

# Financial Exigency and Program Elimination during the COVID-19 Pandemic

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- The material in this webinar was originally designed **to assist faculty who are** in the process of **developing or negotiating policies or contracts provisions** on financial exigency or program discontinuation.
  - Even if you are **not currently working on** applicable policies, the material may still be of use in several ways:
    - If you don't have policies, **you may be able to argue that AAUP policies should be employed.**
    - If your policies lack definitions or details, **you may be able to argue that AAUP definitions or details should be employed.**
    - The webinar may be of use in **comparing existing policies to AAUP standards for future revisions.**

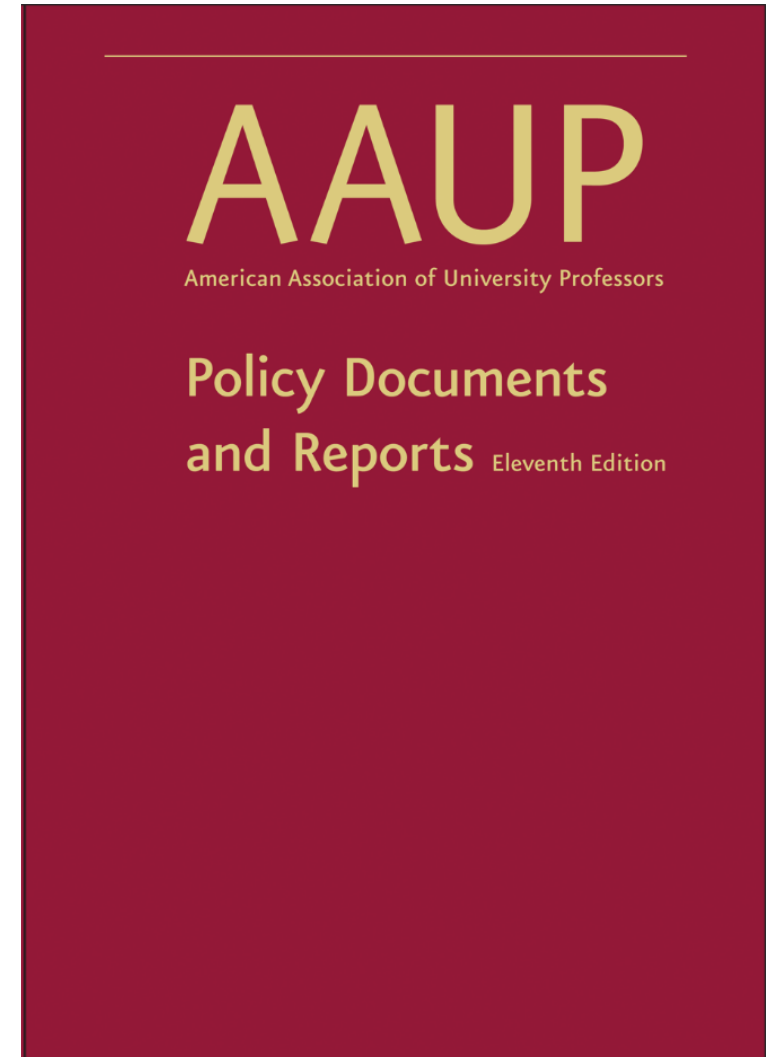
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In this presentation, we will...

- Review AAUP-supported procedural standards concerning termination of appointments for reasons of **financial exigency** and **program discontinuation**.
  - Address specific issues, including
    - program discontinuations vs program reductions,
    - **terminations of individual appointments** within **programs** that are **not discontinued**,
    - the selection of individuals and programs on the basis of “**relative merit**.”
  - And provide examples of language that **falls short** of AAUP-supported standards.
- Note: Material set in this format consists of examples of handbook or CBA language **not** consistent with AAUP standards.

# The 2015 Redbook

- Official title: Policy Documents and Reports
- Significantly enlarged
- Updated statistical and legal Information
- Larger number of sections that are more thematically organized





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“Relevant AAUP-supported policies—most notably those that recognize the special challenge of ‘financial exigency’—**are sufficiently broad and flexible to accommodate even the inconceivable disaster. These policies have, in fact, been successfully invoked** (as documented through AAUP experience) **by institutions in situations that, while perhaps not matching the gravity of those in New Orleans in fall 2005, surpassed in severity those imagined.”** (8)

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## Basic Underlying Principles

- “After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except ... **under extraordinary circumstances because of financial exigencies.**” (1)
- “Termination of a continuous appointment because of financial exigency should be **demonstrably bona fide.**” (1)

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# Financial Exigency

- Definition of “financial exigency.”
- Prevalence of financial exigency policies in handbooks and CBAs.
- Role of the faculty in conditions of financial exigency.
- Procedural issues concerning terminations of appointments because of financial exigency.

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# Definition of “Financial Exigency”

- “A **severe financial crisis** that fundamentally compromises the academic integrity of the institution as a **whole** and that cannot be alleviated by less drastic means” than terminating appointments.” (2)
- “**All feasible alternatives** to termination of appointments” should be pursued first, e.g.
  - expenditure of one-time money or reserves as bridge funding,
  - furloughs,
  - pay cuts,
  - deferred-compensation plans,
  - early-retirement packages,
  - deferral of nonessential capital expenditures, and
  - cuts to noneducational programs and services, including expenses for administration. (2)

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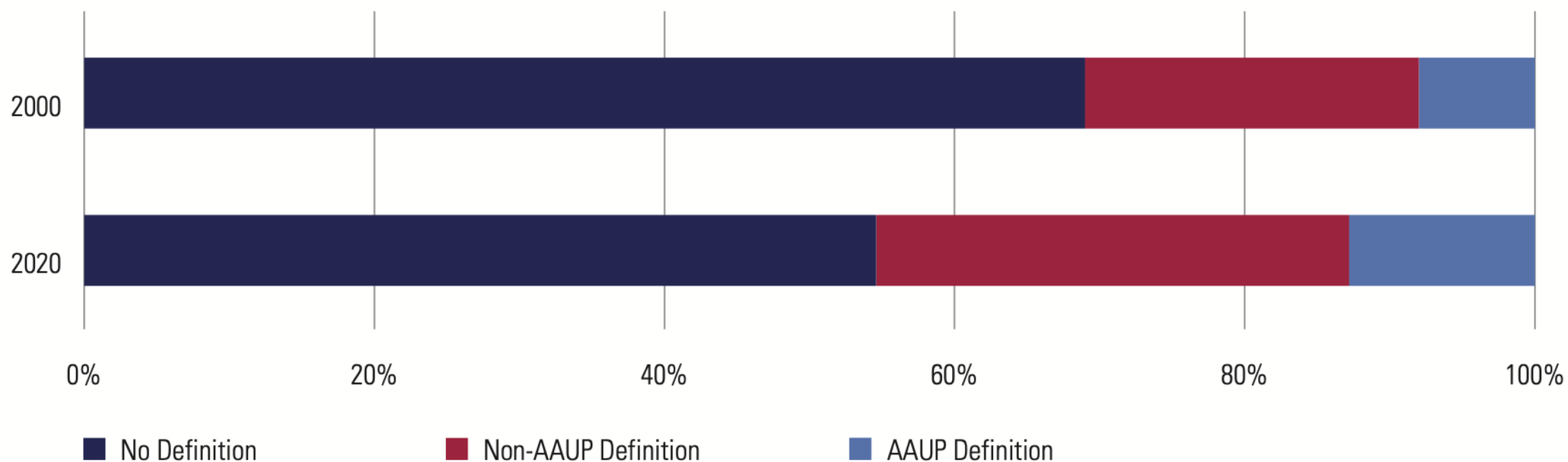
# Prevalence of Financial Exigency Policies

- The AAUP recently released a research report on the prevalence of policies on academic freedom, dismissal for cause, and terminations because of financial exigency and program discontinuation.
- The study was based on a random sample of about 200 four-year institutions with a tenure system.
- Overall, 95% of institutions have a financial exigency policy.
- Of these, 81% use the term “financial exigency.”
- The prevalence of the latter differs between CB (44%) and non-CB (90%) institutions.

FIGURE 7

## More Institutions Are Defining Financial Exigency

Change in Provenance of Financial Exigency Definitions, 2000 to 2020



## Examples of Bad Handbook Language: Financial Exigency

- "A bona fide financial exigency exists when the president and Board of Trustees, in consultation with an appropriate standing committee of the University Senate or its successor, concludes that circumstances present **a pressing need to reorder the nature and magnitude of financial obligations at [the institution] in order to restore or preserve financial stability.**"
- Termination of appointments of tenured faculty will take place when "the Board of Trustees concludes that an **imminent financial crisis** exists."
- "Relevant **financial circumstances** requiring a headcount reduction."
- "Multi-year **budget shortfall.**"
- "**Projected** significant operating **deficits.**"
- "Financial **challenges.**"

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# Role of the Faculty

- “There should be **early, careful, and meaningful faculty involvement** in decisions relating to the reduction of instructional and research programs. The financial conditions that bear on such decisions should not be allowed to obscure the fact that **instruction and research constitute the essential reasons for the existence of the university.**” (4)
- “Judgments determining **where within the overall academic program** termination of appointments may occur involve considerations of **educational policy**, including affirmative action, as well as of **faculty status**, and should therefore be **the primary responsibility of the faculty** or of an appropriate faculty body.” (2)



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## Procedures Specified in (2)

- **Affected faculty members** will promptly be **informed in writing** and provided at least **thirty days to respond**.
- A **tenured** faculty appointment **should not be terminated** before an **untenued** appointment except in extraordinary circumstances.
- **New** appointments **should not be made** except in extraordinary circumstances.
- The institution should make “**every effort**” to find **another suitable position**.
- Affected faculty members have **the right to a hearing** before a faculty body:
  - **Previous faculty judgments** in the matter are “**presumptively valid**,”
  - But **the burden of proof** on other issues **rests with the administration**.
- Severance **salary** or **notice**, and **recall rights**.

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# The Purpose of Notification

- “**Some arguments** for a program’s elimination or preservation are **better than others**, and we believe that faculty members **must be entrusted** with the right to **make and assess** those arguments.” (3)

**FIGURE 8**  
**Change in Prevalence of Provisions in Financial Exigency Regulations, 2000 to 2020**

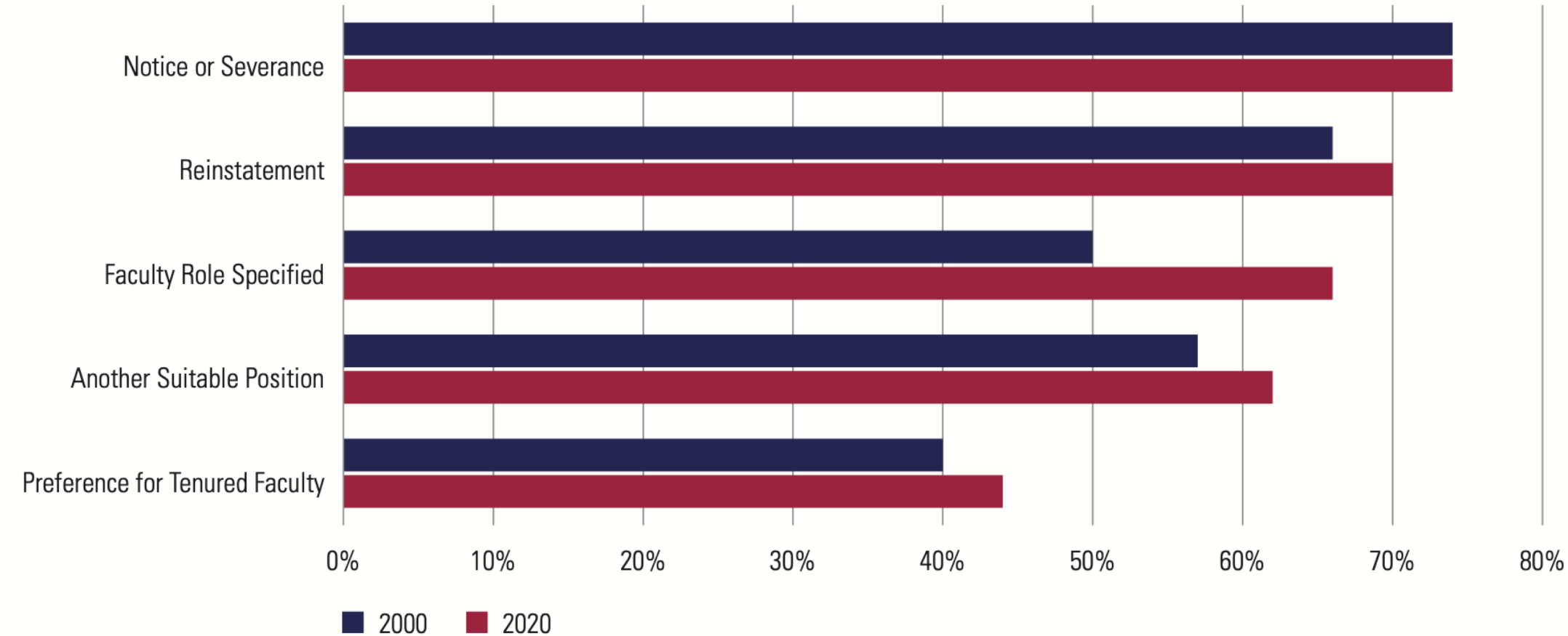
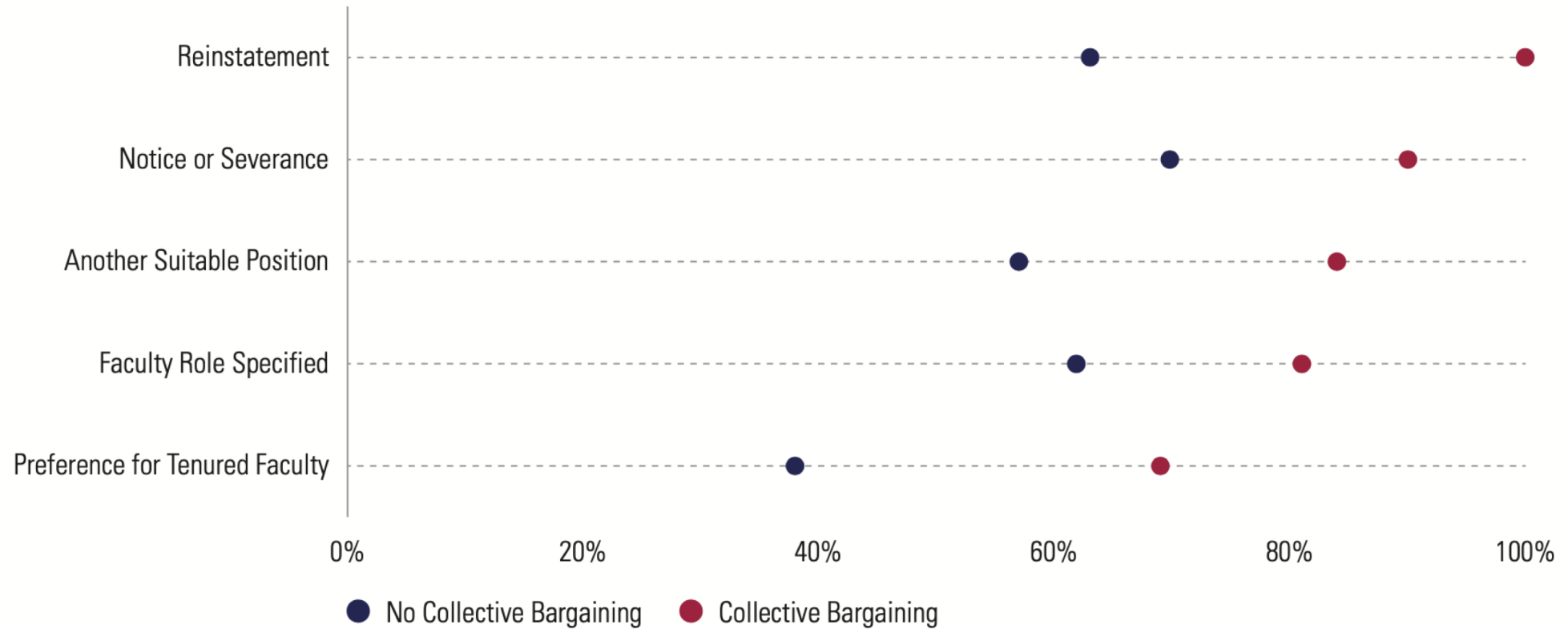


FIGURE 9

**Provisions for Faculty in Financial Exigency Policies Are More Prevalent at Institutions with Faculty Collective Bargaining**



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# Discontinuation of Programs

- Definition of “educational considerations.”
- Role of the faculty in program discontinuations.
- Procedural issues concerning terminations of appointments because of program discontinuations (omitted).

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# What is a Program?

“The term ‘program’ should designate **a related cluster of credit-bearing courses that constitute a coherent body of study** within a discipline or set of related disciplines. When feasible, the term should designate **a department or similar administrative unit** that offers **majors and minors.**” (2)

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## Definition of “Educational Considerations” and Role of the Faculty

- Educational Considerations
  - **Determined** primarily **by the faculty**.
  - Reflect **long-range judgments** that the educational mission of the institution as a whole will be **enhanced** by the discontinuance.
  - Do **not** include cyclical or temporary variations in enrollment.

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- “We note also that an **increasingly common justification for program closure** is ‘low completion rates,’ that is, **low numbers of graduates per year**. We believe that gauging enrollment simply by counting the number of student majors is **especially inimical** to sound academic judgments. Often, modern languages such as French and German are **unduly penalized** by such calculations, because they discount the number of students who meet language requirements by taking courses in French and German without majoring in those subjects...” (3)
  - “So-called ‘data-driven’ program closures should be eschewed in favor of **comprehensive, orderly reviews of the full profile of an institution’s curricular offerings**, reviews that are guided not solely by enrollment numbers but also by **sound, rational, and justifiable determinations of the intellectual strengths and weaknesses** of each program.” (3)



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# Prevalence of Program Discontinuation Policies

- Overall, 85% of institutions have a program discontinuation policy.
- Of these, 33% restrict the reasons for program discontinuations to “educational considerations.”
- Collective-bargaining (26%) and research (19%) institutions have a somewhat lower prevalence of this restriction.

**FIGURE 10**  
**Change in Prevalence of Provisions in Program Discontinuance Regulations, 2000 to 2020**

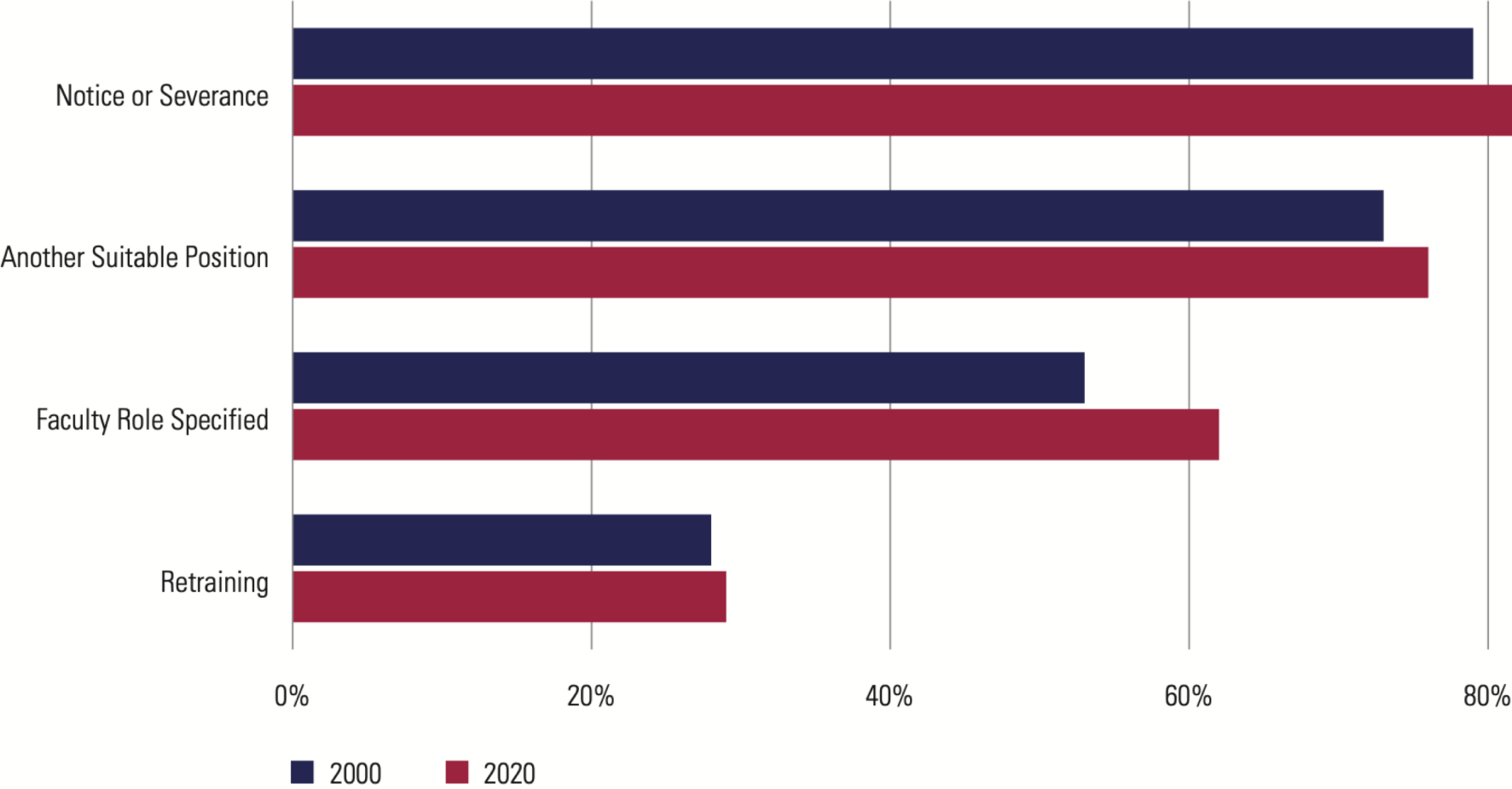
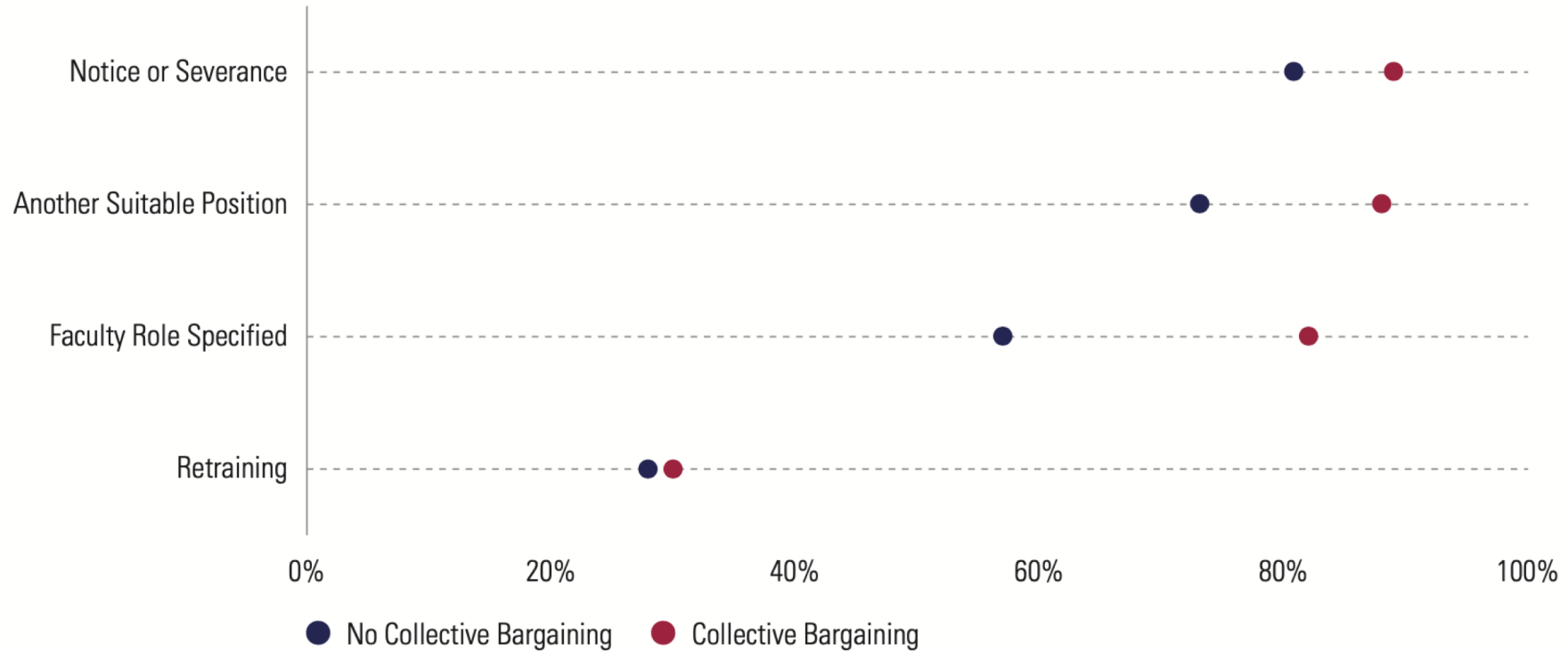


FIGURE 11

**Provisions for Faculty in Program Discontinuance Policies Are More Prevalent at Institutions with Faculty Collective Bargaining**



## Examples of Bad Handbook Language: Program Discontinuation

- “Financial reasons which, though they do not constitute an emergency for the college as a whole, do suggest that continuation of the program would not be in the best interests of the college.”
- “An elimination of duplication of programs within the University and/or among state institutions of higher education.”
- “An ability to achieve effective and efficient program delivery through the creation of cooperative programs with other institutions of higher education through traditional or non-traditional means.”
- “A prioritization of the current academic objectives of the University.”
- “A reallocation of resources due to budget priorities, and or a reduction of or elimination of restricted program funds.”

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“One way to determine whether a **program closure** is **bona fide** is to ask whether the courses in the program continue to be offered, as was the case at Southeastern Louisiana University after it ‘closed’ its majors in French and French education. In other words, **the elimination of a major or minor** in a course of study **is**, of itself, **no excuse for the release of tenured faculty members** if courses are still on the books...” (3)

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# Program Reductions

- **Terminations of individual appointments** within programs or departments that are not discontinued are **only** permissible following **the declaration of a bona fide financial exigency**.
- **Only program discontinuations** but not program reductions are permissible **for educational reasons**.

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# Program Discontinuations vs Program Reductions

- “To say that **the elimination of courses** here, and **sections** there, to say that **the paring away** which is program reduction **justifies firing tenured professors is to make the assurance and protection of tenure meaningless.**” (Former AAUP President Ralph S. Brown)
- “**Requiring** the abolition of an **entire** program or department helps ensure that the discontinuance is not an **impermissible substitute** for a declaration of financial exigency, but is indeed based **essentially** upon educational considerations.” (5)

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## Relative Merit

- “If a faculty member’s appointment is **terminated** implicitly or explicitly **on the grounds of relative merit**, however merit is measured, **his or her release is in effect a dismissal for cause**, requiring a full due-process hearing in which the burden of proof is to be borne by the administration.” (7)
- “An administration’s **judgment** that **faculty members** who comprise a particular program **are less meritorious** than their colleagues in other programs to continue at the institution **suggests a commentary**, intended or not, **on the fitness of the particular faculty members who are affected.**” (6)



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“However cumbersome faculty consultation may at times be, the importance and value of such participation become **even greater in exigent times** than in more tranquil times. The imperative that affected faculties be consulted and assume a meaningful role in making critical judgments reflects more than the values of collegiality; given the centrality of university faculties in the mission of their institutions, **their meaningful involvement in reviewing and approving measures that vitally affect the welfare of the institution** (as well as their own) **becomes truly essential at such times.** ... [A]n institution **cannot be rebuilt on mistrust** or worse on a broadly shared sense of betrayal. **Action that manifests regard** for the faculty’s collective role is **essential** in order to **rebuild** commitment and trust.” (8)

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## Cited AAUP Policy Documents, Investigative Reports, and Research Reports

1. *1940 Statement of Principles on Academic Freedom and Tenure*
2. *Recommended Institutional Regulations on Academic Freedom and Tenure*
3. *The Role of the Faculty in Conditions of Financial Exigency*
4. *On Institutional Problems Resulting from Financial Exigency: Some Operating Guidelines*
5. *Goucher College* (1983)
6. *University of Northern Colorado* (1984)
7. *University of Texas Medical Branch* (2010)
8. *Report of an AAUP Special Committee: Hurricane Katrina and New Orleans Universities* (2007)
9. *Policies on Academic Freedom, Dismissal for Cause, Financial Exigency, and Program Discontinuance*

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Thank You!

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