

BOARD OF HIGHER EDUCATION
REQUEST FOR COMMITTEE AND BOARD ACTION

COMMITTEE: Fiscal Affairs and Administrative Policy **NO.:** FAAP 07-32

COMMITTEE DATE: June 6, 2007

BOARD DATE: June 14, 2007

OPTIONAL RETIREMENT PROGRAM HOUSING ALLOWANCE POLICY

MOVED: The Board of Higher Education hereby authorizes and approves the Housing Allowance Policy for Massachusetts Optional Retirement Program participants.

Authority: Massachusetts General Laws Chapter 15, Section 40; and Chapter 32, Section 1

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

Background Information

Plan Contributions prescribed by the Optional Retirement Program (the “ORP” or “Program”) are calculated as a percentage of “Regular Compensation” as defined in Chapter 32 of the Massachusetts General Laws, as amended (MGLA). Regular Compensation includes the value of Housing Allowances, in any form by which they are paid to participants in the Program. Plan Contributions are comprised of Employee Plan and Employer Matching Contributions (“Employee” and “Employer” respectively).

The recent Massachusetts Supreme Judicial Court decision in Bulger v. CRAB, 447 Mass. 651 (2006) highlights the fact that Housing Allowances may not have been included in Regular Compensation in the past and that it must be included prospectively. Accordingly, the Board of Higher Education (the “Board”), as the ORP Plan Administrator, has established this policy, which governs implementation of Bulger v. CRAB (*supra*) as it relates to calculating Plan Contributions in the future and making up any contributions that had not been made in the past.

Effective Date

This policy will become effective on September 2, 2007, which is the first day of the first pay period beginning in September. Also effective on September 2, 2007, Housing Allowance values will be paid, *pro rata*, to Optional Retirement Program Participants during each scheduled pay period during the year.

Policy

Active Participants

Prospective Contributions: Active participants are those participants who receive current contributions under the Program. As of the effective date of this policy, any Housing Allowance included in the definition of Regular Compensation under MGLA Chapter 32 must be used to calculate Plan Contributions.

Make-up of Past Contributions: In cases where Housing Allowance values were not included in Regular Compensation when calculating Plan Contributions for an active participant prior to the effective date of this policy, the Participant will have the right to voluntarily elect to make-up their Employee Plan Contributions.

The Commonwealth will make Employer Matching Contributions relating to each of the Employee’s make-up amount. The Commonwealth will not make up any Fiscal Year End Contributions.

Where elected by participants, such make-up contributions will be made for amounts missed during Plan Years identified by the Participant. The period elected by the Participant must include all pay periods during a Plan Year, except for those Years during which the Participant was employed by the Commonwealth but not participating in the Optional Retirement Program. Additionally, the period determined by the Participant will end on September 1, 2007.

The Commonwealth will determine and make-up any (net) investment gain that was missed on contributions being made-up under this Policy. Any missed investment gains will be calculated and remitted as soon as administratively practical after all make-up

contributions have been remitted. The Board of Higher Education will administer this provision in accordance with its current procedures relating to amounts mistakenly excluded from the plan.

Active participants electing to make-up past contributions relating to their Housing Allowances must make their election on a form provided by the Plan Administrator and within the election period established by the Board. The Board will establish a reasonable period of time during which make-up contributions will be remitted to the Plan.

Inactive and Former Participants

Inactive participants are those who do not receive current contributions but maintain assets in the Plan. They may or may not be employed by the Commonwealth. This group is typically comprised of participants who have terminated employment with the Commonwealth and maintain their assets in the Plan, are employed but on un-paid leave of absence, or have moved to a position not eligible for ORP coverage.

Former participants are those who no longer hold assets in the plan. They may or may not be employed by the Commonwealth. This group is comprised of participants who terminated employment with the Commonwealth and withdrew all of their assets from the Plan. Some may have been re-employed and do not currently participate in the ORP.

Inactive Participants currently employed by the Commonwealth

Inactive participants who are currently employed by the Commonwealth may make up any ORP Plan Contributions attributable to Housing Allowance values that were not included in their Regular Compensation when they were active participants. Inactive participants who elect to make-up these contributions will be governed by the administrative procedures established by the Plan Administrator which are applicable to active participants.

Inactive Participants not currently employed by the Commonwealth and Former Participants

Inactive participants who are not currently employed by the Commonwealth and former participants may not make-up ORP Plan Contributions attributable to Housing Allowance values that were not included in their Regular Compensation when they were active participants.