

BOARD OF HIGHER EDUCATION

REQUEST FOR COMMITTEE AND BOARD ACTION

NO: BHE 22 -51

EXECUTIVE COMMITTEE DATE: April 25, 2022

BOARD DATE: May 3, 2022

**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 October 1, 2022.

VOTED: Motion approved and advanced to the full BHE by the Executive Committee on 4/25/2022; and adopted by the BHE on 5/3/2022.

Authority: Massachusetts General Laws Chapter 15A, Section 40

Contact: Joe Wallerstein, Acting Deputy Commissioner for Administration and Finance

Background

History

First implemented with an effective date of October 30, 1995, the Optional Retirement Program (“ORP” or “Plan”) is a defined contribution Money Purchase Pension Plan available to faculty, administrators and librarians at the State Universities, the Community Colleges and the University of Massachusetts, as well as to the Department of Higher Education staff, as a portable alternative to the state employees’ pension (MSERS).

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 (BHE or Board) employed the Segal Company, a nationally known and respected benefits consulting firm, for assistance in drafting a formal plan document and organizing the ORP’s provisions and features in a single, authoritative “source document.” The BHE voted to adopt this plan document during their meeting in June, 2004.

Since the document’s initial adoption in 2004, the BHE restated the Plan in 2010 and 2015, with amendments made during the intervening years when needed – such as the emergency amendments in 2021 to make the liberalizations offered by the federal government under the CARES Act, in response to the COVID-19 pandemic available to participants

2022 Restatement

The Board is restating the Optional Retirement Program’s provisions and features, as evidenced in the updated plan document (accompanying this motion as an attachment), effective October 1, 2022. The restated plan accomplishes several important objectives for the Plan:

1. The restatement incorporates the language of the earlier amendments.
2. The restatement has been drafted to replace the male pronouns (he, him, his) with gender-neutral terms (they, them, their)
3. The restatement has been drafted to incorporate protections for spouses, ensuring their entitlement to half of a participants’ benefits. These changes reflect similar protections found in the state employees’ pension.

Under these changes, spouses are automatically considered beneficiaries for at least one half of the benefits available upon the participant’s death, and automatically imbued with the rights under a 50% Joint and Survivor Annuity in partnership with the participant when the participant is ready to begin drawing funds from the Plan.

Especially important: spouses may waive these rights, which can be key issues in a family's overall financial planning.

Note that these spousal rights reflect similar protections in the state employees' pension and terms under the Retirement Equity Act, which are applicable to all non-governmental retirement plans.

4. While reviewing the document the DHE staff carefully reviewed each provision and definition. Where needed, language in both definitions and text were subject to rigorous review and adjustment. Moreover, the document was revised to present all significant definitions in Article 1: "Definitions." This approach provides ensure that key definitions are easily found, helping any reader to understand the terms of the Plan.
5. Additionally, the staff working on the restatement worked to revise and clarify terminology in each section, ensuring ease of use for non-professionals.
6. The document has been updated to reflect recent changes to Required Minimum Distributions required by the Internal Revenue Code.
7. Finally, note that the effective date of this restatement is October 1, 2022. The effective date is being delayed in order to allow time for the Department of Higher Education to provide a succession of notices to participants about the new spousal protections, and for participants to assess the impact of these rules on their personal estate and other financial plans.