

610 CMR: BOARD OF HIGHER EDUCATION

610 CMR 11.00: OPTIONAL RETIREMENT PROGRAM

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11.00: Introductory Provisions

The following introductory provisions shall apply to the Optional Retirement Program:

11.01: Authority

610 CMR is promulgated by the Board of Higher Education pursuant to authority granted by M.G.L. c. 15A, § 40 and in accordance with the requirements of M.G.L. c. 30A regarding state administrative procedures.

11.02: Purpose

610 CMR 11.00 is promulgated to establish the rules and regulations governing the administration of and participation in the Optional Retirement Program pursuant to M.G.L. c. 15A, § 40 which requires the Board of Higher Education to establish an Optional Retirement Program.

11.03: Scope and Application

610 CMR 11.00 shall apply to the administration of and participation in the Board of Higher Education Optional Retirement Program including:

- (1) Administration of the Optional Retirement Program shall include those provisions in 610 CMR 11.40 and subsequent sections.
- (2) Participation in the Optional Retirement Program shall include:
 - (a) New Employee. Any eligible employee who is initially appointed on or after the effective date of the Optional Retirement Program may elect in writing to participate in the Optional Retirement Program within 90 days of the effective date of the appointment.

11.03: continued

(b) Incumbent Employee.

1. Any eligible employee who is a member of any retirement system established under the provisions of M.G.L. c. 32 on the effective date of the Optional Retirement Program who has less than ten years of creditable service on the effective date of the Optional Retirement Program may elect in writing within 90 days of the effective date of the Optional Retirement Program to participate in the Program.
2. Any eligible employee who is a member of any retirement system established under the provisions of M.G.L. c. 32 on the effective date of the Optional Retirement Program who has less than ten years of creditable service on the date the employee becomes eligible to participate in the Optional Retirement Program may elect in writing to participate in the Optional Retirement Program within 90 days of the date the employee becomes eligible.

11.04: Exceptions

Participation of the Optional Retirement Program shall not include:

- (1) An eligible employee who becomes ineligible to participate in the Optional Retirement Program shall thereafter participate in the State Employee's Retirement System.
- (2) Any non eligible employee.
- (3) Any eligible incumbent employee who fails to make an election in writing to participate in the Optional Retirement Program within 90 days of the effective date of the Optional Retirement Program.
- (4) Any eligible new employee who fails to make an election in writing to participate in the Optional Retirement Program within 90 days of the effective date of the appointment.

11.05: Definitions

For the purpose of 610 CMR 11.00, the following terms will mean:

Annuity Contracts. An amount of money payable periodically to an Optional Retirement Program participant.

Bank or Financial Institution. An establishment for the custody, loan, exchange, or issue of money, for the extension of credit, and for facilitating the transmission of funds by drafts or bills of exchange.

Beneficiaries. Any person entitled to any present or potential benefits on account of membership of a person other than himself or herself, under the provisions of M.G.L. c. 32, §§ 1 through 28.

Board. Board of Higher Education.

Board Administrative Account. An account established into which a portion of the employer contribution is deposited to pay for the direct costs to establish and operate the Optional Retirement Program.

Board Employee Deduction Escrow Account. An account established to hold in escrow employee retirement deductions until such time as the employee elects to participate in the Optional Retirement Program.

Board of Higher Education. The agency established pursuant to the provisions of M.G.L. c. 15A, § 4.

Board Optional Retirement Program Trust Fund. An account established into which the employer contribution is deposited.

11.05: continued

Certificate. A written assurance or official representation of some fact.

Certificate of Authority. Document issued by the Secretary of the Commonwealth's Office on application of foreign corporation granting such corporation the right to do business in the Commonwealth.

Chancellors. The name given to the chief executive officer of the campuses of the University of Massachusetts at Amherst, Boston, Dartmouth, Lowell, and Worcester.

Commissioner of the Board or Commissioner. The chief executive and administrative officer of the Department of Higher Education and Board of Higher Education, pursuant to M.G.L. c. 15A, § 6.

Comptroller. The Comptroller of the Commonwealth of Massachusetts.

Continuously Employed. As defined in M.G.L. c. 32.

Contracts Providing Retirement and Death Benefits. A term describing any account or annuity provided under Section 401(a), 403(a), 403(b), or 401(f) of the Internal Revenue Code.

Contributions. As defined in M.G.L. c. 32, the amount of a member's payroll deducted on behalf of the employee to the Optional Retirement Program, 8% up to \$30,000 of regular compensation and an additional 2% for amounts over \$30,000 of regular compensation. These contributions may be made as employer contributions under Section 403(b) or 414(h) of the Internal Revenue Code.

Council. The name given to a group of persons responsible to operate the Optional Retirement Program on behalf of the Board of Higher Education.

Coverage. In insurance, the amount and extent of risk covered by insurer.

Creditable Service. All membership service, prior service, and other service for which credit is allowable to any member under the provisions of M.G.L. c. 32, §§ 1 through 28.

Custodial Accounts. Accounts described in Section 403(b)(7) of the Internal Revenue Code.

Death Benefits. As defined in M.G.L. c. 32.

Direct Costs. The amount of payroll, expense, and capital equipment directly relating to administering the Optional Retirement Program.

Effective Date of Appointment. The date of hire.

Elect to Participate. A 90 day period during which an eligible member may elect to participate in the Optional Retirement Program.

Eligible Members. Participation in the Optional Retirement Program is limited to persons who are otherwise eligible for membership in the State Employee's Retirement System as established under M.G.L. c. 32 for:

- (a) Faculty Members;
- (b) Chancellors of the campuses of the University of Massachusetts at Amherst, Boston, Dartmouth, Lowell, and Worcester;
- (c) Commissioner of the Board; and
- (d) Presidents of Public Institutions of Higher Education.

Employee Account. The Account established for each employee which can be funded by Custodial Accounts or Contracts providing Retirement and Death Benefits.

Faculty Members. The body of persons who are entrusted with the instruction at the Public Institutions of Higher Education.

11.05: continued

Fiduciary Standards. As defined in M.G.L. c. 32, § 23(3).

Fixed. Prices are fixed when they are mutually agreed upon.

Group Annuity. Type of pension plan for employees under a master plan or contract in which employer each year buys a deferred annuity for each qualified employee.

Guarantees. An agreement by a person or party to another person or party that promises to make the other secure.

Insurer. An entity which provides life, death, and disability benefits to Optional Retirement Program participants.

Internal Revenue Code. As published by the Internal Revenue Service of the Department of the Treasury of the United States of America, that body of law which codifies all federal tax laws. Such laws comprised Title 26 of U.S. Code, and are implemented by Treasury Regulations and Revenue Rulings.

Irrevocable. That which cannot be revoked or recalled.

Licensed Insurers. One who or that which insures as licensed by the Commonwealth of Massachusetts.

Life and Health Insurance Guarantee Association. For insurance companies, as defined by the Division of Insurance.

Life Benefits. As defined in M.G.L. c. 32.

Life Insurance Company. An entity which issues a contract of insurance based upon the life of a person.

Minimum Required Capital and Surplus. For Life Insurance companies, as defined by the Division of Insurance.

Minimum Values. For Life Insurance companies, as defined by the Division of Insurance.

Monthly Fees. A term to describe the monthly amount of direct costs to be paid to operate the Optional Retirement Program.

New Employee. Any eligible employee who is initially appointed on or after the effective date of the Optional Retirement Program may elect in writing to participate in the Optional Retirement Program within 90 days of the effective date of the appointment.

Optional Retirement Program. A program established pursuant to M.G.L. c. 15A, § 40 which requires the Board of Higher Education to establish an Optional Retirement Program.

Participants. Eligible employees of the system of Public Institutions of Higher Education who elect to participate in the Optional Retirement Program.

Pay Period. As defined by the Commonwealth's payroll system.

Presidents. The chief executive officers of the Public Institutions of Higher Education for the State Universities, the Community Colleges, and the University of Massachusetts.

Providers. An entity providing tax-sheltered annuities or custodial accounts for Optional Retirement Program participants.

Public Institutions of Higher Education. The University of Massachusetts, the State Universities, and the Community Colleges as defined in M.G.L. c. 15A(g)(5).

11.05: continued

Regular Compensation. As defined in M.G.L. c. 32, the salary, wages or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority, not including bonus, overtime, severance pay, for any and all unused sick leave, early retirement incentives, or any other payments made as a result of giving notice of retirement, but including evaluated maintenance as provided for in M.G.L. c. 32, 22(1)(c), and including any part of such salary, wage, or other compensation derived from federal grants except as provided in M.G.L. c. 32, § 3(2)(a)(xi); provided that salary, wages, or other compensation payable in the form of cost of living bonuses and cost of living pay adjustments shall be included in such term. Regular compensation shall also include all premiums paid by any governmental unit for the purchase of an individual or group annuity contract as authorized by M.G.L. c. 15, § 18A or M.G.L. c. 71, § 37B. Regular compensation shall also mean compensation received by any member having made the election provided for in M.G.L. c. 32, § 90G½ and serving having attained age 70 pursuant to M.G.L. c. 32 90F or 90G.

Retirement Benefits. As defined in M.G.L. c. 32.

State Employees' Retirement System. As defined in M.G.L. c. 32.

Taxation. The process of taxing or imposing Federal and Commonwealth of Massachusetts taxes.

Tax-Sheltered Annuity. An annuity eligible for tax-sheltered treatment.

Transfer of Funds. The movement of employee and employer contributions moneys.

Transfer of Previously Accumulated Total Deductions. Member contributions of incumbent Board of Higher Education employees, who are members of any retirement system as defined in M.G.L. c. 32, who elected to participate in the Optional Retirement Program and whose State Employees' Retirement System Annuity Savings Fund amount is transferred to the Optional Retirement Program.

Trustee to Trustee Transfer. As described in 26 U.S.C. c. 1.

Variable. Fluctuating.

Withdraw. To remove funds from the Optional Retirement Program.

11.10: General Provisions

The following general provisions shall apply to the Optional Retirement Program:

11.11: Custodial Accounts and Annuity Contracts

An Optional Retirement Program employee member account shall be maintained by a provider into which the employee and employer contributions shall be transferred.

11.12: Plan Requirements

- (1) The benefits shall be payable only to participants in the Optional Retirement Program or their beneficiaries.
- (2) The benefits shall be paid only by the selected providers in accordance with the terms of the custodial accounts, annuity contracts or certificates providing coverage to the participant.
- (3) An active participant is prohibited from withdrawing contributions until the participant has fulfilled the requirements established in 610 CMR 11.12(2); provided, further, that any participant who becomes ineligible to participate in the Optional Retirement Program may withdraw their contributions.

11.13: Providers

- (1) The selected providers shall be authorized to conduct business within the Commonwealth.
- (2) Each provider or issuer of annuity contracts under the Optional Retirement Program which is a life insurance company shall:
 - (a) Hold a certificate of authority to do a life insurance business in the Commonwealth.
 - (b) Maintain the minimum required capital and surplus required for Life Insurance Companies under the laws of the Commonwealth.
 - (c) Be a member of the Commonwealth's Life and Health Insurance Guaranty Association and be a member of the Life and Health Insurance Guaranty Association in any and all jurisdictions where required by law with similar retirement programs funded in whole or in part through the provider's annuities in which participants in the Optional Retirement Program might participate upon transfer of employment.

11.14: Eligibility

Participation in the Optional Retirement Program shall be limited to persons who are otherwise eligible for membership in the State Employee's Retirement System as established under M.G.L. c. 32 for:

- (1) Faculty Members;
- (2) Chancellors of the campuses of the University of Massachusetts at Amherst, Boston, Dartmouth, Lowell, and Worcester;
- (3) Commissioner of the Board; and
- (4) Presidents of Public Institutions of Higher Education.

11.15: Election to Participate

Election to participate in the Optional Retirement Program shall be for:

- (1) Any eligible employee initially appointed on or after the effective date of the Optional Retirement Program may elect to join the Program within 90 days of the effective date of the appointment.
- (2) Any eligible employee who is a member of any M.G.L. c. 32 retirement system on the effective date of the Optional Retirement Program who has less than ten years of creditable service on the Optional Retirement Program effective date, may elect to participate in the Program within 90 days after the effective date of the Program.
- (3) Any employee who is a member of any M. G. L. c. 32 retirement system who has less than ten years of creditable service on the date the employee becomes eligible, can elect to participate in the Optional Retirement Program within 90 days the employee becomes eligible.
- (4) Any eligible employee electing to participate in the Optional Retirement System program shall not be eligible for the State Employees' Retirement System as long as the employee remains continuously employed in any eligible position.
- (5) The election shall be irrevocable for so long as the employee continues to meet the eligibility requirements.
- (6) Once an employee is ineligible to participate in the Optional Retirement Program, the employee can thereafter participate in the State Employees' Retirement System.

11.16: Member Contributions

An eligible employee in the Optional Retirement Program:

- (1) Shall not be required to make contributions to the State Employees' Retirement System.
- (2) Shall contribute to the Program an amount equal to the contribution the employee would have made to the State Employees' Retirement System.
- (3) May direct the amount of the accumulated total deductions and interest from the State Employees' Retirement System to the employee's Optional Retirement Program Account.
- (4) May direct the amount of the accumulated total deductions and interest from the State Employees' Retirement System to remain in the State Employees' Retirement System.

11.17: Employer Contributions

The State Employees' Retirement System shall contribute an amount equal to 5% of the regular pay as defined in M.G.L. c. 32 of a participating Optional Retirement Program employee, as follows:

- (1) Up to 1% of the employer contribution shall go to an Optional Retirement Program Life and Disability Account.
- (2) The balance of the employer contribution shall be transferred to an Optional Retirement Program Provider Account:
 - (a) A monthly fee amount established by the Council to be approved by the Comptroller shall be transferred to the Optional Retirement Program Administrative Account to pay for the direct costs to administer the Program and the costs to establish the Program.
 - (b) The balance of the employer contribution shall be transferred to the Optional Retirement Program employee contract(s) or custodial account(s) in direct proportion to each employee's regular compensation.

11.18: Exemption from Taxation

The funds accumulated under the Optional Retirement Program shall be exempt from taxation, including income taxes levied under the provisions of M.G.L. c. 62, including:

- (1) The rights of a participant to a custodial account, an annuity, the annuity contracts or certificates providing coverage to participants.
- (2) The rights in and to the funds accumulated under the custodial accounts, annuity contracts, or certificates.

11.19: Assignment of Rights

No assignment of any right in or to any funds or annuities under the Optional Retirement Program shall be valid except an assignment as may be made for the purpose of making restitution in the case of dereliction from duty by any participant pursuant to M.G.L. c. 32, § 15, as long as the assignment does not violate the restrictions of the Internal Revenue Code. A participant's custodial account or annuity may be attached, taken on execution, assigned, or subject to another process to satisfy a support order under M.G.L. c. 208, 209, or 273, as long as the order constitutes a qualified domestic relations order under the terms of the Internal Revenue Code.

11.40: Administrative Provisions

The following administrative provisions shall apply to the Optional Retirement Program:

11.41: Commonwealth of Massachusetts Systems

The administrative systems of the Commonwealth of Massachusetts will generally be utilized to administer the Optional Retirement Program.

- (1) The Optional Retirement Program shall be accounted for as a Non-Expendable Trust Fund on the books of account of the Commonwealth of Massachusetts.
- (2) The Board of Higher Education shall have the ability to define procedures, records, and forms to administer the Optional Retirement Program.

11.42: Member Elections

Any eligible employee may elect to participate in the Optional Retirement Program.

- (1) Any new eligible employee who is initially appointed on or after the effective date of the Optional Retirement Program shall elect to participate or not to participate in the Optional Retirement Program within 90 days of the effective date of the appointment.
- (2) Any eligible employee who is a member of any retirement system established under the provisions of M. G. L. c. 32 on the effective date of the Optional Retirement Program who has less than ten years of creditable service on the date the employee becomes eligible to participate in the Optional Retirement Program shall elect to participate or not participate in the Optional Retirement Program within 90 days of the date the employee becomes eligible.
- (3) Any election shall take effect not later than the next pay period following the date of the election.

11.43: Member Contributions

Optional Retirement Program member contributions shall be deducted once each month on the Thursday before the second to last Saturday of each month, or according to the payroll schedule as promulgated by the Commonwealth's payroll system. The current pay period begins the day following the last Saturday of each month and ends on the last Saturday of the next month, or as defined by the Commonwealth's payroll system.

- (1) Optional Retirement Program member contributions shall be held in a Board Employee Deduction Escrow Account maintained by the Board until such time the employee elects to or not to participate in the Optional Retirement Program, or the initial 90 day election period expires.
- (2) The cumulative member contributions deducted shall accrue interest while in the Board Employee Deduction Escrow Account.
- (3) Upon election by the employee to participate in the Optional Retirement Program, the escrowed member contributions with interest shall be transferred by the Board from the Board Employee Deduction Escrow Account to the Employee's Optional Retirement Program account at the Provider.
- (4) Upon election by the employee to not participate in the Optional Retirement Program, or when the initial 90 day election period expires without election by the employee, the escrowed member contributions shall be transferred by the Board from the Board Employee Deduction Escrow Account to the Employee's Member Account at the State Board of Retirement. Interest earnings on said contributions shall be paid from the Board Employee Deduction Escrow Account to the employee.
- (5) An employee electing not to participate in the Optional Retirement Program or whose election period to participate in the Optional Retirement Program expires, shall become a member of the State Employees' Retirement System in accordance with existing statutes.

11.44: Employer Contributions

The State Employees' Retirement System shall contribute an amount equal to 5% of the regular compensation of each participating Optional Retirement Program employee to the Optional Retirement Program. This employer contribution shall be paid directly by the State Employees' Retirement System to the Board Optional Retirement Program Trust Fund.

(1) The Board shall make a monthly accounting and shall submit to the State Retirement Board within ten working days after the last Saturday of each month, by individual and in total, a report of the dollars of regular compensation of Optional Retirement Program participants.

(2) The Board shall also present to the State Retirement Board within ten working days after the last Saturday of each month, or the last day of the pay period, an invoice amounting to 5% of the total regular compensation of Optional Retirement Program participants for the State Retirement Board to pay to the Board.

(3) The State Retirement Board shall utilize the State warrant process to submit a payment to the Board within ten working days of receipt of the Board invoice.

(4) The State Retirement Board shall make the employer contribution payment directly to the Board Optional Retirement Program Trust Fund.

11.45: Life and Disability Account

Once received by the Board, up to one percent of the employer's contribution shall be transferred by the Board from the Optional Retirement Program Trust Fund to individual Life and Disability Accounts at an Insurer in proportion to each member's regular compensation for that pay period.

(1) An accounting shall be made by the Board of the individual and total amounts transferred to the Insurer.

(2) A monthly report shall be issued by the Board detailing the amounts transferred by the Board to individual Life and Disability Accounts at the Insurer.

11.46: Administrative Account

The costs to start-up the Optional Retirement Program and the monthly administrative costs to operate the Optional Retirement Program shall be paid from the employer contribution from the Board Optional Retirement Program Trust Fund to the Board Administrative Account.

(1) The Board shall prepare a one-time invoice consisting of Board costs to establish the Optional Retirement Program from the date the Board incurred Optional Retirement Program start-up costs through the date of the invoice.

(2) The BoardC start-up costs invoice shall be submitted by the Board to the Comptroller for approval and payment shall be made from the Optional Retirement Program Trust Fund to the Optional Retirement Program Administrative Account.

(3) The Board shall prepare each month a fee invoice consisting of Board administrative direct costs and shall submit said invoice to the Comptroller for approval and payment.

(4) The Board monthly fee shall be paid from the Optional Retirement Program Trust Fund to the Optional Retirement Program Administrative Account.

(5) A monthly report shall be issued by the Board detailing the amounts transferred to the Administrative Account for the start-up costs and direct administrative costs.

11.47: Employee Account

The Board shall transfer monthly the balance of the employer contribution (less Life and Disability Account and Monthly Fee) from the Optional Retirement Program Trust Fund to the Optional Retirement Program Employee Accounts maintained by not less than two and no more than four providers.

- (1) A monthly accounting shall be made by the Board of the:
 - (a) Total monthly amount of regular compensation of all Optional Retirement Program participants.
 - (b) Total monthly amount transferred to the Life and Disability Account.
 - (c) Total monthly amount paid to the Administrative Account.
 - (d) The monthly balance of the State Employees Retirement System employer contribution.
- (2) The monthly balance of the State Employees' Retirement System employer contribution shall be transferred by the Board from the Optional Retirement Program Trust Fund to each Board Optional Retirement Program Employee Account based on the percent of individual regular monthly compensation to the monthly balance of the employer contribution.
 - (a) The Board shall make a monthly accounting of the individual Employee Account transferred, the amounts transferred to each Provider, and shall reconcile the individual transfers by Provider to the total transferred to all Providers.
 - (b) The Board shall make a monthly report of the amounts transferred to the individual Employee Accounts.

11.48: Monthly Reporting

The Board shall make, or provide for, a monthly report of member and employer contribution transactions and shall submit the monthly report to:

- (1) Comptroller;
- (2) State Board of Retirement;
- (3) Group Insurance Commission;
- (4) State Treasurer.
- (5) The Board shall make, or provide for, a monthly reporting of member and employer contributions to each Optional Retirement Program participant.
- (6) The chairmen of the joint committee on public service shall receive a monthly report upon request.

11.49: Custodian

The Board shall designate a person to serve as Custodian of all records of the Optional Retirement Program.

11.50: Provider and Insurer Oversight

The Board shall at least annually monitor and evaluate the performance of the Providers and the Insurer in order to ensure that fiduciary standards as defined in M.G.L. c. 32, § 23(3) are maintained by the Providers and the Insurer.

- (1) The Board or Council, in its own discretion, may terminate any such contract with any such Provider or Insurer with 90 days written notice should a Provider or Insurer breach its fiduciary responsibilities.
- (2) The Board or Council, in its own discretion, may re-bid the services provided by a Provider or the Insurer, should a Provider or Insurer breach its fiduciary responsibilities.

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(3) If there is a breach of fiduciary responsibility by the Insurer, those services may be competitively rebid.

(4) If a Provider breaches its fiduciary responsibility, the participants shall choose between the other selected provider(s) or the Board can select another provider through the competitive bidding process.

REGULATORY AUTHORITY

610 CMR 11.00: M.G.L. c. 15A, § 40.