Report on Retirement Incentive Plan
By the Yale Inter-school Faculty Working Group [1,2]
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Draft for Circulation and Comments

Yale Provost Scott Strobel announced in August 2020 an early retirement package ("Yale University Retirement Incentive Plan for Tenured Faculty Age 70 or Older"). The program provides a one-time payment for eligible faculty who sign up during the enrollment window which ends February 28, 2021. Eligible faculty who sign up must retire no later than June 30, 2021. Faculty currently compensated at $200,000 and above will receive an incentive equal to their annual academic year salary. Those making less than $200,000 will receive an incentive of 125% of their annual academic year salary up to a maximum of $200,000. The proposal covers 177 faculty, of which 82 are in the FAS, 71 are in Medicine, 11 in the Law School, and 13 in other Yale Schools.

Though it is customary at Yale and other major universities for the faculty to play a strong role in the design of important initiatives that affect them, this plan was developed and announced with no warning or faculty consultation. Consultation is particularly important for retirement plans since retirement has a life-changing impact on faculty and their families. In a break with tradition, with this announcement, Yale in effect devalues faculty input, especially that from its older faculty.

In response, the Yale FAS Senate reviewed the plan and decided that it was important to analyze the proposal. In a resolution passed on October 15, 2020, the Senate voted, "The Provost in August announced an early retirement package…. This was developed with zero faculty consultation and has some obvious questions that should be collectively addressed by the faculty. Since this policy has important impacts both inside and outside the FAS, it would be useful to have members not only from the

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FAS Senate but also from the Medical School, the Law School, and SOM review it. The charge is to analyze the proposal and to make recommendations to the Provost."

The Yale Inter-School Working Group is composed of three members of the FAS Faculty Senate, one member selected by the Faculty Advisory Council of the School of Medicine, and one member each from the Law School and the School of Management. These four schools comprise more than 95% of eligible faculty.

Because the Incentive Plan had a short lead time and faculty were already signing on, the Working Group felt the necessity to work with extreme speed to prepare this report. We were unable to reach out to faculty or to have a complete analysis of the plan and its alternatives. However, our brief review, which involved comparing Yale's plan to those of peers, and having the plan reviewed by legal and tax experts, indicates several major concerns with the plan as it now stands.

The Working Group will not review all the details of the plan in this report. It is described in three documents, and these are sent as an attachment, "Yale Incentive Plan."

Analysis of the Plan

The Working Group has reviewed the Yale plan along with plans of other major universities.[3] Our findings and conclusions are as follows.

1. *No faculty advice or review.* The most important single concern with the plan is that it was developed behind closed doors and without any faculty consultation – without consultation with the representative bodies in the Faculty of Arts and Sciences, the School of Medicine, or any other faculty-led committee. For important matters affecting faculty, it has been traditional to ensure that faculty are centrally involved in their design and review. Faculty are the individuals who are most deeply affected by university policy, and, as a diverse group of highly accomplished individuals, they have different personal plans, financial and other needs, stages of careers, and family circumstances. Additionally, many individual faculty members have deep expertise in pension law and practice, tax considerations, scholarship on retirement behavior, as well as knowledge of the views and attitudes of their peers. Many of the shortcomings identified below reflect the fact that the proposal was developed without appropriate faculty development and advice.

2. Basic financial and benefit structure. The basic plan offers 100% of base salary (125% for those earning less than $200,000). Our review of the plans of other universities finds that the salary component of Yale's Incentive Plan is comparable to the post-70

[3] The group reviewed the standard and Incentive Plans at Carnegie Mellon, Chicago, Columbia, Harvard, Princeton, Stanford, UC Berkeley, and Yale.

Incentive Plans at other universities. However, the non-salary components are far less favorable than our leading competitors. Some examples are provided below.

3. *Basic timetable.* The timetable of the Incentive Plan is extremely tight and inflexible. It gives individuals a window of only a few months and has a fixed retirement date. It asks faculty members, some of whom have lived their entire adult lives working and teaching at Yale, to make a sudden life-changing decision in a matter of months in return for a cash payment. An effective plan would allow more flexibility in timing of retirement, a gradual phasing or even a part-time option, provide continuation of benefits, and a longer period rather than a drop-dead date of June 30, 2021. **The Working Group recommends that Yale be a leader in developing a more flexible approach to incentivizing retirement of its senior tenured faculty.**

4. *Tax planning.* The Retirement Incentive Plan ignores the issues of tax planning. The proposal provides for a single lump sum payment in 2021. This is likely to be a high-income year for many faculty, whereas, because faculty will be retired, later years are likely to be lower-income years. As a result, the lump-sum structure is likely to result in higher taxes than it would under alternatives with a different payout structure. **The Working Group recommends that the University offer alternative payout structures, allowing the option of deferral of payment, with interest, to later years and the spreading out of payment over multiple years.**

5. Base year's salary. The plan bases the payout on the 2020-21 academic year salary. Since salaries were frozen for this year, the plan lowers the payout relative to salaries under normal salary growth. **The Working Group recommends that the base salary for the Incentive Plan be actual 2020-21 salary incremented by 3% over the 2019-2020 base salary.**

6. Other fringe benefits. Important issues involve retiree health and pension contributions. Where retiree health is concerned, the University should ensure that faculty receive fully subsidized retiree health (since it is not fully subsidized until the retiree has reached 30 years of service). On pension contributions, the University should include what the University would have normally contributed had the payout been paid as salary over the subsequent academic year, subject to plan and law. Additionally, faculty should be allowed to retain their research and special use accounts for a period after retirement. Some universities offer a subvention for consultation with legal and financial advisers of the faculty member's choice, which would not only provide advice but also comfort. The University should also clarify that the tuition benefit continues to apply to children of faculty retirees, as do the retirement incentive plans of other universities. We note that some university incentive retirement plans go further and waive premiums for medical plans and offer free campus parking privileges.

7. Other community benefits. Many non-monetary benefits are an important part of the intellectual and social life of Yale faculty. Faculty members have spent many years at Yale and are devoted to the institution, their work, their department and school, and their colleagues. One of the most critical features of a successful transition to retirement is to retain as many of these benefits as possible for those who desire them. These include, inter alia and for limited periods, an office in their department or school, ability to teach and supervise students, the means to remain part of the intellectual life of the department and school, and the ability to continue research. These should be supplemented by the appropriate support services for a time, such as computer and IT support. Retirement should not represent the forced crossing of a bridge to a foreign land, leaving the familiar and cherished attachments of a lifetime of dedication and service behind. Faculty committees elsewhere have found that emphasizing these continuing relationships is central for faculty contemplating retirement. **The Working Group recommends that the University develop more inclusive options for community affiliation of retired faculty.**

8. Accrued paid leaves of absence. The Incentive Plan makes no mention of the treatment of leaves of absence that have accrued as of June 2021. For example, if a faculty member has accrued a year of leave with pay, then retirement would be worth nothing or less, as it would have a negative salary advantage for the faculty member who, under the current plan, would forgo the normal salary increase, pension contributions, as well as any other benefits of being an active faculty member, with no advantages. For those due Triennial Leaves of Absence during 2021-22, the benefit of the plan would, in effect, be less than half the nominal amount. **The Working Group recommends that the University develop options to deal with accrued leaves.**

9. Technical issues. The appendix to this report notes some technical issues that need to be addressed. These are features of the plan that are contrary to law or ones that create ambiguity about the benefits under the plan and other Yale policies.

Overview of the Plan

The Incentive Plan was undoubtedly developed in the pressured chaos of the pandemic during the spring and summer, and it is understandable that many important features may have been overlooked. At best, the current plan will deal for a year or two with the problem of an aging faculty and a growing ratio of tenured to total ladder faculty. But it does not solve the longer run issue of developing a plan enabling faculty to retire gracefully, to keep life-long attachments that are extremely valuable, and to do so at their own pace. Indeed, it might well make the problem worse by suggesting that another retirement plan will have to come along in a few years to deal with the issue, thereby inducing older faculty who turn down this plan to wait for a better one.

Broadly speaking, it is clear that Yale, like many other universities, needs to respond more robustly to the reality of the end of mandatory retirement. That change has completely transformed the relative bargaining power of faculty and universities. In an earlier era, universities could define the terms of retirement. Today, universities must induce faculty to retire by making retirement *more attractive* than continuing to remain an active member of the faculty. Yale now has the opportunity to take the lead nationally in developing a plan to resolve this issue. This will require carefully designed incentives. It will also require facilitating the ways that retired faculty might retain the most valuable aspects of what brought them into the academy in the first place – colleagues, shared space, the ability to do research and teach, and the respect of their institution. Equally important, an innovative Yale plan will contribute to improving faculty diversity by making way for younger and emerging scholars and teachers.

The major recommendation of the Working Group is that the University develop a generous and inclusive plan that will address the issues raised in this report, thus offering strong incentives for faculty to retire at an appropriate time, accompanied in this important life transition by the ancillary and cherished benefits of being a member of the Yale faculty.

Appendix on Some Technical Details

The Yale Incentive Retirement Plan is of a type known in the employee benefits world as a window plan, a term referring to the time period (window) during which eligible employees must act. Aside from the questions raised in the body of the report, three particular further issues are of concern.

The provisions in Article III governing dispute resolution, which seek to preclude external review, are in tension with ERISA's requirement that a claimant is entitled to "a full and fair review by … [a] fiduciary of the decision denying the claim." 29 U.S.C. 1133(2).

The provision in § 5.1 providing that, in the event that the participant dies before receiving the payment, "the Participant's heirs shall still be entitled to receive [it]," is awkward, because it needlessly trumps the participant's other estate planning documents.

The provisions in Article VI concerning "Amendment and Termination" provide that amendments that materially affect Plan benefits adopted in the interim between an individual's signing and actual retirement are inapplicable to that individual. But the Article is silent regarding material benefit amendments after an individual does retire and regarding the Plan's relationship to the "Plan Overview" (FAQ) document, which refers to benefits available to individuals who retire under the Plan. Those benefits, such as access to retiree health benefits, are not referenced in the Plan. To correct any possible misunderstanding, it would be useful to include language in the Plan indicating that supporting materials (specifically, the FAQ document) as well as other relevant University documents (such as the *Faculty Handbook* or ones that refer to retirement policies) are part of the agreement.