

**Summary of Differences Between the
Former Policy on the General Faculty
and the
New Policy on Employment of Non-Tenure-Track Faculty**

Prepared by

The General Faculty Council Policy Committee

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Introduction

On 24 February 2006, the University's Policy Review Committee (PRC) approved the new policy on Employment of Non-Tenure-Track Faculty, which replaced the former Policy on the General Faculty. In mid March 2006, the new policy was posted on the Provost's web site at

<https://etg07.itc.virginia.edu/policy/policydisplay?id='HRM-003'>

and the former policy was subsequently deleted. For the benefit of our constituents, the GFC prepared the following summary of major differences between the former and the new policy and our associated concerns about some new provisions.

Background

Between 1997 and summer 2003, the General Faculty Council (GFC) collaborated with the Provost and his staff in revising the former policy. However, the GFC was not provided an opportunity to review or comment on the most recent version of the new policy before implementation. Although improved in several respects relative to the former policy, the GFC has concerns about specific elements of the new policy. We have expressed these concerns to the Provost and hope to work with his office to address and resolve them.

Currently, the University has no provisions for public review of proposed changes in policy before implementation. On 30 March 2006, the GFC requested that the PRC implement a 30-day comment period before acting on proposed revisions to policies that impact faculty. This request was declined. On 28 April 2006, the Faculty Senate passed a similar motion requesting that the administration implement a 30-day comment period before acting on proposed changes in policy.

General Changes

- The term “general faculty” as used in various University policy documents is ambiguous; in the new policy, this term has been replaced by the more explicit characterization “non-tenure-track faculty.”
- Relative to the former policy, the new policy is also more explicit in other respects and more comprehensive.
- Language in the new policy is more straightforward and easier to understand.
- Links to relevant related policies are included in the new policy.

Specific Changes

Section V.A. Annual Review

- This section of the new policy specifies that “non-tenure-track faculty should be evaluated annually” by their supervisors following specific guidelines and that faculty members “have the right to insist” that such reviews be conducted. The GFC views the right of faculty to insist on an annual review as a significant improvement over the former policy.

Section VI. Expectation of Continued Employment (ECE)

- This section of the new policy contains ambiguous statements that we have brought to the attention of the University’s Policy Review Committee and are trying to resolve. Specifically, the first statement in this section reflects text in the former policy;

“With the first reappointment after the sixth year of continuous employment at the University, non-tenure-track faculty members serve with the Expectation of Continued Employment (ECE) and may be reappointed, reassigned or terminated only in accordance with the terms of this policy.”

Be aware that because new conditions and qualification have been added to the new policy, the above statement is no longer accurate without qualification and, thus, is potentially confusing. Specifically, as described later in the new policy, faculty can be renewed without the ECE after their sixth year of continuous service if they 1) have not been reviewed (Section VI.B), 2) waive the right to the ECE (Section VI.D), 3) are employed in the Department of Athletics (Section VI.A), or 4) are hired under an “individually negotiated contract” or serve with “at will” employment terms that do not provide for the ECE (Section IX).

Section VI.A. ECE - Conditions

- This section details conditions for the ECE and includes two important new restrictions that did not appear in the former policy.

“Regardless of whether or not ECE has been earned, however, the reappointment of non-tenure-track faculty whose salaries are funded from grants, contracts or private gifts is subject to the continued availability of such funds.”

“Unless expressly provided by contract, non-tenure-track faculty employed in the Department of Athletics, who do not already have the ECE as of July 1, 2005, and who are 0.5 FTE or greater in the Department of Athletics, cannot obtain the ECE.”

Section VI.B. ECE - Review Process

- Under the new policy, a “substantial review” and written approval by the appropriate vice president are required for faculty to earn the ECE. Under the former policy the ECE was earned automatically upon the first contract renewal following six continuous years of service.
- This section also includes the following statement, which indicates that, for faculty who have already earned the ECE, the rights, privileges, and protections that were guaranteed under the former policy no longer apply if they are not also specified in the new policy.

“Those non-tenure-track faculty members who have already attained the ECE under the prior version of this policy will not be subject to the Expectation of Continued Employment Review, although they will be subject to all other provisions of this policy, including an annual review.”

The above refers specifically to those who have already earned the ECE. The new policy does not include a comparable statement regarding application of the former versus new policy to current faculty who have not earned the ECE.

Section VI.C. ECE - Provision for Appeal on Procedural Grounds

and

Section VI.D. ECE - Review Waiver

- The above two sections are new. Under the former policy, faculty automatically earned the ECE upon their first reappointment following their sixth year of continuous service.

VIII. B. 3. Termination - Appointments Subject to Availability of Funding

- This section specifies the following new provision that did not appear in the former policy:

“Appointments subject to the availability of funding associated with grants, contracts, or private gifts may be terminated should such funds cease to be available for such

purpose. Departments and units may elect to place the affected individual on leave without pay through the end of his/her current term of employment.”

- This provision is of concern for the following reasons:
 1. The provision is not entirely consistent with either current practice or current policy in that it specifies only termination and leave without pay under this circumstance. However, various forms of temporary bridging support for sponsor-supported faculty are also employed currently on an ad hoc across the University. These include direct support from the VP for Research or through departmental overhead funds, temporary shift to paid teaching, and leave for institutional convenience (which provides benefits but not salary). Termination appears to be quite rare and leave without pay may extend beyond the end date of a current contract to allow ongoing or pending work to be completed.
 2. The phrase “should such funds cease to be available” is nonspecific and, thus, subject to different interpretations and associated applications. For example, under this provision, a very temporary hiatus in sponsor support (e.g., one pay period) could be cited as grounds for termination.
 3. This provision does not address important related issues involving outstanding contractual obligations on existing or pending grants and contracts for which most sponsor-supported faculty in this situation would be responsible.
 4. Provisions for notice are not specified. We think it unreasonable to terminate sponsor-supported faculty without adequate notice.

IX. Contracts that Supersede this Policy

- This section specifies a new provision that did not appear in the former policy:

“Non-tenure-track faculty members hired as a result of individually negotiated contracts of employment or those with “at will” employment terms contained in their contracts that are different from the employment rights and terms contained in this policy, are governed by the terms of their individually negotiated contracts. The employment terms contained in such contracts which have been approved by the vice president in charge of the position or function area and which are not otherwise in violation of law or policies of the Board of Visitors shall supersede this policy, including the policy provisions relating to non-reappointment and earning the Expectation of Continued Employment.”

- In effect, this provision allows individual units within the University to negotiate contracts with non-tenure-track faculty based on policies that are more restrictive than those specified under the Provost’s policy on Employment of Non-Tenure-Track Faculty as long as they do not violate state or federal “law or policies of the Board of Visitors.”

- It is not clear under this provision whether current faculty who were hired under a different policy could be made subject to more restrictive policies specified in renewal contracts.