

TO: The Board of Regents Addendum IX-B-1

Business Affairs

MEETING DATE: September 8, 2006

SUBJECT: Repeal of Regents' Policy on Health Care for Tenured Early Retirees

RECOMMENDED ACTION: Approve the repeal of RP- 4.2.5: Health Care Policy for Tenured Early Retirees.

PREVIOUS ACTIONS: August 30, 2003—The Board of Regents approved the 2003 Retirement Incentive Program for Tenured Faculty. This was a temporary policy that encompassed retirements between January 6 and June 30, 2003.

November 22, 1997—The Board of Regents approved a Health Care Policy for Tenured Early Retirees that is embodied in the policy which is repeated in its entirety below:

RP-4.2.5 Health Care Policy for Tenured Early Retirees

Following the retirement of individuals on a continuous appointment who are at least 59.5 years of age, with ten (10) years of prior service, the University will pay the full amount of the retiree's annual health insurance (including the portion previously paid by the faculty member) for those who continue to enroll in the University-sponsored health plan. Payments will continue until the participant is Medicare eligible, at which time they will cease. Those who wish to participate in this program must provide a notice of intention to retire a semester ahead of time for academic year employees and six (6) months ahead of time for twelve (12) month appointees.

It is anticipated that this program will remain in effect for at least the next five (5) years, and there is no intent to adopt other early retirement programs for those on continuous appointments during this period.

EXPLANATION: The 1997 plan was created to provide incentives to faculty considering early retirement to relinquish their property right of tenure in exchange for health benefits. The program was to have ended with the introduction of the 2003 plan.

The 2003 plan was designed with the same goals as the 1997 plan. The 2003 plan contained a tolling date of June 30, 2003. Intentions to retire must have been received by that date.

The recent decision of the U.S. Court of Appeals for the Eighth Circuit in *Jankovitz v. Des Moines Independent Community School District*, 421 F.3d 649, 201 Ed. Law Rep. 428, held that a retirement incentive plan very similar to the University's 1997 plan violated the federal Age

Discrimination in Employment Act, because it arbitrarily denied plan benefits to employees 65 years of age and older. The University's 1997 plan also denies benefits to tenured faculty who are 65 years of age and older, and if it were challenged under the federal Age Discrimination in Employment Act, the *Jankovitz* decision would be controlling authority.

There currently is not an early retirement plan in existence, but the presence of RP-4.2.5 within the *Policies of the Board of Regents* has created the misconception that the program and some entitlement to subsidized health insurance (paid by their respective departments) is still in place. This agenda item, if approved, will delete that policy in its entirety. This change will allow Chancellors, Deans and Directors flexibility in dealing with persons wishing to surrender their tenure.

PROJECT COST: N/A

SOURCE OF FUNDS: N/A

SPONSORS: Richard R. Wood
Vice President and General Counsel

David E. Lechner
Vice President for Business and Finance

RECOMMENDED: _____
James B. Milliken, President
University of Nebraska

DATE: August 17, 2006