

IMPACT

Board staff identified reports required in policy which are unnecessary, duplicative or discretionary. Updating Board policy will clarify and streamline reporting requirements, and focus Board policy on reports that are most relevant to the Board's governance responsibilities. Eliminating unnecessary reports will also free up time and resources at the institutions.

ATTACHMENTS

Attachment 1 – Policy II.A. Authority & Scope	Page 3
Attachment 2 – Policy II.C. Reporting & Accountability	Page 5
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STAFF COMMENTS AND RECOMMENDATIONS

There were no changes from the first reading. Staff recommends approval.

BOARD ACTION

I move to approve the second reading of the amendments to Board Policy II. A., C., F., G., H. and P., as presented.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: A. Authority and Scope****December 2011**

The State Board of Education and the Board of Regents of the University of Idaho (the Board) is designated by the Idaho Constitution and Code as the employer for the institutions (Boise State University, Idaho State University, Lewis-Clark State College, University of Idaho, and Eastern Idaho Technical College), agencies (Division of Professional-Technical Education, Division of Vocational Rehabilitation, Idaho Educational Public Broadcasting System, and Office of the State Board of Education under its governance (*reference Idaho Code Title 33, 67-53, and 59-16*)).

All employees at the institutions and agencies are governed by these personnel policies and procedures. The employees of the State Department of Education are subject to Section 33-127, Idaho Code, which authorizes the state superintendent of public instruction to hire and dismiss employees of the State Department of Education.

The primary responsibility for personnel management is delegated to the chief executive officers by the Board. The Board establishes these general personnel policies and procedures as an integral part of efficient and effective personnel management. The institutions and agencies may establish additional policies and procedures necessary for the management of personnel that further amplify and are consistent with the Governing Policies and Procedures of the Board.

Any personnel policies and procedures created by the chief executive officers must be described in the context of the respective purposes and missions of the various entities under the governance of the Board. It shall be the responsibility of each chief executive officer to ensure that all employees under their supervision have access to such policies and procedures and that a copy of such procedures is on file at the Office of the State Board of Education. If there is a conflict between a Board governing policy or procedure and an institutional or agency policy or procedure, the provisions of these Governing Policies and Procedures will apply and control.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: A. Authority and Scope

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GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: C. Reporting and Accountability

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1. The Board, in entrusting its vested personnel authority to the chief executive officers, expects compliance with these policies and procedures and with the directives and orders of the Board. To ensure this, the Board requires complete accountability from the chief executive officers.
2. The Board may, at any time, require reports or schedules of any and all personnel actions delegated to the chief executive officers.

The executive director is hereby delegated the full authority to call for, at any time, any such reports or schedules that the Board itself could require.

3. All reports and schedules shall be uniform and in the form and content as directed by the Board or, in the absence of Board specifications, as prescribed by the executive director.
4. In addition to any reports or schedules requested by the Board, the following schedules and reports shall be standing directives to the chief executive officers:
 - a. In February of each year, a report of the supplemental or additional compensation (or payment of bonuses or contractual incentive pay) made to athletic department personnel (at the institutions only) in the preceding year, and including anticipated costs in the ensuing year. Additionally, the February report should include information on each coach's performance relative to the academic incentives of his or her contract.
 - b. Upon request, a report of one or more of the items listed below, which should include, the name of the appointee, position to which appointed, area or department of assignment, salary and effective date of appointment, and any other information as prescribed by the executive director:

(1) a list of faculty members that were granted tenure;

(2) a list of employees granted a change in faculty rank;

a list of employees granted professional leave or sabbatical leave with or without compensation, along with a brief statement of the purposes of each.

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GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: F. Policies Regarding Non-classified Employees****December 2011**

1. Employment Terms

- a. All non-classified employees, except those set forth in Section II.F.1.b. below, serve at the pleasure of the chief executive officer, and may be dismissed at any time, with or without cause, and without notice, at the discretion of the chief executive officer.

b. Employment Contracts

- (1) An institution may provide employment contracts to its non-classified employees. If an institution chooses to offer employment contracts to its non-classified employees, the employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-classified employees have no continued expectation of employment beyond their current contract of employment.
- (2) Non-classified employees, who serve pursuant to contracts of employment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or through furlough or work hour adjustments (as provided for in section II.B.2.c of Board Policy).
- (3) Each employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution.
- (4) Each contract of employment shall include a statement to the following effect and intent: "The terms of employment set forth in this contract of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of University of Idaho), and the policies and procedures of the institution." The contract shall also state that it may be terminated at any time for adequate cause, as defined in Section II.L. of Board Policy, or when the Board declares a state of financial exigency, as defined in Section II.N. of Board Policy. The

contract shall also state that it may be non-renewed pursuant to Section II.F.5. of Board Policy.

- (5) No contract of employment with such an employee may exceed one (1) year without the prior express approval of the Board. Employment beyond the contract period may not be legally presumed. Renewal of an employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.

2. Compensation

- a. Salary – All non-classified employees shall receive a fixed salary. Payment in addition to the fixed salary may be authorized by the chief executive officer. All initial salaries for non-classified employees are established by the chief executive officer, subject to approval by the Board where applicable. The Board may make subsequent changes for any non-classified employee salary or may set annual salary guidelines and delegates to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board approval before such increase may be effective or paid to the non-classified employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.

b. Salaries, Salary Increases and other Compensation related items

- (1) Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such position established by the College and University Professional Association for Human Resources (CUPA-HR), or its equivalent, without prior Board approval.
- (2) Appointments to acting or interim positions shall be at base salary rates no greater than ten percent (10%) more than the appointees' salary rate immediately prior to accepting the interim appointment or ninety-five percent (95%) of the prior incumbent's rate, whichever is greater.
- (3) Overtime Compensation – Non-classified employees earning annual leave at the equivalent rate of two (2) days for each month or major fraction thereof of credited state service are not eligible for either cash compensation or compensatory time off for overtime work. Non-classified employees in positions that are defined as "non-exempt" under the Fair Labor Standards Act earn overtime at a rate of one and one-half (1½) hours for each overtime hour worked. Other non-classified employees may earn compensatory time

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off at the discretion of the chief executive officer at a rate not to exceed one (1) hour of compensatory time for each hour of overtime worked.

- (4) Credited State Service - The basis for earning credited state service will be the actual hours paid not to exceed forty (40) per week.
- (5) Pay Periods - All non-classified employees are paid in accordance with a schedule established by the state controller.
- (6) Automobile Exclusion - Unless expressly authorized by the Board, no non-classified employee will receive an automobile or automobile allowance as part of his or her compensation.

3. Annual Leave

- a. Non-classified employees at the institutions, agencies earn annual leave at the equivalent rate of two (2) days per month or major fraction thereof of credited state service. Twelve-month employees employed at the entities named above may accrue leave up to a maximum of 240 hours. An employee who has accrued the maximum will not earn further leave until the employee's use of annual leave reduces the accrual below the maximum.

Non-classified employees in positions which are covered under the Fair Labor Standards Act earn annual leave according to § 67-5334 and are subject to the maximum leave accruals in § 67-5335(2).

- b. Non-classified employees appointed to less than full-time positions earn annual leave on a proportional basis dependent upon the terms and conditions of employment.
- c. Professional Leave - At the discretion of the chief executive officer, non-classified employees may be granted professional leave with or without compensation under conditions and terms as established by the chief executive officer.

4. Performance Evaluation

Each institution or agency must establish policies and procedures for the performance evaluation of non-classified employees, and are responsible for implementing those policies in evaluating the work performance of employees. The purposes of employee evaluations are to identify areas of strength and weakness, to improve employee work performance, and to provide a basis on which the chief executive officers and the Board may make decisions concerning retention, promotion, and merit salary increases. All non-classified employees must be evaluated annually. Any written recommendations that result from a performance evaluation must be signed by the appropriate supervisor, a copy provided to the

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employee and a copy placed in the official personnel file of the employee. Evaluation ratings that result in findings of inadequate performance of duties or failure to perform duties constitute adequate cause as set forth in Section II.L. of Board Policy.

5. Non-Renewal of Non-classified Contract Employees

- a. Notice of the decision of the chief executive officer to not renew a contract of employment must be given in writing to the non-classified employee at least sixty (60) calendar days before the end of the existing period of appointment for annual appointments. For appointments of less than one year, the written notice must be at least thirty (30) days prior to the end of the existing period of appointment. Reasons for non-renewal need not be stated. Non-renewal without cause is the legal right of the Board. If any reasons for non-renewal are provided to the employee for information, it does not convert the non-renewal to dismissal for cause and does not establish or shift any burden of proof. Failure to give timely notice of non-renewal because of mechanical, clerical, mailing, or similar error is not deemed to renew the contract of employment for another full term, but the existing term of employment must be extended to the number of days necessary to allow sixty (60) (or thirty days where applicable) calendar days notice to the employee.
- b. Except as set forth in this paragraph, non-renewal is not grievable within the institution nor is it appealable to the Board. However, if an employee presents bona fide allegations and evidence to the chief executive officer of the institution that the non-renewal of the contract of employment was the result of discrimination prohibited by applicable law, the employee is entitled to use the internal discrimination grievance procedure to test the allegation. If the chief executive officer is the subject of the allegations, the employee may present the bona fide allegations and evidence to the Executive Director. The normal internal grievance procedure for discrimination must be used unless changed by mutual consent of the parties. The ultimate burden of proof rests with the employee. The institution is required to offer evidence of its reasons for non-renewal only if the employee has made a prima facie showing that the recommendation of non-renewal was made for reasons prohibited by applicable law. Unless mutually agreed to by the parties in writing, the use of the discrimination grievance procedure will not delay the effective date of non-renewal. Following the discrimination grievance procedures, if any, the decision of the institution, is final, subject to Section II.F.5.c., below.
- c. The non-classified contract employee may petition the Board to review the final action of the institution. Any petition for review must be filed at the Office of the State Board of Education within fifteen (15) calendar days after the employee receives notice of final action. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a review petition has

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been filed will not stay the effectiveness of the final action, nor will the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for purposes of judicial review. Nothing in this section should be construed as any prohibition against filing a complaint with any appropriate state or federal entity, including but not limited to the Equal Employment Opportunity Commission (EEOC) or the Idaho Human Rights Commission (IHRC).

6. Tenure

Non-classified employees are generally not entitled to tenure. Certain, very limited, exceptions to this general rule are found in Subsection G.6 of these personnel policies and procedures.

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1. Letters of Employment

- a. All faculty employees serve pursuant to employment contracts. The employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-tenured faculty employees have no continued expectation of employment beyond their current contract of employment. Each faculty employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the faculty employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution. Each contract of employment must include a statement to the following effect and intent: "The terms of employment set forth in this letter (contract) of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of the University of Idaho), and the policies and procedures of (the institution)."
- b. Term of Appointment - All non-tenured faculty employees have fixed terms of employment. No contract of employment with such an employee may exceed one (1) year without the prior approval of the Board. Employment beyond the contract period may not be legally presumed. Reappointment of a faculty employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.
- c. Non-tenured faculty and tenured faculty, who serve pursuant to contracts of employment or notices (letters) of appointment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or through furlough or work hour adjustments (as provided for in section II.B.2.c of Board Policy).
- d. Faculty Rank and Promotion
 - (1) There are four (4) primary faculty ranks at each institution: (a) professor, (b) associate professor, (c) assistant professor, and (d) instructor. Each institution may establish additional faculty ranks, specify the title of each rank, and delineate the requirements for each faculty rank so established.

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Recommendations for additional faculty ranks must be submitted by the chief executive officer to the Board for approval.

- (2) Faculty rank, including initial appointment to faculty rank and any promotion to a higher rank at an institution, is located in a department or equivalent unit.
- (3) Each institution must establish criteria for initial appointment to faculty rank and for promotion in rank at the institution. Such criteria must be submitted to the Board for approval, and upon approval must be published and made available to the faculty.
- (4) Persons who have made substantial contributions to their fields of specialization or who have demonstrated exceptional scholarship and competence or appropriate creative accomplishment of recognized outstanding quality may be appointed to faculty rank without satisfying established institutional criteria for initial appointment or promotion, provided that the qualifications of such individuals have been reviewed in accordance with institutional procedures and the appointment is recommended by the chief executive officer and approved by the Board.
- (5) A non-classified employee may hold faculty rank in a department or equivalent unit in which rank has previously been established by the institution. A non-classified employee may be granted rank at the time of appointment or subsequent thereto, or may be promoted in rank, if such employee meets the criteria for rank as established by the institution and approved by the Board.

2. Compensation**a. Salary**

All initial salaries for faculty employees are established by the chief executive officer, subject to approval by the Board where applicable. Payment in addition to regular salaries must be authorized by the chief executive officer and reported to the Board. The Board may make subsequent changes for faculty employee positions or may set annual salary guidelines and delegate to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board approval before such increase may be effective and paid to the employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board Authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.

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- (1) For purposes of categorizing faculty employees for salary and reporting purposes, the following definition applies: Faculty includes all persons whose specific assignments customarily are made for the purpose of conducting instruction, research, or public service as a principal activity (or activities), and who hold the following academic rank or titles of professor, associate professor, assistant professor, instructor, lecturer, or the equivalent of any of these academic ranks. Report in this category deans, directors, or the equivalents, as well as associate deans, assistant deans, and executive officers of academic departments (chairpersons, heads, or the equivalent) if their principal activity is instructional. Do not include student teaching or research assistants or medical interns or residents. (For reporting purposes, deans, associate deans, and assistant deans are included in the executive/administrative category.)
- (2) Credited State Service/Full Time Status - A faculty member employed for an academic year and paid over a twelve-month period will be credited with twelve (12) months of state service. For all benefit status determinations and calculations, faculty members shall be considered full time, year round employees of the employing institution as long as the employee's teaching; research and service duties are commensurate with the full time faculty work load assignment as defined by the employing institution.
- (3) Pay Periods - All faculty employees, including those on academic year appointments, are paid in accordance with a schedule established by the state controller.
- (4) Automobile Exclusion - Unless expressly authorized by Board policy, no faculty employee will receive an automobile or automobile allowance as part of his/her compensation.

3. Annual Leave

- a. Only faculty members serving twelve (12) month appointments earn annual leave. Such annual leave shall be earned in the same manner as for non-classified employees.

b. Sabbatical Leave**(1) Eligibility**

A sabbatical leave may be granted at the discretion of the chief executive officer to a tenured faculty member (or a professional-technical faculty member) who has completed at least six (6) years of full-time service at an institution. A sabbatical leave may not be awarded to the same faculty

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member more than once in any six (6) academic years and sabbatical leave time is not cumulative. Sabbatical leave proposals must be submitted, reviewed, and processed according to policies and procedures established at each institution. A sabbatical leave may be used for the purpose of acquiring new professional skills and updating professional skills or conducting research. Sabbatical leave awards are fully dependent on the availability of appropriate funding.

(2) Term

The term of a sabbatical leave is either one (1) academic semester at full pay or two (2) semesters at half pay.

(3) Condition

Each faculty member who is granted a sabbatical leave must serve at the institution for at least one (1) academic year after completion of the sabbatical unless the chief executive officer approves a waiver of the requirement.

(4) Report on Sabbatical Leave

By the end of the first semester following return to the institution from a sabbatical leave, the faculty member must submit a written account of sabbatical activities and accomplishments to the academic vice president.

4. Performance Evaluation

- a. Annual Evaluation - Each year the chair of a department must submit to the dean of the chair's college an evaluation of each faculty member in the department. This evaluation, together with the input of higher administrators, will be used as (1) basis for the final recommendation relative to reappointment, non-reappointment, acquisition of tenure, or other personnel action, whichever is appropriate. The chairman must communicate an assessment of strengths and weaknesses to each faculty member evaluated.
- b. Evaluation Criteria - Evaluation of faculty should be made in terms of the individual's effectiveness. Each institution shall publish its criteria for annual evaluation and ensure that all members of the faculty have access to the criteria.
- c. Any written recommendations that result from evaluation of a faculty employee will be given to the employee and a copy will be placed in the employee's file.
- d. Each institution must develop policies, procedures, and measurement instruments to be used in the evaluation by students of faculty teaching effectiveness.

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5. Non-renewal of Non-tenured Faculty Members

a. Notice of non-renewal must be given in writing and in accordance with the following standards:

- (1) First Year Of Service - Not later than March 1 of the first full academic year of service if the appointment is not to be renewed at the end of the academic year; or if a one-year appointment terminates during an academic year and is not to be renewed, at least three (3) months in advance of its termination.
- (2) Second Year of Service - Not later than December 15 of the second full academic year of service if the appointment is not to be renewed at the end of the academic year; or, if the appointment terminates during an academic year and is not to be renewed, at least six (6) months in advance of its termination.
- (3) Three (3) Or More Years Of Service – Not later than July 15 preceding the academic year at the end of which the appointment is to be terminated; or, if the appointment terminates during an academic year and is not to be renewed, at least twelve (12) months in advance of its termination.
- (4) Failure to provide timely notice of non-renewal because of mechanical, clerical, or mailing error does not extend or renew the letter or contract of employment for another term, but the existing term of employment will be extended to provide the employee with a timely notice of non-renewal.
- (5) Financial Exigency - Notice of non-renewal is not required when the Board has authorized a reduction in force resulting from a declaration of financial exigency and a non-tenured faculty member is to be laid off. In that event, notice of layoff must be given as provided under the policies for reduction in force.

b. Request For Review

- (1) Non-renewal is not subject to investigation or review except that the employee may request an investigation or review to establish that written notice was or was not received in accordance with the time requirements set forth in this section. In such cases, the investigation or review will be concerned only with manner and date of notification of non-renewal. The employee must request such investigation or review in writing of the chief executive officer within fifteen (15) days of receipt of the written notice of non-renewal.
- (2) Provided, however, that if the non-tenured faculty member presents bona fide allegations and evidence in writing to the chief executive officer of the institution that the non-reappointment was the result of discrimination

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prohibited by applicable law, the non-tenured faculty member is entitled to use the internal discrimination grievance procedure to test the allegation. In such cases, the same procedures, burden of proof, time limits etc. as set forth for the grievance of non-renewal by non-classified employees shall be used (see subsection F).

- c. Non-tenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment are not entitled to a statement of reasons upon which the decision for such action is based. No hearing to review such a decision will be held.

6. Tenure

- a. Tenure Defined - Tenure is a condition of presumed continuous employment following the expiration of a probationary period and after meeting the appropriate criteria. After tenure has been awarded, the faculty member's service may be terminated only for adequate cause; except in the case of retirement or financial exigency as declared by the Board; in situations where extreme shifts of enrollment have eliminated the justification for a position; or where the Board has authorized elimination or substantial reduction in a program. Tenure status is available only to eligible, full-time institutional faculty members, as defined by the institution. All faculty appointments are subject to the approvals as required in Board policy. Nontenured members of the faculty are appointed to term appointments pursuant to subsection G1. Any commitment to employ a nontenured member of the faculty beyond the period of his or her current term of appointment is wholly ineffective.

- b. Acquisition of Tenure

- (1) Professional-Technical Faculty hired under the division of professional-technical education prior to July 1, 1993 who were granted tenure may retain tenure in accordance with these policies. Individuals hired under the Division of Professional-Technical education subsequent to July 1, 1993 are hired and employed as nontenure track faculty and will:

- (a) be afforded the right to pursue promotion; and
 - (b) be considered and granted an employment contract in accordance with these policies and be subject to continued acceptable performance and/or the needs of the institution; and
 - (c) be afforded on opportunity to serve on institutional committees.

- (2) Academic faculty members, after meeting certain requirements, established by the employing institution, may acquire tenure. Each institution shall develop policies for the acquisition of tenure that are consistent with this general philosophy and policy statement of the Board. Acquisition of tenure is not automatic, by default or defacto, but requires

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an explicit judgment, decision, and approval. A faculty member is eligible to be evaluated for the acquisition of tenure after having completed four (4) full years of academic employment at the institution, although tenure may be awarded prior to completion of this initial eligibility period in certain exceptional cases as provided in Board Policy II.G.6.d.4.a). In addition, an academic faculty member must be evaluated for the acquisition of tenure not later than the faculty member's sixth (6th) full academic year of employment at the institution. In certain exceptional cases a faculty member may petition for extension of the timeline for tenure due to extenuating circumstances as provided in Board Policy II.g.6.d.4.b).

- c. Notification - An individual eligible for tenure must be informed, by proffered written contract, of appointment or nonappointment to tenure not later than June 30 after the academic year during which the decision is made. In case of denial of tenure, the faculty member must be given a written notice that tenure was denied.
- d. Standards of Eligibility for Tenure
 - (1) Annual Appointments - Until the acquisition of tenure, all appointments are made for a period not to exceed one (1) year. Prior to the award of tenure, employment beyond the annual term of appointment may not be legally presumed.
 - (2) Service in Professional Rank - All satisfactory service in any professorial rank may be used to fulfill the time requirement for acquiring tenure. Each institution must develop criteria and rules by which prior service may be evaluated for inclusion in experience necessary for acquiring tenure.
 - (3) Service in Instructor Rank - A maximum of two (2) years satisfactory service in the rank of instructor at the institution will be allowed in partial fulfillment of the time requirement in the professorial ranks. Faculty members who hold the rank of instructor may be eligible for tenure status if provided for by the institution even though they teach in fields that have established professorial ranks.

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(4) Exceptional Cases

- (a) Tenure may be awarded prior to completion of the usual eligibility period in certain exceptional cases. In such cases, the burden of proof rests with the individual.
 - (b) Extension of the tenure review period may be granted in certain exceptional cases. In such cases the faculty member must formally request such an extension and indicate the reason for the request. An institution that permits an extension of the tenure review period must include in its policies the procedure a faculty member must follow to request such an extension, and the basis for determining the modified timeline for review.
 - e. Evaluation For Tenure - It is expected that the chief executive officer, in granting tenure, will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and non-tenured faculty; student representation; and one (1) or more representatives from outside the department. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision.
 - f. Award of Tenure - The awarding of tenure to an eligible faculty member is made only by a positive action of the chief executive officer of the institution. The president must give notice in writing to the faculty member of the approval or denial of tenure. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given
 - g. Periodic Performance Review of Tenured Faculty Members - It is the policy of the Board that at intervals not to exceed five (5) years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department chairperson or unit head. The review must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: teaching effectiveness, research or creative activities, professional related services, other assigned responsibilities, and overall contributions to the department.
- (1) Procedures for periodic review - Each institution must establish procedures for the performance review of tenured faculty members at the

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) December 2011**

institution. Such procedures are subject to the review and approval of the Board. Each year the academic vice president or designee is responsible for designating in writing those tenured faculty members whose performance is subject to review during the year.

- (2) Review standards - Each institution may establish its own internal review standards subject to approval by the Board. Absent such institutional standards, the institution must use the following standards.

If during the periodic review, the performance of a tenured faculty member is questioned in writing by a majority of members of the department or unit, the department chairperson or unit head, the appropriate dean, the appropriate vice president, or the chief executive officer, then the appropriate vice president or equivalent administrator must decide whether a full and complete review must be conducted in accordance with the procedures established for the initial evaluation for tenure at the institution. If during the periodic review, the performance of a tenured faculty member is not questioned in writing, members of the department or unit and the department chairperson or unit head must prepare a written review statement that the performance review has been conducted and that a full and complete review is not required.

- (3) Exception for Associate Professors in the Promotion Process - Generally, the promotion from the rank of associate professor to full professor is considered no earlier than the fifth full year after attaining the rank of associate professor, which is generally contemporaneous with the granting of tenure. In such cases, if review for promotion to full professor is scheduled during the fifth, sixth or seventh full year after the award of tenure then the promotion review may, if it meets substantially similar criteria and goals of the post tenure review, take the place of the periodic performance review described here.

- (4) Termination of employment - If, following a full and complete review, a tenured faculty member's performance is judged to have been unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member. In other words, an unsatisfactory or less than adequate performance rating shall constitute adequate cause for dismissal.

- h. Dismissal for Adequate Cause - Tenured faculty members may be dismissed for adequate cause as provided for in Subsection L of this Section.

- i. Tenure for Academic Administrators

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) December 2011**

- (1) "Academic administrators," for purposes of this topic, means the chief executive officer/presidents, chief academic officers/provosts, vice provosts or equivalent of the institutions, the deans, associate/assistant deans, and department chairs of the academic units of the institutions, and the vice presidents for research of the institutions, and shall not include persons occupying other administrative positions.
 - (2) An employee with tenure in an academic department or equivalent unit who is appointed to an academic administrator position retains tenure in that department or equivalent unit
 - (3) An individual hired for or promoted to an academic administrator may be considered for a tenured faculty rank in the appropriate department or equivalent unit. Such consideration is contingent upon approval by the institution's president.
 - (4) Upon termination of employment as an academic administrator, an employee with tenure may, at his or her option, return to employment in the department or equivalent unit in which he or she holds tenure unless such employee resigns, retires, or is terminated for adequate cause.
 - (5) An individual hired for a non-academic administrator position from outside the institution will not be considered for tenured faculty rank in conjunction with such appointment. However, he or she may be granted an adjunct faculty appointment, upon the recommendation of the appropriate department and dean and with the approval of the provost or chief academic officer and president, if the individual will teach and otherwise contribute to that department.
 - (6) Notwithstanding the above, each administrative employee who is granted tenure shall be reviewed in accordance to policies established at each institution for the evaluation of an academic administrator.
- j. Terminal Contract of Employment - If a faculty member is not awarded tenure, the chief executive officer must notify the faculty member of the decision not to recommend tenure and may, at his or her discretion, either issue to the faculty member a contract for a terminal year of employment, or, at the sole discretion of the chief executive officer, issue to the faculty member contracts of employment for successive periods of one (1) year each. Such appointment for faculty members not awarded tenure must be on an annual basis, and such temporary appointments do not vest in the faculty member any of the rights inherent in tenure and there shall be no continued expectation of employment beyond the annual appointment.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) December 2011

- k. When authorized by the chief executive officer, or his or her designee, the year in which the tenure decision is made may be the terminal year of employment.
- l. Effect of lapse in service, transfer, reassignment, reorganization, and administrative responsibilities.
 - (1) A non-tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years may have his or her prior service counted toward eligibility for the award of tenure. Eligibility for the award of tenure must be clarified in writing before reappointment. A tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years must have tenure status clarified in writing by the president or his designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status.
 - (2) Before a non-tenured faculty member holding academic rank is moved from one position in the institution to another, the member must be informed in writing by the academic vice president, after consultation with the receiving department, as to the extent to which prior service may count toward eligibility for tenure status.
 - (3) No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative structure. A faculty member's tenure is not affected by reassignment of administrative responsibilities.
 - (4) When a tenured faculty member is serving as department chairman, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained.

GOVERNING POLICIES AND PROCEDURES

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GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors** December 2011

1. Agreements Longer Than One Year

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of more than one (1) year, but not more than five (5) years, subject to approval by the Board as to the terms, conditions, and compensation there under, and subject further to the condition that the contract of employment carries terms and conditions of future obligations of the coach or athletic director to the institution for the performance of such contracts. Each contract for the services shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law. The December 9, 2010 Board revised and approved multiyear model contract is adopted by reference into this policy. The model contract may be found on the Board's website at <http://boardofed.idaho.gov/>.

2. Agreements For One Year Or Less

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of one (1) year or less without Board approval. Each contract shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law. The December 9, 2010 Board revised and approved model contract is adopted by reference into this policy. The single-year model contract may be found on the Board's website at <http://boardofed.idaho.gov/>.

3. Academic Incentives

Each contract for a head coach shall include incentives, separate from any other incentives, based upon the academic performance of the student athletes whom the coach supervises. The chief executive officer of the institution shall determine such incentives.

4. Part-time Coaches Excepted

The chief executive officer of an institution is authorized to hire part-time head coaches as provided in the policies of the institution. Applicable Board policies shall be followed.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors December 2011

5. Assistant Coaches

The chief executive officer of the institution is authorized to hire assistant coaches as provided in the policies of the institution. Applicable Board policies shall be followed.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: P. General Policies and Procedures – All Employees****December 2011**

1. Nondiscrimination Policy

It is the policy of the Board that the institutions or agency under its governance provide equal employment opportunities to applicants for employment and equal benefits to employees without regard to race, color, national origin, religion, sex, age, disability, or veteran's status in accordance with applicable state and federal laws.

2. Equal Employment Opportunity

The policy of the Board is to pursue a continuing program of specific positive practices designed to achieve the realization of equal employment opportunity without regard to race, color, national origin, religion, sex, age, disability, or veteran's status in accordance with applicable state and federal laws.

To implement this policy, the Board directs the chief executive officers of its institutions or agencies to:

- a. recruit, hire, train, and promote persons without discrimination in accordance with applicable state and federal laws and the governing policies of the Board;
- b. make decisions on employment so as to further the principle of equal employment opportunity;
- c. ensure that promotion decisions are in accordance with the principles of equal employment opportunity; and
- d. ensure that all personnel actions affecting such matters as compensation, benefits, transfer, termination, layoff, return from layoff, sponsored training, education, and social and recreational programs are administered without discrimination.

Each chief executive officer or his or her designee is specifically responsible for ensuring that there are no obstacles to equal employment opportunity by establishing a program of affirmative action, ensuring internal adherence to such a program, and evaluating its progress.

3. Sexual Harassment Policy

It is the policy of the Board that no employee should be subject to illegal sexual harassment. Each institution and agency must establish and maintain policies prohibiting sexual harassment and an internal process for investigating allegations of

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: P. General Policies and Procedures – All Employees****December 2011**

sexual harassment and addressing and remedying violations of applicable law and policies prohibiting sexual harassment.

4. Personnel Files**a. Employee Files**

Each institution and agency must maintain for each employee a personnel file, which is open for examination by the employee in accordance with the provisions of the Idaho public records act, Idaho Code 9-337 et seq., and other applicable law.

(1) The employee may, pursuant to the Idaho public records act, request in writing an amendment of any record pertaining to that employee. Within ten days of the receipt of the request, the custodian of the files will make any correction of any portion of the file which the employee establishes is inaccurate, irrelevant, or incomplete; or inform the employee in writing of the refusal to amend the record(s) in accordance with the request and the reasons for the refusal, as set forth in the Idaho public records act.

(2) In accordance with the Idaho public records act and other applicable law, an employee may obtain copies of materials in his or her personnel file.

b. Personnel Records Exempt From Disclosure

Each institution and agency will comply with the provisions of the Idaho public records act and other applicable law concerning the maintenance, disclosure and confidentiality of personnel records and information.

c. File Maintenance and Retention

(1) Each institution and agency must maintain personnel files under such conditions as are necessary to ensure the integrity and safekeeping of the file and may establish additional policies and procedures for the maintenance of personnel files consistent with the Idaho public records act and other applicable law.

(2) Any personnel files related to and involving legal action must be retained through any time period in which legal action may be taken.

(3) Personnel files must be retained for a minimum of three (3) years following severance of an employment relationship with an institution or agency. A summary record of employment relationships must be kept indefinitely.

5. Miscellaneous Policies and Procedures

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: P. General Policies and Procedures – All Employees****December 2011**

a. Political Activities of Employees

Employees retain unimpaired all of their individual and political rights of citizenship. However, employees may not exercise those political rights in the name of any institution or agency, or through the use of Board facilities, or through the use of forms or official stationery or in any way that might involve an institution or agency in partisan political activity or controversy.

- (1) The Board or any of its members, agents, representatives, or employees must not prevent, threaten, harass, or discriminate against any employee who chooses to run for public office.
- (2) Employees are permitted to campaign freely in a manner that does not violate Board Governing Policies and Procedures or applicable provisions of the Idaho Code.
- (3) Employees may choose to request a leave without compensation in order to campaign for elective office or to serve in an elective office by using the procedures established at an institution or agency in addition to these policies and procedures.

b. Loyalty Oaths

No loyalty oath shall be required of any Board employee.

c. Outside Employment

The maintenance of a high standard of honesty, impartiality, and conduct by Board employees is essential to ensure the proper performance of its business and to strengthen the faith and confidence of the people of the State of Idaho in the integrity of state employees. The Board recognizes that employees may engage in outside employment of a professional or personal nature, directly related to the professional or other competencies of the employee. However, no employee may undertake outside employment that interferes with the employee's assigned duties to the Board or the agency. In all outside employment, the outside employer must be informed that the employee is acting in a private capacity and that the institution or agency is in no way a party to the outside employment, and is not liable or responsible for the performance thereof.

d. Other Services to the Institution or Agency.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: P. General Policies and Procedures – All Employees

December 2011

An employee may be requested by the Chief Executive Officer or his or her designee to perform responsibilities or provide services beyond the primary scope of his or her appointment.

Each institution and agency must establish policies and procedures that do not conflict with policies and procedures of the Board regarding additional responsibilities or services.

Payment in addition to regular salaries must be authorized by the Chief Executive Officer.

BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011

SUBJECT

Amendments to Board Policy, Section II. Subsection G.1. – First Reading: proposal to allow institutional authority to offer multi-year contracts for non-tenure track faculty

REFERENCE

October 29-30, 2006 Board discussion item related to the approval of individual extended contracts approved at the same meeting. Board asked CAAP to work on a proposal for review.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section II.G.1.b.

BACKGROUND/DISCUSSION

The Council on Academic Affairs and Programs (CAAP) has discussed and given input to the attached policy revision to Board Policy II.G.1.b. The revision would establish parameters under which the institutions may enter into multi-year contracts for certain non-tenure faculty classifications, for a maximum term of three years.

Rationale for the change includes:

- 1) The ability to attract and retain the highest quality candidates (e.g. clinical and research faculty). A requirement of prior Board approval, coupled with the Board's meeting schedule, deprives the institutions of the hiring flexibility necessary to make timely offers, and hinders their ability to keep the best candidates in the applicant pool;
- 2) The ability to attract candidates who may be relocating with a reasonable sense of security in the position (subject to satisfactory annual performance);
- 3) To avoid a misuse of tenure track positions as a means to offer reasonable position security.

IMPACT

Some level of job security will enhance applicant pools for national searches and encourage applicants to relocate as needed. Cost savings are anticipated as a result of minimized training and failed search costs.

ATTACHMENTS

Attachment 1 – Policy II.G.1. Policies Regarding Faculty

Page 3

STAFF COMMENTS AND RECOMMENDATIONS

In February 2010, the Board revised its policy to clarify the powers delegated to the institution presidents to manage their workforce. In an effort to make the Board's policy internally consistent, in June 2011 the Board amended policy II.B.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011**

to provide institution presidents the authority to create new positions and hire employees below the vice president level without Board approval. However, Board policy still requires approval of multi-year contracts. Specifically, policy II.F. provides that no contract of employment with a non-classified employee may exceed one year without the prior express approval of the Board. Policy II.H. requires institution presidents to seek Board approval to enter into a contract for the services of a head coach or athletic director for a term of more than one year (and not more than five years).

Policy II.G. limits the term of appointment of non-tenure track faculty to one year. CAAP brings a recommendation to the Board to allow for multi-year contracts not to exceed three years as a recruitment and cost savings tool. Under the proposed amendments, such contracts would be reported to the Board, but would not require Board approval.

This comes down to a policy decision for the Board as to how much oversight it wants over multi-year contracts. Staff finds that the proposed amendments are reasonable in light of recent actions by the Board to delegate authority.

BOARD ACTION

I move to approve the first reading of the amendments to Board Policy II.G.1.b., as presented.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~June 2010~~ February 2012

1. Letters of Employment

- a. All faculty employees serve pursuant to employment contracts. The employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-tenured faculty employees have no continued expectation of employment beyond their current contract of employment. Each faculty employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the faculty employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution. Each contract of employment must include a statement to the following effect and intent: "The terms of employment set forth in this letter (contract) of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of the University of Idaho), and the policies and procedures of (the institution)."

- b. Term of Appointment - All non-tenured faculty employees have fixed terms of employment. Except as provided herein, No contract of employment with such an employee may exceed one (1) year without the prior approval of the Board. The institutions may implement policies allowing for multi-year contracts for certain classifications of non-tenure track faculty members. Such policies must include, at a minimum, the following requirements: (1) no contract of appointment may exceed three (3) years; (2) all multi-year employment contracts shall be approved in writing by the institution's Chief Executive Officer or designee; and (3) all multi-year contracts must be reported to the Board at the next regular meeting. Employment is subject to satisfactory annual performance review with informal review at the end of each semester.

A multi-year contract shall also state that it may be terminated at any time for adequate cause, as defined in Section II.L. of Board policy, or when the Board declares a state of financial exigency, as defined in Section II.N. of Board policy. The contract shall also state that it may be non-renewed pursuant to Section II.G.5. of Board policy.

Employment beyond the contract period may not be legally presumed. Reappointment of a faculty employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~June 2010~~ February 2012

- c. Non-tenured faculty and tenured faculty, who serve pursuant to contracts of employment or notices (letters) of appointment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or through furlough or work hour adjustments (as provided for in section II.B.2.c of Board Policy).
- d. Faculty Rank and Promotion
 - (1) There are four (4) primary faculty ranks at each institution: (a) professor, (b) associate professor, (c) assistant professor, and (d) instructor. Each institution may establish additional faculty ranks, specify the title of each rank, and delineate the requirements for each faculty rank so established. Recommendations for additional faculty ranks must be submitted by the chief executive officer to the Board for approval.
 - (2) Faculty rank, including initial appointment to faculty rank and any promotion to a higher rank at an institution, is located in a department or equivalent unit.
 - (3) Each institution must establish criteria for initial appointment to faculty rank and for promotion in rank at the institution. Such criteria must be submitted to the Board for approval, and upon approval must be published and made available to the faculty.
 - (4) Persons who have made substantial contributions to their fields of specialization or who have demonstrated exceptional scholarship and competence or appropriate creative accomplishment of recognized outstanding quality may be appointed to faculty rank without satisfying established institutional criteria for initial appointment or promotion, provided that the qualifications of such individuals have been reviewed in accordance with institutional procedures and the appointment is recommended by the chief executive officer and approved by the Board.
 - (5) A non-classified employee may hold faculty rank in a department or equivalent unit in which rank has previously been established by the institution. A non-classified employee may be granted rank at the time of appointment or subsequent thereto, or may be promoted in rank, if such employee meets the criteria for rank as established by the institution and approved by the Board.

BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011

SUBJECT

Amendments to Optional Retirement Plan document

APPLICABLE STATUTES, RULE OR POLICY

Idaho Code 33-107A, 107B

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

BACKGROUND / DISCUSSION

The Board's tax counsel regularly reviews retirement plan documents to ensure compliance with federal tax laws.

Counsel has recently informed us that passage by Congress of the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") will necessitate some new Optional Retirement Plan (ORP) provisions to accommodate participants who are absent from work due to qualified military service. While we are not required to make these Plan amendments immediately, the Plan must operate in accordance with these requirements. A Plan will be treated as being operated in accordance with Plan terms if an amendment regarding the applicable HEART Act provisions is made on or before December 31, 2012. The Plan is required to apply the following provisions:

1. "Some employers make differential wage payments to their employees who are called to active duty in the uniformed services. "Differential wage payments" (or "differential pay") are typically the difference between the individual's normal pay from the employer and his military pay. Employers are not required to make these wage payments, but for those that do, the HEART Act changed their tax treatment. Under the HEART Act, differential wage payments made after December 31, 2008, are considered W-2 wages. As a result, individuals receiving such payments are considered to be active employees of the employer... For purposes of applying the section 415 Annual Additions and Annual Benefits limits, compensation must include differential pay."¹ The Plan amendment includes the definition of differential wage payment, and provides that for purposes of applying the section 415 limits, these payments should be included.
2. If an ORP participant dies while performing qualified military service, the participant shall be treated as having been an active employee for purposes of any additional benefits under the Plan.
3. An employee returning from qualified military leave must be allowed to make contributions to the ORP that the employee could have made if employed during the period of qualified military leave. To the extent the employee makes such contributions to the ORP, the employer must make corresponding employer

¹ "Pension Analyst," *Prudential Retirement*, http://www.prudential.com/media/managed/IRS_guidance_miscellaneous_HEART_Act.pdf (accessed November 11, 2011)

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011**

contributions to the employee's ORP account. Employees returning from qualified military leave should be given a notice of this right to make retroactive contributions.

Counsel has also advised staff that the Plan needs to be amended to comply with provisions of the Pension Protection Act by adding "Roth IRA" to the definition of an "Eligible Retirement Plan" that may receive direct rollovers of plan distributions. This will allow participants to directly rollover a plan distribution to a Roth IRA.

Finally, staff has updated the defined term "Plan Administrator" and made minor formatting changes.

IMPACT

The proposed amendments will bring the Plan into compliance with federal tax law.

ATTACHMENTS

Attachment 1 – Optional Retirement Plan document

Page 3

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval.

BOARD ACTION

I move to approve the amendments to the Optional Retirement Plan document as presented in Attachment 1.

Moved by_____ Seconded by_____ Carried Yes____ No____

Idaho State Board of Education
Optional
Retirement Plan

A Defined Contribution Retirement Plan
Restated November 2001
Restated December 2003
Restated to include amendments through 2008
[Restated December 2011](#)

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Article I: Definitions

- 1.1 **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.
- 1.2 **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 section 415(l)(2) and 419A(d)(2) of the Code, if any.
- 1.3 **Beneficiary (ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 **Board** means the Idaho State Board of Education and Board of Regents of the University of Idaho as defined in Idaho Code §33-101.
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 **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).

In addition to other applicable limitations stated in the plan, and notwithstanding any other provision of the Plan to the contrary, for Plan years beginning on or after January 1, 1996, the annual compensation of each employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For Plan years beginning on or after January 1, 1996, any reference in this Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit stated in this provision.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996, the OBRA '93 annual compensation limit is \$150,000.

Notwithstanding the above, employees who became Participants in the Plan before the first day of the Plan Year beginning on or after January 1, 1996, will not be subject to the annual compensation limit.

- 1.7 **Date of Employment or Reemployment** means the effective date of the appointment for a faculty member or professional staff. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the Institution.

1.8 **Eligible Employee** means faculty or nonclassified staff of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired between July 1, 1990 and June 30, 1993 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1990 who elected to participate in the Plan during the 90 day period from July 1, 1990 to September 28, 1990; and teaching staff and officers of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired on or after July 1, 1993 who work on a .50 full-time equivalency basis or more; and teaching staff and officers of the College of Southern Idaho, North Idaho College, College of Western Idaho, or Eastern Idaho Technical College initially appointed or hired on or after July 1, 1997 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1997 who elected to participate in the Plan during the 150 day period from July 1, 1997 to November 28, 1997. However, “Eligible Employee” shall exclude:

- (a-) an Employee whose employment is expected to be less than five (5) months; and
- (b-) an Employee whose employment is incidental to his or her status as a student at the Institution; and
- (c-) an Employee who is vested in the Public Employee Retirement System of Idaho (PERSI) and who makes a one time irrevocable election to remain a member of that retirement system within 60 days of the date of initial hire or appointment.

The term Eligible Employee shall not include any leased employee deemed to be an employee of the Institution as provided in Code Section 414(n).

If an individual is classified as an independent contractor during any period of providing services to the Institution, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation. Notwithstanding the above, if the failure to cover such reclassified individual would prevent the Plan from satisfying the minimum coverage requirement under Code Section 410(b) for a Plan year, the minimum number of such individuals necessary for the plan to fulfill such minimum coverage requirements will be included as eligible employees for the plan year, with preference given to those reclassified individuals with the smallest amount of compensation.

No individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole discretion, or individual performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer, shall be an Eligible Employee for purposes of this plan.

1.9 **Fund Sponsor** means an insurance, variable annuity or Investment Company that provides Funding Vehicles available to Participants under this Plan.

1.10 **Funding Vehicles** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

1.11 **Hours of Service means:**

- (a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.
- (b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is directly or indirectly paid, or entitled to payment by the Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under

this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.

- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Institution is a member, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the regulations thereunder. Hours of Service also will be credited for any person considered an employee for this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

Hours of Service will be determined on the basis of actual hours that an employee is paid or entitled to payment.

- 1.12 ***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
 North Idaho College
 College of Western Idaho
- 1.13 ***Institution Plan Contributions*** means contributions made by the Institution under this Plan.
- 1.14 ***Limitation Year*** means a calendar year.
- 1.15 ***Normal Retirement Age*** means age 65.
- 1.16 ***Participant*** means any Eligible Employee of the Institution participating in this Plan.
- 1.17 ***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.

- 1.18 ***Plan*** means the Idaho State Board of Education Optional Retirement Plan as set forth in this document, and pursuant to Idaho Code §33-107A and 33-107B.
- 1.19 ***Plan Contributions*** means the combination of Participant Plan Contributions and Institution Plan Contributions.
- 1.20 ***Plan Entry Date*** means the later of the Effective Date of the Plan or the Eligible Employee's Date of Employment or Reemployment.
- 1.21 ***Plan Year*** means January 1 through December 31.
- 1.22 ***Year of Service*** means a 12-month period (computation period) during which the Eligible Employee completes 1,000 or more Hours of Service.

Article II: Establishment of Plan

2.1 ***Establishment of Plan.*** The Idaho State Legislature authorized the Board to establish the Plan as of July 1, 1990.

This Plan document sets forth the provisions of this Code Section 401(a) Plan. The Plan was restated as of November 1, 2001. Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants. 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).

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 III: Eligibility for Participation

- 3.1 ***Eligibility.*** An Eligible Employee must, as a condition of employment, begin participation in this Plan on the Plan Entry Date following employment at the Institution.
- 3.2 ***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.
- 3.3 ***Enrollment in Plan.*** 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 will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.
- 3.4 ***Reemployment.*** A former employee who is reemployed by the Institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.
- 3.5 ***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.

Article IV: Plan Contributions

- 4.1 ***Plan Contributions.*** Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III as follows:

Each Institution shall contribute the percentage indicated below of the Compensation of that Institution's Participants, reduced by the amount necessary, if any, to provide contributions to a total disability program, but in no event less than five percent (5%) of each Participant's Compensation:

NIC, CSI, CWI and EITC: seven and eighty-one one hundredths percent (7.81%);

UI, BSU, ISU, LCSC and the Office of the State Board of Education: nine and thirty-five one hundredths percent (9.35%) effective July 1, 2007; seven and eighty-one one hundredths percent (7.81%) prior to July 1, 2007.; and

Each Participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of his or her Compensation.

Plan Contribution rates are defined in Idaho Code §33-107A and are subject to change as that section is amended.

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 III. 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.
- 4.3 ***Allocation of Contributions.*** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. 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 employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer 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~~ **Military Service**. 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 to the extent required by Code §section~~ 414(u)~~of the Code~~.

(a) Effective January 1, 2009, for purposes of applying the limitations of Code section 415 as described in section 4.8 of the Plan, compensation includes differential wage payments. A "differential wage payment" is a payment which (1) is made by the Institution with respect to a period during which an individual is on active military duty for a period of more than 30 days, and (2) represents all or a portion of the wages the individual would have received from the Institution if the individual were performing service for the Institution, all as defined by Code section 3401(h)(2).

(b) Effective January 1, 2007, to the extent required by Code section 401(a)(37), if a Participant dies while performing qualified military service (within the meaning of Code section 414(u)(5)), the Participant shall be treated as having terminated employment with the Institution due to his death for purposes of any additional benefits (other than contributions relating to the period of qualified military service) provided under the Plan.

(c) Effective December 12, 1994, a Participant who returns to employment with the Institution as an Eligible Employee during the period within which reemployment rights are guaranteed by law may elect to contribute to the Plan all or a part of the contributions the Participant would have made to the Plan if the Participant had remained continuously employed by the Institution throughout the period of the Participant's qualified military service. The amount of contributions the Participant may make according to this subsection 4.7(c) shall be determined on the basis of the Participant's Compensation in effect immediately before the qualified military service and the terms of the Plan at that time. A Participant may make such contributions during a period beginning on the Participant's reemployment with the Institution and lasting for the shorter of five years or three times the Participant's period of qualified military service. To the extent the Participant makes contributions permitted by this subsection 4.7(c), the Participant's Accumulation Account will receive Institution contributions that would have been made during the same period.

- 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.

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, 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 V: Funding Vehicles

- 5.1 ***Funding Vehicles.*** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors are:

| [\(A-a\)](#) Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)

| [\(B-b\)](#) Variable Annuity Life Insurance Company (VALIC)

Participants may choose any Funding Vehicle offered by a Fund Sponsor. The Institution's current selection of Fund Sponsors isn't intended to limit future additions or deletions of Fund Sponsors. Any additional accounts offered by a Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Institution and the Fund Sponsor.

- 5.2 ***Fund Transfers.*** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles.

Article VI: Vesting

- 6.1 ***Plan Contributions.*** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

Article VII: Benefits

- 7.1 **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.

- 7.2 **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.

Except, following retirement or termination of employment prior to age 55, if total accumulation is less than or equal to \$15,000, both Participant and Institution Plan Contributions are available in a cash withdrawal subject to any restrictions of the Funding Vehicles of the Fund Sponsor.

- 7.3 **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 10 percent of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.

- 7.4 **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).

- 7.5 **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.

- 7.6 **Minimum Distribution Requirements.** The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this Section shall apply to any distribution of a Participant's vested Accumulation Account(s) 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 Section. 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 Distributions During Participant's Lifetime.**

- (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 (c)(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 or forfeitures 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 Participants, 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 subsection (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.

- 7.7 **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:

~~(1-a)~~ The total Accumulation Account is \$2,000 or less.

~~(2-a)~~ 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.

- 7.8 **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:

~~(1a)~~ 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 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).

~~(2b)~~ 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. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in Code section 408A, subject to the adjusted gross income limits of Code section 408A(c)(3)(B), if applicable, and subject to the distribution rules of Code section 408A(d)(3).

~~(3c)~~ 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.

(4d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

7.9 Distribution to IRA of Nonspouse Beneficiary. A Participant's nonspouse Beneficiary may elect payment of any portion of the deceased Participant's account in a direct trustee to trustee transfer to an individual retirement account or annuity described in section 402(c)(8)(B)(i) or (ii) of the Code that is established to receive the Plan distribution on behalf of the Beneficiary. For purposes of this section, a trust maintained for the benefit of one or more designated beneficiaries may be the Beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's required beginning date as defined in section 7.6, the required minimum distribution in the year of death may not be transferred according to this section. The requirements of section 402(c)(11) of the Code apply to distributions under this section.

Article VIII: Administration

- 8.1 ***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 following 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:

~~The~~ Chief Fiscal Officer

~~The~~ Office of the Idaho State Board of Education

~~The Financial~~ Vice President for Finance and Administration
Boise State University

~~The Financial~~ Vice President for Finance and Administration
Idaho State University

~~The~~ Vice President for Finance and Administration
University of Idaho

~~The Financial~~ Vice President for Finance and Administration
Lewis-Clark State College

~~The Financial~~ Vice President for Finance and Administration
Eastern Idaho Technical College

~~The~~ Financial Vice President
College of Southern Idaho

~~The~~ Financial Vice President
North Idaho College

~~The Financial~~ Vice President for Finance and Administration
College of Western Idaho

- 8.2 ***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.

- 8.3 ***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 section 8.2 "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 8.2 "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.

- 8.4 **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 8.2 "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 by-laws of the Institution, under any provision of law, or under any other agreement.
- 8.5 **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.
- 8.6 **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.
- 8.7 **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 IX: Amendment and Termination

- 9.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Institution reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of its Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Institution will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 ***Limitation.*** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.
 - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

Article X: Miscellaneous

- 10.1 ***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.
- 10.2 ***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.
- 10.3 ***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.
- 10.4 ***Finality of Determination.*** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.
- 10.5 ***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.
- 10.6 ***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.

Article XI: Trust Provisions

- 11.1 **Establishment of Trust.** The Institution shall establish a Trust, pursuant to applicable law, to hold the assets of the Trust Fund (as defined below). By signing below, the Trustees agree to hold the assets of the Trust Fund, as constituted from time to time, in trust, and to administer the Trust Fund in accordance with the terms and conditions of the Trust provisions in this Article XI. The Trustees shall, at the direction of the Institution as named fiduciary of the Plan, be the owner of the custodial account pursuant to which mutual funds shall be made available under the Plan as investment options. The Trustees shall follow the proper directions of the Institution, as named fiduciary of the Plan, with respect to the investment and withdrawal of assets in the mutual funds provided such directions are made in accordance with the terms of the Plan and are not contrary to ERISA. The shares of such mutual funds in the custodial account shall constitute the "Trust Fund." TIAA-CREF annuity contracts or certificates (and any other annuity contracts that satisfy the requirements of §401(f) of the Code) shall not be part of the Trust Fund. It shall be prohibited at any time for any part of the Trust Fund (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan Participants and Beneficiaries except as otherwise permitted under the Code and ERISA.
- 11.2 **Nontransferability or Alienation of Benefits.** No right or interest of a Plan Participant or Beneficiary shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code and ERISA. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) or to a lien or levy on behalf of the Internal Revenue Service.
- 11.3 **Trustees' Authority and Powers over Trust Fund.** Subject to any limitations imposed by § 4975 of the Code and § 406 of ERISA related to prohibited transactions:
- (a) The Trustees shall have the exclusive authority and custody over all Plan assets deposited in the Trust, except to the extent otherwise provided herein.
 - (b) The Trustees shall have the authority and power to make, execute, acknowledge and deliver any instruments that may be necessary or appropriate to carry out their powers.
 - (c) The Trustees shall have the authority to vote by proxy on any mutual fund shares constituting the Trust Fund. In voting such proxies, the Trustees shall follow the instructions of Plan Participants and their Beneficiaries. If no instructions for voting proxies applicable to mutual fund shares are received, the Trustees shall not exercise the voting rights for such shares and will not be responsible for the failure to vote or instruct the vote of such shares.
 - (d) The Trustees shall have full authority and power to do all acts whether or not expressly authorized which may be deemed necessary or proper for the protection of the Trust Fund including the exercise of any conversion privilege and/or mutual fund subscription rights.
 - (e) The Trustees shall have full authority and power to sell, dispose, purchase, exchange or transfer any Trust Fund shares pursuant to the instructions of the Institution, including a return of Plan contributions to the Institution that is permitted under ERISA and the Plan. No provision of this Trust shall be construed to prevent the transfer of funds at the direction of Participants or Beneficiaries among the Plan Allocation Accounts.
 - (f) The Trustees shall apply for beneficial ownership of the custodial account pursuant to the instructions of the Institution as named fiduciary under the Plan.
- 11.4 **Standard of Care.** The Trustees shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. No Trustee shall cause the Trust to engage in any prohibited transaction under ERISA.

- 11.5 **Payment of Benefits.** The Trustees shall take such actions as may be necessary to distribute Plan assets held in the Trust to Participants or Beneficiaries in accordance the instructions of the Institution under the Plan. Except as provided in the following sentence, the Trust shall not retain any part of the Accumulation Account due a Participant or Beneficiary. If the Trustees receive any claim to assets held in the Trust which is adverse to a Participant's interest or the interest of his or her Beneficiary, and the Institution as named fiduciary under the Plan, in its absolute discretion, decides the claim is, or may be, meritorious, the Institution may direct the Trustees, and the Trustees shall agree, to withhold distribution until the claim is resolved or until instructed by a court of competent jurisdiction. As an alternative, the Institution may direct the Trustees and the Trustees shall agree, to deposit all or any portion of the Participant's or Beneficiaries' interest in the Trust into the court. Deposit with the court shall relieve the Trustees of any further obligation with respect to the assets deposited. The Trustees have the right to be reimbursed from the Institution for legal fees and costs incurred.
- 11.6 **Reliance on Trustees as Owner.** No one dealing with the Trustees shall be bound to see to the application of any money paid or property transferred to or upon the order of the Trustees, or to inquire into the validity or propriety of anything the Trustees may purport to do.
- 11.7 **Reliance on Institution.** The Trustees may consult with the Institution or counsel designated by the Institution with respect to the meaning or construction of any provision of the Plan, a funding instrument which is an asset of the Trust, the Trustees' obligations or duties under this Article XI or with respect to any action or proceeding arising hereunder. To the extent permitted by law, the Trustees shall be fully protected both with respect to any action taken or omitted in good faith pursuant to the advice of the Institution or its counsel and in reliance upon any statement of fact made by the Institution.
- 11.8 **Accounting of the Trustees.** Within a reasonable period of time after the end of each Plan Year, and/or upon termination of the Trust, the Trustees shall submit to the Institution sufficient information requested by the Institution which is necessary for the Institution to carry out its respective duties under ERISA with respect to the Plan.
- 11.9 **Trustees' Records.**
- (a) The Trustees shall keep accurate and detailed accounts of all investments (if any), Plan assets, receipts, disbursements, and other transactions involving the Trust Fund (if any), not otherwise prepared by the custodian/record-keeper of the custodial account. All accounts, books and records relating to such transactions shall be open to inspection at all reasonable times by any person designated by the Institution.
 - (b) The Trustees shall submit copies of any statements or written communications received pertaining to the investment of any Plan assets constituting the Trust Fund to the Institution contemporaneously with their receipt by the Trustees.
- 11.10 **Annual Valuation.** The Trustees shall cause a valuation of the Trust Fund to be made as of the last day of each Plan Year and shall provide the Institution with a written report of such valuation within a reasonable period of time after the valuation is performed. On each valuation date the earnings and losses shall be allocated to the Accumulation Account of each Participant with interest in such asset in the ratio that the Participant's interest bears to the fair market value of the asset and the Institution shall receive written notice of the value of each Participant's account held in such asset. Such report shall be prepared by the custodian/record-keeper of the custodial account.
- 11.11 **Compensation of Trustee.** The Trustees shall receive such reasonable compensation for services as agreed to in writing by the Trustees and the Institution, except that no compensation shall be paid to an employee of the Institution or its subsidiaries for service as a Trustee.
- 11.12 **Expenses.** All expenses incurred in connection with the administration of the Plan, including but not limited to Trustees' fees, fees of appraisers and accountants (if any), and legal fees shall be paid by the Institution. All expenses of the Trust Fund (if any), shall be paid by the Institution.
- 11.13 **Removal or Resignation of Trustee.** Any person may be removed as Trustee by the Institution at any time by notice in writing to such Trustee. Any person acting as Trustee hereunder may resign at any time upon 30 days notice in writing to the Institution. A resigning or removed Trustee shall transfer and deliver to the Institution all

records of the Trust in his or her possession and shall deliver to their successor Trustees (or the Institution if there are no successor Trustees) all instruments of transfer or assignment, whereupon such Trustee shall have no further duties hereunder; provided, however, that nothing herein shall prevent any Trustee at any time from filing a judicial settlement and accounting with a court of competent jurisdiction. The only parties to such action shall be the Trustees and the Institution. A successor Trustee shall have no duty to examine the accounts, records, investments, or acts of any previous Trustee.

- 11.14 **Appointment of Successor and Additional Trustees.** The Institution may at any time and from time to time appoint successor Trustees and/or additional Trustees. The appointment of a successor and/or an additional Trustee shall become effective upon such Trustee's written acceptance of such appointment agreeing to be bound by the provisions of this Article XI. Upon acceptance of the appointment, each successor and/or additional Trustee shall have all the powers and duties of a Trustee. Except to the extent otherwise provided under ERISA, no successor or additional Trustee shall be personally liable for any act or omission which occurred prior to the time he or she became a Trustee.
- 11.15 **Actions of Trustees.** Except as otherwise provided herein, when there are two Trustees, both must join in taking an action. When more than two Trustees are serving hereunder, all powers of the Trustees shall be by the act of a majority of such persons. Notwithstanding the foregoing, a Trustee may in a signed writing delegate his power to one or more of the other Trustees. No delegation of power may be irrevocable. Notwithstanding the delegation of a power, any Trustee who releases a power shall be liable as a result of the exercise or non-exercise of said power in the same manner as if the power had not been delegated.
- 11.16 **Trustees Liability and Protection.** To the extent permitted by applicable law:
- (a) The Trustees shall not be responsible for the adequacy of the Trust Fund to meet and discharge any and all payments and liabilities under the Plan or Trust. The Trustees shall be fully protected in acting upon any instrument, certificate, or payment believed to be genuine and to be signed or presented by the proper person or persons, and the Trustees shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained. Except as otherwise provided in Section 405 of ERISA, each Trustee shall be liable only for his or her own acts of fraud, negligence or willful misconduct and for losses or diminution in value that results from his or her own acts of fraud, negligence or willful misconduct.
 - (b) The responsibilities of the Trustees shall be limited to those duties specifically imposed upon them under the terms of this Article XI, and the Trustees shall not be personally liable for the acts or omissions of any other fiduciary of the Plan, except as provided in ERISA.
 - (c) Except to the extent otherwise provided in this Article XI, the Trustees shall not be responsible for the investment of any property delivered to, or held in the Trust. The Trustees shall not be liable for any losses sustained by the Trust Fund by reason of the purchase, sale, retention, transfer or exchange of any investment in accordance with the provisions of the instrument or instructions of the Institution, Plan Participants and Beneficiaries under the terms of the Plan.
 - (d) To the extent permitted by law, the Trustees shall be fully protected in relying upon the advice of legal counsel or the Institution with respect to their duties under the Trust.
 - (e) In addition to whatever rights of indemnification the Trustees may be entitled to under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement, the Institution will satisfy any liability actually and reasonably incurred by any Trustee, including expenses, attorney's fees, judgments, fines, and amounts paid in settlement or in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise of any of the powers, authority, responsibilities, or discretion of the Trustee as provided in this Article XI or which is reasonably believed by the Trustee to be provided hereunder or any action taken by such Trustee in connection with such reasonable belief.
- 11.17 **Documentation.** Any action by the Institution pursuant to this Article XI may be evidenced by writing over the signature of a person designated by the Institution in writing and the Trustees shall be fully protected in acting in accordance with such writing. Any action of the Trustees may be evidenced by a writing signed by such Trustee,

and any party shall be fully protected in acting in accordance with such writing. Except to the extent otherwise provided, any notice to be given under this Article XI will be considered effective when received.

- 11.18 **Amendment.** The Institution may amend any provisions of this Article XI by submitting a copy of the amendment to each Trustee provided that no such amendment which affects the rights, duties or responsibilities of any Trustee may be made without his or her written consent.
- 11.19 **Termination.** The Trust shall continue in full force and effect for such time as may be necessary to accomplish the purposes for which it is created. If the Plan is terminated by the Institution, the Trust shall remain in existence until such time as all assets held in the Trust Fund have been distributed in accordance with the terms of the Plan.
- 11.20 **No Bond.** No original, successor or additional Trustee shall be required to furnish any bond except to the extent required by ERISA and other applicable law.
- 11.21 **Governing Law.** This Trust shall be construed and enforced according to the laws of the State of domicile of the Institution, and all provisions hereof shall be administered according to the laws of such State except to the extent such laws are superseded by ERISA. The determination that any provision of this Trust is not enforceable in accordance with its terms in a particular jurisdiction shall not affect the validity or enforceability of the remaining provisions of this Trust generally or in any other jurisdiction or as to any other parties, but rather such unenforceable provisions shall be stricken or modified in accordance with such determination only as to such parties and this Trust, as so modified, shall continue to bind the specific parties involved therein and otherwise all other parties in unmodified form.

Employer Identification Number: -

Plan Number: 001

(Signature of Plan Administrator)

Amendment 1

AMENDMENT OF THE Idaho State Board of Education Optional Retirement Plan for EGTRRA

IN WITNESS WHEREOF, Idaho State Board of Education and Board of Regents of the University of Idaho herein amends the Idaho State Board of Education Optional 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 employers 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 VII 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 VII 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.
3. Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in Article VII 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 includible 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) or 403(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.

BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011

BOISE STATE UNIVERSITY

SUBJECT

Retirement plan changes for Chris Petersen

REFERENCE

November 2009	Board approved University's request to establish and adopt 403(b) base and 415(m) excess benefit plans
April 2010	Board approved Employment Agreement and Addendum 1 to Chris Petersen's employment agreement.
February 2011	Board freezes its 403(b) Highly Compensated Employee Plan
June 2011	Board adopts new Supplemental 403(b) Retirement Plan
October 2011	Board approved revised Addendum 2 to Chris Petersen's employment agreement

APPLICABLE STATUTE, RULE OR POLICY

Section 33-107C, Idaho Code

BACKGROUND/DISCUSSION

Boise State University (BSU) has been working with outside tax counsel (Ice Miller, LLP) to make changes to Mr. Petersen's existing retirement plans, the BSU 403(b) Base Plan (Base Plan) and BSU 415(m) Excess Benefit Plan (Excess Plan), and draft a new 401(a) base plan and 415(m) excess benefit plan.

The University is requesting approval of the following:

- (1) A new 401(a) base plan;
- (2) A new 415(m) excess benefit plan;
- (3) An amendment to the existing BSU Base Plan to:
 - (i) clarify the 2010 change in contribution formula;
 - (ii) amend the distribution provision; and
 - (iii) discontinue contributions to and freeze the plan effective January 1, 2011.
- (4) An amendment to the existing BSU Excess Plan to:
 - (i) revise the definition of "participant" to tie the definition to the 403(b) base plan;
 - (ii) make clear that the Excess Plan is a portion of the 403(b) base plan as required by statute; and
 - (iii) amend the distribution provision.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011**

IMPACT

The requested changes arise out of a comprehensive review of Mr. Petersen's plans and are based on recommendations from Ice Miller. By adopting new plans and making the recommended amendments to existing plans, the University mitigates the risk of adverse findings in the event of an IRS audit. Once plans have been approved, the University will seek a private letter ruling from the IRS on the new 415(m) excess benefit plan.

ATTACHMENTS

Attachment 1 – BSU 401(a) Base Plan
Attachment 2 – BSU 415(m) Excess Plan

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Page 33

STAFF COMMENTS AND RECOMMENDATIONS

The Board's deputy attorney general and outside tax counsel worked closely with BSU counsel on the matter of Mr. Petersen's deferred compensation plans. The Board's tax counsel has reviewed the existing BSU 403(b) Base and 415(m) Excess plans (approved by the Board in November 2009) and believes there is little to no risk of an adverse finding by the IRS, but supports the University's decision to adopt new plans in an effort to ameliorate any concerns.

BOARD ACTION

I move to approve the request by Boise State University to: adopt a new 401(a) base plan and 415(m) excess benefit plan; to amend the existing BSU 403(b) Base Plan and BSU 415(m) Excess Plan; and to authorize the Vice President for Finance and Administration to execute the necessary documents. The University is authorized to request an IRS private letter ruling or determination letter, as applicable, as the Board cannot guarantee the tax consequences of the Plans pending IRS action.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**BOISE STATE UNIVERSITY
SUPPLEMENTAL 401(a) PLAN**

Established Effective as of December 1, 2011

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**BOISE STATE UNIVERSITY
SUPPLEMENTAL 401(a) PLAN**

Boise State University (the "University") hereby establishes the Boise State University Supplemental 401(a) Plan (the "Plan"), effective December 1, 2011.

Background

A. The University wishes to establish a qualified retirement plan, effective December 1, 2011, to provide additional retirement benefits for certain eligible employees of the University.

B. The University intends for the Plan to be a defined contribution plan qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended ("Code"), that is a governmental plan as defined under Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

C. The University intends for the Plan to be funded through one or more qualified trusts under Code Section 501(a), custodial accounts treated as qualified trusts under Code Section 401(f), and/or annuity contracts treated as qualified trusts under Code Section 401(f), all in accordance with the qualification requirements of the Code.

In consideration of the premises, the University hereby establishes the Plan, effective December 1, 2011, to be and read as follows:

**ARTICLE I
ESTABLISHMENT OF PLAN**

The Plan is hereby established, effective as of December 1, 2011, for the purpose of providing retirement benefits for Eligible Employees. The Plan shall be a profit sharing plan within the meaning of Code Section 401(a)(27), provided, however, that contributions shall be made without regard to profits.

ARTICLE II
DEFINITIONS AND RULES OF CONSTRUCTION

Section 2.01 Rules of Construction and Governing Law.

(a) The Plan shall be construed, enforced, and administered and the validity thereof determined in accordance with the Code and, when not inconsistent with the Code, the laws of the State of Idaho.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender, where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular, where appropriate.

(c) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute a qualified plan under the provisions of Code Section 401 with the earnings of the Trust exempt from income tax under Code Section 501, (ii) be a "governmental" plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with all applicable requirements of the Code shall prevail over any different interpretation.

(d) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(e) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

Section 2.02 Definitions. When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "Account" means, with respect to a Participant, the bookkeeping account maintained to reflect the Participant's interest under the Plan attributable to Employer Contributions. Where the context so permits, "Account" also refers to the amount credited thereto.

(b) "Administrator" means the University and, to the extent that the University has delegated any of its duties as Administrator pursuant to Section 10.03, the committee to whom such duty has been delegated.

(c) "Affiliated Employer" means the University and any other entity that is required to be aggregated with the University under Code Section 414(b), (c) or (m), as determined pursuant to the following sentence. The University shall determine the entities that are Affiliated Employers based on a reasonable good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

(d) "Applicable Form" means the appropriate form as designated and furnished by the Administrator or Vendor to make the election or provide the notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Administrator or Vendor may prescribe an electronic or telephonic form in lieu of or in addition to a written form.

(e) "Attachment A" means Attachment A to the Plan, as adopted and amended from time to time by the University. Attachment A lists all Eligible Employees of the University and, with respect to each such Eligible Employee for each Plan Year, either the (i) the amount of the Employer Contribution or (ii) the formula for determining the Employer Contribution.

(f) "Attachment B" means Attachment B to the Plan, as adopted and amended from time to time by the University. Attachment B sets out the terms of the Excess Benefit

Arrangement, which is a part of the Plan and is intended to be a qualified governmental excess benefit arrangement pursuant to Code Section 415(m).

(g) "Beneficiary" means the person or persons determined eligible to receive any benefits payable under the Plan in the event of a Participant's death, as determined pursuant to Section 8.03.

(h) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(i) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 415(d) or 401(a)(17), as applicable for any year.

(j) "Effective Date" means December 1, 2011.

(k) "Eligible Employee" means an Employee listed in Attachment A.

(l) "Employee" means a common law employee of the University.

(m) "Employer Contribution" means a contribution made by the University on behalf of a Participant pursuant to the terms of the Plan.

(n) "Excess Benefit Arrangement" means the Boise State University 415(m) Qualified Excess Benefit Arrangement established pursuant to Attachment B, which is the portion of this Plan intended to be a qualified governmental excess benefit arrangement pursuant to Code Section 415(m).

(o) "Investment Option" means an investment option selected by the Administrator and made available to the Participants under the Plan pursuant to Section 6.04.

(p) "Participant" means an Eligible Employee or former Eligible Employee who has an Account balance under the Plan.

(q) "Plan" means the plan created and embodied herein, as amended from time to time, known as the "Boise State University Supplemental 401(a) Plan."

(r) "Plan Compensation" means, with respect to a Participant for a Plan Year, the remuneration paid to the Employee by the University during such Plan Year as his base wage or salary, plus bonuses and overtime paid, but excluding living or other allowances, premium payments, compensation in kind, payments made to any employee pension or welfare benefit plan, or any other special or unusual form of compensation; provided, however, Plan Compensation includes any amount contributed by the University pursuant to a salary reduction agreement between the University and the Employee that is excludable from gross income of the Employee pursuant to Code Section 125, 132(f)(4), 403(b), or 414(h)(2) or amounts deferred under an eligible deferred compensation plan within the meaning of Code Section 457(b). Notwithstanding any other provision of the Plan to the contrary, the annual Plan Compensation of an Employee taken into account under the Plan shall not exceed the limitation specified by Code Section 401(a)(17), increased thereafter by the Cost of Living Adjustment.

(s) "Plan Year" means the initial short Plan Year of December 1, 2011 through December 31, 2011, and thereafter, the calendar year.

(t) "Section" means a section of this Plan, unless it is immediately preceded by the word "Code."

(u) "Severance from Employment" means a Participant's severance from employment with the University and Affiliated Employers for any reason. A Participant shall be deemed to have severed from employment with the University for purposes of the Plan when, in accordance with the established personnel practices of the University, the employment relationship is treated

as terminated. An authorized leave of absence, including a leave pursuant to the Family and Medical Leave Act, is not a Severance from Employment.

(v) "Spouse" means the person to whom the Participant is married as of the relevant date determined in accordance with applicable local law.

(w) "Trust" means a trust, a custodial account treated as a qualified trust under Code Section 401(f), and/or an annuity contract treated as a qualified trust under Code Section 401(f), established under the Plan to hold Plan assets.

(x) "Trust Fund" means all the cash, securities, or other property, together with income therefrom, held by the Trustee pursuant to the terms of the Plan and Trust.

(y) "Trustee" means the entity or person(s) designated by the University as trustee of a Trust, and includes the entity or person(s) holding the assets of a custodial account or holding an annuity contract in accordance with Code Section 401(f).

(z) "University" means Boise State University.

(aa) "Vendor" means a service provide designated by the Administrator to serve as third party administrator and/or recordkeeper for the Plan and/or to offer Investment Options to Participants under the Plan.

(bb) "Vested" refers to the portion of an Account in which the interest of the Participant or Beneficiary is nonforfeitable, except as otherwise expressly provided herein.

ARTICLE III **ELIGIBILITY**

Section 3.01 Participation Standards. An Employee shall become a Participant as of the date designated in the Attachment A.

Section 3.02 Cessation of Participation. A Participant shall cease to be a Participant upon the distribution of his entire Account.

Section 3.03 Completion of Forms by Participants and Beneficiaries. A Participant and any Beneficiary eligible to receive, or claiming a right to receive, any benefits under the Plan must complete such Applicable Forms and furnish such proofs and information as may reasonably be required at any time by the Administrator or Vendor.

ARTICLE IV
CONTRIBUTIONS AND VESTING

Section 4.01 Employer Contributions.

(a) The University shall contribute on behalf of each Participant who is an Eligible Employee on the last day of the Plan Year an Employer Contribution in the amount required for such Participant pursuant to Attachment A for the Plan Year.

(b) Notwithstanding paragraph (a), if an Eligible Employee has a Severance from Employment prior to the last day of the Plan Year, the University shall contribute on behalf of such Participant a prorated Employer Contribution for that Plan Year determined by multiplying the Employer Contribution required for such Participant pursuant to Attachment A for the Plan Year by a fraction, the numerator of which is the number of days in the Plan Year prior to the Eligible Employee's Severance from Employment and the denominator of which is 365.

(c) The University shall make such Employer Contribution no later than required by law, and such contribution shall be allocated to the Eligible Employee's Account as of the last day of the Plan Year or, if earlier, as of the day prior to the Eligible Employee's Severance from Employment; provided, however, the Eligible Employee shall not be entitled to earnings with respect to an Employer Contribution until such contribution is made to the Trust and allocated to the Eligible Employee's Account.

Section 4.02 Vesting. A Participant's interest in his Account shall be one hundred percent (100%) Vested at all times.

Section 4.03 Rollover Contributions. The Plan does not accept any rollover contributions.

ARTICLE V
LIMITATIONS ON CONTRIBUTIONS

Section 5.01 Code Section 415(c) Limitations.

(a) To the extent required by Code Section 415(c), in no event shall the "annual addition" for any Participant for any Plan Year exceed the lesser of:

(1) The amount specified in Code Section 415(c)(1)(A), increased thereafter by the Cost of Living Adjustment (\$49,000 for 2011 and \$50,000 for 2012); or

(2) One hundred percent (100%) of the "compensation" the Participant received from the University or an Affiliated Employer during the Plan Year.

(b) For purposes of this Article, "annual addition" has the meaning specified in Code Section 415(c), as modified in Code Section 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines the annual addition as the sum of (i) employer contributions and (ii) forfeitures credited to the Participant's Account for the Plan Year under this Plan and any other Code Section 401(a) plan sponsored by the University or by an Affiliated Employer. Amounts allocated after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the University or an Affiliated Employer are treated as annual additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the University or an Affiliated Employer are treated as annual additions to a defined contribution plan.

(c) For purposes of this Article, "compensation" means compensation as defined in Code Section 415(c)(3). In general, Code Section 415(c)(3) defines compensation as all of a Participant's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the University at election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125, 403(b), 132(f)(4), or 457(b). Compensation under this paragraph for a Plan Year shall not include any compensation for the year greater than the limit established under Code Section 401(a)(17) as of the first day of the year, increased by the Cost of Living Adjustment.

Compensation for a Plan Year includes compensation paid by the later of (i) two and one-half (2½) months after an Employee's Severance from Employment, or (ii) the end of the Plan Year that includes the date of the Employee's Severance from Employment, if: (I) the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (*e.g.*, overtime or shift differential), commissions, bonuses, or other similar payments and the payment would have been paid to the Employee prior to a Severance from Employment if the Employee had continued in employment with the University; or (II) the payment is for unused accrued *bona fide* sick, vacation, or other leave, but only if the Employee would have been able to use the leave if the Employee had continued in employment; or (III) received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been

paid to the Employee at the same time if the Employee had continued in employment with the University and only to the extent that the payment is includible in the Employee's gross income.

Compensation shall also include compensation after a Severance from Employment if the compensation is paid because of either (i) qualified military service or (ii) permanent and total disability.

(d) If a Participant has annual additions for a Plan Year under this Plan and another 401(a) defined contribution plan of the University or Affiliated Employer for such Plan Year, and such annual additions (before application of this Article) would exceed the limitations of this Article, the adjustment to comply with this Article shall be made pursuant to this Plan.

(e) Pursuant to Treasury Regulation Section 1.415(j)-1(a), the "limitation year" for the Plan under Section 415 is the calendar year (which is the same as the Plan Year).

ARTICLE VI

INVESTMENTS AND ACCOUNTING

Section 6.01 Participant's Account. An Account shall be maintained by the Administrator or Vendor for each Participant pursuant to the terms of the Plan. The Account shall reflect the record of the Participant's interest under the Plan attributable to contributions and the earnings and losses thereon. The maintenance of individual accounts is for accounting and recordkeeping purposes only, and a segregation of Plan assets to each Account is not required.

Section 6.02 Statement of Account. The Administrator or Vendor shall provide each Participant with a statement of the value of the Participant's Account as of the end of the Plan Year and as of such other dates as the University may request in writing.

Section 6.03 Value of Account. The value of a Participant's Account as of any determination date is the value of the balance of the Account as determined by the Administrator or Vendor. All transactions and Account records shall be based on fair market value.

Section 6.04 Investment Options.

(a) The Administrator shall select the Investment Options available to Participants under the Plan, and it may add and delete Investment Options at any time.

(b) Each Participant shall have sole authority and responsibility for directing the investment of future contributions on his behalf and his Account among the available Investment Options. Each Participant shall elect Investment Options in which his Account and/or future contributions shall be invested by completing the Applicable Form in accordance with the procedure established by the Vendor. To the maximum extent permitted by law, the University and Administrator shall have no responsibility or liability for any investment made pursuant to the Participant's election.

(c) If a Participant does not have a valid and complete investment direction on file with the Vendor on the Applicable Form, contributions may be invested in a default fund selected by the Administrator, in its sole discretion, until the Participant makes an affirmative election regarding the investment of his Account.

ARTICLE VII
NONALIENATION OF BENEFITS

No benefit under the Plan, prior to actual receipt thereof by the Participant or his Beneficiary, shall be liable for any debt, liability, contract, engagement, or tort of the Participant or his Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or other voluntary or involuntary alienation or other legal or equitable process, nor transferable by operation of law.

ARTICLE VIII
BENEFITS

Section 8.01 Benefits.

(a) If a Participant incurs a Severance from Employment for any reason other than death, the Participant shall be entitled to the value of his Account payable in a single cash lump sum or in any other form of benefit offered by the Vendor. Payment of benefits shall commence as soon as practicable, but not later than the sixtieth (60th) day after the close of the Plan Year in which the Participant becomes eligible for a payment of his benefit; provided, however, that the Participant or Beneficiary, if applicable, may elect a later distribution date in writing directed to the Administrator or Vendor, subject to the limitations set out in Subsection (b).

(b) Notwithstanding any provision of the Plan to the contrary, the distribution of a Participant's Account shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Treasury Regulations thereunder (including Treasury Regulation Section 1.401(a)(9)-(2)), the provisions of which are incorporated herein by reference:

(1) The Participant's benefits shall be distributed to him not later than April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches age seventy and one half (70½) or (ii) the calendar year in which the Participant has a Severance from Employment.

(2) Distributions to the Participant and his Beneficiaries shall be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the Treasury Regulations thereunder.

Section 8.02 Death Benefits.

(a) If a Participant dies after distribution of his entire Account, no benefit is payable under the Plan.

(b) If a Participant dies before his entire Account is distributed, his remaining Account balance shall be distributed to his Beneficiary as a single lump sum payment as soon as administratively feasible after the Participant's death.

Section 8.03 Beneficiaries.

(a) The primary Beneficiary of a Participant is the Participant's Spouse, unless the Participant designates a different primary Beneficiary pursuant to Subsection (b).

(b) The Participant may designate on the form provided by the Administrator or Vendor one or more primary and contingent Beneficiaries to receive any death benefits payable under the Plan upon his death. Each such designation may be revoked, amended, or changed by the Participant by notice in writing to the Administrator or Vendor on the Applicable Form.

(c) In the absence of a designation by the Participant pursuant to Subsection (b), or if all designated Beneficiaries predecease the Participant, the benefits, if any, shall be paid to the Participant's Spouse, if living at the time of the Participant's death, or if such Spouse does not survive the Participant, to the Participant's estate.

Section 8.04 Survivor Rights. After distribution of the Participant's Account, neither the Participant nor his Beneficiary shall be entitled to any further benefit from this Plan.

Section 8.05 No Loans or Hardship Distributions. No Participant loans or distributions for financial hardship shall be allowed or available under the Plan.

Section 8.06 Charge or Discount. Notwithstanding anything contained herein to the contrary, any surrender charge assessed against a Participant's Account by any Investment Option shall reduce the amount of the benefit payable to the Participant.

Section 8.07 Persons Under Legal Disability. If any benefit under the Plan is payable to a minor or other person under legal disability, the Administrator shall direct that such payment be made to the legal guardian of such person or to such other person or organization as a court of competent jurisdiction may direct. Neither the University, the Administrator, the Trustee, nor the Plan shall be responsible for the application of such payment.

Section 8.08 Payments at Direction of the Administrator. Any benefit payable under the Plan shall be paid only at the written direction of the Administrator following completion of appropriate form or forms, as determined by the Administrator. Benefits under the Plan shall be paid only if the Administrator decides in its discretion that the Participant is entitled to them.

ARTICLE IX **ROLLOVERS FROM PLAN**

Section 9.01 Definitions for this Article. For purposes of this Article, the following definitions shall apply.

(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.

(b) "Distributee" means the Participant when eligible to receive a distribution from the Plan, or the Participant's surviving Spouse who is eligible to receive a distribution from the Plan, or the Participant's non-Spouse Beneficiary who is eligible to receive a distribution from the Plan.

(c) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means:

(1) an individual retirement account described in Code Section 408(a);

- (2) an individual retirement annuity described in Code Section 408(b);
- (3) an annuity plan described in Code Section 403(a);
- (4) a contract described in Code Section 403(b);
- (5) a qualified plan described in Code Section 401(a);
- (6) an eligible deferred compensation plan described in Code Section 457(b)

which is maintained by an eligible employer described in Code Section 457(e)(1)(A); and

- (7) a Roth individual retirement account described in Code Section 408A(e), provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year to which the distribution occurs,

that accepts the Distributee's Eligible Rollover Distribution; provided, however, that for purposes of the Participant's non-Spouse Beneficiary, Eligible Retirement Plan has the meaning in item (1) or (2), to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(d) "Eligible Rollover Distribution," as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under this Plan, excluding the following:

- (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made over 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 years or more;
- (2) any distribution to the extent to which such distribution is required under Code Section 401(a)(9);

(3) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation described in Code Section 402(e)(4));

(4) any distribution which is made upon hardship of the employee; and

(5) other items designated by regulations, or by the commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

Section 9.02 Direct Transfer of Eligible Rollover Distribution. A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Administrator. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 403, or 408.

Section 9.03 Mandatory Withholding of Eligible Rollover Distributions.

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory twenty percent (20%) federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e).

(b) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the sixtieth (60th) day following the day on which the Distributee received the distribution.

(c) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

Section 9.04 Explanation of Plan Distribution and Withholding Requirements.

Each Distributee shall be provided, within a reasonable period of time before making an Eligible Rollover Distribution, a written explanation which explains the rules:

(a) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

(b) that require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan;

(c) that provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within sixty (60) days after the date the Distributee receives the distribution; and

(d) if applicable, certain special rules regarding taxation of the distribution as described in Code Sections 402(d) and (e).

ARTICLE X
ADMINISTRATION OF THE PLAN

Section 10.01 Administrator. The University is the Plan's Administrator, and shall act through action of the University, except as the University's authority to act is delegated as provided in Section 10.03. The Administrator shall have authority to control and manage the operation and administration of the Plan and shall be the named fiduciary of the Plan. The

Administrator shall have all powers necessary or convenient to enable it to exercise such authority. In connection therewith, the Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan.

Section 10.02 Powers of the Administrator. Except as may be otherwise specifically provided in the Plan, the Administrator shall have the power to construe and interpret the Plan and to determine all questions of fact or law arising hereunder. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as it may deem expedient and, subject to provisions of the Plan regarding claims to benefits, the Administrator should be the sole and final judge of such expediency.

Section 10.03 Delegation by Administrator. The University may delegate some or all of its duties or responsibilities as Administrator to a committee; provided, however, the University may revoke such delegated authority at any time without cause or advance notice. To the extent of such delegation, the committee shall have the same power and authority with respect to such delegated duties or responsibilities as the University would have in the absence of such delegation.

Section 10.04 Advice to Administrator. The Administrator may employ or contract with one or more persons to render advice with regard to its duties, responsibilities, and authority under the Plan.

Section 10.05 Fiduciary Insurance. The Administrator may purchase fiduciary liability insurance for any employees of the Administrator to cover liability or losses occurring by reason of the act or omission of an employee with respect to the Plan.

Section 10.06 Limitation on Recovery. To the extent permitted by law, a Participant and any Beneficiary may not seek recovery against the University or Administrator, or any employee, contractor, or agent of the University or Administrator, for any loss sustained by the Participant or Beneficiary due to the nonperformance of their duties, negligence, or any other misconduct of the above named persons.

Section 10.07 Benefit Payments. The Administrator, if in doubt regarding the correctness of its action with respect to a benefit payment, may direct suspension of payment until satisfied as to the correctness of the payment or the person to receive the payment. Alternatively, the Administrator may file, in any state court of competent jurisdiction, a suit, in the form it deems appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator may also bring a suit, or take other action as it deems appropriate, to resolve questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and any affected Participant or Beneficiary, and the Administrator shall be bound by such an order, insofar as it affects the benefits payable under this Plan, or the method or manner of payment.

Section 10.08 Unclaimed Benefit Payments. If any payment of a benefit hereunder, which has been mailed by regular United States first-class mail to the last address of the payee furnished to the Trustee by the Administrator is returned unclaimed, the Trustee shall notify the Administrator and shall discontinue further payments to such payee until it receives the further instructions of the Administrator, subject to any applicable Unclaimed Property Act provisions.

Section 10.09 Payment of Expenses. All expenses and costs associated with the administration and investments of the Plan shall be assessed against Plan assets and the Participant's Account unless otherwise agreed in writing by the Administrator.

ARTICLE XI
CLAIMS PROCEDURE

Section 11.01 Claims. Any person who believes that he is entitled to any benefits under the Plan shall present such claim in writing to the Administrator. The Administrator shall within ninety (90) days provide adequate notice in writing to any claimant as to the decision on any such claim. If such claim has been denied, in whole or in part, such notice shall set forth (i) the specific reasons for such denial, (ii) the specific reference to any pertinent provisions of the Plan on which denial is based, (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary, and (iv) an explanation of the review procedure for the Plan. Such notice shall be written in a manner calculated to be reasonably understood by the claimant. Within sixty (60) days after receipt by the claimant of notification of denial, the claimant shall have the right to present a written appeal to the Administrator. If such appeal is not filed within said sixty (60) day period, the decision of the Administrator shall be final and binding. The Administrator shall act as a fiduciary in making a full and fair review of such denial. The claimant or his duly authorized representative may review any Plan documents that are pertinent to the claim and may submit issues and comments to the Administrator in writing. A decision by the Administrator shall be made promptly, and in any event not later than sixty (60) days after its receipt of the appeal.

Section 11.02 Questions of Interpretation. The Administrator shall have the power to construe this Plan and to determine all questions of fact or law arising thereunder. It may correct any defect, supply any omission or reconcile any inconsistency in this Plan in such manner and to such extent as they may deem expedient.

Section 11.03 Reliance. If the Administrator or any other fiduciary with respect to the Plan acts in reliance on an election, consent, or revocation made pursuant to this Plan, the election, consent, or revocation shall be treated as valid for purposes of discharging the Plan from liability to the extent of payments made pursuant to such acts.

Section 11.04 Disputes. In the event there is a dispute over any terms and conditions of this Plan affecting any individual, such individual shall notify the Administrator in writing of his position. The decision of the Administrator shall be final and binding on all parties, and this appeal shall be the sole and exclusive remedy in any such dispute.

ARTICLE XII
PLAN AMENDMENT AND TERMINATION

Section 12.01 Amendment for Qualification of Plan. It is the intent of the University that the Plan shall be and remain qualified for tax purposes under the Code. The Administrator may submit the Plan for approval under the Code, and all expenses incident thereto shall be borne by the University. The University may adopt any Plan amendments necessary to obtain and retain approval of the Secretary of Treasury or his delegate as may be necessary to establish and maintain the tax-qualified status of the Plan under the Code, as now in effect or hereafter enacted. Any amendment of the Plan adopted in accordance with this Section may be adopted retroactively, if necessary or appropriate, and all persons shall be bound thereby.

Section 12.02 Other Plan Amendments. The University reserves the right, in its sole and final discretion, to amend the Plan at any time; provided, however, that no such amendment shall reduce any Participant's Vested Account balance or violate any other applicable provision of the Code.

Section 12.03 Termination of Plan. The University reserves the right, in its sole and final discretion, to terminate the Plan in whole or in part at any time. Following such

termination, Participants' Accounts shall be distributed in accordance with the applicable provisions of the Plan.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

Section 13.01 Nondiversion. The assets of the Plan shall never inure to the benefit of the University and shall be held for the exclusive purposes of providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan; provided, however, that:

(a) in the case of a contribution made by the University under a mistake of fact, such contribution shall be returned to the University, upon demand, within one year after the payment of the contribution; and

(b) Contributions by the University are conditioned on the initial qualification of the Plan under the Code and the continued qualification of the Plan as a result of Plan amendment, and if the Plan does not so qualify initially or as a result of amendment, then such contributions shall be returned to the University, upon demand, within one year after the date of denial of qualification of the Plan.

Section 13.02 Military Leave.

(a) Notwithstanding any provisions of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), Code Section 414(u), and Code Section 401(a)(37), as amended from time to time.

(b) For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(c) If a Participant timely resumes employment with the University in accordance with USERRA, the University shall make the contributions that would have been made if the Participant had remained employed during the Participant's qualified military service. Contributions must be made no later than ninety (90) days after the date of reemployment or when the contributions are normally due for the year in which the qualified military service was performed, if later.

(d) To the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then terminated employment on account of death.

(e) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the University, shall be treated as an Employee of the University and the differential wage payment shall be treated as Plan Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 13.03 Merger, Consolidation of Plans or Transfer of Plan Assets. In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant shall be entitled to a benefit (as if the Plan had been terminated) immediately after the

merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (as if the Plan had been terminated).

Section 13.04 Allocation of Fiduciary Responsibilities. Each fiduciary under the Plan shall be responsible only for the specific duties assigned under the Plan and shall not be directly or indirectly responsible for the duties assigned to another fiduciary. No fiduciary of the Plan shall be liable for any act or omission in appropriately carrying out his responsibilities under the Plan.

Section 13.05 Limitation of Rights and Obligations. Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor the purchase of any insurance contract, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) As conferring upon the Participant or Beneficiary, or any other person any right or claim against the University, Administrator, or Trustee except to the extent that such right or claim shall be specifically expressed and provided in the Plan.

(b) As an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the University or any Employee to continue or terminate the employment relationship at any time.

(c) As creating any responsibility or liability for any taxes or tax consequences on the accrual or payment of benefits under this Plan or the Excess Benefit Arrangement.

Section 13.06 Counterparts. This Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be sufficiently evidenced by any one counterpart.

IN WITNESS WHEREOF, Boise State University has caused this Plan to be established
as of the Effective Date.

BOISE STATE UNIVERSITY

By:_____

Title:_____

Date:_____

ATTACHMENT AELIGIBLE EMPLOYEES OF UNIVERSITY

This Attachment A identifies each Eligible Employee of the University, his Entry Date, and the Method of Determining his Employer Contributions, as follows:

Eligible Employee	Entry Date	Employer Contribution (<i>expressed as annual dollar amount or percentage of Plan Compensation</i>)
Chris Petersen	12/1/11	\$245,000 for 2011 Plan Year \$250,000 for 2012 Plan Year and thereafter

The University has approved the Eligible Employees, Entry Dates, and Employer Contributions specified above and agrees to fund the required contributions for such Employees under the Plan and to comply with the terms of the Plan with respect to such Employees.

BOISE STATE UNIVERSITY

By: _____

Title: _____

Date: _____

ATTACHMENT B

CODE SECTION 415(M) QUALIFIED GOVERNMENTAL EXCESS BENEFIT
ARRANGEMENT

**BOISE STATE UNIVERSITY
415(m) QUALIFIED EXCESS BENEFIT ARRANGEMENT**

A portion of the
Boise State University Supplemental 401(a) Plan,
established effective December 1, 2011

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**BOISE STATE UNIVERSITY
415(m) QUALIFIED EXCESS BENEFIT ARRANGEMENT**

Boise State University has adopted this Boise State University 415(m) Excess Benefit Arrangement as part of the Boise State University Supplemental 401(a) Plan ("401(a) Plan"), effective as of December 1, 2011.

Background

A. The 401(a) Plan is a governmental plan, as defined in Section 414(d) of the Internal Revenue Code ("Code") and the Employee Retirement Income Security Act Section 3(32) ("ERISA").

B. The Excess Benefit Arrangement is intended to be a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m)(3) and an exempt governmental deferred compensation plan described in Code Section 3121(v)(3). Internal Revenue Code Sections 83, 402(b), 409A, 457(a), and 457(f)(1) shall not apply to the Arrangement. The sole purpose of the Arrangement is to provide for contributions that would have been made to the 401(a) Plan absent the limitations of Code Section 415(c).

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

Section 1.01 Definitions. The definitions of the 401(a) Plan shall apply to this Arrangement. In addition, when the initial letter of a word or phrase is capitalized herein but not defined in the 401(a) Plan, the meaning of such word or phrase shall be as follows:

(a) "Arrangement" or "Excess Benefit Arrangement" means the plan created and embodied herein, as amended from time to time, known as the "Boise State University 415(m) Qualified Excess Benefit Arrangement."

(b) "Excess Contribution" means, with respect to a 415(m) Participant, the Employer Contribution that would have been made for the 415(m) Participant to the 401(a) Plan but could not be made because of the application of Code Section 415(c).

(c) "415(m) Account" means, with respect to a 415(m) Participant, the bookkeeping account maintained to reflect his interest under this Arrangement attributable to Excess Contributions.

(d) "415(m) Participant" means an Eligible Employee or former Eligible Employee who has an Account balance under this Arrangement.

(e) "415(m) Trust" means the trust or trusts established to receive contributions under the Arrangement, each such trust to be a grantor trust established in accordance with Rev. Proc. 92-64, which trust is established separate from the 401(a) Plan and the trust thereunder.

(f) "415(m) Trustee" means the entity or persons designated trustee of a 415(m) Trust or any successor trustees(s) of a 415(m) Trust.

Section 1.02 Construction and Governing Law.

(a) Subject to Subsection (b), the Rules of Construction and Governing Law provisions of Section 2.01 of the 401(a) Plan shall apply to this Arrangement.

(b) In resolving any conflict among provisions of this Arrangement and in resolving any other uncertainty as to the meaning or intention of any provision of this Arrangement, the interpretation that causes (i) the Arrangement to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m), (ii) the 415(m) Trust to be exempt from tax under Code Sections 115 and 415(m), and (iii) the Arrangement to comply with all applicable provisions of the 401(a) Plan and all applicable requirements of the Code and other applicable laws and rules shall prevail over any different interpretation.

ARTICLE II
PARTICIPATION

A Participant in the 401(a) Plan shall automatically participate in this Arrangement for a Plan Year, if the Employer Contributions made on the Participant's behalf under the 401(a) Plan for such Plan Year are limited by Code Section 415(c). The Administrator shall determine for each Plan Year which Participants in the 401(a) Plan are required to participate in this Arrangement.

ARTICLE III
EXCESS BENEFITS

Section 3.01 Excess Contributions.

(a) The University shall make an Excess Contribution for each 415(m) Participant determined eligible for the Plan Year pursuant to Article II equal to the Employer Contributions that would have been made for the 415(m) Participant to the 401(a) Plan but that could not be made because of the application of Code Section 415(c). The Excess Contribution shall be made to the 415(m) Trust and allocated to the Participant's 415(m) Account.

(b) No election is provided at any time to the 415(m) Participant, directly or indirectly, to defer compensation under this Arrangement, and no employee pre-tax or after-tax contributions may be made to or under this Arrangement at any time.

Section 3.02 Time and Form of Benefit Payment.

(a) If a 415(m) Participant incurs a Severance from Employment for any reason other than death, his Vested 415(m) Account shall be distributed in a single cash lump sum payment as soon as practicable following sixty (60) days after his Severance from Employment.

(b) If 415(m) Participant dies before his entire Vested 415(m) Account has been distributed, his remaining Vested 415(m) Account shall be distributed to his Beneficiary as a single cash lump sum payment as soon as practicable after the 415(m) Participant's death.

(c) Notwithstanding paragraph (a), a Participant may make an irrevocable election within thirty (30) days after becoming a Participant in the Excess Benefit Arrangement to:

- (1) delay receipt of his Vested 415(m) Account to a date after his Severance from Employment, but not later than attainment of age seventy and one-half (70 ½), and/or
- (2) receive his Vested 415(m) Account in installment payments over a period not to exceed ten (10) years.

To the extent an election is made to change the timing of the distribution, the election must state the specific age (not later than age seventy and one-half (70 ½)) at which distributions will begin. To the extent an election is made to change the form of the distribution, the election must state the specific period of time (not to exceed ten (10) years) over which installments will be paid. An election under this paragraph (c) will be irrevocable once made.

ARTICLE IV **VESTING**

A 415(m) Participant's interest in his 415(m) Account shall be one hundred percent (100%) Vested at all times.

ARTICLE V **FUNDING**

Section 5.01 Funding.

(a) This Arrangement shall be, and remain, unfunded, and the rights, if any, of any person to any benefits hereunder shall be those specified herein and in the 415(m) Trust. This Arrangement constitutes an unsecured promise by the University to make benefit payments in the future through the 415(m) Trust.

(b) Under no circumstances shall Excess Contributions under this Arrangement be part of or credited to the 401(a) Plan, and benefits under this Arrangement shall be paid solely from the 415(m) Trust.

Section 5.02 415(m) Trust. The 415(m) Trust is established separate from the 401(a) Plan and its underlying trust to hold the Excess Contributions under this Arrangement and the earnings thereon. The 415(m) Trust is maintained solely for the purpose of providing benefits under this Arrangement and defraying the reasonable administrative costs of this Arrangement and the 415(m) Trust. Contributions under this Arrangement shall be held separate and apart from the funds of the 401(a) Plan and shall not be commingled with the assets thereof.

Section 5.03 415(m) Trust Assets. All assets of the 415(m) Trust, including all Excess Contributions under this Arrangement, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts shall be and remain the general, unpledged, unrestricted assets of the 415(m) Trust. The 415(m) Trust funds shall be held separate and apart from other funds of the University and shall be used exclusively for the uses and purposes of Participants and general creditors as set forth herein. 415(m) Participants shall have no preferred claim on, or any beneficial interest in, any assets of the 415(m) Trust or the University. Any assets held by the 415(m) Trust shall be subject to the claims of the University's general creditors under federal and state law in the event of insolvency, to the extent of the University's undistributed contributions, if any.

Section 5.04 415(m) Trust Income. It is intended that income accruing to the 415(m) Trust shall constitute income derived from the exercise of an essential governmental function on which the 415(m) Trust shall be exempt from tax under Code Sections 115 and 415(m)(1).

ARTICLE VI
ACCOUNTING

Section 6.01 Participant's Account. A 415(m) Account shall be maintained by the Administrator or Vendor for each 415(m) Participant pursuant to the terms of this Arrangement. The 415(m) Account shall reflect the record of the 415(m) Participant's interest under this Arrangement attributable to Excess Contributions made by the University and the earnings and losses thereon. The maintenance of individual accounts is for accounting and recordkeeping purposes only, and a segregation of assets to each 415(m) Account is not required.

Section 6.02 Statement of Account. The Administrator or Vendor shall provide each 415(m) Participant with a statement of the value of his 415(m) Account as of the end of the Plan Year and as of such other dates as the University may request in writing.

Section 6.03 Participant Directed Investments. Each 415(m) Participant shall have sole authority and responsibility for the investment of his 415(m) Account in the Investment Options available under this Arrangement. Each 415(m) Participant shall elect Investment Options into which his 415(m) Account shall be invested by completing the Applicable Form in accordance with the procedure established by the Vendor. Neither the University, 415(m) Trustee, nor Administrator shall have responsibility or liability for any investments, investment directions, or investment results of the 415(m) Participant.

Section 6.04 Value of 415(m) Account. The value of a 415(m) Participant's 415(m) Account as of any determination date is the value of the balance of the 415(m) Account as determined by the Administrator or Vendor. All transactions and 415(m) Account records shall be based on fair market value.

ARTICLE VII
ADMINISTRATION

Section 7.01 **Administrator.** Except as expressly provided herein, the University and the Administrator shall have the same rights, duties, and responsibilities with respect to this Arrangement as they have with respect to the 401(a) Plan.

(a) The Administrator shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable it:

(1) to establish procedures with respect to administration of this Arrangement not inconsistent with the terms hereof or the Code and to amend or rescind such procedures;

(2) to determine, consistent with the terms hereof, applicable provisions of the 401(a) Plan, and the requirements of applicable law, rules, and regulations all questions of law or fact that may arise as to eligibility for participation, benefits, and/or other rights hereunder;

(3) pursuant to Article IV hereof, to make payments from the 415(m) Trust with respect to 415(m) Participants;

(4) to contract with one or more Vendors to perform designated administrative services under this Arrangement; and

(5) subject to and consistent with the Code, to construe and interpret the terms of this Arrangement and to correct any defect, supply any omission, or reconcile any inconsistency relating to the administration of this Arrangement.

(b) Any action by the Administrator that is not found to be an abuse of discretion shall be final, conclusive, and binding on all individuals affected thereby. The Administrator may take any such action in such manner and to such extent as it, in its sole discretion, may deem expedient.

Section 7.02 **Advice.** The Administrator may employ one or more persons to provide advice with regard to its responsibilities hereunder. The consultants, independent auditors, attorneys, and actuaries performing services for the 401(a) Plan may also perform services hereunder. Any fees attributable to services performed with respect to this Arrangement shall be payable from 415(m) Participants' Accounts, if not paid by the Administrator or the University.

Section 7.03 **Payment of Benefits.** The Administrator, if in doubt concerning the correctness any benefit payment hereunder, may suspend payment until satisfied as to the correctness of such payment.

ARTICLE VIII

PLAN AMENDMENT OR TERMINATION

Section 8.01 **Termination.** The University reserves the right, in its sole and final discretion, to terminate this Arrangement in whole or in part at any time; provided, however, that this Arrangement shall terminate automatically on termination of the 401(a) Plan. Following such termination, all 415(m) Accounts shall be distributed in accordance with the applicable provisions hereof.

Section 8.02 **Amendment.** The University reserves the right, in its sole and final discretion, to amend this Arrangement at any time; provided, however, that no such amendment shall reduce any 415(m) Account or the Vested interest therein.

ARTICLE IX
MISCELLANEOUS

Section 9.01 **Federal and State Taxes.** Neither the University, 415(m) Trustee, nor the Administrator guarantees that any particular federal or state income, payroll, or other tax consequence will occur because of participation in this Arrangement.

Section 9.02 **Release.** Any payment to a 415(m) Participant shall, to the extent thereof, be in full satisfaction of the claim of the Participant being paid thereby, and the Administrator or Trustee may condition payment thereof on the delivery by the 415(m) Participant of a duly executed receipt and release in such form as may be determined by the Administrator.

Section 9.03 **Severability.** If any provision of this Arrangement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Arrangement shall continue to be fully effective.

IN WITNESS WHEREOF, the University has caused this Excess Benefit Arrangement to be established as part of the 401(a) Plan, effective as of December 1, 2011.

BOISE STATE UNIVERSITY

By:_____

Title:_____

Date:_____

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**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011**

UNIVERSITY OF IDAHO

SUBJECT

Renewal of Board-Approved Multi-Year Contract Pursuant to ABA Accreditation Requirement for the College of Law

REFERENCE

Nov. 29-Dec. 1, 2006 The Board approved a five year contract for clinical law instructor and director of external programs in Boise (now Associate Dean for Boise Programs) Lee Dillion.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section II.G.1.b.

BACKGROUND/DISCUSSION

In 2006, the Board of Regents approved a five-year contract for clinical law instructor and director of external programs at University of Idaho in Boise (now associate dean for Boise programs) Lee B. Dillion. The contract, attached, provides at paragraph 2.5 a process for review of performance and recommendation regarding renewal. This process has been followed, and performance has been found to be outstanding. The review committee has recommended, and the College dean also hereby recommends, that the contract be renewed for another five-year term.

IMPACT

The University will remain in compliance with the American Bar Association (ABA) Accreditation Standard 405 ("A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members").

ATTACHMENTS

Attachment 1 – Proposed Contract	Page 3
Attachment 2 – Dean's Letter	Page 7

STAFF COMMENTS AND RECOMMENDATIONS

This is a five year contract for an associate dean position at the University of Idaho's College of Law.

Board policy II.G. provides as follows: "All non-tenured faculty employees have fixed terms of employment. No contract of employment with such an employee

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011**

may exceed one (1) year without the prior approval of the Board. Employment beyond the contract period may not be legally presumed. Reappointment of a faculty employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.”

The accrediting body requires law schools to provide “full-time clinical faculty members a form of security of position reasonably similar to tenure.” A five year contract meets the intent of this accreditation standard. The contract does, however, contain provisions allowing for termination for cause or due to discontinuance of the program.

Staff finds that a contract for a term of five years is reasonable and recommends approval.

BOARD ACTION

I move to approve the request by the University of Idaho to approve a five year contract for clinical law instructor and Associate Dean for Boise Programs, Lee Dillion, and to authorize the University’s Vice President for Finance and Administration to execute the contract in substantial conformance to the form submitted in Attachment 1.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Lee Dillion (Employee).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University will employ Employee as the Associate Dean for Boise Programs and Instructor in Law, a full-time, fiscal year, non-tenure track faculty position with an administrative component. Except as otherwise provided in this Agreement, Employee remains subject to all University and Regents policies generally applicable to employees of his classification.

1.2. Reporting Relationship. Employee will report and be responsible directly to Director of Clinical Programs and to the Dean of the College of Law (Dean). Annual performance evaluations will be conducted in accordance with standard University and College of Law policies.

1.3. Duties and Performance. Employee's duties will be as described in the position description attached as **Exhibit A**. The Director of Clinical Programs, in consultation with Dean and Employee, will review and, if appropriate, modify the position description on an annual basis in accordance with University and College of Law policies.

1.4. Compensation and Benefits. Employee will be paid at a fiscal year salary rate of \$116,329.60 and will be eligible for University and College changes in employee compensation, if any, in accordance with applicable guidelines. Employee will be eligible for University benefits generally applicable to employees of his classification.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on December 1, 2011 and terminating on December 1, 2016, without further action by either party, unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Discipline or Termination for Adequate Cause. During the term of this Agreement, Employee may be disciplined or terminated for adequate cause, as defined by Regents and University policies, and in accordance with the process set forth in the University's Faculty-Staff Handbook.

2.3. Termination Due to Discontinuance or Material Modification of Program. During the term of this Agreement, Employee may be terminated upon twelve (12) months written notice from the Dean if the College discontinues or materially modifies

the clinical programs or external programs.

2.4. Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Employee, both of which must be in writing and signed by the parties. A written offer of employment has been made by the College of Law and accepted by the Employee, subject to Board approval. This Agreement in no way grants to Employee a claim to tenure in employment.

2.5 Process for Renewal. At least six months prior to the expiration of this Agreement, the Dean will review Employee's responsibilities, performance, and conduct during the term of the Agreement. Based on this initial review, the Dean may recommend and initiate renewal of the Agreement or may initiate a comprehensive review. The comprehensive review will be conducted by a committee consisting of the members of the College's promotion and tenure committee plus the Director of Clinical Programs. The committee will evaluate Employee's responsibilities and effectiveness in the following areas: teaching; administration; service (College, University, professional, and public); and professional writing and communications. Evidence of effectiveness should include, but is not limited to, annual performance evaluations, student evaluations, professional writing and communications, input from the Employee, and input from the relevant constituencies both within and outside the College. Upon completion of its review, the committee will issue a written report with its findings and recommendations to the Dean, with a copy to the Employee. The Dean will then determine whether to renew this Agreement and will notify the Employee in writing of his decision and the basis for the decision.

ARTICLE 3

3.1 Board Approval. This Agreement will not be effective until and unless approved by the University's Board of Regents and fully executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this Agreement will be subject to the approval of the University's Board of Regents, the President, and the Dean; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and Board of Regents and University rules regarding financial exigency.

3.2 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

3.3 Waiver. No waiver of any default in the performance of this Agreement will be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement will not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach will not constitute a waiver of any other available remedies.

3.4 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement will not be affected and will remain in effect.

3.5 Governing Law. This Agreement will be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement will be brought in the courts of the state of Idaho.

3.6 Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation will not be binding upon the University.

3.7 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), will excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

3.8 Confidentiality. Employee hereby consents and agrees that this document may be subject to disclosure upon University's receipt of a request pursuant to the Idaho Public Records Act.

3.9 Notices. Any notice under this Agreement will be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices will be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

the University:	Dean College of Law University of Idaho P.O. Box 442321 Moscow, Idaho 83844-2321
with a copy to:	Director of Clinical Programs College of Law University of Idaho P.O. Box 442322 Moscow, Idaho 83844-2322
the Employee:	Last known address on file with University's Human Resources

Any notice will be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, will always be effective.

3.10 Headings. The headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation hereof.

3.11 Binding Effect. This Agreement is for the benefit only of the parties hereto and will inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

3.12 No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

3.13 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement will be effective unless in writing, signed by both parties, and approved by University's Board of Regents.

3.14 Opportunity to Consult with Attorney. Employee acknowledges that he has had the opportunity to consult and review this Agreement with an attorney. Accordingly, in all cases, the language of this Agreement will be construed simply, according to its fair meaning, and not strictly for or against any party.

Approved by the Board of Regents on the ____ day of _____, 2011.

UNIVERSITY OF IDAHO

EMPLOYEE

Ron Smith, Vice President for
Finance and Administration

Lee Dillion

Date: _____

Date: _____

Approved by:


Douglas Baker, Provost and Executive Vice President
Date: _____

Don Burnett, Dean
College of Law
Date: _____

MEMORANDUM

Date: 17 October 2011

To: Doug Baker, Provost and Executive Vice President, University of Idaho

From: Don Burnett, Dean, University of Idaho College of Law 

Subject: *Renewal* of ABA-Required and Regents-Approved Five-Year Contract for Law Faculty Member Lee B. Dillion

As explained on the accompanying cover sheet for the Board of Regents, the American Bar Association, requires – and in 2006 the Board approved – a five-year renewable contract for clinical law faculty member Lee Dillion. Pursuant to paragraph 2.5 of the contract (attached), the process for renewal entails a comprehensive review of the faculty member's responsibilities and effectiveness in fulfilling those responsibilities. This review has been conducted by a committee composed of Professor Maureen Laflin, Director of Clinical Programs, and faculty members of the College's Tenure & Promotions Committee (chaired by Professor Dale Goble).

The committee has solicited input from the entire law school community – faculty, staff, and students – as well as from the College of Law Advisory Council and other professional colleagues outside the University. The committee has submitted a thorough written report, finding that Lee Dillion has (a) performed his teaching role admirably as an instructor and thoughtful mentor to students in the Small Business legal Clinic, which he founded, and in the externships he has developed and supervised; (b) excelled in administration, demonstrating leadership as Director of External Programs and subsequently as Associate Dean for Boise programs; (c) excelled also in service to the College, to the UI Boise Center, and to the Idaho State Bar and Law Foundation; and (d) produced useful scholarship in the form of continuing legal education materials and articles for the Idaho State Bar's publication *The Advocate*. His professional writings and presentations, and his interactions with colleagues, are characterized by objective analysis and clear communication.

The committee has “resoundingly” recommended that Lee Dillion's contract be renewed for another five-year term. I enthusiastically concur. My annual evaluations of Lee's performance, and the evaluations made by our Associate Dean for Faculty, Professor Elizabeth Brandt, have consistently rated Lee's performance as exceptional or as exceeding expectations throughout the current contract period. He is a treasure to the College of Law and to the University. I heartily recommend that the University seek Board approval for another five-year term.

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