

BOARD OF HIGHER EDUCATION
REQUEST FOR COMMITTEE AND BOARD ACTION

COMMITTEE: Fiscal Affairs and Administrative Policy **NO.:** FAAP 16-33

COMMITTEE DATE: June 7, 2016

BOARD DATE: June 14, 2016

**APPROVAL OF GUIDELINES AND PROCEDURES FOR TRANSITIONAL AND
POST-PRESIDENTIAL EMPLOYMENT AGREEMENTS FOR STATE UNIVERSITY
AND COMMUNITY COLLEGE PRESIDENTS**

MOVED: The Board of Higher Education approves the attached Guidelines and Procedures for Transitional, and Post-Presidential Employment Agreements for State University and Community College Presidents, and delegates to the Commissioner the authority to act on behalf of the Board of Higher Education as specified therein.

Authority: G.L. c. 15A, § 9, 6

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I. Purpose

The following Board of Higher Education (BHE) policy establishes guidelines and procedures regarding the continued receipt of compensation by and/or continued employment of state university and community college presidents after employment¹ as president has come to an end.² This policy is issued in furtherance of the BHE's statutory authority to "approve and fix" the compensation of the chief executive officer of each institution, and consistent with the BHE's responsibility to establish overall goals in order to achieve a well-coordinated, quality system of public higher education in the Commonwealth, to establish coordination between and among institutions, and to resolve conflicts of policies or operations. M.G.L. c. 15A, § 9.

Trustees of state universities and community colleges are prohibited from entering into post-presidential employment agreements with a sitting president unless the agreement is memorialized in the President's BHE-approved Terms of Appointment or otherwise approved by the Commissioner of the Department of Higher Education, in consultation with the Chair of the BHE.

Proposed agreements with a former president who has resigned within the last 12 months shall be submitted to the Commissioner for review to determine 1) whether the proposed agreement is a retirement benefit or severance agreement which would require BHE approval; or 2) whether the agreement is reasonable on its face using the guidelines set forth below.

II. Guidelines

The institution's board of trustees should adhere to the following principles and guidelines when considering whether to enter into post-presidential employment and/or compensation arrangement with an outgoing/former state university or community college president:

- Independence of evaluation and decision-making. It is essential that the analysis and decision regarding the continued employment of an outgoing/former president be undertaken by an impartial group of trustees without any conflicts of interest.
- Determination of need. Only when it can be objectively shown that the services to be provided by the outgoing/former president are necessary to the continuing operation and success of the institution should a post-presidential employment arrangement be proposed.
- Obtaining independent sources of information. The amount of compensation should be determined based on an independent review of comparable compensation arrangements for similar services.
- Avoidance of undue influence. The outgoing/former president and/or any trustee with any interest – personal, financial, or otherwise – in any continued employment of the

¹ For purposes of this policy, the term "employment" shall include retention by the institution as an employee; as an independent contractor, including as a consultant; as a contingent worker; as an on-call worker; or under any other arrangement whereby the outgoing/former president receives compensation, remuneration or other consideration from the institution that he/she formerly led.

² This policy shall supersede BHE 02-09, which contains the current Board policy regarding transitional and severance agreements for state university and community college presidents.

outgoing president by the institution must refrain from any involvement in the review process or any communication with the impartial trustees regarding the review process while the process is underway.

- Documentation and disclosure. Contemporaneous documentation of the review process and decision is essential to showing compliance with this policy, and upon request, this documentation must be disclosed to the entire board of trustees and/or the BHE.

III. Procedures

In order to comply with the above principles and guidelines, a board of trustees should ensure that certain procedures are followed when it is deciding whether the institution's sitting president or a former president who retired from service as president within the preceding 12 months should be extended an offer of employment after the end of his/her service as president.

- The initial assessment of the proposed post-presidency employment arrangement may be conducted by a standing or ad hoc committee of the board or by all impartial, unconflicted members of the board of trustees ("the review team"). The review team shall review the proposed services that would be provided by the outgoing/former president under the proposed arrangement and, using the guidelines as set forth above, make a determination that those services are necessary to the institution, that entering into an agreement for those services is in the best interest of the institution, and that the outgoing/former president is the best possible person to provide those services to the institution.
- The review team must obtain compensation data for similar contracts for similar services from independent sources. The review team should rely upon the comparability data in determining the appropriate compensation arrangement for the outgoing/former president that it will recommend to the board of trustees and the BHE.
- Any compensation arrangement must be submitted to the full board and approved by a majority of sitting members, or as otherwise specified in the board of trustees' by-laws. Members of the board of trustees who may have a conflict of interest concerning the proposed agreement with the outgoing/former president should abstain from any discussion or approval of the proposed agreement.
- Both the review team and the entire board of trustees must contemporaneously document their processes and procedures in undertaking the review, making recommendations, and discussing and approving any compensation arrangement.
- Once approved by the board of trustees of the institution, any proposed transitional or post-presidency employment agreement between a state university or community college and its outgoing/former president shall be submitted to the Commissioner of DHE *prior to the agreement's execution* for a review of the board of trustees' adherence to these guidelines and procedures and for final approval. The Commissioner may request additional information, including the review team and the board of trustees' records, to assist with his/her review.

- No sitting state university or community college president shall be offered a severance agreement involving compensation to be paid subsequent to the time he/she no longer performs the duties of president. Severance for sitting presidents is not allowed, unless expressly approved by the BHE consistent with BHE policies and procedures on Presidential appointments and removals.