

ITEM 126-108-R0305

Montana University System Board of Regents Contract Employment Status Recommended Modifications

I. BACKGROUND INFORMATION

A. Statutory Reference

Authority for the appointment of and establishment of salaries for all Montana University System employees resides with the Board of Regents per 20-25-301, M.C.A.

“(9) shall appoint a president or chancellor and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;”

The referenced statute further states:

“(11) shall confer, at the regents’ discretion, upon the president and faculty of each of the units of the system for the best interest of the unit authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;”

Therefore, the Board may delegate authority for hiring and setting salary levels for employees, as they deem appropriate.

B. Current Practice

The Board has, in effect, delegated authority for appointing classified staff members, individuals on letters of appointment, and other employees who are not issued Board of Regents’ contracts. The Regents fix compensation for these types of employees in a limited manner through collective bargaining agreement provisions, if applicable, and Board policies such as the MUS Staff Compensation Plan (formerly MAP) and Policy 802.3 (summer pay) applicable to non-union faculty. The Presidents and Chancellors establish compensation for these employees only in aspects not addressed by Board policy or collective bargaining agreements.

The Regents retain full authority for appointment and fixing compensation of employees issued Board of Regents’ contracts and reported on the Board staff consent agenda.

For each employee issued a Board of Regents’ contract, the Regents must expressly approve compensation and appointment-related conditions of employment: job title/rank, annual salary, FTE (salary indicator), and effective dates of employment. These items appear on the Board consent agenda, along with other data provided for informational purposes (e.g., funding source, salary for employee replaced, etc.)

Board Policy 711.2 requires that each university adopt a policy to define the types of positions eligible for Board of Regents’ contracts. The result of this policy is that campuses define the positions for which the Board assumes direct responsibility rather than the Board, more appropriately, defining those positions.

II. ISSUE/PROBLEM STATEMENT

Excluding faculty, the Board currently has direct responsibility/authority to approve appointments of and compensation for over 800 contract administrators and contract professionals, an increase from approximately 475 in 2000. This leaves the Regents with direct authority for approximately 20 percent of MUS employees.

Recent Board discussion and OCHE staff policy recommendations focused on the need for: a) system-wide definitions for positions eligible for Board of Regents' contracts; and b) consistent, system-wide salary parameters for Regents' contract employees.

Once the definitions are in place, a compensation plan/policy remains essential to ensure that the Board issues substantive approvals within defensible and relevant parameters. Otherwise, such approvals are based, to varying degrees, on subjective factors that are difficult to understand, administer, and defend, if challenged. A sound salary policy should cover employees who have a community of interest, rather than the weak and sometimes non-existent similarities among current contract administrators and contract professionals.

The lack of consistent employee definitions and appropriate salary policy for employees on Board of Regents' contracts results in potential liability and risks of inequity and discrimination claims. How would the Regents (who have retained their direct authority) respond to a complaint if decisions continue to be made without the benefit of even the most basic guideline or policy?

III. RECOMMENDATION

A. Criteria for Board of Regents' Contracts Redefined

By its very nature, Regents' contract employment status should denote significant impact and decision-making authority relative to the overall missions of the Montana University System and campuses, thereby requiring the Regents' direct approval of appointment and salary decisions. Because of the Regents' involvement, some degree of system-wide equity should be required.

All other positions should fall under the authority of the campus Chief Executive Officers. Presidents should adopt policies to govern the appointments and salaries of non-Regents' contract positions. Such policies should address campus and university-wide equity and fairness. The policies should be reviewed and discussed with the Commissioner and/or her designee. Positions excluded from Board of Regents' contracts will be either classified staff or employed via a campus contract such as letters of appointment.

Two definitions of positions requiring Board of Regents' contracts are presented for consideration:

1. MUS executive-level administrators: presidents, chancellors, Great Falls and Helena Colleges of Technology deans, vice presidents, and associate/assistant vice presidents.

Approximately 44 executive-level administrators would be included in this definition.

2. In addition to executive-level administrators, deans, associate/assistant deans, and department directors (e.g., directors of facilities services, business services, information technology, dining services, etc.) Excluded from this group would be associate/assistant directors and program directors.

Including executives, the group totals approximately 218.

To reach a decision regarding option 1 or 2, the Board may want to consider the following factors:

- a) Degree of similarities among campuses relative to a position’s overall responsibilities and potential impact on the system;
- b) Recruitment area (i.e., would a facilities services director position be eliciting candidates from the same recruitment area, requiring comparable market competitiveness, regardless of employing campus?);
- c) Level of position’s accountability to the employing campus versus system;
- d) Reasonableness of notice of non-renewal provisions applicable to Board of Regents’ contract employees versus notice provisions that will be afforded the employees through individual campus policies; and
- e) Board comfort level in delegating full authority.

Any decision made by the Board may, of course, be subsequently modified at any time.

B. Implementation/Transition

If the Regents agree to revise the criteria for Board of Regents’ contracts as recommended in #1 or #2 above, the following implementation steps are necessary:

1. Approve revised Board policy 711.2, Criteria for Board of Regents Contracts and 711.1, Employment Instruments, Professional and Administrative Employees.	September 2005
2. Approve effective date for complete transition of current employees no longer eligible for Regents’ contracts.	July 1, 2006
3. Approve effective date for revised criteria as it effects new employees.	December 1, 2005
3. Submit to Commissioner for review campus policies to address appointment and compensation conditions for employees excluded from Regents’ contracts due to modified Board policy. (<i>Refer to notation below</i>)	November 1, 2005
4. Adopt Board policy to formally delegate authority per 20-25-301, M.C.A.	September 2005
6. Adopt Board policy addressing salary conditions for Board of Regents’ Contract positions.	September 2005
7. Provide notice to employees to be converted from Regents’ contract employment status in accordance with Board policy 711.1. (<i>Note: No employee shall suffer a reduction in salary solely due to the conversion from a Board of Regents’ contract.</i>)	December 31, 2005

Regarding #3 above, such policies may either modify the current use of letters of appointment or create a new employment contract category. In developing policies, one provision **must** be included: **No employee or position currently covered by a collective bargaining agreement may be converted to other employment status, either at the time the position is filled or when vacant, without the explicit approval of the MUS Director of Labor Relations.** This policy provision is mandatory in order to ensure that there is no risk of an Unfair Labor Practice or other legal action that could result if changing employment status of a position or

incumbent is viewed as an effort to subvert unions' legal rights and roles within the Montana University System.

IV. OTHER CONSIDERATION

It is recommended that the Regents also review the need to approve faculty appointment and salary actions. It may be appropriate to delegate such approvals to the Presidents and Chancellors. If the Board decides to review this approval process, an existing Board policy should be included. Policy 706.1 requires the Regents to approve the award of tenure.

Submitted by Kathy L. Crego, 07/2005