

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(b) 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 administrating 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.

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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.

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