

**Proposed policy revisions
for
employment contracts
in the
Montana University System**

Introduction

Individual employment contracts in the Montana University System (MUS) are subject to Board of Regents (BOR) approval, pursuant to the Board's constitutional authority to supervise and manage the system. BOR policies for non-faculty employment contracts with professionals and administrators are found at sections 711.1 and 711.2 of the Regents policy manual. The policy provisions appear in this report with a strikethrough symbol (i.e., ~~crossed-out lines~~) denoting language intended for deletion from policy. The proposed new policy language in this report appears after the denoted current policy language.

The MUS has approximately 7,590 full-time equivalent employees supported through all fund sources, or, approximately 4,360 full-time equivalent employees considering only unrestricted funds. The majority of employees in the MUS are faculty members working under faculty contracts, or staff members who are covered by the MUS job classification system and Staff Compensation Plan. A smaller group of non-faculty, non-classified employees is covered by individual employment contracts governed by BOR Policies 711.1 and 711.2. This group of professional-level employees and administrators totals approximately 800. Members of the BOR Staff and Compensation Committee have expressed interest in reducing the number of employment contracts that must go to the Board for formal action.

The BOR could accomplish this interest by delegating to the Commissioner the authority to approve most non-faculty employment contracts, while retaining BOR authority to approve the contracts of certain employees as designated by policy. The draft policy revisions in this document would reduce the non-faculty employment contracts on the BOR agenda from the current number of approximately 800 to a reduced number of approximately 60. At the same time, the revised policy would require the Commissioner to prepare an annual report to the BOR on salaries and trends of employment contracts throughout the MUS.

Integrated with the draft policy revisions on employment contracts is a draft policy on salary changes for non-faculty administrators and professionals. The draft salary policy follows the delegation model as described above, authorizing the Commissioner to approve salary changes for most contract employees within a designated range. The BOR would retain authority to approve salary changes beyond the designated range for most contract employees. The BOR also would retain full authority to approve any salary changes for approximately 60 employees whose contracts are subject to BOR approval.

Some notable draft policy revisions include:

- Campuses would submit staff items and contract matters to the Commissioner's Office as they have in the past, but most of the items would not have to be placed on the BOR meeting agenda for action. The information would be available to the BOR and the public in an annual report from the Commissioner.
- There would be two types of employment contracts: (1) an MUS employment contract covering roughly 740 employees, approved by the Commissioner as delegated by the Board, and; (2) a Board of Regents contract covering roughly 60 administrators and professionals that would remain subject to BOR approval.
- The new policy would allow for a two-year contract term in certain recruitment situations with the Commissioner's approval for employees covered by MUS employment contracts. The policy also would allow for a two-year contract term in certain recruitment situations for the roughly 60 employees covered by BOR employment contracts conditional upon BOR approval.

- The six-month notice of non-renewal for employees with at least two years of continuous service is modified to five months of notice.

Additional items for consideration:

- **Faculty contracts.**

The BOR may want to consider delegating to the Commissioner the approval of roughly 2,000 faculty contracts that currently go on the BOR agenda for action. Faculty contract information could be made available to the BOR and to the public in the same annual report fashion as proposed above for non-faculty professionals and administrators.

- **Coaches.**

Coaches currently are not covered by the BOR employment contracts policies, nor are they covered by the draft policy revision contained in this report. Despite this policy void, there has long been an unwritten policy or practice that coaches may only be hired on a year-to-year basis, which has been bolstered by the fact that on at least two occasions in the past few decades the Regents have expressly rejected proposals to allow for multi-year coaching contracts.

The treatment of coaches has naturally surfaced again during the course of the past year's discussion of system contracts. The Commissioner has asked the campuses to prepare and submit through MSU-Bozeman and UM-Missoula a written statement addressing coaching-related needs for employment contract procedures. Campuses should articulate their needs and desires in a number of areas, including but not limited to: possible guidelines or policies for coaches' contracts; relevant market factors; recruitment and retention trends; duration of contracts; contract renewal procedures; notice of non-renewal procedures; plans for fiscal solvency in contract termination buy-outs; relevant NCAA or NAIA regulations; financial incentives; outside compensation. This information from campuses may be used for BOR consideration of a future policy or procedure for coaches' contracts.

SUBJECT: PERSONNEL

**Policy 711.1 – Employment Instruments; Professional and Administrative Employees
Issued November 19, 1998; Issued December 30, 1998**

Board policy:

1. All employees of the Montana University System except those excluded in Subsection 6 shall be hired through a University System professional employment contract or a letter of appointment in accordance with this policy.

2. Montana University System Professional Employment Contracts

a. Professional and administrative employees holding permanently budgeted positions shall be issued a Montana University System professional employment contract specifying salary and other terms of employment. Employees other than those holding permanently budgeted positions may be issued a Montana University System professional employment contract and when the contract is approved by the Board of Regents the employment shall be governed by this section.

b. Montana University System professional employment contracts are for a maximum of a one year period and must be signed by the applicable President, Chancellor, or the Commissioner of Higher Education, and be approved by the Board of Regents.

c. Except in situations involving termination for cause or loss of funding (see Section 4), professional and administrative employees hired through a Montana University System professional employment contract shall be given written notice of intent not to renew their contracts at least 30 days prior to expiration during the first year of employment, three (3) months prior to expiration during the second year of employment, or six (6) months prior to expiration during the third or subsequent years of employment with the institution in a full-time position.

3. Letters of Appointment

a. Employees not hired through a Montana University System professional employment contract shall be hired through a letter of appointment signed by the campus chief executive officer or the Commissioner.

b. Letters of appointment are for a specified period and are not to exceed one year. There is no restriction on the number of successive one-year letters of appointment which may be granted to an individual. However, in no case does an employee hired through a letter of appointment have a right to continuous employment beyond the one year period. Except in situations involving termination for cause the employment of employees hired by a letter of appointment automatically ends without notice at the end of the specified term or the end of the one year period, whichever occurs first.

4. Funding Contingency: Montana University System professional employment contracts and letters of appointment may include a notation that makes employment contingent upon continuation of external funding. If anticipated funding is not forthcoming, an employee hired through a contract or letter of appointment with such notation may be terminated at any time during the expected term of the contract upon 15 working days written notice.

5. Limitations: No agent of the Board of Regents may make commitments or promises to any employee to extend employment beyond the maximum one year term authorized in this policy. Any such promises, whether written, oral or implied, are invalid and unenforceable.

6. Tenure track faculty, student employees, classified employees, coaches, Presidents and the Commissioner are excluded from paragraphs one through five of this policy.

7. No later than October 1 of each year, the Presidents shall submit to the Commissioner a list containing:

~~a. The names, positions, dates of employment, and salaries of all employees employed through a letter of appointment in the preceding fiscal year.~~

~~b. The names and positions of all employees employed pursuant to a Montana University System professional employment contract for any part of the preceding fiscal year, who during that year received salary in excess of the amount listed on the Board of Regents' staff item in which the employee's contract salary was listed. The list should state for each person thereon both the previously approved salary, the amount by which the employee's compensation exceeded the previously listed salary, and the reason for the difference.~~

~~The Commissioner shall thereafter make available these lists, along with similar information from the Commissioner's Office, to the Regents.~~

**SUBJECT: ~~PERSONNEL~~
~~Policy 711.2 - Criteria for Board of Regents Contract; Non-faculty Personnel~~
~~Effective July 7, 1994; Issued September 28, 1994~~
~~Board policy:~~**

~~1. Administrative employees with substantial policy-making authority and professional employees are eligible to receive a Board of Regents employment contract upon recommendation of the university president and the Commissioner and approval of the Board of Regents.~~

~~2.~~

~~a. Each university shall develop a policy defining the specific criteria for receipt of a Board of Regents employment contract in order to:~~

~~1) provide for consistent treatment of similar positions throughout the university;~~

~~2) maintain the number of Regents' contract employees at the minimum necessary for efficient operation; and~~

~~3) distinguish between administrative and professional employees. Both universities should coordinate their policy development efforts through the Commissioner's Office in order to achieve as much system uniformity as is practical.~~

~~b. A university may change an occupied position from a Regents contract position to a classified position if such position does not meet the criteria established in university policy. The employee shall be provided the same notification required in policy 711.1 prior to any such involuntary change in employment status. The employee's salary will be set in accordance with the state pay plan rules.~~

~~c. A change in employment status may be a condition of a transfer or promotion to a new position~~

DRAFT POLICIES TO REPLACE CURRENT POLICY 711.1 AND 711.2

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION

Policy and Procedures Manual

SUBJECT: PERSONNEL

(NEW) Policy 711.1 – Montana University System employment contracts (non-faculty)

1. Delegation of Authority:

The Board of Regents, pursuant to its constitutional authority to supervise and manage the Montana University System (MUS), hereby delegates to the Commissioner of Higher Education the authority to approve employment contracts offered to certain employees by Presidents, Chancellors, and Deans of the Colleges of Technology in Helena and Great Falls. MUS employment contracts in this policy cover non-faculty professional employees who are not on the MUS Staff Compensation Plan, and administrators who are not covered by a Board of Regents employment contract as provided in Regents Policy 711.2.

2. Accountability:

a. Campuses shall submit the terms and conditions of tentative MUS employment contracts to the Commissioner. Presidents are authorized to coordinate the submitted items on behalf of affiliated campuses. The submitted information should identify the employee's name, position title, department or program, proposed salary, position funding source, date of hire, and proposed duration of the contract. Upon the Commissioner's approval, the President, Chancellor, or appropriate College of Technology Dean shall be authorized to sign the approved contract into a binding agreement.

b. The Commissioner will prepare an annual report to the Board of Regents in November summarizing the status and trends of MUS employment contracts.

c. Salaries will be administered in accordance with Board of Regents Policy 8.XXX (Salaries for non-faculty contract employees).

d. In all cases for new and continuing employees, salary levels and guidelines shall be established with a goal of maintaining a balance between recruiting a high-quality workforce and recognizing the reality of scarce salary resources.

e. Montana University System employment contracts and letters of appointment (section 5) may include a notation that makes employment contingent upon continuation of external funding. If anticipated funding is not forthcoming, an employee hired through a contract or letter of appointment with such notation may be terminated at any time during the expected term of the contract upon 15 working days written notice.

3. Eligibility:

a. Employees eligible for hire through an MUS employment contract are non-faculty professional and administrative employees who perform work that is autonomous in nature or involves policy-making authority.

b. Tenure track faculty, student employees, classified employees, coaches, employees covered by a collective bargaining agreement, and employees covered by a Board of Regents employment contract (Policy 711.2) are excluded from this policy.

c. Not all positions exempt from the overtime provisions of state and federal wage statutes are appropriate for MUS employment contracts, however, positions must be exempt from the overtime regulations to be eligible for MUS employment contracts.

d. Eligibility for an MUS employment contract is not determined solely on the basis of the employee's job title or his/her supervisor's job title. Relevant factors include job duties and responsibilities, decision-making authority, and the essential business needs of the employer.

4. Terms and conditions:

a. The maximum term of a contract is one year, except in situations where a one-year term causes substantiated recruitment difficulty. A two-year contract may be offered to a new employee to resolve the recruitment difficulty with prior approval from the Commissioner.

b. Except in situations involving termination for cause or loss of funding for the position, professional and administrative employees hired through MUS employment contracts shall be given written notice of intent not to renew their contracts at least thirty (30) days prior to expiration during the first year of employment; three (3) months prior to expiration during the second year of employment; or five (5) months prior to expiration during the third or subsequent years of employment with the institution.

In the event the initial term of employment contract for a newly hired employee is for less than six (6) months, the employee shall be entitled to at least thirty (30) days written notice of non-renewal prior to expiration in both the first and second years of employment. Such employee will be entitled to at least three (3) months notice prior to expiration during the third year, and five (5) months prior to expiration during the fourth or subsequent years of employment.

5. Letters of Appointment:

a. A Letter of Appointment is an employment contract issued to administrative employees or professional employees whose appointments are temporary and/or funded through means not available from year to year. Non-tenurable faculty members are also eligible for a Letter of Appointment. In all cases, the appointment is for the fixed term specified in the Letter of Appointment, not to exceed one year. Employees hired through a Letter of Appointment have no right to continuous employment beyond the fixed term of the letter. The eligibility requirements articulated in Section 3 of this policy also apply to Letters of Appointment.

b. Letters of Appointment may include a notation that makes employment contingent upon continuation of funding. If anticipated funding is not forthcoming, an employee hired through a Letter of Appointment with such notation may be terminated at any time during the expected term of the contract upon 15 working days written notice.

c. Except in situations involving termination for cause or lack of funding, employment of employees hired by a Letter of Appointment automatically ends without notice at the end of the specified term.

d. Campuses shall submit to the commissioner by October 1 each year a list containing the names, positions, dates of employment, and salaries of all employees employed through a letter of appointment in the previous 12 months.

e. Aside from the annual report referenced in part 5d above, campuses are not required to submit terms and conditions of a Letter of Appointment contract to the Commissioner for prior approval.

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No agent of the Board of Regents or Montana University System executives may make commitments or promises to any employee to extend employment beyond the maximum term authorized in this policy. Any such promises, whether written, oral or implied, are invalid and unenforceable

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION

Policy and Procedures Manual

SUBJECT: PERSONNEL

(NEW) Policy 711.2 – Board of Regents employment contracts

1. The following positions shall be hired through a Board of Regents employment contract:

Commissioner of Higher Education

Deputy / Associate Commissioner

President

Vice President

Provost

Vice Provost

Chancellor

Vice Chancellor

Deans of the Colleges of Technology in Helena and Great Falls

Legal Counsel

Other Commissioner's staff not covered by the MUS Staff Compensation Plan

2. Board of Regents employment contracts:

- a. Employees in positions referenced above shall be issued a Board of Regents employment contract specifying salary and other terms of employment. Board of Regents employment contracts are for a maximum of a one-year period and must be signed by the applicable President, Chancellor, or the Commissioner of Higher Education, and be approved by the Board of Regents. In cases of substantiated recruitment difficulty, if a one-year employment contract is the primary reason, a Board of Regents employment contract may be offered for a term not to exceed two years upon review by the Commissioner and approval by the Board of Regents. For the Commissioner and Presidents, the procedures for two-year contracts and certain other conditions are governed by BOR Policy 702.5 (Appointment; Executive Contracts; Commissioner and Presidents).

- b. Except in cases of mid-contract termination for cause or loss of funding, full-time employees hired through a Board of Regents employment contract shall be given written notice of intent not to renew their contracts at least thirty (30) days prior to expiration during the first year of employment; three (3) months prior to expiration during the second year of employment, or; five (5) months prior to expiration during the third or subsequent years of employment with the institution.

- c. All other terms and conditions of employment shall be outlined in the contract.

3. Limitations: No agent of the Board of Regents may make commitments or promises to any employee to extend employment beyond the maximum term authorized in this policy. Any such promises, whether written, oral or implied, are invalid and unenforceable.

4. Salary adjustments for executives working under Board of Regents employment contracts are subject to Board of Regents policy number 8XXX and Board approval (Salary increases for non-faculty contract employees).

DRAFT SALARY POLICY FOR NON-FACULTY CONTRACT EMPLOYEES

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION

Policy and Procedures Manual

SUBJECT: COMPENSATION

(NEW) Policy 8XXX– Salary changes for non-faculty contract employees

Positions defined in Board Policy 711.1 and 711.2 are subject to the provisions of this policy, unless otherwise noted. Faculty members are excluded from this policy, with the exception of non-tenurable or adjunct faculty members covered by Letters of Appointment. Only those provisions specified are applicable to individuals on Letters of Appointment.

All requests for salary adjustments shall adhere to the following parameters. The Board of Regents has authority to approve requested salary adjustments for employees working under Board of Regents employment contracts (Policy 711.2).

The Commissioner has authority to approve requested salary adjustments for employees working under Montana University System employment contracts (Policy 711.1) up to an amount of fifteen (15) percent. Requested salary adjustments of greater than fifteen (15) percent require Board of Regents approval.

I. Across-the Board Salary Adjustment

- A. Definition:** An annual percentage or flat dollar amount salary increase, at least in part intended to be distributed equally among eligible employees.
- B. Amount:** The Board of Regents shall establish the amount of any across-the-board adjustment.
- C. Eligibility:** Employees eligible for across-the-board increases shall typically have been employed in their current position at least twelve (12) calendar months prior to the effective date for implementation.
- D. Effective Date:** The Board of Regents shall establish the effective date for implementation of the across-the-board salary increases for eligible employees.
- E. Documentation Required:** With input from OCHE staff, members of the Board of Regents Staff and Compensation Committee shall determine what, if any, documentation will be required (e.g., fiscal impact assessment, etc.).
- F. Merit Salary Increases:** Campuses may elect to award merit salary increases to employees using funds for across-the-board salary adjustment authorized under this policy. Merit increases will be based upon performance evaluations and may be available to an employee who demonstrates outstanding performance in a recent evaluation indicating the employee is above the average rating established by the campus.

II. Retention Salary Increase

- A. Definition:** Retention salary increases allow the Montana University System to retain an employee **a)** with valuable knowledge, skills or abilities that are vital to the achievement of the University's mission or strategic goals and **b)** whose resignation would have a significant adverse impact on the accomplishment of critical and/or urgent projects.
- B. Amount:** Retention salary increases may be permanent or temporary base adjustments or a onetime or periodic lump sum amount that is not added to the employee's base salary. The amount requested shall be supported by relevant salary comparison data from CUPA and other sources deemed relevant by OCHE staff, in consultation with the employing unit.
- C. Eligibility:** Normally, only those individuals employed at least three (3) full contract terms shall be eligible for a retention salary adjustment. An individual employee may normally receive no more than one (1) retention salary adjustment in any two (2) consecutive year period.
- D. Effective Date:** A retention salary adjustment shall be effective on the date established by the Board.
- E. Documentation Required:** A retention increase request shall be accompanied by:
 - 1. Explanation of the adverse impact if the employee resigns, and a summary of the employee's value to the institution;
 - 2. Relevant salary survey data, including the job titles and descriptions of duties for positions used for comparison purposes;

3. Existing salary relationships among positions with similar responsibilities and in supervisory hierarchies within the campus and Montana University System;
4. Budget availability, funding source and long-term impact on tuition;
5. Evidence the employee has higher-paying opportunities with other employers.

III. Internal Equity

A. Definition: A salary adjustment for an employee performing similar work under similar working conditions requiring a comparable level of knowledge, skill, or ability in order to resolve inequities. The fact that a retention salary adjustment is granted to one or more employees on the same or another campus may not be used as the sole justification for additional internal equity salary requests. Other relevant factors to be considered include: merit and length of service of the employee; market-based considerations; statutory protected class considerations; pay compression or inversion in existing pay relationships on a campus.

B. Amount: The amount requested shall be supported by salary comparison data from within the Montana University System, along with relevant salary comparison data from CUPA and other sources deemed relevant by OCHE staff in consultation with the employing unit.

C. Eligibility: Normally, only those individuals employed at least three (3) full contract terms shall be eligible for an internal equity salary adjustment.

D. Effective Date: An internal equity salary adjustment shall be effective after Board approval.

E. Documentation Required: An internal equity increase request shall be accompanied by:

1. Explanation of reason the inequity exists;
2. Position and salary comparisons within the Montana University System that confirm an internal equity problem; and
3. Budget availability and funding source.

IV. Non-base Performance Bonus

A. Definition: Non-base building compensation for exemplary service or contribution beyond the scope of the employee's regular job responsibilities and expectations.

B. Amount: Typically, the amount of a lump sum bonus may not exceed 10 percent of the employee's annual base salary or \$5,000, whichever is less.

C. Eligibility: Employees must have been continuously employed in their current position for at least twelve (12) calendar months and shall not have received a lump sum bonus in at least the most recent 12-month period.

D. Criteria: The following job performance criteria shall be used to further determine eligibility:

1. The work significantly exceeds standard expectations in terms of quality, quantity, creativity, initiative, and effort;
2. The employee shall have maintained a consistent level of exemplary job performance during the term of their employment with the Montana University System, as evidenced by regular performance evaluations;
3. The efficiency, effectiveness, revenue generation, and/or cost savings efforts of the campus and/or University System are measurably enhanced by the employee's documented work; and
4. The employee's accomplishments occurred within the prior 12-month period.

E. Effective Date: Approved non-base awards shall be effective December 1 of each year. The Board of Regents prior to December 1 shall approve these bonus requests.

F. Documentation Required: Written documentation addressing the above-described eligibility criteria shall be submitted to the Commissioner, along with the requested dollar amount.

Individuals on Letters of Appointment are ineligible for retention, internal equity, and non-base performance or merit awards during the term of their appointment contracts. Nothing in this policy shall be construed to mean that an employee is entitled to any type of salary adjustment at any time, nor shall any provision in this policy be construed to mean that any individual is entitled to employment beyond the term of their existing contract, or as provided for in Board of Regents policies.