

THE UNIVERSITY OF TEXAS SYSTEM

Office of Employee Benefits

POLICY AND PROCEDURES MEMORANDUM

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TO: System Administration Officials
Institutional Chief Business Officers
Institutional Chief Human Resources Officers

FROM: Office of Employee Benefits

SUBJECT: Optional Retirement Program

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1. PURPOSE

This policy will be the governing document for The University of Texas System (U.T. System) Optional Retirement Program (ORP) along with applicable federal and state laws, and policies consistent with the *Rules and Regulations* of The U.T. System Board of Regents and Texas Higher Education Coordinating Board (THECB) Rules, found at 19 *Texas Administrative Code* Chapter 25. It shall be interpreted in a manner so that it is consistent with the *Internal Revenue Code of 1986*, as amended, and its regulations there under, including, but not limited to, Section 403(b) thereof, and Section 830.001 et seq. of the *Texas Government Code*. This policy will not in any manner reduce, restrict, or make forfeitable any participant's vested rights or accrued benefits under the ORP.

2. POLICY

Employee salary reduction policies and procedures will be in effect at all U.T. System institutions for the effective administration of the U.T. System ORP in accordance with existing federal and state laws and regulations of the Board of Regents of The University of Texas System. Policies and procedures will also be in place so as to restrict both active ORP participation through periodic payroll contributions and ORP transfer of funds to the currently authorized ORP companies.

3. PROCEDURES

3.1. Eligibility to Elect ORP

3.1.1 Eligibility Criteria

An employee shall be eligible to make a once-per-lifetime irrevocable election of ORP in lieu of Teacher Retirement System (TRS) if all of the following criteria are met:

- (1) ORP-eligible Position. Employment in an ORP-eligible position as defined in this section;
- (2) 100 Percent Effort. Employment in an ORP-eligible position on a full-time basis (*i.e.*, 100 percent effort) for a period of at least one full semester or four and one-half months.
 - (A) Initial Eligibility Period. This eligibility requirement is an employee's initial ORP eligibility period.
 - (B) Combining of Percent Effort at Different Institutions Not Permitted. The 100 percent effort requirement shall be satisfied by employment with only one institution, unless

an individual is simultaneously employed in ORP-eligible positions with more than one U.T. System institution, in which case, the employee's percent effort at each institution may be combined to meet the minimum 100 percent effort requirement;

- (3) First Election Opportunity. No previous opportunity to elect ORP in lieu of TRS membership during the current or a prior period of employment at the same U.T. System institution or another Texas public institution of higher education; and
- (4) Active Membership in TRS. Current membership or eligibility for active membership in TRS.

3.1.2 ORP Participation after Election

Once an employee makes an election to participate in ORP, the employee's eligibility to continue participating in ORP shall be determined in accordance with the provisions of this policy and procedures memorandum.

3.1.3 Non-Texas ORP Plans

Prior enrollment, participation or vested status in any plan other than the ORP plan authorized under *Texas Government Code*, Chapter 830, shall have no bearing on an employee's eligibility to elect ORP, except that the employee must be eligible for active membership in TRS.

3.1.4 Opportunity to Elect

Each U.T. System institution shall provide an opportunity, as provided by the Board of Regents, to all eligible employees to elect ORP in lieu of TRS.

3.1.5 90-Day ORP Election Period

An employee who meets the eligibility criteria in this section shall be provided an ORP election period, during which an election to participate in ORP may be made by signing and submitting a properly completed election form in the manner designated by the U.T. System. An election may be made through a U.T. System institution's benefits office or electronically through UTRetirement Manager.

- (1) Beginning and Ending Dates. The 90-day ORP election period shall begin on the employee's initial ORP eligibility date (as defined in 3.1.6), and shall end on the earlier of:

- (A) the date the employee makes an ORP election; or
 - (B) the 90th calendar day after the employee's initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first working day after the 90th calendar day.
- (2) Written Notification. Each U.T. System institution shall, within 15 business days of an ORP-eligible employee's initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the U.T. System procedures for election of ORP.
- (3) Once-per-Lifetime Irrevocable Election. An employee who is eligible to elect ORP shall have only one opportunity during his or her lifetime, including any future periods of employment in Texas public higher education, to elect ORP in lieu of the applicable retirement system, and the election may never be revoked.
- (A) Default Election. Failure to elect ORP during the 90-day ORP election period shall be a default election to continue membership in TRS.

An employee of a Texas public institution of higher education who does not elect ORP in lieu of TRS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of TRS, even if subsequently employed in an ORP-eligible position at the same U.T. System institution or another Texas public institution of higher education.
 - (B) Irrevocable. An election of ORP shall be irrevocable. Except for the vesting and participation exceptions provided in Sections 3.2.6 and 3.2.7, an employee who elects ORP shall remain in ORP.
- (4) ORP Vendor Selection Required at Election. When an employee makes an election to participate in ORP the employee must select an ORP vendor from the U.T. System list of currently authorized ORP vendors in conjunction with the election of ORP.

Failure to select and enroll with an ORP vendor from the U.T. System list of currently authorized ORP vendors may result in disciplinary action up to and including termination of employment at the discretion of the U.T. System institution.

- (5) Waiver of Retirement System Benefits. An election of ORP shall be a waiver of the employee's rights to any benefits that may have accrued from prior membership in TRS, other than benefits resulting from transfers of service credit between the applicable retirement systems and reinstatement of withdrawn service credit under the ERS/TRS service transfer law, even if the participant has met the applicable ERS/TRS vesting requirement. Except as provided by subsections of this policy and procedures memorandum and the ERS/TRS service transfer law, an ORP participant shall not be eligible to become an active member of TRS or receive any benefits from TRS other than a return of employee contributions that may have been deposited with TRS (and accrued interest, if any).

3.1.6 Participation Start Date

The first day that ORP contributions are made shall be determined as follows.

- (1) Election on Initial ORP Eligibility Date.
- (A) New Employees. For new employees who make an election through the benefits office of a U.T. System institution or through election in the UTRetirement Manager on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (*i.e.*, first day of ORP-eligible employment).
- (B) Transfers within Same ORP Employer. For employees who transfer to an ORP-eligible position within the same or another U.T. System institution, and who make an election on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (*i.e.*, first day of ORP-eligible employment), unless the initial ORP eligibility date is not the first day of the month, in which case, to avoid dual contributions to both TRS and ORP during the same month, the participation start date shall be the first day of the month following the month in which the initial ORP eligibility date falls, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis.

- (2) Election After Initial ORP Eligibility Date. The participation start date for ORP-eligible employees who make an election after their initial ORP eligibility date shall be the first day of the month following the date that the election is made, with the following exceptions.
- (A) During Month of Initial ORP Eligibility Date. Employees who elect ORP after their initial ORP eligibility date but before the payroll cutoff for the month in which the initial ORP eligibility date falls will have ORP contributions made for the month beginning with the first day of the month. Those employees who elect to participate in ORP after their initial ORP eligibility date and after the payroll cutoff date for the month in which their initial ORP eligibility date falls will be enrolled for ORP participation beginning with the first day of the next month
- (B) After Month of Initial ORP Eligibility Date. Employees who elect ORP after the month in which their initial ORP eligibility date falls, but before the payroll has been processed for the month in which the election is made, may start participating in the month in which the election is made rather than the first of the following month. To avoid partial month payments, contributions for these participants shall be based on salary earned during the entire month in which the election is made, or during the entire pay period in which the election is made, if payroll is not processed on a monthly basis.
- (3) TRS Membership before Election. ORP-eligible employees who elect ORP after their initial ORP eligibility date shall be reported as TRS members for any months prior to their election of ORP. Employee contributions (plus accrued interest, if any) that are made to TRS after an employee becomes eligible to elect ORP but prior to an election of ORP, including the month in which the ORP election is made, if applicable, may be withdrawn from TRS after an election of ORP is made.

3.1.7 Active Membership in TRS Requirement

Participation in ORP shall be an alternative to active membership in TRS.

Retirees Not Eligible. Employees who have retired from TRS are no longer active members of TRS; therefore, a TRS retiree shall not be eligible to elect ORP

in lieu of TRS at a U.T. System institution.

3.1.8 Automatic Retirement System Enrollment

A new U.T. System employee who is eligible to elect ORP in lieu of TRS shall be automatically enrolled in TRS until an election to participate in ORP is made.

3.1.9 Dual Employment in TRS/ORP Positions at Different Employers

- (1) Simultaneous Retirement Plan Membership Not Permitted.
 - (A) Dual Employment with Institution and Non-Higher Education TRS-Covered Employer. A member of TRS who is employed in the Texas public school system (including all Texas Independent School Districts and regional educational service centers) or with any other Texas public educational institution or state agency that is covered by TRS but does not offer ORP in lieu of TRS, and who concurrently becomes employed in an ORP-eligible position with a U.T. System institution and elects to participate in ORP, may not remain an active member of TRS as an employee of the non-higher education TRS-covered employer once ORP participation has started at the U. T. System institution and no TRS contributions may be made by the non-higher education TRS-covered employer for that employee while he or she is actively participating in ORP. If the employee is required to return to active TRS membership , TRS contributions will resume as provided in Section 3.1.9(2).
 - (B) Dual Employment with Different Texas Public Institutions of Higher Education.
 - (i) Active TRS Membership not Permitted. A member of TRS who is employed with a U.T. System institution in a position that is eligible for TRS but is not ORP-eligible and who becomes concurrently employed with another Texas public institution of higher education in a position that is ORP-eligible and who elects to participate in ORP, may not remain an active member of TRS once ORP participation has started and no TRS contributions may be made by the U. T. System institution for that employee while he or she is actively participating in ORP at another institution. If the employee is required to return to active TRS membership, TRS contributions will resume as provided in subsection 3.1.9(2).

- (ii) Before Vesting in ORP. An employee who elects ORP at one institution while concurrently employed in what would otherwise be a TRS-eligible position at another institution is not eligible for ORP contributions based on the participant's TRS-only employment prior to the employee vesting in ORP.
- (iii) After Vesting in ORP. Once the employee vests in ORP, the institution employing the participant in a position that would otherwise be eligible for TRS, shall enroll the individual in ORP.

(2) Returning to TRS.

- (A) Dual Employment with a U.T. System Institution and Non-Higher Education TRS-Covered Employer.
 - (i) Termination of Employment with a U.T. System Institution. If the individual described in Section 3.1.9(1)(A) above terminates all employment with the U. T. System institution while concurrently employed in a TRS-eligible position with a non-higher education TRS-covered employer, then, regardless of ORP vesting status, the individual shall return to active TRS membership with the non-higher education TRS-covered employer and shall be ineligible for any future ORP participation in lieu of TRS, even if subsequently employed in an ORP-eligible position with the same U.T. System institution or another institution.
 - (ii) Transfer to Non-ORP Eligible Position at a U.T. System Institution. If, prior to meeting the ORP vesting requirement, the individual described in Section 3.1.9(1)(A) above transfers to a position at the institution that is not ORP-eligible but is eligible for TRS, then the individual shall return to active TRS membership with both the U T. System institution and the non-higher education TRS-covered employer and shall be ineligible for any future ORP participation in lieu of TRS, even if subsequently employed in an ORP-eligible position with the same U. T. System institution or another institution.

(iii) Transfer to Non-Benefits-Eligible Position at a U.T. System Institution. An individual described in Section 3.1.9 (1)(A) of this subsection who transfers to a non-benefits-eligible position at the U. T. System institution shall not be eligible for ORP contributions nor for active TRS membership and shall remain ineligible for TRS contributions at the non-higher education TRS-covered employer while employed in the non-benefits-eligible position at the U. T. System institution. If this individual subsequently terminates all employment with the U. T. System institution, then the provisions in Section 3.1.9(2)(A)(i) above will apply.

(B) Dual Employment with Different Institutions.

(i) Termination of Employment in ORP-eligible Position Before Vesting. If, prior to satisfying the ORP vesting requirement, the individual described in Section 3.1.9(1)(B) above terminates ORP participation by terminating employment or transferring to a non-ORP-eligible position with the same U. T. System institution while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then he or she shall return to active TRS membership and shall be ineligible for any future ORP participation in lieu of TRS, even if subsequently employed in an ORP-eligible position with the same U. T. System institution or another institution.

(ii) Termination of Employment in ORP-eligible Position After Vesting. If, after satisfying the ORP vesting requirement, the individual described in Section 3.1.9(1)(B) terminates employment in the ORP-eligible position by terminating employment with the U. T. System institution or transferring to a non-ORP-eligible position while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then the individual shall not return to TRS membership and shall continue to make ORP contributions at the other institution based on the employment in the TRS-eligible position as provided in Section 3.1.9(1)(B)(iii).

- (iii) Transfer to Non-Benefits-Eligible Position. An individual described in Section 3.1.9(1)(B) who transfers from the ORP-eligible position to a non-benefits-eligible position at the same U. T. System institution shall not be eligible for ORP contributions at that institution and shall not be eligible for active TRS membership at either institution while employed in the non-benefits-eligible position.
- (I) Termination Before Vesting in ORP. If this individual terminates employment in the non-benefits-eligible position before satisfying the ORP vesting requirement, then the provisions in Section 3.1.9(1)(B)(i) for an individual who terminates employment in an ORP-eligible position before vesting in ORP will apply.
- (II) Termination After Vesting in ORP. If this individual terminates employment in the non-benefits-eligible position after satisfying the ORP vesting requirement, then the provisions in Section 3.1.9(1)(B)(ii) for an individual who terminates employment in an ORP-eligible position after vesting will apply.

3.1.10 Eligible Positions

The following positions shall be considered ORP-eligible. Only those U.T. System employees who fill ORP-eligible positions and who meet the eligibility requirements established in this policy and procedures memorandum shall be eligible to elect ORP or to continue participating in ORP prior to vesting.

- (1) Faculty Member - A member of the faculty as defined by U.T. System Regents' *Rules and Regulations* whose duties include teaching and/or research as a principal activity, and who holds the title of professor, associate professor, assistant professor, instructor, lecturer, or equivalent faculty title, including "visiting professor" if the position is at least one full semester in duration.
- (2) Faculty Administrator - An administrator responsible for teaching and research faculty whose principal activity is planning,

organizing, and directing the activities of faculty and who holds the title of dean, associate dean, assistant dean, director, department chair, or head of academic department.

- (3) Executive Administrator - A U.T. System administrator who holds the title of chancellor, executive vice chancellor, vice chancellor, associate vice chancellor, assistant vice chancellor, or the equivalent, and a U.T. System institution administrator who holds the title of president, executive vice president, provost, vice president, associate vice president, assistant vice president, or the equivalent.
- (4) Other Key Administrator - An administrator other than a faculty administrator or an executive administrator whose position is considered a key administrative position within the U.T. System institution's organizational structure and that meets the requirements of this paragraph. The most common position titles in this category are executive director, director or associate director, but included titles may vary by institution based on differences in organizational structure, size, mission, etc. All positions in this category, including positions with the title of director or associate director, shall meet the following criteria:
 - (A) serves as director or other administrative head of a major department or budget entity, excluding the title of assistant director unless the assistant director position has responsibility for what is considered a major department or budget entity that is within a larger department or budget entity.
 - (B) is responsible for the preparation and administration of the budget, policies, and programs of the major department or budget entity;
 - (C) usually reports to the office of a chancellor, president, vice chancellor, vice president, dean, or equivalent; and
 - (D) is generally and customarily recruited from the same pool of candidates that other colleges and universities across the nation are recruiting from for this type of position by, for example, advertising in national publications such as the *Chronicle of Higher Education* or in newsletters or websites of national professional associations or at meetings of such associations.
 - (E) A position shall not be considered ORP-eligible under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant

ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not ORP-eligible.

- (5) Librarian. A professional librarian who holds, at a minimum, a master's degree in library science or information science, and whose principal activity, is the provision of library services.
- (6) Athletic Coach. An athletic coach, associate athletic coach, or assistant athletic coach whose principal activity, is coaching, excluding an athletic trainer, and excluding an athletic director or assistant athletic director unless the principal activity is coaching rather than administrative.
 - (A) Athletic trainers may be included in the "professional" category if the position requires the trainer to be a physician.
 - (B) Athletic directors whose principal activity is not coaching normally shall be included in one of the administrator categories.
- (7) Professional. An employee whose principal activity, is performing the duties of a professional career position, including, but not necessarily limited to, physician, attorney, engineer, veterinarian and architect, that meets the following criteria:
 - (A) requires a terminal professional degree in a recognized professional career field that requires occupation-specific knowledge and appropriate professional licensure;
 - (B) is a non-classified position; and
 - (C) is generally and customarily recruited from the same pool of candidates that other colleges and universities across the nation are recruiting from for this type of position by, for example, advertising in national publications such as the *Chronicle of Higher Education* or in newsletters of national professional associations or at meetings of such associations.
 - (D) A position shall not be considered ORP-eligible under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not ORP-eligible.

3.1.11 Position-Required Qualifications

An employee who meets the qualifications of a “professional” or a “librarian” shall not be considered eligible to elect ORP as a professional or librarian unless the position requires the professional or librarian qualifications, respectively, as a principal activity.

3.1.12 Counselors

The eligibility of counselors to elect ORP is a matter of institutional policy and shall be determined as follows.

- (1) Faculty. If the U.T. System institution has established policies that consider and treat counselors in the same manner as faculty in such areas as, for example, employment contracts, oversight, and work schedules, then ORP eligibility for a counselor position shall be determined under the same requirements as a faculty position, except that the principal activity shall be counseling rather than teaching and/or research, and the title shall be counselor rather than the faculty titles listed in that category.
- (2) Staff. If the U.T. System institution has established policies that consider and treat counselors in the same manner as staff rather than faculty, in such areas as, for example, employment contracts, oversight, and work schedules, then ORP eligibility for a counselor position shall not be determined under the faculty category. Depending on the duties and required qualifications, a counselor who is considered staff rather than faculty may meet the criteria for one of the non-faculty ORP-eligible positions.

3.1.13 Review of Positions for ORP Eligibility

- (1) Comprehensive Review. Each U.T. System institution shall conduct a comprehensive review of all non-classified positions to ensure that ORP eligibility requirements are being applied fairly and consistently across all departments and divisions. Each U.T. System institution should complete this comprehensive review on a periodic continuing basis, but must complete this review no less than once every third fiscal year.
- (2) New Position. Each U.T. System institution shall analyze newly created non-classified positions for ORP eligibility determination and shall maintain proper documentation of the analysis and determination for future reference.
- (3) Re-classified Position. ORP employers shall re-classify a position as

ORP-eligible if changes in the position's responsibilities or the U.T. System institution's organizational structure result in a position that meets the ORP-eligibility criteria set out in this policy and procedures memorandum.

- (A) Option to Elect ORP. Each U.T. System institution shall provide the incumbent in a position that is re-classified as ORP-eligible an opportunity to elect ORP as if newly hired into the position.
- (B) Initial ORP Eligibility Date. The incumbent's initial ORP eligibility date, shall be the date that the re-classification is effective, unless the re-classification is retro-active to a prior month, in which case, the initial ORP eligibility date shall be the date that the employee is notified of the re-classification.

3.1.14 Administrative Errors

- (1) Orientation Procedures. Each U.T. System institution shall develop and implement effective orientation and enrollment procedures to ensure appropriate and timely processing of newly eligible employees' retirement plan choices.
- (2) Rectification. In the event an administrative error occurs which prevents the normal processing of an ORP-eligible employee's election, the U.T. System institution shall rectify the error as soon as practicable and in a manner that results in a situation that is as close to the originally expected outcome as possible, within applicable federal and state laws and rules.
- (3) Documentation and Prevention. When an administrative error occurs, the U.T. System institution shall:
 - (A) maintain documentation of the error and the actions taken by the U.T. System institution to address the problem, with a copy placed in the employee's personnel file; and
 - (B) immediately develop and implement appropriate administrative procedures to avoid such errors in the future.
- (4) Failure to Notify Error. If a U.T. System institution fails to notify an ORP-eligible employee of his or her eligible status on or before the employee's initial ORP eligibility date, the U.T. System institution shall notify the eligible employee as soon as the oversight is discovered. The 90-day ORP election period for the eligible employee shall begin on the date that the employee is notified and the

participation start date shall be determined in accordance with Section 3.1.6.

3.2. ORP Vesting and Participation

3.2.1 Vesting Requirement

An ORP participant shall be considered vested in ORP on the first day of the second year of active participation in ORP in lieu of TRS at one or more Texas public institutions of higher education.

- (1) Year Defined. For purposes of this subsection, a year shall mean twelve cumulative, but not necessarily consecutive, months of ORP participation.
- (2) Leave-without-Pay. A full calendar month of leave without pay shall not be included in the calculation of a year for vesting purposes.
- (3) Summer Credit. Because a year for academic faculty members does not normally include the three summer months, an academic faculty member shall be credited the three summer months toward vesting in ORP provided the faculty member is participating in ORP at the end of the spring semester immediately preceding the summer and resumes participation in an ORP-eligible position at the same or another Texas public institution of higher education at the beginning of the fall semester immediately following the same summer.
- (4) More than One Period of Employment. As provided in subsection 3.2.3 partial vesting credit shall be retained when there is a break in participation prior to satisfying the vesting requirement. Therefore, the vesting requirement may be satisfied during more than one period of participation.
- (5) Non-Texas ORP Plan. The vesting requirement may not be satisfied by prior enrollment, participation or vested status in any plan other than the Texas ORP plan authorized under *Texas Government Code*, Chapter 830.
- (6) Separate Vesting. Because the election of ORP in lieu of TRS at a Texas public institution of higher education and the election of ORP in lieu of ERS as the Texas Higher Education Coordinating Board (THECB) shall be considered separate and distinct elections, the vesting requirement for ORP in lieu of TRS may not be satisfied by previous participation or vested status in ORP in lieu of ERS at the THECB. The vesting requirement for ORP in lieu of ERS at the THECB may not be satisfied by previous participation or vested status

in ORP in lieu of TRS at a Texas public institution of higher education.

3.2.2 Once Vested, Always Vested

- (1) Only One Vesting Period. An ORP participant who satisfies the vesting requirement for ORP in lieu of TRS shall not be required to satisfy the vesting requirement again by any Texas public institution of higher education.
- (2) Withdrawal of ORP Funds has No Effect. A reemployed ORP participant's vested status shall not be affected by any partial or total withdrawals of ORP funds made after termination from a prior period of employment.

3.2.3 Partial Vesting Credit Retained

Unvested ORP participants shall retain partial vesting credit in the following circumstances.

- (1) Termination of Employment. An ORP participant who terminates employment in all Texas public institutions of higher education prior to satisfying the vesting requirement shall, upon returning to ORP-eligible employment with the same or a different Texas public institution of higher education, retain credit for previous ORP participation in lieu of TRS.
- (2) Leave-Without-Pay. An ORP participant who goes on leave without pay for a full calendar month or more prior to satisfying the vesting requirement shall, upon resuming active ORP participation with the same or a different Texas public institution of higher education, retain credit for previous ORP participation in lieu of TRS.
- (3) Direct Transfers. An ORP participant, who, prior to satisfying the vesting requirement, directly transfers from one ORP-eligible position to another at the same or a different Texas public institution of higher education, shall retain credit for previous ORP participation in lieu of TRS.
- (4) Withdrawal of ORP Funds has No Effect. An ORP participant's partial vesting credit shall not be affected by any partial or total withdrawals of ORP employee contributions made after termination of employment.

3.2.4 Benefits of Vested Status

- (1) Ownership Rights to Employer Contributions. A vested ORP participant shall have ownership rights to the employer contributions in his or her ORP accounts, meaning that, upon termination of employment with all ORP employers or reaching age 70-1/2, he or she may access both the employee and employer contributions (and any net earnings) in his or her ORP accounts.
- (2) ORP Participation while in Non-ORP-Eligible Position. A vested ORP participant shall remain in ORP even if subsequently employed in a position that is not ORP-eligible.

3.2.5 Unvested ORP Employer Contributions Forfeited

An ORP participant who terminates employment prior to meeting the vesting requirement shall forfeit all ORP employer contributions made during that period of employment. Except as provided in subsection 3.3.1(11)(F), forfeited funds shall not be recoverable, even if the participant later satisfies the vesting requirement in a subsequent period of ORP-eligible employment. Such a participant shall be considered vested only in ORP employer contributions made during the subsequent and any future employment periods.

3.2.6 Employment in a non-ORP-Eligible Position

An ORP participant who terminates employment in an ORP-eligible position and becomes employed in a position that is not eligible for ORP, but is eligible for TRS participation, shall remain in ORP or become a member of TRS in accordance with the following provisions.

- (1) Not Vested in ORP. An ORP participant who terminates employment in an ORP-eligible position prior to satisfying the ORP vesting requirement and who becomes employed in a position that is not eligible for ORP, but is eligible for TRS membership, shall become a member of TRS, and shall thereafter be ineligible to participate in ORP in lieu of TRS, even if subsequently employed in an ORP-eligible position and/or if membership in TRS is canceled through a withdrawal of employee contributions.

An ORP participant who elected ORP in lieu of TRS, who has not satisfied the ORP vesting requirement, who terminates employment in an ORP-eligible position, and who becomes employed with the same or another U.T. System institution or other Texas public institution of higher education in a position that is not eligible for ORP, but is eligible for TRS, shall become a member of TRS for the remainder of his or her employment with any Texas public institution of higher education. This individual shall never be eligible to participate in ORP in lieu of TRS again, even if subsequently employed in an ORP-

eligible position at the same or another Texas public institution of higher education and/or if the individual cancels his or her TRS membership by withdrawal of employee contributions.

- (2) Vested in ORP. An ORP participant who terminates employment in an ORP-eligible position after satisfying the ORP vesting requirement and who becomes employed in a position that is not eligible for ORP but is eligible for TRS, shall remain in ORP unless he or she became an active TRS member during a break in service prior to employment in the non-ORP-eligible position, in which case, he or she shall never be eligible for ORP in lieu of TRS again, even if subsequently employed in an ORP-eligible position and/or if membership in TRS was canceled through a withdrawal of employee contributions.

An ORP participant who has vested in ORP in lieu of TRS, who terminates employment in an ORP-eligible position, and who subsequently becomes employed with any Texas public institution of higher education in a position that is not ORP-eligible, but is TRS-eligible, shall continue to participate in ORP and shall not be eligible for TRS membership, unless he or she terminates employment with all Texas public institutions of higher education and becomes employed in a TRS-eligible position with the Texas public school system (*e.g.*, Independent School Districts, regional educational service centers) or any other Texas public educational institution or agency that is covered by TRS but does not offer ORP in lieu of TRS, which will require the participant to become a member of TRS. Such an individual (*i.e.*, one who has had active TRS membership since terminating ORP participation), upon becoming subsequently reemployed with any Texas public institution of higher education:

- (A) shall not resume participation in ORP; and
- (B) shall not thereafter be eligible to participate in ORP in lieu of TRS ever again, regardless of the individual's previous ORP vested status, employment in an ORP-eligible position, or if the individual's TRS membership was canceled by withdrawal of employee contributions following termination of employment from the TRS-covered position.

3.2.7 Employment in a Non-Benefits-Eligible Position

An employee who elected ORP in lieu of TRS and who terminates employment in the ORP-eligible position and becomes employed with the same institution or another Texas public institution of higher education in a non-benefits-eligible position shall not be eligible to participate in ORP (*i.e.*, have contributions sent to the ORP vendor) for the period of time while

employed in the non-benefits-eligible position.

An employee who is participating in ORP at one institution of higher education and who simultaneously becomes employed at another institution in a non-benefits-eligible position is not eligible to participate in ORP at the institution in which he or she is employed in a non-benefits-eligible position.

- (1) Definition. For purposes of this subsection, a non-benefits-eligible position shall be defined as a position that is one or more of the following:
 - (A) less than 50 percent effort;
 - (B) expected to last less than a full semester or a period of four and one-half months (*i.e.*, temporary); or
 - (C) requires student status as a condition of employment.
- (2) Combining of Percent Effort at Different Institutions Not Permitted. When calculating an employee's percent effort to determine whether a position is benefits-eligible as provided in this subsection, a U.T. System institution shall include only the individual's employment with that U.T. System institution, unless the employee is simultaneously employed with more than one U.T. System institution. In this case, the employee's percent effort at each U.T. System institution may be combined to meet the minimum 50 percent effort requirement.
- (3) Regardless of Vested Status. An employee shall not be eligible to participate in ORP while employed in a non-benefits-eligible position regardless of his or her ORP vested status.
- (4) No Effect on ORP Eligibility. Because a non-benefits-eligible position is not eligible for TRS, employment in a non-benefits-eligible position normally shall have no effect on an employee's ORP eligibility status upon his or her subsequent return to a benefits-eligible position, regardless of vested status.

3.2.8 TRS Membership after ORP Vesting

A vested ORP participant shall not be eligible for active membership in TRS unless he or she terminates all employment with the ORP employer and becomes employed in a position that is eligible for TRS with an employer that does not offer ORP. A vested ORP participant who elected ORP in lieu of TRS shall not be thereafter eligible for TRS membership, unless he or she terminates employment with all Texas public institutions of higher education and becomes employed in a TRS-eligible position with the Texas public

school system (*e.g.*, Independent School Districts, regional educational service centers) or any other Texas public educational institution or agency that is covered by TRS but does not offer ORP in lieu of TRS, which will require the participant to become a member of TRS. Such an individual, upon becoming subsequently reemployed with any Texas public institution of higher education:

- (1) shall not resume participation in ORP; and
- (2) shall not thereafter be eligible to participate in ORP in lieu of TRS ever again, regardless of the individual's previous ORP vested status, employment in an ORP-eligible position, or if the individual's TRS membership was canceled by withdrawal of employee contributions following termination of employment from the TRS-covered position.

3.2.9 ORP Retirees Not Eligible to Participate

ORP retirees, who later return to employment with the same or another Texas public institution of higher education, shall not be eligible to participate in ORP, with the following exceptions:

- (1) ORP retirees who enrolled in retiree group insurance on or before June 1, 1997;
- (2) employees who elected ORP in lieu of ERS at the THECB and who, after terminating employment with the Board and enrolling in retiree group insurance as an ORP retiree from the THECB, subsequently become employed in an ORP-eligible position at a Texas public institution of higher education;
- (3) employees who elected ORP in lieu of TRS at a Texas public institution of higher education and who, after terminating employment with all Texas public institutions of higher education and enrolling in retiree group insurance as an ORP retiree from a Texas public institution of higher education, subsequently become employed in an ORP-eligible position at the THECB; and
- (4) ORP retirees who enroll in retiree group insurance as part of a phased retirement program.
 - (A) Definition. For the purposes of this subsection, a phased retirement program shall be a locally designed option that is offered by a U.T. System institution as a means of transitioning active employees to retired status through a contractual agreement that requires the employee to meet certain milestones during the contractual period, which is typically one

or two years, such as a reduction in percentage of effort and/or enrollment in retiree group insurance prior to termination of employment. At the end of the contractual period, the employee is considered to be in a retired status for all purposes.

(B) Exemption. ORP participants who are covered by a phased retirement program agreement shall remain eligible for ORP contributions during the contractual period as long as they maintain at least 50 percent effort, even after they are required to enroll in retiree group insurance as an ORP retiree. Once the contractual period has expired, the participant shall no longer be exempt from the provisions of this subsection.

(5) ORP retirees who meet the exceptions described in paragraphs (1) through (4) of this subsection shall not be considered eligible to participate in ORP or elect ORP in lieu of TRS from which they did not retire unless they meet the same eligibility criteria as employees who have not established ORP retiree status.

3.2.10 Termination of Participation

An employee shall terminate participation in ORP only upon death, retirement (including disability retirement), or termination of employment with all Texas public institutions of higher education.

(1) Employment Transfer is not a Termination. A participant's transfer of employment between U.T. System institutions or other Texas public institutions of higher education without a break in service shall not be considered a termination of employment for ORP purposes, unless the new position is non-benefits-eligible, as defined in subsection 3.2.7 of this section.

(2) Transfer of Funds is not a Termination. A transfer of ORP funds between ORP accounts or ORP vendors shall not be considered a termination of employment for ORP purposes.

3.3. Uniform Administration of ORP

3.3.1 Contributions

(1) Tax-Deferred. All ORP contributions shall be made on a tax-deferred basis.

(2) IRS Limits on Defined Contributions. Contributions to a participant's ORP account shall not exceed the maximum amount allowed under §415(c) of the *Internal Revenue Code of 1986*, as amended.

- (A) 415(m) Plan. U.T. System institutions participate in The University of Texas System Governmental Retirement Arrangement (UTGRA), a governmental excess benefit plan authorized under Internal Revenue Code Section 415(m) and Section 830.004 of the *Texas Government Code* that provides eligible participants of the ORP that portion of a participant's benefits that would otherwise be payable under the terms of ORP except for the limitations on benefits imposed by Section 415 of the Internal Revenue Code. For employees eligible to participate in UTGRA, UTGRA contributions are not subject to the 415(c) limits on retirement contributions.
 - (B) Interaction with UTSaver TSA Program. An employee's contributions to the U.T. System voluntary, supplemental UTSaver Tax-Sheltered Annuity Program (UTSaver TSA) shall be included in the calculation of the 415(c) limit.
- (3) No Co-Mingling of ORP and non-ORP Funds.
- (A) No Non-Texas ORP Funds. No non-Texas ORP funds may be rolled over or transferred to an ORP account prior to the participant's termination of ORP participation.
 - (B) No UTSaver TSA Funds. Amounts that have been contributed by the participant through the UTSaver Tax-Sheltered Annuity Program (UTSaver TSA) may not be rolled over or transferred to an ORP account prior to the earlier of the participant's termination of ORP participation.
 - (C) Currently Authorized ORP Vendor. ORP contributions may only be made to a currently authorized ORP vendor or with a currently grandfathered ORP vendor of the U.T. System. An employee who contributes to a grandfathered vendor and who experiences a break in service other than a routine semester break in service or who begins participation with a currently authorized ORP vendor must thereafter participate with a currently authorized ORP vendor.
- (4) No Dual Contributions. A contribution to TRS and to an ORP vendor within the same calendar month shall not be permitted, except when a person terminates employment in a position covered by the TRS and, prior to the end of the calendar month in which the termination occurs, becomes employed in an ORP-eligible position at a different ORP employer and elects to participate in ORP in such manner that the ORP participation start date is prior to the end of that same calendar month.

- (5) Eligible Compensation.
- (A) Definition. For purposes of determining the amount of a participant's ORP contribution, institutions shall use the same definition of eligible compensation that is used for TRS members in §821.001 of the *Texas Government Code*.
- (B) IRS Limits. The maximum amount of salary that can be taken into account for ORP purposes shall not exceed the limits established by §401(a) (17) of the *Internal Revenue Code of 1986*, as amended. An individual who first participated in ORP prior to September 1, 1996, regardless of a subsequent break in service, shall qualify for the "grandfathered" rate established by IRC §401(a)(17).
- (6) Contribution Rates. The amount of each participant's ORP employer contribution shall be a percentage of the participant's eligible compensation as established by the ORP statute, the General Appropriations Act for each biennium, and the U.T. System Board of Regents. Each contribution shall include an amount based on the employee rate and an amount based on the employer rate.
- (A) Employee Rate. The employee contribution rate shall neither exceed nor be less than the rate established in the ORP statute for employee contributions (currently 6.65 percent).
- (B) ORP Employer Contribution Rate. The ORP employer contribution rate shall consist of a state base rate (minimum), as established each biennium in the General Appropriations Act, and an optional supplemental rate, as provided in Section 3.3.1(6)(C) below.
- (C) Supplemental Employer Rate. Each U.T. System institution may provide a supplement to the state base rate under the following conditions:
- (i) Amount of Supplemental Rate. The supplemental rate may be any amount that, when added to the state base rate (currently 6.58 percent), does not exceed the maximum employer rate established in the ORP statute (currently 8.5 percent).
- (ii) U.T. System institution Policies. Each U.T. System institution may recommend to the U.T. System Board of Regents prior to the beginning of each fiscal year a

supplemental rate between zero percent and the maximum employer rate in the ORP statute for both grandfathered and non-grandfathered participants.

- (iii) Annual Determination. The U.T. System Board of Regents shall determine the amount of the supplemental rate for each U.T. System institution once per year, to be effective for the entire year.
- (iv) Option 1 – All Participants. U.T. System institutions may recommend the same supplemental rate to all ORP participants, regardless of the participant’s first date of participation in ORP or a break in service. If this method is selected and approved by the U.T. System Board of Regents, each ORP participant shall receive the same supplemental rate as every other participant.
- (v) Option 2 – Two Groups. Each U.T. System institution may recommend two different supplemental rates based on a participant’s first date of participation in ORP, as follows:
 - (a) Grandfathered. Each participant whose first date to participate in ORP in lieu of TRS at any Texas ORP employer, is prior to September 1, 1995, shall receive the same supplemental rate as other participants in this group, regardless of any break in service. This group of participants shall be referred to as the grandfathered group.
 - (b) Non-Grandfathered. Each participant whose first date to participate in ORP in lieu of TRS at any ORP employer is on or after September 1, 1995, shall receive the same supplemental rate as other participants in this group, regardless of any break in service. This group of participants shall be referred to as the non-grandfathered group.
- (vi) Transfers Between U.T. System institutions with Different ORP Employer Contribution Rates. In the event that a U.T. System employee transfers between U.T. System institutions with different supplemental rates, the transferring employee shall receive the supplemental rate provided to other comparable participants at the U.T. System institution to which the

employee transfers.

- (7) Proportionality.
- (A) ORP Employers Other than Community Colleges. U.T. System institutions and other Texas public institutions of higher education shall pay ORP employer contributions on a proportionate basis from the same funding source that a participant's salary is paid. General Revenue funds may only be used for ORP employer contributions for the portion of a participant's salary that is actually paid with General Revenue.
 - (B) Not Applicable to Supplemental Employer Contributions. The proportionality provisions do not apply to supplemental employer contributions that a U.T. System institution may make.
- (8) Three-Day Submission Deadline. U.T. System institutions shall send ORP contributions to the ORP vendor within three business days of legal availability, except for contributions made on a supplemental payroll or contributions that are sent to a previously authorized ORP vendor with less than 50 participants.
- (A) Legal Availability. Contributions shall generally be considered legally available on payday. For U.T. System institutions that normally pay participants on a twice-monthly basis, the three-day minimum shall apply to each payday in the month.
 - (B) Previously authorized ORP Vendor. For purposes of this paragraph, a previously authorized ORP vendor shall be an ORP vendor that is no longer a U.T. System currently authorized ORP vendor, but that continues to receive ORP contributions for certain participants.
 - (C) Exception Deadline. Contributions excepted from the three day submission deadline shall be sent to the ORP vendor as soon as practicable, but not later than 10 business days after they are legally available.
- (9) Electronic Funds Transfer (EFT).
- (A) Requirement. U.T. System institutions shall send all ORP contributions, including contributions based on a supplemental payroll and contributions sent to a previously authorized ORP vendor, to each ORP vendor through the UTRetirement Manager. The UTRetirement Manager shall then transmit all

remittances by electronic funds transfer (EFT) to each ORP vendor currently able to receive funds by EFT.

(B) Inability to Receive. If an ORP vendor is unable to receive funds by EFT, the UTRetirement Manager shall send contributions to the ORP vendor by check and U.T. System shall provide the following notifications.

(i) Certification. U.T. System shall certify to the THECB on the U.T. System annual ORP report that the previously authorized ORP vendor is unable to receive funds by EFT.

(ii) Participant Notification. At least once per fiscal year, U.T. System shall provide notice to each participant indicating which ORP vendors are unable to receive funds by EFT.

(10) Same-Day Credit. ORP vendors shall deposit each participant's ORP contributions into the accounts and/or funds designated by the participant effective on the same day that the contributions are received by the ORP vendor. An ORP vendor that does not comply with this provision shall not be eligible to be authorized as an ORP vendor.

(11) Forfeited ORP Employer Contributions. If a participant forfeits ORP employer contributions, the U.T. System institution shall return the forfeited contributions to the originating fund in accordance with the following procedures.

(A) 93-Day Deadline for Request. Not later than 93 calendar days after the last day of the calendar month in which an unvested participant terminates all employment with all ORP employers, a U.T. System institution shall send a request, known as a Vesting/Termination Status letter, to the ORP vendor or vendors for a return of the ORP employer contributions that were sent to the ORP vendor or vendors for that participant during that period of employment.

(i) 93 Days is Outside Limit. A U.T. System institution may send the request for forfeited ORP employer contributions immediately upon a participant's termination if the U.T. System institution has knowledge that the participant has not become employed and is not anticipating becoming employed in a position that is eligible for Texas ORP in lieu of TRS

at the same or another ORP employer within the 93-day period.

(ii) If Deadline is Missed. If the U.T. System institution fails to request the forfeited amounts within the 93-day deadline, then the U.T. System institution shall make the request immediately upon discovering the oversight, even if the participant later resumes participation after the 93-day deadline as described in 3.3.1(11)(B) below.

(B) If Participant Returns After 93 Days. If an unvested participant returns to employment that is eligible for ORP in lieu of TRS at the same or another Texas ORP employer and resumes active participation on a date that is more than 93 calendar days after the last day of the calendar month in which he or she previously terminated participation, the participant's unvested ORP employer contributions from the prior period of employment shall still be forfeited, even if the participant subsequently satisfies the vesting requirement.

(C) Forfeited Amount. The forfeited amount shall be the actual amount of ORP employer contributions sent to the participant's ORP accounts during his or her current period of employment.

(i) Excess Amounts not Included. The forfeited amount shall not include any amounts in the participant's ORP account in excess of the actual ORP employer contributions that are attributable to net earnings.

(ii) If Account is Less than Actual Amount. The entire amount of actual ORP employer contributions shall be returned even if the account balance is less than the amount of the actual ORP employer contributions because of investment loss, transfer, or other occurrence or transaction.

(a) The ORP vendor shall be responsible for covering any loss of unvested ORP employer contributions, so that the entire amount of actual ORP employer contributions is returned to the ORP employer upon request.

(b) Certification. Before an ORP vendor is eligible to receive ORP contributions from unvested participants, the ORP vendor must certify that the entire amount of actual unvested ORP

employer contributions will be returned upon request. The ORP vendor must indicate what method will be used, for example, restriction of unvested funds to money market or similar accounts.

- (D) ORP Vendor Response Deadline. Within 30 days of receiving a U.T. System institution request for a return of unvested ORP employer contributions, the ORP vendor shall:
 - (i) process a reimbursement to the U.T. System institution; and
 - (ii) send notification of the transaction to the employee indicating the reason for the reduction in the account balance.
- (E) Deposit into Originating Fund. The U.T. System institution shall deposit the reimbursed ORP employer contributions into the originating fund or funds in accordance with instructions from the Texas Comptroller of Public Accounts and any other applicable policies and procedures.
- (F) Resumption of Participation within 93 Days.
 - (i) If unvested ORP employer contributions are returned to the originating fund when the participant did, in fact, resume ORP participation in lieu of the same retirement system at the same or another Texas ORP employer within 93 calendar days of the last day of the calendar month in which the termination of participation occurred, the U.T. System institution that requested the reimbursement shall, immediately upon being notified of the employee's resumption of participation, return the reimbursed amount to the ORP vendor for re-deposit into the participant's account.
 - (ii) The Texas ORP employer with which the participant resumes participation, if not the U.T. System institution that requested the reimbursement, shall notify the U.T. System institution that requested the reimbursement of the participant's status as soon as practicable after the participant resumes participation.
 - (iii) The entire amount of actual ORP employer contributions that were returned to the originating fund

under the provisions in this paragraph shall be sent back to the ORP vendor. There shall be no allowance for any earnings or losses on the ORP employer contributions that may have accrued during the time that the amounts were not in the participant's account.

3.3.2 Withdrawal of Retirement System Funds

An employee who elects to participate in ORP may withdraw any employee contributions (plus accrued interest, if any) that he or she may have accumulated in TRS prior to the election of ORP.

3.3.3 ORP Vendors

- (1) Currently authorized ORP vendors. The U.T. System shall maintain a list of currently authorized ORP vendors authorized to provide ORP products to U.T. System institution ORP participants.
- (2) Participant's Change of ORP Vendors.
 - (A) One Opportunity per Month. Each U.T. System institution shall provide ORP participants with at least a monthly opportunity to change ORP vendors from among the U.T. System list of currently authorized ORP vendors. Additionally, employees may participate concurrently with more than one ORP vendor.
 - (B) Contribution Remittance after Payroll Period. The U.T. System institution shall start sending the participant's ORP contributions to his or her newly selected ORP vendor(s) beginning with the next payroll period.
 - (C) Prior Contributions. Amounts contributed by the participant to previously authorized ORP vendors, including ORP contributions made during prior periods of employment with the same or another U.T. System institution or another Texas public institution of higher education, shall be under the same statutory distribution restrictions as the contributions in the participant's account with his or her newly selected currently authorized ORP vendor.
 - (D) Transfers of Prior Contributions. Participants may transfer ORP funds that were contributed during the current or prior periods of employment with the same or another U.T. System institution or other Texas ORP employer to another ORP vendor, but only to another currently authorized ORP vendor of

the U.T. System.

- (E) Transfer Procedures. All transfers of ORP funds must be accompanied by the completion of the Transfer Verification form and processing by the U.T. System institution benefits office.
- (F) Previously Authorized ORP Vendor Participation. A U.T. System participant may retain any active or inactive account with any previously authorized ORP vendor and is not required to transfer monies from it to a currently authorized ORP vendor. A U.T. System participant may not contribute to an account with an ORP vendor that is not a currently authorized ORP vendor unless he or she is grandfathered, as defined in 3.3.1(3)(C).
- (G) Transfer Options. A participant may transfer funds from either active or inactive accounts with any previously authorized ORP vendor to any currently authorized ORP vendor.
- (H) Transfer Prohibition. A participant may not transfer ORP funds to any vendor that is not a currently authorized ORP vendor of the U.T. System.
- (I) Transfer Limits. A participant may transfer from one ORP vendor to another more than once every 90 days, without limitation.
- (J) Exception for Account Consolidation Prior to Retirement. At retirement, a participant may transfer funds from or to any currently or previously authorized ORP vendor, if he or she has an active account with the ORP vendor and states that the fund transfers are for the purpose of account consolidation for retirement and annuitization.

3.3.4 Solicitation Practices at U.T. System Institutions.

Currently authorized ORP vendors may sell ORP products to participants subject to the terms and conditions contained in the U.T. System Regents' *Rules and Regulations*. All ORP vendors, ORP vendor representatives, participants, and investment advisors must comply with the provisions of the Regents' *Rules and Regulations* and other U.T. System and U.T. System institutional policies applicable to ORP. The U.T. System institutional Human Resources Officer or his or her designee may invite ORP vendors to campuses to conduct educational seminars that may include marketing and sales presentations. Representatives of ORP vendors and investment advisors

may not make in-person, promotional cold-calls on employees. In addition, promotional telephone calls to employees must not interfere with the academic or institutional programs and activities of the U.T. System institution. ORP vendor representatives and investment advisors may not utilize the institutional internal mail or electronic mail system for solicitation purposes.

(1) Sales Presentations. Representatives from currently authorized ORP vendors and investment advisors shall be permitted to make sales presentations to ORP-eligible employees on the U.T. System institution's premises, under the following conditions

(A) Only at the Employee's Request. Individual employees may request that an ORP vendor representative or investment advisor provide information about proposed plans or coverages to them during working hours. However, such presentations must not interfere or disturb the normal business of the U.T. System institution.

(B) As a Guest of the Employee and U.T. System Institution.

(i) in compliance with the Regents' *Rules and Regulations* related to sales solicitation and any applicable policies and procedures of the U.T. System institution;

(ii) provided the representative representing a currently authorized ORP vendor has completed and signed a Sales Solicitation Agreement with the U.T. System and a copy of the agreement is on file with the currently authorized ORP vendor and with the U.T. System Office of Employee Benefits;

(iii) all sales and presentation activity is in conformity with the U.T. System institution's policies and procedures; and

(iv) Any meetings to disseminate information about ORP are to be sponsored by either the U.T. System or a U.T. System institution.

(C) Prohibited Gifts. No ORP vendor representative or investment advisor shall provide gifts or monetary rewards directly or indirectly to any employee of the U.T. System for information on newly eligible employees. Any employee providing confidential information to an ORP vendor representative or investment advisor without authorization may be subject to

disciplinary action up to and including termination from employment.

- (D) Notification of Violations. All U.T. System institutions shall report violations of these provisions to the ORP vendor and the U.T. System Office of Employee Benefits. Upon receipt of a report of violations of these provisions by the U. T. System Office of Employee Benefits, as soon as practicable, the U. T. System Office of Employee Benefits will send a written notification to the ORP vendor representative or investment advisor as well as the ORP vendor whose products are being sold by this investment advisor of the violation.

- (E) Disqualification. ORP vendor representatives and investment advisors found to have willfully or repeatedly violated these Regents' *Rules and Regulations* may be disqualified from any sales or related activity at the U.T. System or at any U.T. System institution, at the discretion of the U.T. System Office of Employee Benefits. Multiple violations of these provisions by representatives of an ORP vendor may result in removal of the ORP vendor from the U.T. System currently authorized ORP vendor list. Multiple violations of these provisions by an investment advisor may result in disciplinary action, up to and including revocation of the investment advisor's privilege to solicit on U. T. System campuses.

3.3.5 Investment Advisory Fees.

Participants may pay certain investment advisory fees with tax-deferred funds in their ORP account in accordance with the following conditions.

- (1) Investment advisory fees may only be paid with amounts in a participant's ORP account in accordance with the following provisions.
 - (A) The investment advisory fees for each fiscal year shall not exceed two percent of the annual value of the participant's account as of the last day of that fiscal year.
 - (B) The fees shall be paid directly to a registered investment advisor that provides advice to the participant.
 - (C) The investment advisor to whom the fees are paid shall be registered with the Securities and Exchange Commission and any other applicable federal or state agencies, and shall be engaged full-time in the business of providing investment

advice.

- (D) The participant and the investment advisor shall enter into a contract for a term of no more than one year. A contract that automatically renews each year shall be considered acceptable as long as both parties have the right to sever the relationship, with reasonable notification, at any time.
- (2) A U.T. System institution shall not prohibit participants from utilizing this right and shall not restrict the payment percentage to less than two percent. No U.T. System institution personnel shall sign a form that actually authorizes the payments because that is a relationship between the advisor, the participant and the ORP vendor.
- (3) Investment Advisory Agreement Between Participant and Investment Advisor. An investment advisory contract is deemed to be between the participant and the investment advisor. No U.T. System institution representative will participate in or sign any agreement, authorization, or other document pertaining to investment advisory agreements. No U.T. System institution representative will provide investment advice to participants nor make recommendations with regard to investment advisory agreements or advisors. A decision on investment advisory services is strictly the responsibility of the participant.

3.3.6 Distributions

(1) Distributions Due to Termination or reaching age 70-1/2. Participants who terminate all employment with all ORP employers or who reach age 70 ½ years may elect to receive a distribution of funds or to retain an ORP account or roll the account as an eligible rollover distribution directly to an eligible retirement plan as specified by the participant in a direct rollover. Rollovers are subject to the approval of the receiving vendor or plan. Income tax must be paid on any distributed amount from the ORP accounts

(2) Direct Rollover Distributions. A participant or the beneficiary of a deceased participant (or a participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in Section 402(c)(4) of the Code) from the ORP paid directly to an eligible retirement plan (as defined in Section 402(8)(B) of the Code) specified by the participant in a direct rollover. An eligible rollover distribution from an ORP account to a Roth IRA applies only to qualified rollover distributions (as defined in Section 408A(e)(2) of the Code) on or after January 1, 2008. In the case of a distribution on or after January 1, 2008, to a beneficiary who at the time of the participant's death was neither the spouse of the participant nor the spouse or

former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the beneficiary as an inherited IRA (within the meaning of Section 408(d)(3)(C) of the Code). Each ORP vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the participant or beneficiary of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

3.3.7 Distribution Restrictions.

(1) Restricted Access.

(A) No Pre-Termination Access unless Age 70-1/2. ORP participants shall not access any of their ORP funds by any means until the earlier of the date that they:

- (i) terminate all employment with all ORP employers; or
- (ii) reach age 70-1/2 years.

(B) No Loans or Hardship Withdrawals.

- (i) Loans, financial hardship withdrawals, or any other method that provides a participant with any type of access to ORP funds prior to the earlier of termination of employment or attainment of age 70-1/2 are not permitted.
- (ii) ORP products may provide for loans or hardship withdrawals after the participant's termination of employment or attainment of age 70-1/2, if permissible under applicable laws and regulations.

(C) Previously Contributed Amounts. ORP contributions made during prior periods of employment with the same or another ORP employer and ORP contributions made to previously selected ORP companies with the current ORP employer shall be under the same statutory distribution restrictions as the contributions in the participant's current active account.

(D) Employment Transfer is not a Termination. A participant's transfer of employment between Texas public institutions of higher education without a break in service is not considered a

termination of employment for ORP purposes, unless the new position is non-benefits-eligible.

- (E) Transfer of Funds is not a Termination. A transfer of ORP funds between ORP accounts or ORP companies is not considered a termination of employment for ORP purposes.
 - (F) Simultaneous Contributions and Withdrawals. An ORP participant shall not simultaneously make ORP contributions and withdraw funds from ORP accounts unless that participant is at least age 70-1/2.
- (2) Authorization to Release ORP Funds. An ORP vendor shall not release any ORP funds to a participant until receipt of a Vesting/Termination Status letter from the participant's U.T. System institution that a break in service has occurred, except when the participant has reached age 70-1/2, in which case, the ORP vendor may release funds upon verification that the participant has reached age 70-1/2.
- (A) Unvested Participants. If a participant terminates prior to meeting the vesting requirement, the U.T. System institution's notification shall include a request for the return of the participant's forfeited ORP employer contributions
 - (B) Vested Participants. If a participant terminates after meeting the vesting requirement, all funds shall be available in accordance with applicable federal law and contractual provisions, but non-ORP-related early withdrawal penalties, such as additional federal income taxes or contractual surrender fees, may apply depending on factors such as the participant's product selection and age at termination.
- (3) Prohibited Distribution by ORP Vendor. If an ORP vendor provides a participant with any access to ORP funds prior to the earlier of the participant's termination of employment with all ORP employers or attainment of age 70-1/2, the ORP vendor shall be responsible for making a prohibited distribution and the following provisions apply.
- (A) Redeposit. The U.T. System institution shall require the ORP vendor to:
 - (i) redeposit funds to the employee's ORP account as if no withdrawal had been made; and
 - (ii) provide written verification to the U.T. System

institution that the accounts have been fully restored with no adverse impact to the employee.

- (B) ORP Vendor Suspension. U.T. System may suspend an ORP vendor from doing further business with U.T. System if the ORP vendor fails to comply with the Redeposit provisions above.
 - (C) Separate Transaction Not Related to ORP. A prohibited distribution, such as a loan that is not authorized under the ORP statute, is not related to ORP and shall be treated as a separate transaction between the ORP vendor and the participant, for example, as an unsecured loan.
- (4) Qualified Domestic Relations Orders (QDROs). Each ORP vendor is solely responsible for determining whether a domestic relations order is qualified and payable in accordance with *Texas Government Code*, Chapter 804. All ORP participants and alternate payees must contact the respective ORP vendors directly to file the necessary forms to process QDROs.

3.3.8 Required Notices to Employees.

- (1) Basic Information for Newly Eligible Employees. On or before an ORP-eligible employee's initial ORP eligibility date, which is the first day of his or her 90-day ORP election period, each U.T. System institution shall provide the ORP-eligible employee with written introductory information on ORP developed by the Board and titled, "An Overview of TRS and ORP for Employees Eligible to Elect ORP."
- (A) Uniform and Unbiased. The purpose of this notification requirement is to ensure that all employees who become eligible to elect ORP are provided general, uniform and unbiased information on which to base their decision.
 - (B) Electronic Notification. A U.T. System institution may meet this notification requirement by:
 - (i) placing on its website the electronic version of the Overview document that is provided by THECB, and/or placing a link on its website to the Overview document that is available on the THECB website;
 - (ii) providing the ORP-eligible employee with local internet/intranet access to the electronic version of the

document or link; and

(iii) within the required timeframe, notifying the ORP-eligible employee in writing of the location of the electronic version or link.

(C) ORP Election Period Dates. Each U.T. System institution shall, within 15 business days of an ORP-eligible employee's initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the U. T. System procedures for selection of ORP.

(2) Participant's ORP Responsibilities. On or before an ORP-eligible employee's initial ORP eligibility date, which is the first day of his or her 90-day ORP election period, each U.T. System institution shall provide written notification to the ORP-eligible employee that:

(A) an election of ORP entails certain responsibilities for the employee, including selection and monitoring of ORP companies and investments; and

(B) neither the U.T. System nor any U.T. System institution has any fiduciary responsibility for the market value of a participant's ORP investments or for the financial stability of the ORP vendor(s) chosen by the participant.

4. DEFINITIONS

The following words and terms shall have the following meanings, unless indicated otherwise:

(1) Active Participation. Period of employment during which an ORP participant makes regular ORP contributions through payroll salary reduction based on the statutory percentage of the employee's salary earned during that period, which along with the matching employer contributions, are sent by the U.T. System institution to a currently authorized ORP vendor or previously authorized ORP vendor. A faculty member who is not employed by a Texas public institution of higher education during the three summer months but who was participating in ORP at the end of the spring semester immediately preceding the summer and who resumes ORP participation with the same or another U.T. System or other Texas public institution of higher education in the fall semester immediately following that summer shall be considered an active participant during the three summer months.

- (2) Applicable Retirement System. The Teacher Retirement System of Texas for employees of U.T. System institutions or other Texas public institutions of higher education.
- (3) Break in Service. A period following a participant's termination of all employment with all Texas public institutions of higher education that is at least one full calendar month in which no ORP contribution is made, excluding the three summer months for faculty members who were participating in ORP at the end of the spring semester immediately preceding the summer and who resume ORP participation with the same U.T. System institution or another Texas public institution of higher education in the fall semester immediately following that summer, and excluding periods of leave-without-pay. A transfer between Texas public institutions of higher education with less than a full calendar month in which no ORP contribution is made shall not be considered a break in service.
- (4) Currently Authorized ORP Vendor. Companies that are currently authorized by the U.T. System to provide ORP products and services to participants in the program.
- (5) Full-time. For purposes of determining initial ORP eligibility, the term "full-time" shall mean employment for the standard full-time workload established by the U.T. System institution ("100 percent effort") at a rate comparable to the rate of compensation for other persons in similar positions for a definite period of four and one-half months or a full semester of more than four calendar months.
- (6) Initial ORP Eligibility Date. The first day of an ORP-eligible employee's 90-day ORP election period. For employees of a Texas public institution of higher education, the initial ORP eligibility date shall be the first day of employment in an ORP-eligible position.
- (7) Initial ORP Eligibility Period. The period of time beginning with the first date of employment in an ORP-eligible position that is expected to be 100 percent effort for a period of at least one full semester or four and one-half months.
- (8) Investment Advisory Contract. An agreement between an ORP participant and a registered investment advisor in which the fee for such service is paid from the ORP account, and which meets the requirements of Section 830.107 of the *Texas Government Code*.
- (9) Major Department Requirement. One of the factors used to determine whether a position is ORP-eligible in the "Other Key Administrator".

A department or budget entity at a U.T. System institution shall meet this requirement if:

- (A) the department or budget entity is considered a “major” department by the institution based on the specific organizational size and structure of that institution; and
 - (B) the department or budget entity has its own budget, policies and programs.
- (10) Texas Public Institution of Higher Education. Any public institution of higher education as defined in Section 61.003 (8) of the Texas Education Code.
- (11) ORP. The Optional Retirement Program as administered by the U.T. System for and on behalf of its participating employees in accordance with Chapter 830 of the *Texas Government Code* and 19 *Texas Administrative Code* Chapter 25.
- (12) ORP Election Period. The period of time during which ORP-eligible employees have a once-per-lifetime, irrevocable opportunity to elect to participate in ORP in lieu of participation in TRS. The ORP election period shall begin on an employee’s initial ORP eligibility date, as defined in paragraph (7) of this section, and shall end on the earlier of:
- (A) the date the employee makes an ORP election; or
 - (B) the 90th calendar day after the employee’s initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first working day after the 90th calendar day.
- (13) ORP Retiree. An individual who participated in ORP while employed with the U.T. System or another Texas public institution of higher education and who established retiree status by meeting the applicable retiree insurance requirements and enrolling in retiree group insurance provided by the U.T. System or another public insurance provider, regardless of whether currently enrolled.
- (14) Principal Activity Requirement. One of the factors used to determine whether a position is ORP-eligible based on the percent of effort required by the position to be devoted to ORP-eligible duties. The principal activity requirement shall be met if at least 51 percent of the position’s duties are devoted to ORP-eligible duties in one of the ORP-

eligible categories, with two exceptions:

- (A) During Initial ORP Eligibility Period. During an employee's initial ORP eligibility period (when the position is required to be 100 percent effort to qualify as ORP-eligible), if the ORP-eligible duties associated with an ORP-eligible category are less than 51 percent of the activities for a particular position, the position shall be considered to meet the principal activity requirement if all of the position's other duties are ORP-eligible duties as provided in Section 3.1.10, for a total of 100 percent effort devoted to ORP-eligible duties, as would be the case, for example, for a position with required duties that are 50 percent instruction and/or research (faculty position) and 50 percent department chair (faculty administrator position).
- (B) After Initial ORP Eligibility Period. For a participant who has completed the initial ORP eligibility period but who has not vested in ORP and who fills a position that is less than 100 percent effort but at least 50 percent effort, then the principal activity requirement shall be considered met if at least 50 percent effort is devoted to applicable ORP-eligible duties in one of the ORP-eligible categories.

- (15) TRS. The Teacher Retirement System of Texas.
- (16) UTRetirement Manager. The common remitter system currently authorized by the U.T. System.
- (17) U.T. System Institution. An institution of The University of Texas System and U.T. System Administration.
- (18) Vesting Requirement. The minimum amount of ORP participation required to attain vested status. An ORP participant shall be considered vested on the first day of the second year of active participation in lieu of TRS. A vested participant shall have ownership rights to the employer contributions in his or her ORP accounts, meaning that, upon termination of employment with all ORP employers or reaching age 70-1/2; he or she may access both the employee and employer contributions (and any net earnings) in his or her accounts. A vested participant shall remain in ORP even if subsequently employed in a position that is not ORP-eligible.

5. AUTHORITY

The authority for these provisions is provided by:

- *Texas Government Code*, Chapter 830

- Internal Revenue Code of 1986, as amended, Sections 403(b) and 415
- U.T. System Regents' *Rules and Regulations*, Series 30202, Section 1

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