1. Financial Exigency

   The Board recognizes that in order to discharge its responsibilities for the agencies or institutions under its governance, it may become necessary to curtail, modify, or eliminate some of the programs of the agencies or institutions due to unfavorable economic conditions. The Board further recognizes that it must dedicate its resources to the achievement of the purposes and goals of its agencies or institutions. As used here, “financial exigency” means a demonstrably bona fide financial crisis that adversely affects an agency or institution as a whole, or one (1) or more programs, or other distinct units. A financial exigency exists only upon Board declaration, and the responsibility and authority to make such a declaration rests solely with the Board. The realities of the legislative appropriation process, the state revenue collection process, the possibility of budget hold-backs via executive order and the subsequent analysis needed before the Board declares a financial exigency may allow little time for official notice of a declaration of a financial exigency and may require that the decision to declare a financial exigency be based on estimated revenues, rather than on actual revenues. The Board must take action by written resolution setting forth the basis for its decision to declare a financial exigency, after notice and hearing, at a regular or special meeting of the Board.

   This subsection N addresses potential responses to a declared financial exigency including: (1) the layoff of non-classified contract employees, tenured faculty, and non- tenured faculty, and classified employees during the term of their contract of employment; (2) employment actions other than layoffs that are designed to reduce budgetary expenditures; (3) the closure, relocation, or discontinuance of any programs, units, or activities; or (4) any combination thereof.

   This subsection N does not apply to the organization or reorganization of the institutions or agencies under the governance of the Board, nor does it limit the authority delegated by the Board to the chief executive officers to organize and reorganize the institutions or agencies, including the authority to take certain employment actions, as provided in section II.B.2.b. of the Board’s Governing Policies and Procedures, either independently or, in response to, a declared financial exigency. In addition, this subsection N is not applicable to the following situations:

   a. When a reduction in force occurs pursuant to, and for those employees subject to, the State Board for Professional-Technical Education’s administrative rules governing post-secondary reduction or termination (IDAPA 55.01.02), which excludes community colleges.

   b. When a reduction in force occurs where the reductions are made via the non-renewal process for non-classified contract staff and non-tenured faculty.

c. When a reduction in force occurs pursuant to Board policies (Section III. G.) for program consolidation, relocation or discontinuance not resulting from financial exigency. Program closure, relocation, reduction, or discontinuance pursuant to Section III.G. shall not be implemented utilizing any policy or procedure in this Section II.N.

d. When a reduction in force affects State of Idaho classified employees using the procedures of the State Division of Human Resources or classified employees of the University of Idaho using the policies of the University of Idaho.

e. When a reduction in force affects non-classified at-will employees.

2. Response by an Institution or Agency to a Declared Financial Exigency

a. After active consultation with employees, including faculty, professional staffs, and classified personnel, the Chief Executive Officer of each agency or institution must prepare a plan (the "Plan") in response to the declaration of financial exigency. When developing this Plan, consideration must be given to the necessity and manner of reducing the employment force, the appropriate units or subunits to be affected, and the criteria for identifying the employees who are affected by the Plan. Once completed, the Plan must be approved by the Board. Provided, however, that implementation of the Plan and notices required to be given in the Plan may begin prior to Board approval, which approval shall then also include ratification of such actions.

b. Each of the institutions shall seek advice from a committee, which may include representatives of the administration, faculty, staff or students, on the state of the financial exigency and possible responses thereto.

c. Notwithstanding any other Board policy, order or rule, or the policies of any institution or agency, all categories of employees may be laid off as a result of a Board declared financial exigency. The process used to layoff employees must be done equitably (but not necessarily uniformly), in good faith, and in a systematic manner directly related to the financial exigency.

d. Employment Actions Other than Layoffs. In any situation where a layoff may be made under this subsection N, an employment action other than a layoff (including but not limited to a salary reduction, a work hour reduction, a demotion, and/or administrative leave without pay) may also be instituted. Such employment action need not be uniformly applied, it need only meet the requirements of this topic 2 and topic 7 below. In determining how to implement employment actions other than a layoff, the institution shall use the same policies that apply to a financial exigency layoff. However, employees who are affected by employment actions other than layoff do not have layoff reinstatement rights.

e. Program Closure, Relocation and Discontinuance. When the Plan for responding to a declared financial exigency includes the closure, relocation or discontinuance of a program, such program closure, relocation or discontinuance shall be subject only to the requirements of this subsection N and not to any other Board policy, including specifically, but not limited to, section III.G, and its related guidelines. However, arrangements should be made for enrolled students to complete affected programs in a timely manner and with minimum interruptions.

f. A financial exigency layoff, employment actions other than a layoff, and program closure, relocation or discontinuance resulting from financial exigency may occur in the following manner and may be the same or may differ from one (1) agency or institution to another:

(1) By entire entity or across an entire agency or institution; or

(2) By subunit within an agency or institution, such as, but not limited to, a college, school, academic department, administrative department, division, office, bureau, discipline, or specialty within a discipline, and such actions may also differ between subunits of the same agency or institution; or

(3) By any combination of the aforementioned.

3. Classified Employees

When a financial exigency results in a layoff that affects classified employees, the following shall apply:

a. State of Idaho Classified Employees

A layoff affecting employees subject to the Idaho classified personnel system will be made pursuant to the Rules of the Division of Human Resources.

b. University of Idaho Classified Employees

A layoff affecting University of Idaho classified employees will be made pursuant to the policies of the University of Idaho. Provided, however, that University of Idaho classified employees do not have a right of appeal to the Idaho Personnel Commission nor to the Board.

4. At-Will Employees.

   This section II.N does not apply to the termination of at-will employees at the institutions or agencies. Such employees have no layoff rights and no right to notice, a hearing or reinstatement following termination of employment.

5. Layoff Criteria – All non-classified contract employees, non-tenured faculty and tenured faculty.

   a. In developing the Plan, the chief executive officer must utilize as the first criterion the preservation of the overall quality and effectiveness of the programs of the agency or institution. Consequently, those employees who are deemed to be of key importance will be retained in preference to other employees, whatever their status, at the discretion of the Chief Executive Officer. Programs, for purposes of a financial exigency layoff, include, but are not limited to, academic, non-instructional, maintenance, administrative, and other support areas. Other criteria that must be considered include, but are not limited to, tenure, rank, time in rank, length of service, field of specialization, maintenance of necessary programs or services, maintenance of affirmative action programs, and quality of service and work.

   b. Notice of Financial Exigency Layoffs

      (1) Form of Notice. The Board recognizes that any layoff may be a severe economic and personal loss to an employee. Therefore, and within the time frame provided in this policy, the Chief Executive Officer must give notice in writing to employees who are affected by a financial exigency layoff, which notice must include the effective date of the layoff; a statement of the basis for the Board's declaration of a financial exigency; a statement of the basis, the procedures, and the criteria used to layoff an employee; any opportunity for reconsideration or appeal, including access to appropriate documentation, and the issues that may and may not be considered; and the reinstatement rights of the employee.

      (2) Time. Each agency or institution should make every reasonable effort to give as much notice as is practical, in light of the financial exigency, to each employee in advance of the effective date of the layoff. The Board requires each agency or institution under its governance to the following minimum time for written notice of layoff:

         (a) Non-classified Contract Employees And Non-tenured Faculty - Not less than sixty (60) calendar days before the effective date of the layoff. Provided, however, that if under the express terms of the employee's contract the employment may be terminated on less notice, then the shorter notice provided in the contract shall apply.

(b) Tenured Faculty - To tenured faculty members occupying faculty positions, a notice of layoff with the effective date of layoff being at the end of the first full semester (Fall or Spring) after the financial exigency is declared.

c. Hearing Procedures

(1) All employees of the institutions or agencies who receive a notice of a financial exigency layoff have the right to appear before the Board at the meeting of the Board where the Board will take action on the Plan. Such appearance shall be governed by the Board's policies, procedures and guidelines regarding testimony before the Board. In addition, categories of employees shall have hearing rights as set forth below in this subtopic c.

(2) Non Tenured Faculty and Non-classified Contract Employees' Hearing Rights

(a) In most instances, a layoff of non-tenured faculty and non-classified employees serving under a contract of employment for a fixed term may be accomplished by non-renewal of the contract of employment rather than by layoff during the term of employment. Non-renewal after a Board declared financial exigency does not require a hearing nor is the non-renewal appeal able at the agency or institution, nor is it appeal able to the Board.

(b) If a non-tenured faculty member occupying a permanent faculty position or a non-classified employee serving under a contract of employment for a fixed term is laid off during the term of employment due to a financial exigency, the faculty member or employee is entitled to the pre-layoff hearing procedures set forth in paragraph (4) below.

(3) Tenured Faculty Hearing Rights. All Tenured faculty members occupying permanent faculty positions who are laid off due to a financial exigency are entitled to the pre-layoff hearing procedures set forth in paragraph (4) below.

(4) Financial Exigency Layoff Hearing Procedures

(a) The financial exigency layoff hearing procedures at the institutions or agencies must ensure a prompt and expeditious hearing that is fair and unbiased, but the hearing shall be informal. The application of evidentiary rules, questioning of witnesses (including cross-examination), rules concerning burden of proof, the participation of legal counsel, and similar and related attributes of more formal adjudication shall not be required. The final written recommendation of the hearing body or officer must be conveyed to the Chief Executive Officer of the institution or agency who shall make a final decision. An employee may ask the Chief Executive Officer to reconsider the decision. Such a request must be filed in writing with the Chief Executive Officer within fifteen (15) days of the notice of the final decision of the institution or agency. The decision of the Chief Executive Officer in response to the reconsideration request is final except as modified by the Board pursuant to an appeal under Section II.M. Use of these hearing procedures does not delay the effective date of the layoff.

(b) Grounds to Contest. The employee may contest the layoff on the following grounds:

(i) Whether the agency or institution followed the appropriate policies and procedures and the terms of the Plan;

(ii) Whether the layoff was made for constitutionally impermissible reasons; or

(iii) Whether any other improper criteria were applied.

(c) Limitations Upon Review. The hearing body or officer will not review the Board’s decision to declare a financial exigency or the funding distribution among and within the institutions or agencies. The decision of the Board to declare a financial exigency is at the Board’s sole discretion and may not be contested by any employee in any type of hearing or appeal procedure.

(d) Employees may request that the Board hear an appeal of the final decision of the chief executive officer as provided in Board policy section II.M.2.b. Such a request does not delay the effective date of the layoff.

6. Reinstatements Rights

a. Tenured Faculty

In cases of a financial exigency layoff of tenured faculty members occupying permanent faculty positions, the position concerned may not be filled by replacement within a period of three (3) years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within thirty (30) calendar days after the offer is extended.

(1) Refusal of Reinstatement Offer. If an offer of reinstatement is not accepted, the tenured faculty member's name may be deleted from the reinstatement list, and, if so deleted, the Board has no further obligation to the faculty member.

(2) Benefits During Layoff. A tenured faculty member who is laid off may continue to contribute toward and receive the benefits of any applicable state or University of Idaho insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit.

(3) Leave Credit. A tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume tenure and the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and be credited with any annual leave (if applicable) which the employee has accrued as of the date of layoff and for which the employee has not received payment.

b. Non Tenured Faculty and Non-classified Contract Employees

In cases of a financial exigency layoff of non-tenured faculty members occupying permanent faculty positions, and non-classified contract employees occupying permanent positions, the position concerned may not be filled by replacement within a period of one (1) year from the effective date of the layoff unless the employee has been offered a return to employment in that position and the employee has not accepted the offer within thirty (30) calendar days after the offer is extended.

(1) If an offer of reinstatement is not accepted, the employee's name may be deleted from the reinstatement list, and if so deleted, the Board has no further obligation to the employee.

(2) A non-tenured faculty member or a non-classified contract employee who is laid off may continue to contribute toward and receive the benefits of any applicable state or University of Idaho insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit.

(3) A non-tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave (if applicable) which the employee had

accrued as of the date of layoff and for which the employee has not received payment.

(4) A non-classified contract employee who has been laid off and who accepts reemployment at the institution will be credited with any sick leave the employee had accrued as of the date of layoff, paid a salary commensurate with the length of previous service, and credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment.

7. Employment Actions Other than a Layoff. The implementation of personnel actions other than a layoff shall follow the requirements of this topic 7.

   a. If the Plan for addressing the financial exigency includes employment actions other than, or in addition to, a layoff, the employees affected by such actions shall be entitled solely to such procedures as are set forth in this topic and those that may be set forth in the Plan, if any. Such procedures must include at least thirty (30) days written notice prior to the effective date of the action and an informal opportunity for the employee to be heard. The notice must include the effective date of the employment action; a statement of the basis for the Board's action to declare a financial exigency; a statement of the basis for the employment action and a description of the process for the opportunity to be heard. Such process must be prompt, expeditious and fair, but shall be informal. The application of evidentiary rules, questioning of witnesses (including cross-examination), rules concerning burden of proof, the participation of legal counsel, and similar and related attributes of more formal adjudication shall not be required. The employee may contest the action based on whether the agency, institution or school followed the appropriate policies and procedures and the terms of the Plan; whether the action was made for constitutionally impermissible reasons; or whether any other improper criteria were applied. The hearing will not review the Board's decision to declare a financial exigency or the funding distribution among and within the institutions, agencies, or school. The decision of the Board to declare a financial exigency is at the Board's sole discretion, and may not be contested by any employee in any type of hearing or appeal procedure. The written recommendation of the hearing officer or body must be conveyed to the chief executive officer who shall make a final decision. There is no right of appeal to the Board.

   b. There are no reinstatement rights with respect to employment actions other than a layoff. Remedies, if any, to which employees are entitled, shall be set forth in the Plan.

8. Financial Exigency Program Closure, Relocation or Discontinuance.

   a. Faculty or staff being laid off as a result of a program closure, relocation or discontinuance pursuant to a financial exigency Plan shall be entitled to the same procedural rights as any other layoff pursuant to a financial exigency. Provided, however, the reinstatement rights only exist if the program is reinstated by the institution, not merely if the position is filled.

   b. Students enrolled in a program that is closed, relocated or discontinued pursuant to a financial exigency Plan should be given notice of the closure as soon as is practical. Notwithstanding any other provision of Board policy, institutional policy, or institutional catalog statements to the contrary, arrangements should be made for enrolled students to complete affected programs in a timely manner and with minimum interruptions. When there is a similar program within the institutions governed by the Board, an affected student will be provided with information on transferring to that program, although admission to any such program is contingent upon the availability of a position and the student's meeting any applicable admission requirements. If there is no similar program available within the institutions governed by the Board or the student is not able to gain admission to a similar program, the institution will make reasonable efforts to place the student in a related or comparable program within the institution. If none is available, the institution will make reasonable efforts to assist the student in locating to another program at the institution or elsewhere for which he or she is qualified.