

BOARD OF HIGHER EDUCATION
REQUEST FOR COMMITTEE AND BOARD ACTION

COMMITTEE: Fiscal Affairs and Administrative Policy **NO.:** FAAP 07-31

COMMITTEE DATE: June 6, 2007

BOARD DATE: June 14, 2007

AMENDMENT NO. 1 TO OPTIONAL RETIREMENT PROGRAM

MOVED: The Board of Higher Education hereby authorizes and approves Amendment Number One to the Massachusetts Optional Retirement Program.

Authority: Massachusetts General Laws Chapter 15, Section 40

Contact: Peter H. Tsaffaras, Director of Employee Relations and
Benefit Administration

BACKGROUND INFORMATION

The Commonwealth established the Optional Retirement Program (“ORP” or the “Program”) as an alternative to the State Employees’ Retirement System (SERS). The ORP’s defined contribution structure and immediate vesting provide portability of retirement benefits that is attractive to the mobile faculty workforce in higher education. Accordingly, the Program has become an important feature when recruiting faculty and senior administrators at our public institutions of higher education.

The ORP became effective on October 30, 1995. The plan currently covers approximately 2,900 active participants and nearly 2,500 inactive participants. Total Plan Contributions during the Plan Year ended December 31, 2006, were approximately \$30 million. Total plan assets at that time were \$266.3 million.

The Program’s enabling legislation identified the Board of Higher Education (fka Higher Education Coordinating Council) as the ORP Plan Administrator. As such, the Board oversees the operation and compliance of the plan. The Board adopted a plan document in June 2004, which provides a thorough description of the plan’s features. The Board then solicited a Letter of Determination from the Internal Revenue Service relating to the plan document, which was subsequently granted.

Amendment No. 1 to the ORP

The Board is set to amend the Optional Retirement Plan for the first time since adopting the plan document in June 2004. The amendment updates, corrects and expands eight Articles and 16 sections of the document. These changes are primarily adjustments reflecting the results of the best practices audit completed by the Segal Company last year. Several other changes are required to ensure that the document’s language reflects the Board’s administrative policies, while others reflect updates for the Pension Protection Act of 2006.

Synopsis of Sections Subject to Amendment

1. Article 2: Definitions

Election Period The Amendment will insert a definition of the election period during which newly eligible employees choose their retirement plan coverage (ORP or SERS). The definition clarifies the start and duration of the election period, ensuring continuity of administration across all campuses.

Eligible Employee The Amendment clarifies the minimum workload required for plan participation and distinguishes the threshold in effect prior to adoption of the plan document in June 2004 and the current standard.

Employer’s Fiscal Year The Amendment defines the Commonwealth’s fiscal year, which is the basis for allocating any unexpended funds in the Administrative Overhead account.

2. Article 3: Eligibility and Participation

Section 3.1 Eligibility The Amendment addresses two issues in this section:

1. recognition of all faculty as an eligible class; deleting the prior distinctions of “teaching” and “research”; and

2. aligns the plan’s language to reflect the enabling legislation requirement that Eligible Employees are not vested in any plan operating under M.G.L.A. Chapter 32.

Section 3.2 Participation The Amendment clarifies the effective date of enrollment and indicates that enrollments must be completed during the Enrollment Period.

3. Article 4: Contributions and Allocations

Subsection 4.1(a)(3) Employee Contributions The Amendment inserts this section to codify the Board’s policy that participants who are re-employed must contribute to the plan at the current rate as a percentage of compensation.

Section 4.2 Employer Contributions The Amendment revises this section by eliminating a mistaken reference to the Higher Education Coordinating Council.

Subsections 4.4(b), (c), and (d) Military Service The Amendment corrects a grammatical mistake, clarifies that Participants returning from military service may voluntarily make-up their missed contributions, and indicates that the missed Employer Plan Contributions will be made-up as soon as possible after the Participant’s return to work.

Section 4.6 Rollovers The Amendment includes a new provision that allows the plan to accept amounts rolled over from other qualifying plans. This addition reflects changes made under the Pension Protection Act, which eliminated the burdens applicable to plans receiving rollovers.

4. Article 7: Vesting and Years of Participation

Section 7.1 Vesting The Amendment recognizes the full vesting of amounts rolled into the plan; reflecting the change made above by adding Section 4.6.

Section 7.2 Year of Participation The Amendment clarifies the Board’s approach to determining Years of Participation for purposes of determining eligibility for post-employment benefits from the Group Insurance Commission.

5. Article 8: Distributions

Section 8.2 Timing of Distribution The Amendment indicates that a Participant's request for a distribution can be made any time after termination of employment with the Commonwealth but not later than the date required for purposes of making Required Minimum Distributions (upon attaining age 70 ½) under the Internal Revenue Code.

6. Article 9: Form of Distribution

Subsection 9.3 Eligible Retirement Plan The Amendment accommodates a change under the Pension Protection Act allowing all beneficiaries (spouse and non-spouse) to roll over distributions from the plan upon the death of the Participant.

7. Article 13: General Provisions

Subsection 13.8 Rollover Contributions The Amendment deletes this subsection which prohibited the deposit of rollover amounts in the plan.

8. Appendix A: Providers

Disability and Life Insurance Program The Amendment corrects a minor grammatical mistake: removing references to "TIAA" as the insurance Provider.

**AMENDMENT No. 1 to the
THE MASSACHUSETTS
OPTIONAL RETIREMENT PROGRAM**

IN WITNESS WHEREOF, the Massachusetts Board of Higher Education (the "Board") herein amends The Massachusetts Optional Retirement Program (the "Plan"), as follows:

Preamble:

1. *Adoption and effective date of amendment.* This amendment and any attachments thereto are adopted to reflect certain changes in the provisions of the Plan. Except as otherwise provided, this amendment shall be effective as of July 1, 2007.

2. *Supersession of inconsistent provisions.* This amendment and any attachment thereto shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

Plan Provisions:

1. Article 2: Definitions

A. Insert the following definition of "Election Period" after the definition of "Effective Date":

Election Period is the period during which newly eligible employees may choose to participate in the Plan. The Election Period is comprised of ninety (90) calendar days, beginning with the first day that the Eligible Employee is actively at work, performing their duties for compensation by the Employer.

B. Delete the current definition of "Eligible Employee or Employee" and replace it with the following:

Eligible Employee or Employee (prior to July 1, 2004) means an individual who is employed full-time in accordance with the terms of the Employee's job description and who meets the requirements for eligibility and participation under Article 3. The term full-time shall be determined in accordance with the Eligible Employee's job classification. Effective July 1, 2004, Eligible Employee or Employee shall mean such term as defined in M.G.L.A. c. 32.

C. Insert the following definition of "Employer's Fiscal Year" following the definition of "Employer":

Employer's Fiscal Year means the twelve- (12-) month period beginning on July 1 and ending June 30.

2. Article 3: Eligibility and Participation

A. Delete Section 3.1 (Eligibility) and replace it with the following:

3.1 Eligibility

An Employee shall be eligible to participate in the Plan on his Eligibility Date if he meets all of the following conditions:

- (a) he is or becomes an Employee in one of the following job classifications of the Board of Higher Education or a public institution of higher education:
 - (1) Faculty;
 - (2) Chancellor;
 - (3) Vice Chancellor;
 - (4) President;
 - (5) Vice President;
 - (6) Dean; or
 - (7) Senior Administrator I, II, III, IV (at the University of Massachusetts only); and
- (b) he has not earned a nonforfeitable right to a pension benefit in any retirement system operating under M.G.L.A. c. 32; and
- (c) effective July 1, 2004, he meets the M.G.L.A. c. 32 definition of "Employee".

B. Delete subsection 3.2 (a) and replace it with the following:

3.2 Participation

For newly hired Employees on and after October 30, 1995, an Employee must elect in writing to participate in the Plan, on a form provided by the Administrator during his Enrollment Period. Such election to participate shall be irrevocable once made and shall become effective on the first day of the payroll period following submission to the Administrator of a completed enrollment package, provided such enrollment occurs during the Enrollment Period.

3. Article 4: Contributions and Allocations

A. Insert the following subsection 4.1(a)(3):

(3) For Employees who terminate employment with the Employer and are re-employed, the Employee Contribution amount shall be equal to the percentages of compensation applicable to Employees hired at the time of re-employment.

B. Delete subsection 4.2(a) and replace it with the following:

4.2 Employer Contributions

The Employer shall contribute an amount equal to 5 percent (5%) of a Participant's Compensation; provided, however, that not more than one percent of said contribution shall be made to the plan established to provide life and disability benefits; and provided, further, that the balance of said employer

contribution shall be remitted to the appropriate provider for application to the participating employee's contract or custodial account, less any monthly fees established by the Board and approved in advance by the state comptroller in order to cover the reasonably necessary direct costs incurred by the Board in establishing and administering the plan.

C. Delete subsections 4.4 (b) and (c) and replace them with the following:

4.4 Military Service

(b) Under the Uniformed Services Employment and Reemployment Act (USERRA), the "Required Period" depends on the length of Military Service. In general, the Required Period is:

- (1) 1 day after a Member's Military Service ends (if such service was less than 31 days);
- (2) 14 days after a Member's Military Service ends (if such service was more than 30, but less than 181 days); and
- (3) 90 days after a Member's Military Service ends (if such service was more than 180 days).
- (4) If a Member is hospitalized for or recovering from an illness or injury, which was incurred or aggravated during Military Service, USERRA requires that such Participant register for reemployment with the Commonwealth as soon as he/she has recovered. Except as otherwise provided by USERRA, this recovery period cannot exceed two years.

(c) A Participant returning from military service who meets the requirements of paragraphs (a) and (b) may voluntarily elect to make up his/her Employee Contributions. Such Participant shall notify the Administrator upon reemployment of his/her desire to repay his/her Employee Contributions on a form acceptable to the Employer. Such Employee Contributions shall be made either in a lump sum payment or on a pre-tax basis over a period equal to the lesser of three times his/her military service or five (5) years. The amount of Employee and Employer Contributions owed to the Plan shall be equal to the Employee's rate of Compensation in effect immediately prior to the Participant's military service.

D. Insert a new subsection 4.4(d) (below) and renumber the current subsection 4.4(d) as 4.4(e):

4.4 Military Service

(d) The Employer will make-up the amount of Employer Plan Contributions for a Participant returning from military service who meets the requirements of paragraphs (a) and (b). The amount of Employer Plan Contributions to be made-up by the Employer will be equal to the amount of contributions that would have been made had the Participant not been activated to military service. The

Employer will determine the amount of Employer Plan Contributions to be made-up and remit them as soon as administratively feasible.

E. Insert a new section 4.6 Rollovers with the following:

4.6 Rollovers

The Plan Administrator may allow to be transferred to the Plan all or any of the balance to the credit of a Participant in accordance with the provisions of this section. Such amounts will be credited to the Participant's Provider Account and considered assets of the Plan, and therefore subject to the provisions and features of the Plan.

(a) The Plan will accept a direct rollover of an eligible rollover distribution from:

1. A qualified plan described in section 401(a) or 403(a) of the Code, excluding after-tax employee contributions.
2. A qualified tax-sheltered annuity plan described in section 403(b) of the Code.
3. An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(b) The Plan will accept a Participant contribution of an eligible rollover distribution from:

1. A qualified plan described in section 401(a) or 403(a) of the Code.
2. A tax-sheltered annuity plan described in section 403(b) of the Code.
3. An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(c) The Plan will accept a Participant rollover contribution of the portion of distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

4. Article 7: Vesting and Years of Participation

A. Delete section 7.1 Vesting and replace it with the following:

7.1 Vesting

A Participant's interest in his Provider Account, including Employee and Employer Plan Contributions plus any amounts rolled over to the Plan, shall always be fully vested and nonforfeitable.

- B. Delete section 7.2 Year of Participation and replace it with the following:

7.2 Year of Participation

For purposes of establishing eligibility for retiree health care benefits from the Group Insurance Commission, a Year of Participation shall be a period in which an Employee completes 12 Months of Participation beginning with his initial date of Participation in the Plan. A Month of Participation is any calendar month in which a Plan Contribution is made on behalf of a Participant.

In the event an Employee transferred membership in the State Employees Retirement System, Years of Creditable Service under that plan shall be transferred to this Plan and shall count as Years of Participation.

An Employee shall receive Years of Participation for periods of qualified Military Service in accordance with USERRA and Section 4.4, regardless of whether he repays his Employee Contributions upon his return to employment.

5. Article 8: Distributions

- A. Delete section 8.2 Timing of Distribution and replace it with the following:

8.2 Timing of Distribution

If a Participant's Provider Account balance exceeds \$5,000, the Plan Administrator may notify the Participant in writing of his right to receive a distribution of his Provider Account upon the occurrence of a distribution event described in Section 8.1. The Participant must elect, in writing, on a form acceptable to and filed with the Plan Administrator, the distribution of his Provider Account at any time after termination of employment with the Employer but not later than as soon as administratively feasible after the Participant reaches his Required Beginning Date.

6. Article 9: Form of Distribution

- A. Delete subsection 9.3(b) Eligible Retirement Plan and replace it with the following:

9.3 Direct Rollovers

Eligible Retirement Plan. An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an annuity plan described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) that accepts the Distributee's Eligible Rollover Distribution. However, in the case of Eligible Rollover Distributions to the Participant's beneficiary, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

7. Article 13: General Provisions

A. Delete section 13.8 Rollover Contributions

8. Appendix A: Providers

A. Delete the section relating to “Disability and Life Insurance Program” and replace it with the following:

Disability and Life Insurance Program

- ◆ Standard Insurance Company of Oregon