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Response to the Provost's Letter on The Report on Retirement Incentive Plan By the Yale Inter-school Faculty Working Group[1]

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On November 9, 2020, the Inter-school Faculty Working Group on Yale's Retirement Incentive Plan prepared a report on the university's Plan. On December 7, 2020, university Provost Scott Strobel wrote the committee with the university's response. The present report reviews briefly the issues and the Provost's response. The Working Group's report is attached as Appendix A. The Provost's email is attached as Appendix B.

Overview

The Working Group thanks the Provost for a timely response to its report. The faculty greatly appreciates written responses to the reports of its committees, and we hope it is a good augur for the future.

While we all recognize that the Plan was developed in the early swirl of the COVID-19 crisis, the time elapsed since then has permitted fuller consideration of the issues surrounding the momentous decisions about retirement faced by individual members of the faculty. Once we return to more settled times, we believe it is important for the university to revisit these issues further and to face squarely the fiscal and diversity questions that are largely unresolved.

We will not repeat the major points in our report (which is attached as a refresher). These concerned the need for faculty consultation both to develop good proposals and for good governance; the desirability of a more flexible timetable; the base salary used for calculations, given the freeze; and the

[1] Members of the Yale Interschool Working Group are Jeffrey Bender (Robert I. Levy Professor of Medicine, Cardiology, and Professor of Immunobiology, School of Medicine), Howard Bloch (Sterling Professor of French, Faculty of Arts and Sciences), James Choi (Professor of Finance, School of Management), William Nordhaus (Sterling Professor of Economics, Faculty of Arts and Sciences, chair of Working Group), Roberta Romano (Sterling Professor of Law at Yale Law School), Steven Wilkinson (Nilekani Professor of India and South Asian Studies and Professor of Political Science and International Affairs, Faculty of Arts and Sciences).

importance for faculty decision-making of other fringe and community benefits.

The crucial role of faculty in designing retirement plans

The most important way to address these issues and develop the best retirement plans for Yale, we want to stress again, is through a process of genuine faculty consultation, consistent with Yale's history and traditions. It is critical to bring the faculty on board for such plans at an early stage in order to provide legitimacy to the process and for there to be buy-in later on.

The Provost's letter stated that he had consulted with all the deans and worked closely with the Benefits Office. Consultation with deans and select others is no substitute for working with faculty who are most affected by the terms and the timing of the Yale Incentive Plan. It is true that deans are also faculty members, but, more importantly, they are members of the university administration and the President's cabinet. Administrators have a critical and valuable role in managing a top research university. That role involves importantly listening to and respecting the views of their faculty. But shared governance involves faculty expressing their views and participating in decisions on central academic questions; consultation among administrators cannot substitute for shared governance.

Along with other major research universities, Yale has developed a process of relying on faculty committees for studying and recommending policies that are central to the academic process, and the design of retirement plans is one of those areas. We reiterate that this is not just empty rhetoric. Because of the absence of a well-designed retirement plan, the proportion of ladder faculty who are tenured has risen continuously, and 16% of the ladder faculty are currently 70 and over.

We hope that, moving forward, the university will establish a faculty committee that will improve both the process and the substance of retirement plans that are available to the faculty.

Retirement benefits

We appreciate the university's flexibility in allowing alternative timing of the cash payout. Our report recognized that the tax benefits would depend on individual circumstances.

However, we remain concerned that the Provost's letter does not address other issues, which are generally more critical to individual faculty members. Other key issues raised in our report were inter alia the flexibility of timing, the 2019-2020 base year's salary, retiree health and child tuition benefits, accrued leave, the disposition of personal research funds, offices and parking, the potential for part-time teaching, and student advising.

We also pointed to the advantages of having the university underwrite a small sum for independent financial and legal advice to potential retirees. Given the short notice, the short lead time to decision, and the legal hard stop of the Yale plan, and the fiduciary issues discussed below, such counsel would no doubt make it more attractive to those for whom the Plan came as a surprise. Such a step has been taken by other universities.

We noted that several of our suggestions could address faculty concerns with no change in existing university policies. The Provost's letter states that faculty members interested in discussing the specifics of the Plan are invited to consult with members of the administration. This approach is unwieldy and inefficient. It puts the onus on individual faculty members to take that first step. They will be uninformed about what the general and unwritten policies are, or indeed if there are general policies or just myriad special arrangements.

Faculty are often told that university policies are provided on different university websites. Being so scattered around various offices and websites makes them close to useless. In fact, there is no readily accessible website where a faculty member can obtain in one place information on how any post-retirement benefits interact with participating in the Incentive Plan. A better approach, which our peer universities have found helpful, is to collect the information on policies in one place that is easily accessible. A good example is Columbia's website,[2] which contains information not just on the immediate incentives, but also on the continuing forms of engagement with the university that all faculty can expect if they retire. Creating a similar site would make it much easier for faculty to consider the attractiveness of the

[2] See https://faculty-retirement.columbia.edu/transition-retirement/tenured-faculty-retirement-incentive-plan-tfrip/faq-tfrip).

retirement plan even before they contact the administration about their specific needs.

We raise a concern with respect to the Provost's statement that the Incentive Plan is not governed by ERISA (the federal statute that sets standards for employee benefit plans). Although we believe the law is uncertain regarding this characterization of the Incentive Plan, since the university holds that position, then a faculty member who meets with a university employee or agent to obtain information about the Incentive Plan and other university benefit plans will have to be attentive to the fact that a conversation could be governed by two distinct legal regimes concerning the university's responsibilities and liability. Namely, the university employee or agent will be under a fiduciary duty when discussing medical benefits, tuition benefits, the 403(b)(7) plan, etc. but not when discussing the Incentive Plan. The difference in applicable law and consequent implications ought to be disclosed by Yale to all faculty contemplating enrolling in the Incentive Plan.

Summary

Having reviewed the Provost's response to our report, the Working Group has four summary findings.

First, the faculty greatly appreciates written responses to the reports of its committees, and we hope this practice will be followed in the future.

Second, faculty participation in study and recommendations is a key part of devising well-designed plans and providing legitimacy among faculty participants.

Third, we continue to have concerns about the substance of the Plan, particularly many unanswered questions about details and the lack of a clear and consistent statement of policies on the open questions.

Fourth, we recommend that, at an appropriate time in the near future, the Provost establish a faculty committee that will work to develop a generous and inclusive plan that will address the issues raised in our report, thus offering different options that will improve both the process and the quality of the retirement plans available to the faculty.