

BOARD OF HIGHER EDUCATION

REQUEST FOR COMMITTEE AND BOARD ACTION

COMMITTEE: Fiscal Affairs and Administrative Policy **NO.:** FAAP 16-13

COMMITTEE DATE: December 1, 2015

BOARD DATE: December 8, 2015

**ADOPTION OF THE MASSACHUSETTS OPTIONAL RETIREMENT PROGRAM
RESTATEMENT**

MOVED: In accordance with the applicable provisions of Chapter 15A, Section 40, of the Massachusetts General Laws, as amended, the Board of Higher Education herein adopts the restatement of the Optional Retirement Program, represented by the attached plan document, to be effective as of January 1, 2016.

Authority: Massachusetts General Laws Chapter 15A, Section 40

Contact: Sean P. Nelson, Deputy Commissioner for Administration and Finance

Background

History

Effective on October 30, 1995, the Optional Retirement Program (“ORP” or “Plan”) is a defined contribution retirement plan available to faculty, administrators and librarians at the State Universities; the Community Colleges; and the University of Massachusetts. The Plan currently covers approximately 2,600 Active Participants (contributing to the Plan) and more than 1,000 Participants who hold assets in the ORP but do not receive contributions.

During the Plan’s early years, documentation of its provisions, features and operational policies was accomplished through a variety of documents. These included the ORP’s enabling legislation; booklets summarizing the Plan’s key features for employees; and Provider product contracts (e.g. annuity contracts).

As the Plan matured, the Board of Higher Education employed the Segal Company, a nationally known and respected benefits consulting firm, for assistance in drafting a formal plan document; organizing the ORP’s provisions and features in a single, authoritative “source document”. The Board of Higher Education voted to adopt this plan document during their meeting in June, 2004.

Since the document’s initial adoption in 2004, the Board of Higher Education restated the Plan in 2010, and amended it twice since that restatement.

2015 Restatement

The Board is restating the Optional Retirement Program’s provisions and features, as evidenced in the updated plan document, effective January 1, 2016. The restated plan accomplishes several important objectives for the Plan:

1. The restatement incorporates the language of the two earlier amendments. The key features affected by these amendments include:

Amendment No. 1: December, 2011

- Introduced a Break in Participation to the Plan;
- Expanded eligibility to administrators and librarians in accordance with the Acts of 2011;
- Codified the Commonwealth’s ability to control investment funds and assets held by Plan Providers.

Amendment No. 2: December, 2012

- Codified the Plan’s status as a “governmental” plan under the Internal Revenue Code;
- Codified the effects of the inclusion of a Break in Participation on several provisions (*i.e.* Election Period; limits on compensation; rate of Employee Contribution);
- Refinements to the definition of Providers under the Plan;
- Utilization of Revenue Credits;
- Enabled on-line functions for participants.

2. The restatement currently amends provisions related to the definition of “spouse” to reflect changes to this term under the Defense of Marriage Act; and to lump sum distributions by eliminating the age-based restrictions on making such payments to participants.

Letter of Determination

An important purpose for developing and maintaining the plan document is to submit the document to the Internal Revenue Service as part of the Commonwealth’s solicitation of a (favorable) Letter of Determination. The Letter of Determination supports the Commonwealth’s contention that the ORP operates under Internal Revenue Code Section 401(a). This is important in providing tax-deferral for

Employee Plan Contributions (average 10% of Salary); accepting direct transfers from, and making direct transfers to the State Employees Retirement System; and responding to legal action.

The Department of Higher Education will solicit a new Letter of Determination from the Internal Revenue Service immediately following the Board's adoption of the attached restatement.