ORP-Administration

Excerpt from Rules and Regulations of the Texas Higher Education Coordinating Board
Chapter 25 – Optional Retirement Program (ORP)

TEXAS ADMINISTRATIVE CODE *(as in effect on 11/29/2017)*
TITLE 19 – EDUCATION
PART 1 – TEXAS HIGHER EDUCATION COORDINATING BOARD CHAPTER 25 – OPTIONAL RETIREMENT PROGRAM SUBCHAPTER A – OPTIONAL RETIREMENT PROGRAM

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.

(3) Interaction with TTUS TDA Program. An employee's contributions to the TTUS voluntary, supplemental Tax-Deferred Account Program shall be included in the calculation of the 415(c) limit.

(4) 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 TTUS TDA Funds. Amounts that have been contributed by the participant through the TTUS Tax Deferred Account Program may not be rolled over or transferred to an ORP account prior to 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 TTUS. 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.

(5) 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.

(6) 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).

(7) Three-Day Submission Deadline. TTUS institutions shall send ORP contributions to the ORP vendor within three business days of legal availability, except for contributions made on a supplemental payroll.

(a) Legal Availability. Contributions shall generally be considered legally available on payday. For participants normally paid on a twice-monthly basis, the three-day minimum shall apply to each payday in the month.

(b) 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.

(8) Electronic Funds Transfer (EFT). TTUS institutions shall send all ORP contributions, including contributions based on a supplemental payroll, to each ORP vendor through Texas Tech Retirement Manager. Retirement Manager shall then transmit all remittances by electronic funds transfer (EFT) to each ORP vendor.

(9) 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 provided the contributions are received in good order. An ORP vendor that an ORP vendor.

(10) Forfeited ORP Employer Contributions. If a participant forfeits ORP employer contributions, the TTUS 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 TTUS institution shall send a request 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 TTUS institution may send the request for forfeited ORP employer contributions immediately upon a participant's termination if the TTUS 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 TTUS institution fails to request the forfeited amounts within the 93-day deadline, then the TTUS institution shall make the request immediately upon discovering the oversight, even if the participant later resumes participation after the 93-day deadline described 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.

(I) 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.

(II) 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 TTUS institution request for a return of unvested ORP employer contributions, the ORP vendor shall:

(i) process a reimbursement to the TTUS 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 TTUS 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 the same retirement system 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 TTUS 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 TTUS institution that requested the reimbursement, shall notify the TTUS 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.

Administrative Errors

(1) Error Correction. In the event an administrative error occurs which prevents the normal processing of an ORP-eligible employee's election, the TTUS 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.

(2) Documentation and Prevention. When an administrative error occurs, the TTUS institution shall:

(a) maintain documentation of the error and the actions taken by the TTUS 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.

(3) Failure to Notify Error. If a TTUS 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 TTUS 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 established Coordinating Board procedure.