

TEXAS HIGHER EDUCATION COORDINATING BOARD

Text from Chapter 25 – Optional Retirement Program

(effective November 28, 2005)

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25.1. Purpose.

The purpose of these rules is to administer the Optional Retirement Program, to establish eligibility for the Optional Retirement Program and to provide for greater uniformity of procedures for administration of the Optional Retirement Program by Texas public institutions of higher education.

25.2. Authority.

The authority for these provisions is provided by Texas Government Code, Chapter 830.

25.3. Definitions.

Hyperlink Outline: 25.3 Definitions

- (1) Active Participation
- (2) Applicable Retirement System
- (3) Board
- (4) Break in Service
- (5) ERS
- (6) ERS Waiting Period
- (7) Full-time
- (8) Initial ORP Eligibility Date
- (9) Initial ORP Eligibility Period
- (10) Major Department Requirement
- (11) ORP
- (12) ORP Election Period
- (13) ORP Employer
- (14) ORP Retiree
- (15) Principal Activity Requirement
- (16) TRS
- (17) Vesting Requirement

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Active Participation—Period of employment during which an ORP participant makes regular ORP contributions through payroll deduction 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 ORP employer to an authorized ORP company. 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 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.

25.3—continued

(2) Applicable Retirement System—The Teacher Retirement System of Texas for employees of Texas public institutions of higher education and the Employees Retirement System of Texas for employees of the Board.

(3) Board—The Texas Higher Education Coordinating Board.

(4) Break in Service—A period following a participant's termination of all employment with all Texas public institutions of higher education or the Board 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 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.

(5) ERS—The Employees Retirement System of Texas.

(6) ERS Waiting Period—A period of 90 calendar days beginning with the first day of employment with the Board in a position that is otherwise eligible for membership in ERS. In accordance with state law, active membership in ERS does not become effective until the 91st calendar day.

(A) The ERS waiting period does not apply to:

(i) new employees of the Board who are already members of ERS based on contributions made during prior employment with the Board or other state agency that have not been withdrawn; or

(ii) new employees of the Board who elected ORP in lieu of ERS in a prior period of employment with the Board and who are eligible to resume ORP participation.

(B) As provided in §25.4(h) of this title (relating to Active Membership in Retirement System Requirement), a new employee of the Board who becomes employed in an ORP-eligible position and who is subject to the ERS waiting period is not permitted to elect ORP in lieu of ERS until satisfying the ERS waiting period because the election of ORP is in lieu of active membership in ERS.

(7) 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 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.

(8) Initial ORP Eligibility Date—The first day of an ORP-eligible employee's 90-day ORP election period. An employee's initial ORP eligibility date shall be determined as follows:

25.3(8)–continued

(A) Employees of Institutions of Higher Education. 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.

(B) Employees of the Board.

(i) Non-ERS Members. For a new employee of the Board who has never been a member of ERS or who is a former member of ERS who canceled membership by withdrawing employee contributions from ERS after termination from a prior period of employment, the initial ORP eligibility date shall be the 91st calendar day of employment in an ERS-eligible position that is also an ORP-eligible position.

(ii) Current ERS Members. For an employee of the Board who is a current member of ERS at the time that he or she becomes employed in an ORP-eligible position, the initial ORP eligibility date shall be the first day of employment in an ORP-eligible position.

(9) 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. For new employees of the Board who become employed in an ORP-eligible position, the initial ORP eligibility period includes the 90-day ERS waiting period, if applicable.

(10) Major Department Requirement–One of the factors used to determine whether a position is ORP-eligible in the “[Other Key Administrator](#)” category as defined in §25.4(k) of this title (relating to Eligible Positions). A department or budget entity at a public institution of higher education 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.

(11) ORP–The Optional Retirement Program.

(12) ORP Election Period–The period of time during which ORP-eligible employees have a once-per-lifetime opportunity to elect to participate in ORP in lieu of the applicable retirement system. 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 by signing and submitting the appropriate forms to the ORP employer; or

25.3(12)–*continued*

(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 Employer–All public institutions of higher education in Texas and the Board.

(14) ORP Retiree–An individual who participated in ORP while employed with a Texas public institution of higher education or the Board and who established retiree status by meeting the applicable retiree insurance requirements and enrolling in retiree group insurance provided by ERS, The University of Texas System, or The Texas A&M University System, regardless of whether currently enrolled.

(15) 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 defined in §25.4(k) of this title (relating to [Eligible Positions](#)), 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 under one of the other ORP-eligible categories defined in §25.4(k) of this title (relating to [Eligible Positions](#)), 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 defined in §25.4(k) of this title (relating to [Eligible Positions](#)).

(16) TRS–The Teacher Retirement System of Texas.

(17) 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 the applicable retirement system, as provided in §25.5(a) of this title (relating to [Vesting Requirement](#)). 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

25.3(17)–continued

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, as provided in §25.5(f) of this title (relating to [Employment in a non-ORP-Eligible Position](#)).

25.4. Eligibility to Elect ORP.

Hyperlink Outline: 25.4 Eligibility to Elect ORP

- (a) Eligibility Criteria
- (b) ORP Participation after Election
- (c) Non-Texas ORP Plans
- (d) Separate Elections
- (e) Opportunity to Elect
- (f) 90-Day ORP Election Period
- (g) Participation Start Date
- (h) Active Membership in Retirement System Requirement
- (i) Automatic Retirement System Enrollment
- (j) Dual Employment in TRS/ORP Positions at Different Employers
- (k) Eligible Positions
- (l) Position-Required Qualifications
- (m) Counselors
- (n) Review of Positions for ORP Eligibility
- (o) Administrative Errors
- (p) Texas Commissioner of Education

(a) Eligibility Criteria. An employee shall be eligible to make a once-per-lifetime irrevocable election of ORP in lieu of the applicable retirement system if all of the following criteria are met:

Hyperlink Outline: 25.4(a) Eligibility Criteria

- (1) ORP-eligible Position
- (2) 100 Percent Effort
- (3) First Election Opportunity
- (4) Active Membership in Retirement System

(1) ORP-eligible Position: Employment in an ORP-eligible position as defined in [subsection \(k\)](#) of 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 (including the 90-day waiting period for active membership in ERS for employees of the Board, if applicable).

(A) Initial Eligibility Period. This eligibility requirement is an employee's [initial ORP eligibility period](#), as defined in §25.3 of this title (relating to Definitions).

25.4(a)(2)—continued

(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 component institution under the same governing board that operates its ORP either as a single plan for all components or includes the applicable components in the same plan, in which case, the employee's percent effort at each component may be combined to meet the minimum 100 percent effort requirement;

(3) First Election Opportunity: No previous opportunity to elect ORP in lieu of the applicable retirement system during the current or a prior period of employment at the same or another Texas public institution of higher education or the Board; and

(4) Active Membership in Retirement System: Current membership or eligibility for active membership in the applicable retirement system as provided in [subsection \(h\)](#) of this section.

(b) ORP Participation after Election. Once an employee makes an election of ORP, the employee's eligibility to continue participating in ORP shall be determined in accordance with §25.5 of this title (relating to [ORP Vesting and Participation](#)).

(c) 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 the applicable retirement system as provided in [subsection \(h\)](#) of this section.

(d) Separate Elections. An election of ORP in lieu of TRS at a Texas public institution of higher education shall be considered separate and distinct from an election of ORP in lieu of ERS at the Board.

(1) An employee's prior election of ORP in lieu of ERS at the Board on or after September 1, 1994, shall have no bearing on that person's eligibility to elect ORP in lieu of TRS at a Texas public institution of higher education.

(2) An election of ORP by a Board employee prior to September 1, 1994, was made in lieu of TRS; therefore, an institution shall treat an employee's election of ORP in lieu of TRS at the Board prior to September 1, 1994, in the same manner as if the election had been made at an institution.

(3) An employee's prior election of ORP in lieu of TRS at an institution, or an employee's election of ORP in lieu of TRS at the Board prior to September 1, 1994, shall have no bearing on that person's eligibility to elect ORP in lieu of ERS at the Board.

(e) Opportunity to Elect.

(1) The governing board of each Texas public institution of higher education shall provide an opportunity to all eligible employees in the component institutions governed by the board to elect ORP in lieu of TRS in accordance with these rules. The

25.4(e)(1)—continued

Board shall provide an opportunity to all eligible employees to elect ORP in lieu of ERS in accordance with these rules.

(2) Documentation.

(i) ORP employers shall maintain documentation in each ORP-eligible employee's employment record that an opportunity to elect ORP was provided. Such documentation shall indicate the beginning and ending dates of the employee's ORP election period.

(ii) The documentation required by this paragraph may be maintained in an electronic format in accordance with applicable provisions for such records.

(iii) This paragraph applies to employees who become eligible to elect ORP on or after September 1, 2006, including employees who are hired for the Fall 2006 semester whose first active duty date is in the month of August 2006.

(f) 90-Day ORP Election Period. An employee who meets the eligibility criteria in section (a) of this section shall be provided an [ORP election period](#), as defined in §25.3 of this title (relating to Definitions), during which an election to participate in ORP may be made by signing and submitting the appropriate forms to the ORP employer.

Hyperlink Outline: [25.4\(f\) 90-Day ORP Election Period](#)

- (1) [After 90-Day ERS Waiting Period](#)
- (2) [Beginning and Ending Dates](#)
- (3) [Written Notification](#)
- (4) [Once-per-Lifetime Irrevocable Election](#)
- (5) [Company Selection Required at Election](#)
- (6) [Waiver of Retirement System Benefits](#)

(1) After 90-Day ERS Waiting Period. For new employees of the Board, the 90-day ORP election period shall follow the 90-day ERS membership waiting period, if applicable.

(2) Beginning and Ending Dates. The 90-day ORP election period shall begin on the employee's [initial ORP eligibility date](#), as defined in §25.3 of this title (relating to Definitions), and shall end on the earlier of:

(A) the date the employee makes an ORP election by signing and submitting the appropriate forms to the ORP employer; 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.

25.4 (f)—continued

(3) Written Notification. In accordance with §25.6(h)(2) of this title (relating to [ORP Election Period Dates](#)), each ORP employer 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 local procedures for submitting the election form and additional required paperwork.

(4) 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 the applicable retirement system.

(i) ORP in Lieu of 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 or another Texas public institution of higher education.

(ii) ORP in Lieu of ERS. An employee of the Board who does not elect ORP in lieu of ERS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of ERS, even if subsequently employed in an ORP-eligible position at the Board.

(B) Irrevocable. An election of ORP shall be irrevocable. An employee who elects ORP shall remain in ORP, except as provided by subsections (f) and (g) of §25.5 of this title (relating to ORP Vesting and Participation). A default election of the applicable retirement system, as described in subparagraph (3)(A) of this subsection shall be irrevocable. An employee who fails to elect ORP during the ORP election period shall remain in the applicable retirement system in accordance with the laws and rules governing eligibility for the retirement system.

(C) Separate Elections. As provided in [subsection \(d\)](#) of this section, an election of ORP in lieu of TRS at a Texas public institution of higher education shall be considered separate and distinct from an election of ORP in lieu of ERS at the Board; therefore, an election of ORP in lieu of one retirement system shall not preclude an eligible employee's election of ORP in lieu of the other retirement system if subsequently employed in a position that is eligible to elect ORP in lieu of the other retirement system.

(5) Company Selection Required at Election. An employee who elects to participate in ORP shall select an ORP company from the ORP employer's list of authorized companies in conjunction with the election of ORP. An ORP employer shall establish a policy that failure to select an authorized company may result in disciplinary

25.4 (f)(5)—continued

action up to and including termination of employment because retirement contributions are required by law as a condition of employment.

(6) 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 the applicable retirement system, 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 system's vesting requirement. Except as provided by subsections (f) and (g) of §25.5 of this title (relating to ORP Vesting and Participation) and the ERS/TRS service transfer law, an ORP participant shall not be eligible to become an active member of the applicable retirement system or receive any benefits from the system other than a return of employee contributions that may have been deposited with the system (and accrued interest, if any).

(g) Participation Start Date. The first day that ORP contributions are made shall be determined as follows.

Hyperlink Outline: 25.4(g) Participation Start Date

- (1) Election on Initial ORP Eligibility Date
 - (A) Employees of Institutions of Higher Education
 - (i) New Employees
 - (ii) Transfers within Same Institution
 - (B) Employees of the Board
- (2) Election After Initial ORP Eligibility Date
 - (A) During Month of Initial ORP Eligibility Date
 - (B) After Month of Initial ORP Eligibility Date
 - (C) Retirement System Membership Before Election

(1) Election on Initial ORP Eligibility Date.

Hyperlink Outline: 25.4(g)(1) Election on Initial ORP Eligibility Date

- (A) Employees of Institutions of Higher Education
 - (i) New Employees
 - (ii) Transfers within Same Institution
- (B) Employees of the Board

(A) Employees of Institutions of Higher Education.

(i) New Employees. For new employees who sign and submit the appropriate ORP election forms 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).

(ii) Transfers within Same Institution. For employees who transfer from a non-ORP-eligible position to an ORP-eligible position within the same institution and who sign and submit the appropriate ORP

25.4(g)(1)(A)(ii)—*continued*

election forms 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, as provided in §25.6(a)(4) of this title (relating to [No Dual Contributions](#)), 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.

(B) Employees of the Board. The participation start date for ORP-eligible Board employees who elect ORP on their [initial ORP eligibility date](#), as defined in §25.3 of this title (relating to Definitions), by signing and submitting the appropriate forms on or before their initial ORP eligibility date shall be based on whether they were subject to the 90-day ERS waiting period.

(i) Board Employees not subject to 90-Day ERS Waiting Period.

(I) New Employees. For new Board employees who are not subject to the 90-day ERS waiting period because they are already members of ERS and who sign and submit the appropriate ORP election forms 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).

(II) Transfers within the Board. For Board employees who are not subject to the 90-day ERS waiting period because they are already members of ERS and who transfer from a non-ORP-eligible position at the Board to an ORP-eligible position at the Board, and who sign and submit the appropriate ORP election forms 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 ERS and ORP during the same month, as provided in §25.6(a)(4) of this title (relating to [No Dual Contributions](#)), 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.

(ii) Board Employees subject to 90-Day ERS Waiting Period. To avoid partial month contributions for employees who are subject to the 90-day ERS waiting period and who sign and submit the appropriate ORP election forms on or before their initial ORP eligibility date, the amount of the ORP contribution for the month in which their initial ORP eligibility date falls shall be based on salary earned during that entire month, so the participation start date shall be the first day of the month in which the

25.4(g)(1)(B)(ii)—continued

initial ORP eligibility date falls, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis.

Hyperlink Outline: 25.4(g)(2)	Election After Initial ORP Eligibility Date
(A)	During Month of Initial ORP Eligibility Date
(B)	After Month of Initial ORP Eligibility Date
(C)	Retirement System Membership Before Election

(2) Election After Initial ORP Eligibility Date. The participation start date for ORP-eligible employees who sign and submit the appropriate ORP election forms after their initial ORP eligibility date, shall be the first day of the month following the date that the forms are signed and submitted, with the following exceptions.

(A) During Month of Initial ORP Eligibility Date. ORP employers may establish a policy that employees who elect ORP by signing and submitting the appropriate forms after their initial ORP eligibility date but before the payroll has been processed for the month in which the initial ORP eligibility date falls may be treated as if they had signed and submitted the forms on or before their initial ORP eligibility date as provided by [paragraph \(1\)](#) of this subsection.

(B) After Month of Initial ORP Eligibility Date. ORP employers may establish a policy that employees who elect ORP by signing and submitting the appropriate forms after the month in which their initial ORP eligibility date falls, but before the payroll has been processed for the month in which the forms are signed and submitted, may start participating in the month in which the forms are signed and submitted 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 forms are signed and submitted, or during the entire pay period in which the forms are signed and submitted, if payroll is not processed on a monthly basis.

(C) Retirement System Membership Before Election. As provided in [subsection \(i\)](#) of this section, ORP-eligible employees who elect ORP after their initial ORP eligibility date, except as provided in [subparagraph \(A\)](#) of this paragraph, shall be reported as members of the applicable retirement system for any months prior to their election of ORP.

(h) Active Membership in Retirement System Requirement. Participation in ORP shall be an alternative to active membership in the applicable retirement system.

(1) Board Employees Subject to 90-Day ERS Waiting Period. Employees who are not current members of TRS when they become employed in an ORP-eligible position at a Texas public institution of higher education shall not be eligible to elect ORP in lieu of TRS until the 90-day TRS waiting period has been satisfied. Employees who are not current members of ERS when they become employed in an ORP-eligible position at the Board shall not be eligible to elect ORP in lieu of ERS until the 90-day ERS waiting period has been satisfied.

25.4(h)—continued

(2) Retirees Not Eligible. Employees who have retired from TRS or ERS are no longer active members of the applicable retirement system; therefore, a TRS retiree shall not be eligible to elect ORP in lieu of TRS at a Texas public institution of higher education and an ERS retiree shall not be eligible to elect ORP in lieu of ERS at the Board.

(i) Automatic Retirement System Enrollment. A new employee at a Texas public institution of higher education 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 by signing and submitting the appropriate forms to the institution as provided in [subsection \(g\)](#) of this section. A new Board employee who is eligible to elect ORP in lieu of ERS shall be automatically enrolled in ERS, following the 90-day ERS waiting period, if applicable, until an election to participate in ORP is made by signing and submitting the appropriate forms to the Board as provided in [subsection \(g\)](#) of this section.

(j) Dual Employment in TRS/ORP Positions at Different Employers.

Hyperlink Outline: [25.4\(j\) 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
 - (i) Active TRS Membership not Permitted
 - (ii) No TRS Contributions
 - (B) Dual Employment with Different Institutions
 - (i) Active TRS Membership not Permitted
 - (ii) Retirement Contributions
 - (I) No TRS Contributions
 - (II) Before Vesting in ORP
 - (III) After Vesting in ORP
- (2) Returning to TRS
 - (A) Dual Employment with Institution and Non-Higher Education TRS-Covered Employer
 - (i) Termination of Employment with Institution
 - (ii) Transfer to Non-ORP Eligible Position at Institution
 - (iii) Transfer to Non-Benefits-Eligible Position at Institution
 - (B) Dual Employment with Different Institutions
 - (i) Termination of Employment in ORP-Eligible Position Before Vesting
 - (ii) Termination of Employment in ORP-Eligible Position After Vesting
 - (iii) Transfer to Non-Benefits-Eligible Position
 - (I) Termination Before Vesting in ORP
 - (II) Termination After Vesting in ORP

(1) Simultaneous Retirement Plan Membership Not Permitted.

(A) Dual Employment with Institution and Non-Higher Education TRS-Covered Employer.

25.4(j)(1)(A)—*continued*

(i) Active TRS Membership not Permitted. 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 Texas public institution of higher education 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 institution.

(ii) No TRS Contributions. Notwithstanding the participant's employment in what would otherwise be considered a TRS-eligible position at a non-higher education TRS-covered employer, TRS contributions may not be made for the participant by that employer while he or she is actively participating in ORP, but shall resume if the employee is required to return to active TRS membership as provided in [paragraph \(2\)](#) of this subsection.

(B) Dual Employment with Different Institutions.

(i) Active TRS Membership not Permitted. A member of TRS who is employed with a Texas public institution of higher education 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.

(ii) Retirement Contributions.

(I) No TRS Contributions. Notwithstanding the participant's employment in what would otherwise be considered a TRS-eligible position at an institution, TRS contributions may not be made for the participant by that institution while he or she is actively participating in ORP at another institution, but shall resume if the employee is required to return to active TRS membership as provided in [paragraph \(2\)](#) of this subsection.

(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 participant vesting in ORP.

(III) After Vesting in ORP. Once the participant vests in ORP, the institution employing the participant in a position that would otherwise be eligible for TRS shall enroll him or her in ORP.

(2) Returning to TRS.

25.4(j)(2)–continued

Hyperlink Outline: 25.4(j)(2)	Returning to TRS
(A)	Dual Employment with Institution and Non-Higher Education TRS-Covered Employer
(i)	Termination of Employment with Institution
(ii)	Transfer to Non-ORP Eligible Position at Institution
(iii)	Transfer to Non-Benefits-Eligible Position at Institution
(B)	Dual Employment with Different Institutions
(i)	Termination of Employment in ORP-Eligible Position Before Vesting
(ii)	Termination of Employment in ORP-Eligible Position After Vesting
(iii)	Transfer to Non-Benefits-Eligible Position
(I)	Termination Before Vesting in ORP
(II)	Termination After Vesting in ORP

(A) Dual Employment with Institution and Non-Higher Education TRS-Covered Employer.

(i) Termination of Employment with Institution. If the individual described in [subparagraph \(1\)\(A\)](#) of this subsection terminates all employment with the institution while concurrently employed in a TRS-eligible position with a non-higher education TRS-covered employer, then, regardless of ORP vesting status, he or she 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 or another institution.

(ii) Transfer to Non-ORP Eligible Position at Institution. If, prior to meeting the ORP vesting requirement, the individual described in [subparagraph \(1\)\(A\)](#) of this subsection transfers to a position at the institution that is not ORP-eligible but is eligible for TRS, then he or she shall return to active TRS membership with both the 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 or another institution.

(iii) Transfer to Non-Benefits-Eligible Position at Institution. In accordance with §25.5(g) of this title (relating to [Employment in a Non-Benefits-Eligible Position](#)), an individual described in [subparagraph \(1\)\(A\)](#) of this subsection who transfers to a non-benefits-eligible position at the institution shall not be eligible for ORP contributions and shall not be eligible for active TRS membership. This individual shall remain ineligible for TRS contributions at the non-higher education TRS-covered employer while employed in the non-benefits-eligible position at the institution. If this individual subsequently terminates all employment with the institution, then the provisions in [clause \(i\)](#) of this subparagraph will apply.

25.4(j)(2)–continued

(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 [subparagraph \(1\)\(B\)](#) of this subsection terminates ORP participation by terminating employment or transferring to a non-ORP-eligible position with the same 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 or another institution.

(ii) Termination of Employment in ORP-eligible Position After Vesting. If, after satisfying the ORP vesting requirement, the individual described in [subparagraph \(1\)\(B\)](#) of this subsection terminates employment in the ORP-eligible position by terminating employment with the 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 he or she 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 (*i.e.*, a benefits-eligible position) as provided in [subclause \(1\)\(B\)\(ii\)\(III\)](#) of this subsection.

(iii) Transfer to Non-Benefits-Eligible Position. In accordance with §25.5(g) of this title (relating to [Employment in a Non-Benefits-Eligible Position](#)), an individual described in [subparagraph \(1\)\(B\)](#) of this subsection who transfers from the ORP-eligible position to a non-benefits-eligible position at the same 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 [clause \(i\)](#) of this subparagraph 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 [clause \(ii\)](#) of this subparagraph for an individual who terminates employment in an ORP-eligible position after vesting will apply.

25.4–continued

(k) **Eligible Positions.** The following positions shall be considered ORP-eligible. Only those employees who fill ORP-eligible positions and who meet the eligibility requirements established in this chapter shall be eligible to elect ORP or to continue participating in ORP prior to vesting.

Hyperlink Outline: 25.4(k) Eligible Positions

- (1) Faculty Member
- (2) Faculty Administrator
- (3) Executive Administrator
- (4) Other Key Administrator
- (5) Librarian
- (6) Athletic Coach
- (7) Professional
- (8) Board Administrative Staff

(1) **Faculty Member**—A member of the faculty whose duties include teaching and/or research as a [principal activity](#), as defined in §25.3 of this title (relating to Definitions), 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](#), as defined in §25.3 of this title (relating to Definitions), 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**—An administrator who holds the title of chancellor, deputy chancellor, vice chancellor, associate vice chancellor, assistant vice chancellor, or the equivalent, and an 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 institution’s organizational structure and that meets the requirements of this paragraph. The most common position titles in this category are 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](#), as defined in §25.3 of this title (relating to Definitions), 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, as may be the case at large institutions;

25.4(k)(4)–*continued*

(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](#), as defined in §25.3 of this title (relating to Definitions), is library services.

(6) Athletic Coach—An athletic coach, associate athletic coach, or assistant athletic coach whose [principal activity](#), as defined in §25.3 of this title (relating to Definitions), 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](#), as defined in §25.3 of this title (relating to Definitions), is performing the duties of a professional career position, including, but not necessarily limited to, physician, attorney, engineer, 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.

25.4(k)(7)–continued

(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.

(8) Board Administrative Staff—A member of the executive or professional staff of the Board, as determined by the Commissioner of Higher Education, who fills a position with the following requirements:

(A) college graduation and prior experience in higher education or experience of such kind and amounts to provide a comparable background; and

(B) national mobility requirements similar to those of faculty.

(l) Position-Required Qualifications. An employee who meets the qualifications of a “professional” or a “librarian” as defined in subsection (k) of this section 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. For example, an attorney who fills a position that does not require that the position be filled by an attorney shall not be considered ORP-eligible based solely on the fact that the person is an attorney.

(m) Counselors. The eligibility of counselors shall be determined as follows.

(1) Faculty. If the 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 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.

(n) Review of Positions for ORP Eligibility.

(1) Comprehensive Review. ORP employers shall periodically 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.

(2) New Position. ORP employers shall analyze newly created non-classified positions for ORP eligibility determination and shall maintain proper documentation of the analysis and determination for future reference.

25.4(n)–continued

(3) Re-classified Position. ORP employers shall re-classify a position as ORP-eligible if changes in the position’s responsibilities or the employer’s organizational structure result in a position that meets the ORP-eligibility requirements.

(A) Option to Elect ORP. ORP employers 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**, as defined by §25.3 of this title (relating to Definitions), 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.

(o) Administrative Errors.

(1) Orientation Procedures. Each ORP employer 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 ORP employer 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 ORP employer shall:

(A) maintain documentation of the error and the actions taken by the ORP employer to address the problem, with a copy placed in the employee’s file; and

(B) immediately develop and implement appropriate administrative procedures to avoid such errors in the future.

(4) Failure to Notify Error. If an ORP employer fails to notify an ORP-eligible employee of his or her eligible status on or before the employee’s initial ORP eligibility date, the ORP employer 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 subsection (g) of this section.

(p) Texas Commissioner of Education.

(1) ORP Eligibility. Notwithstanding other provisions in this chapter, the Texas Commissioner of Education shall be eligible to elect ORP in lieu of ERS.

(2) Employment in Higher Education. Notwithstanding other provisions in this chapter, a Texas public institution of higher education shall, for the purpose of

25.4(p)(2)—*continued*

determining ORP eligibility for a former Texas Commissioner of Education who is subsequently employed by the institution, treat an election of ORP in lieu of ERS made by the Texas Commissioner of Education at the Texas Education Agency in the same manner as if the election of ORP had been made in lieu of TRS at another Texas public institution of higher education.

25.5. ORP Vesting and Participation.

Hyperlink Outline: 25.5 ORP Vesting and Participation

- (a) Vesting Requirement
- (b) Once Vested, Always Vested
- (c) Partial Vesting Credit Retained
- (d) Benefits of Vested Status
- (e) Unvested ORP Employer Contributions Forfeited
- (f) Employment in a Non-ORP-Eligible Position
- (g) Employment in a Non-Benefits-Eligible Position
- (h) Retirement System Membership after ORP Vesting
- (i) ORP Retirees Not Eligible to Participate
- (j) Termination of Participation

(a) Vesting Requirement. An ORP participant at a Texas public institution of higher education shall be considered vested in ORP on the first day of the second year of [active participation](#), as defined in §25.3 of this title (relating to Definitions), in ORP in lieu of TRS at one or more Texas public institutions of higher education. An ORP participant at the Board shall be considered vested in ORP on the first day of the second year of [active participation](#), as defined in §25.3 of this title (relating to Definitions), in ORP in lieu of ERS at the Board.

Hyperlink Outline: 25.5(a) Vesting Requirement

- (1) Year Defined
- (2) Leave-without-Pay
- (3) Summer Credit
- (4) More than One Period of Employment
- (5) Non-Texas ORP Plan
- (6) Separate Vesting

(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.

25.5(a)–continued

(4) More than One Period of Employment. As provided in [subsection \(c\)](#) of this section, 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. For example, a new faculty member who terminated employment after six months of active participation, and subsequently returns to ORP-eligible employment at the same or another public Texas institution of higher education, with no intervening active service as a TRS member, shall only have to participate for an additional six months to meet the definition of “year” for vesting purposes.

(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 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 at the Board 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 Board. The vesting requirement for ORP in lieu of ERS at the Board may not be satisfied by previous participation or vested status in ORP in lieu of TRS at a Texas public institution of higher education.

(b) 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. An ORP participant who satisfies the vesting requirement for ORP in lieu of ERS shall not be required to satisfy the vesting requirement again by the Board.

(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.

(c) Partial Vesting Credit Retained. Unvested ORP participants shall retain partial vesting credit in the following circumstances.

[Hyperlink Outline: 25.5\(c\) Partial Vesting Credit Retained](#)

- (1) [Termination of Employment](#)
- (2) [Leave-Without-Pay](#)
- (3) [Direct Transfers](#)
- (4) [Withdrawal of ORP Funds has No Effect](#)

(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. An ORP participant who terminates employment with the

25.5(c)(1)–*continued*

Board prior to satisfying the vesting requirement shall, upon returning to ORP-eligible employment with the Board, retain credit for previous ORP participation in lieu of ERS.

(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. An ORP participant at the Board 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 Board, retain credit for previous ORP participation in lieu of ERS.

(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. An ORP participant who, prior to satisfying the vesting requirement, directly transfers from one ORP-eligible position to another at the Board, shall retain credit for previous ORP participation in lieu of ERS.

(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.

(d) **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, as provided in [subsection \(f\)](#) of this section.

(e) **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 in accordance with §25.6(a)(11) of this title (relating to [Forfeited ORP Employer Contributions](#)). Except as provided in §25.6(a)(11)(F) of this title (relating to [Resumption of Participation within 93 Days](#)), 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.

(f) **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 the applicable retirement system, shall remain in ORP or become a member of the applicable retirement system in accordance with the following provisions.

25.5(f)—continued

Hyperlink Outline: 25.5(f) Employment in a Non-ORP-Eligible Position

- (1) Not Vested in ORP
- (2) Vested in ORP

(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 the applicable retirement system, shall become a member of the applicable retirement system, and shall thereafter be ineligible to participate in ORP in lieu of the applicable retirement system, even if subsequently employed in an ORP-eligible position and/or if membership in the applicable retirement system is canceled through a withdrawal of employee contributions.

(A) ORP in Lieu of TRS. An ORP participant who elected ORP in lieu of TRS at a Texas public institution of higher education, 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 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.

(B) ORP in Lieu of ERS. An ORP participant who elected ORP in lieu of ERS at the Board, who has not satisfied the ORP vesting requirement, and who becomes employed with the Board in a position that is not eligible for ORP, but is eligible for ERS, shall become a member of ERS for the remainder of his or her employment with the Board. This individual shall never be eligible to participate in ORP in lieu of ERS again, even if subsequently employed in an ORP-eligible position at the Board and/or if the individual cancels his or her ERS 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 the applicable retirement system, shall remain in ORP unless he or she became an active member of the applicable retirement system 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 the applicable retirement system again, even if subsequently employed in an ORP-eligible position and/or if membership in the applicable retirement system was canceled through a withdrawal of employee contributions.

(A) ORP in Lieu of TRS. 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

25.5(f)(2)(A)—continued

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:

(i) shall not resume participation in ORP; and

(ii) 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.

(B) ORP in Lieu of ERS. An ORP participant who has vested in ORP in lieu of ERS at the Board, who terminates employment in an ORP-eligible position with the Board, and who subsequently becomes employed with the Board in a position that is not ORP-eligible, but is ERS-eligible, shall, nevertheless, continue to participate in ORP and shall not be eligible for ERS membership, unless he or she terminates employment with the Board and becomes employed in an ERS-eligible position with a Texas state agency that does not offer ORP in lieu of ERS, which will require the participant to become a member of ERS. Such an individual (*i.e.*, one who has had active ERS membership since terminating ORP participation), upon becoming subsequently reemployed with the Board:

(i) shall not resume participation in ORP; and

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

(g) Employment in a Non-Benefits-Eligible Position.

Hyperlink Outline: [25.5\(g\) Employment in a Non-Benefits-Eligible Position](#)

- (1) [No ORP Contributions in Non-Benefits-Eligible Position](#)
- (2) [No ORP Contributions for Simultaneous Employment in Non-Benefits-Eligible Position at Another Institution](#)
- (3) [Definition](#)
- (4) [Combining of Percent Effort at Different Institutions Not Permitted](#)

25.5(g)—continued

- (5) Regardless of Vested Status
- (6) No Effect on ORP Eligibility
- (7) Alternate Plan at Certain Community Colleges

(1) No ORP Contributions in 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 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 company) for the period of time while employed in the non-benefits-eligible position.

(2) No ORP Contributions for Simultaneous Employment in Non-Benefits-Eligible Position at Another Institution. 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.

(3) 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.

(4) Combining of Percent Effort at Different Institutions Not Permitted. When calculating an employee's percent effort to determine whether a position is non-benefits-eligible as provided in [paragraph \(3\)](#) of this subsection, an institution shall include only the individual's employment with that institution. For example, an individual who is simultaneously employed at 25 percent effort with Institution A and at 50 percent effort with Institution B shall not be eligible to participate in ORP at Institution A even though he or she may already be participating at Institution B based on a minimum 50 percent effort at Institution B. An exception may be made for an individual who is simultaneously employed with more than one component institution under the same governing board that operates its ORP either as a single plan for all components or includes the applicable components in the same plan. In this case, the employee's percent effort at each component may be combined to meet the minimum 50 percent effort requirement.

(5) 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.

(6) 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.

25.5(g)—continued

(7) Alternate Plan at Certain Community Colleges. Participation in an alternate retirement plan for part-time employees who are not eligible for TRS at a community college that has opted out of the federal social security program shall have no effect on a person's ORP eligibility status upon his or her subsequent return to a benefits-eligible position.

(h) Retirement System Membership after ORP Vesting. A vested ORP participant shall not be eligible for active membership in the applicable retirement system unless he or she terminates all employment with the ORP employer and becomes employed in a position that is eligible for the applicable retirement system with an employer that does not offer ORP.

(1) ORP in Lieu of TRS. 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 (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.

(2) ORP in Lieu of ERS. A vested ORP participant who elected ORP in lieu of ERS shall not thereafter be eligible for ERS membership, unless he or she terminates employment with the Board and becomes employed in an ERS-eligible position with a Texas state agency that does not offer ORP in lieu of ERS, which will require the participant to become a member of ERS. Such an individual (i.e., one who has had active ERS membership since terminating ORP participation), upon becoming subsequently reemployed with the Board:

(A) shall not resume participation in ORP; and

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

(i) ORP Retirees Not Eligible to Participate. [ORP retirees](#), as defined in §25.3 of this title (relating to Definitions), who later return to employment with the same or another Texas public institution of higher education or with the Board in what would otherwise be considered a benefits-eligible position shall not be eligible to participate in ORP, with the following exceptions:

25.5(i)—*continued*

(1) Exception 1: Pre-June 1, 1997, Retirees – ORP retirees who enrolled in retiree group insurance on or before June 1, 1997;

(2) Exception 2: Board Retirees Employed by Institution – employees who elected ORP in lieu of ERS at the Board and who, after terminating employment with the Board and enrolling in retiree group insurance as an ORP retiree from the Board, subsequently become employed in an ORP-eligible position at a Texas public institution of higher education;

(3) Exception 3: Institution Retirees Employed by Board – 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 Board; and

(4) Exception 4: Phased Retirement Program Retirees – 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 limited number of institutions 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-Eligibility Otherwise Required. 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 to elect ORP in lieu of the retirement system from which they did not retire unless they meet the same eligibility criteria as employees who have not established ORP retiree status.

(j) 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 (if the election of ORP was in lieu of TRS) or termination of employment with the Board (if the election of ORP was in lieu of ERS).

(1) Employment Transfer is not a Termination. A participant's transfer of employment between Texas public institutions of higher education without a [break in service](#), as defined in §25.3 of this title (relating to Definitions), shall not be considered a

25.5(j)(1)–*continued*

termination of employment for ORP purposes, unless the new position is non-benefits-eligible, as defined in [subsection \(g\)](#) of this section.

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

25.6. Uniform Administration of ORP.

Hyperlink Outline: [25.6 Uniform Administration of ORP](#)

- (a) Contributions
- (b) Withdrawal of Retirement System Funds
- (c) ORP Companies
- (d) Qualified Domestic Relations Orders (QDROs)
- (e) Investment Advisory Fees
- (f) Distribution Restrictions
- (g) ORP Employer Reports
- (h) Required Notices to Employees

(a) Contributions.

Hyperlink Outline: [25.6\(a\) Contributions](#)

- (1) Tax-Deferred
- (2) IRS Limits on Defined Contributions
- (3) No Co-Mingling of ORP and non-ORP Funds
- (4) No Dual Contributions
- (5) Eligible Compensation
- (6) Contribution Rates
- (7) Proportionality
- (8) Three-Day Submission Deadline
- (9) Electronic Funds Transfer (EFT)
- (10) Same-Day Credit
- (11) Forfeited ORP Employer 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.

Hyperlink Outline: [25.6\(a\)\(2\) IRS Limits on Defined Contributions](#)

- (A) 415(m) Plan
- (B) Stopping ORP Contributions
- (C) Interaction with TSA/TDA Program

25.6(a)(2)—continued

(A) 415(m) Plan. Institutions are authorized by the ORP statute to establish a plan authorized under §415(m) of the Internal Revenue Code of 1986, as amended, for a participant's ORP contributions that exceed the 415(c) limit.

(B) Stopping ORP Contributions. In the absence of a 415(m) plan, an ORP employer shall discontinue ORP contributions for participants who reach the 415(c) limit for the remainder of the applicable plan year.

(C) Interaction with TSA/TDA Program. An employee's contributions under the voluntary supplemental Tax-Sheltered Annuity/Tax-Deferred Account Program shall be included in the 415(c) limit.

(3) No Co-Mingling of ORP and Non-ORP Funds.

Hyperlink Outline: [25.6\(a\)\(3\) No Co-Mingling of ORP and Non-ORP Funds](#)

- (A) [No Non-Texas ORP Funds](#)
- (B) [No TSA/TDA Funds](#)
- (C) [Texas ORP Contract Required](#)

(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 TSA/TDA Funds. Amounts that have been contributed by the participant through the Tax-Sheltered Annuity/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) Texas ORP Contract Required. ORP contributions may only be made to a contract that is authorized by the participant's current ORP employer for Texas ORP contributions, even if the participant already has a contract with a company from a prior period of employment with another employer, whether a Texas ORP employer or not.

(4) No Dual Contributions. A contribution to the applicable retirement system and to an ORP company within the same calendar month shall not be permitted, except when a person terminates employment in a position covered by the applicable retirement system 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 by signing and submitting the appropriate forms to the ORP employer in such manner that the ORP participation start date is prior to the end of that same calendar month, as provided in §25.4(g) of this title (relating to [Participation Start Date](#)).

25.6(a)–continued

(5) Eligible Compensation.

Hyperlink Outline: [25.6\(a\)\(5\) Eligible Compensation](#)

- (A) Definition
- (B) IRS Limits
- (C) Stopping ORP Contributions

(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).

(C) Stopping ORP Contributions. An ORP employer shall discontinue ORP contributions for participants who reach the 401(a)(17) limit for the remainder of the applicable plan year.

(6) Contribution Rates. The amount of each participant's ORP contribution shall be a percentage of the participant's eligible compensation as established by the ORP statute and the General Appropriations Act for each biennium. Each contribution shall include an amount based on the employee rate and an amount based on the employer rate.

Hyperlink Outline: [25.6\(a\)\(6\) Contribution Rates](#)

- (A) Employee Rate
- (B) Employer Rate
- (C) Supplemental 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.

(B) Employer Rate. The 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 [subparagraph \(C\)](#) of this subsection.

(C) Supplemental Employer Rate. Institutions may provide a supplement to the state base rate under the following conditions.

25.6(a)(6)(C)—continued

Hyperlink Outline: 25.6(a)(6)(C) Supplemental Employer Rate

- (i) Amount of Supplemental Rate
- (ii) Component Institution Policies
- (iii) Annual Determination
- (iv) Method 1 – All Participants
- (v) Method 2 – Two Groups
 - (I) Grandfathered
 - (II) Non-Grandfathered

(i) Amount of Supplemental Rate. The supplemental rate may be any amount that, when added to the state base rate, does not exceed the maximum employer rate established in the ORP statute. For example, if the state base rate is 6 percent and the maximum statutory rate is 8.5 percent, then the supplement may be any amount up to and including 2.5 percent.

(ii) Component Institution Policies. Governing boards may establish a supplemental rate policy that covers all component institutions or may establish different policies for one or more individual components.

(iii) Annual Determination. The governing board of each institution shall determine the amount of the supplement once per year, to be effective for the entire year.

(iv) Method 1 – All Participants. Institutions may provide the same supplemental rate to all ORP participants, regardless of the participant's first date to participate in ORP or a break in service. If this method is selected, each ORP participant shall receive the same supplemental rate as every other participant.

(v) Method 2 – Two Groups. Institutions may, instead of providing the same supplemental rate to all participants, provide two different supplemental rates based on a participant's first date to participate in ORP, as follows.

(I) Grandfathered. Each participant whose first date to participate in ORP in lieu of the applicable retirement system at any 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.

(II) Non-Grandfathered. Each participant whose first date to participate in ORP in lieu of the applicable retirement system 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.

25.6(a)–continued

(7) Proportionality.

Hyperlink Outline: 25.6(a)(7) Proportionality

- (A) [ORP employers Other than Community Colleges](#)
- (B) [Public Community Colleges](#)
- (C) [Not Applicable to Supplemental Employer Contributions](#)

(A) ORP employers Other than Community Colleges. Texas public institutions of higher education, not including public community colleges, and the Board shall pay ORP employer contributions on a proportionate basis from the same funding source that a participant's salary is paid from. 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) Public Community Colleges. Public community colleges shall pay ORP employer contributions on a proportionate basis from the same funding source that a participant's salary is paid from, except that all participants who are eligible to have all or part of their salary paid from General Revenue shall be eligible for General Revenue funding of their ORP employer contributions for the part of their salaries that is eligible for General Revenue funding, whether or not the salary is actually paid from General Revenue. Eligibility for General Revenue funding shall be based on the Elements of Expenditure.

(C) Not Applicable to Supplemental Employer Contributions. The proportionality provisions in this paragraph do not apply to supplemental employer contributions that an ORP employer may make as provided by [subparagraph \(6\)\(C\)](#) of this subsection.

(8) Three-Day Submission Deadline. ORP employers shall send ORP contributions to the ORP company within three business days of legal availability, except for contributions made on a supplemental payroll or contributions that are sent to a grandfathered company with less than 50 participants.

Hyperlink Outline: 25.6(a)(8) Three-Day Submission Deadline

- (A) [Legal Availability](#)
- (B) [Grandfathered Company](#)
- (C) [Exception Deadline](#)

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

(B) Grandfathered Company. For purposes of this paragraph, a grandfathered company shall be a company that is no longer on a particular ORP employer's list of authorized ORP companies, but that continues to receive ORP contributions for certain participants as authorized by that ORP employer.

25.6(a)(8)—continued

(C) Exception Deadline. Contributions that are excepted from the three-day submission deadline shall be sent to the company as soon as practicable, but not later than 10 business days after they are legally available.

(9) Electronic Funds Transfer (EFT).

(A) Requirement. ORP employers shall send all ORP contributions, including contributions based on a supplemental payroll and contributions sent to a grandfathered company as defined in [paragraph \(8\)](#) of this subsection, to each ORP company by electronic funds transfer (EFT) if the ORP employer is currently able to send funds by EFT and the company is currently able to receive funds by EFT.

(B) Inability to Receive. If a company is unable to receive funds by EFT, the ORP employer shall send contributions to the ORP company by check and provide the following notifications.

(i) Certification. The ORP employer shall certify to the Board, on the ORP employer's annual ORP report as required by [subsection \(g\)](#) of this section, that the company is unable to receive funds by EFT.

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

(10) Same-Day Credit. ORP companies 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 company. A company that does not comply with this provision shall not be eligible to be authorized as an ORP company by any ORP employer.

(11) Forfeited ORP Employer Contributions. If a participant forfeits ORP employer contributions under §25.5(a) of this title (relating to [Vesting Requirement](#)), the ORP employer shall return the forfeited contributions to the originating fund in accordance with the following procedures.

Hyperlink Outline: [25.6\(a\)\(11\) Forfeited ORP Employer Contributions](#)

- (A) 93-Day Deadline for Request
 - (i) 93 Days is Outside Limit
 - (ii) If Deadline is Missed
- (B) If Participant Returns After 93 Days
- (C) Forfeited Amount
 - (i) Excess Amounts not Included
 - (ii) If Account is Less than Actual Amount
 - (I) Company's Responsibility
 - (II) Certification
- (D) Company Response Deadline
- (E) Deposit into Originating Fund
- (F) Resumption of Participation within 93 Days

25.6(a)(11)—*continued*

(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, the ORP employer shall send a request to the ORP company or companies for a return of the ORP employer contributions that were sent to the company or companies for that participant during that period of employment. This request may be referred to as a vesting letter because it indicates that the participant has not met the vesting requirement.

(i) 93 Days is Outside Limit. An ORP employer may send the request for forfeited ORP employer contributions immediately upon a participant's termination if the ORP employer has knowledge that the participant has not become employed and is not anticipating becoming employed in a position that is eligible for ORP in lieu of the same retirement system at the same or another ORP employer within the 93-day period.

(ii) If Deadline is Missed. If the ORP employer fails to request the forfeited amounts within the 93-day deadline, then the ORP employer shall make the request immediately upon discovering the oversight, even if the participant later resumes participation after the 93-day deadline as described in [subparagraph \(B\)](#) of this paragraph.

(B) If Participant Returns After 93 Days. If an unvested participant returns to employment that is eligible for ORP in lieu of the same retirement system at the same or another 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) Company's Responsibility. The ORP company shall be responsible for making arrangements to cover any loss of unvested ORP employer contributions, so that the entire amount

25.6(a)(11)(C)(ii)(I)–continued

of actual ORP employer contributions is returned to the ORP employer upon request.

(II) Certification. Before an ORP employer may authorize a company to receive ORP contributions from unvested participants, as provided in subsection (c) of this section, the ORP employer shall require the company to certify that the entire amount of actual unvested ORP employer contributions will be returned upon request. The ORP employer may require the company to indicate what method will be used, for example, restriction of unvested funds to money market or similar accounts.

(D) Company Response Deadline. Within 30 days of receiving the ORP employer's request for a return of unvested ORP employer contributions, the ORP company shall:

(i) process a reimbursement to the ORP employer; 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 ORP employer 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) Re-deposit into Participant's Account. 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 ORP employer within 93 calendar days of the last day of the calendar month in which the termination of participation occurred, the ORP employer that requested the reimbursement shall, immediately upon being notified of the employee's resumption of participation, return the reimbursed amount to the ORP company for re-deposit into the participant's account.

(ii) If Different ORP Employer. The ORP employer with which the participant resumes participation, if not the ORP employer that requested the reimbursement, shall notify the ORP employer that requested the reimbursement of the participant's status as soon as practicable after the participant resumes participation.

(iii) No Allowance for Earnings/Losses. 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 company. 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.

25.6—continued

(b) **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 the applicable retirement system prior to the election of ORP.

(c) **ORP Companies.**

Hyperlink Outline: 25.6(c) ORP Companies

- (1) Authorized by Each ORP Employer
- (2) Qualified Companies
- (3) Minimum Number of Companies
- (4) Return of Unvested Employer Contributions
- (5) Authorization Policies and Procedures
- (6) Participant's Change of Companies
- (7) Grandfathered Companies
- (8) Confirmation of ORP Contributions
- (9) Confirmation of Funds Transfer
- (10) Required Company Reports
- (11) For All Accounts
- (12) For Fixed and Variable Annuity Accounts
- (13) For Variable Annuity and Custodial Accounts
- (14) Optional Information
- (15) Authorized Company Representatives
- (16) Solicitation Practices

(1) **Authorized by Each ORP Employer.** Each ORP employer shall establish its own list of companies that are authorized to provide ORP products to that employer's ORP participants. Governing boards with more than one component institution may establish one list for all components or separate lists for one or more component institutions.

(2) **Qualified Companies.** Companies authorized by an ORP employer shall be qualified to do business in the state of Texas as determined by the Texas Department of Insurance, the Texas State Securities Board, and any other applicable state or federal agency.

(3) **Minimum Number of Companies.**

(A) **Minimum of Four.** Each ORP employer shall authorize a minimum of four qualified companies, including at least one company that offers 403(b)(1) annuity accounts and at least one company that offers 403(b)(7) custodial accounts.

(B) **Variety of Choices.** Each ORP employer's list of authorized companies and products shall provide a reasonable variety of choices among types of accounts and funds.

(C) **No Maximum Number.** Each ORP employer may authorize as many ORP companies as the ORP employer deems appropriate.

25.6(c)—continued

(4) Return of Unvested Employer Contributions. Before an ORP employer may authorize a company to receive ORP contributions from unvested participants, the ORP employer shall require the company to certify that the entire amount of actual unvested ORP employer contributions will be returned upon request, in accordance with the procedures in [paragraph \(a\)\(11\)](#) of this section. The ORP employer may require the company to indicate what method will be used, for example, restriction of unvested funds to money market or similar accounts.

(5) Authorization Policies and Procedures. Each ORP employer shall be responsible for establishing local policies and procedures for authorizing or certifying companies to provide ORP products to the ORP employer's ORP participants. Governing boards with more than one component institution may establish one policy for all components or separate policies for one or more component institutions.

Hyperlink Outline: [25.6\(c\)\(5\) Authorization Policies and Procedures](#)

- (A) [Consultants](#)
- (B) [Objective Selection Process](#)
- (C) [Participant Requests](#)
- (D) [Periodic Review of Policies](#)
- (E) [Periodic Re-Authorization](#)

(A) Consultants. ORP employers may enlist the assistance of consultants or other outside parties to develop selection criteria.

(B) Objective Selection Process. ORP employers may utilize an objective process to review the quality of ORP products and services and select ORP companies and products using pre-determined standards either in a competitive selection process or in a minimum criteria process. Standards may include performance relative to peer products in the same asset class, costs and fees paid by the participant to participate in the investment products, financial stability of the company, company ratings, and service to participants, including type of service delivery model, company financial counseling, and other services for participating employees. ORP employers may establish additional standards that must be met by ORP companies to remain on the ORP employer's list of authorized companies, such as minimum participation standards.

(C) Participant Requests. ORP employers shall not be required to authorize any ORP company, company representative, or product requested by any participant, although ORP employers may take such requests into account if it may be done in accordance with applicable laws, rules and policies.

(D) Periodic Review of Policies. Each ORP employer shall periodically review and update its authorization or certification policies and procedures.

(E) Periodic Re-Authorization. Each ORP employer shall periodically re-authorize or re-certify companies.

25.6(c)—continued

(6) Participant's Change of Companies.

Hyperlink Outline: 25.6(c)(6) Participant's Change of Companies

- (A) Two Opportunities per Year
- (B) Two Changes per Year
- (C) Effective within 35 Days
- (D) Prior Contributions
- (E) Transfers of Prior Contributions

(A) Two Opportunities per Year. Each ORP employer shall provide ORP participants with at least two opportunities during each fiscal year to select a different company from the ORP employer's list of authorized companies. The opportunities may be provided on set dates during the year or on a flexible individualized basis.

(B) Two Changes per Year. Each ORP employer shall allow a participant to change his or her company selection on either or both of the opportunities provided by the ORP employer under [subparagraph \(A\)](#) of this paragraph.

(C) Effective within 35 Days. The ORP employer shall start sending the participant's ORP contributions to his or her newly selected company beginning with the next payroll period if practicable, but not later than 35 days after the date the participant signs and submits the appropriate forms to the ORP employer.

(i) Problems. If the ORP employer cannot comply with this deadline due to circumstances beyond the ORP employer's control, the ORP employer shall notify the participant of the problem and shall provide the participant with an opportunity to change his or her company selection.

(ii) Additional Change. A participant's change of companies made in accordance with [clause \(i\) of this subparagraph](#) shall not be counted against the number of changes required under [subparagraph \(B\)](#) of this paragraph.

(D) Prior Contributions. Amounts contributed by the participant to previously selected ORP companies, including ORP contributions made during prior periods of employment with the same or another ORP employer, shall be under the same statutory distribution restrictions as the contributions in the participant's account with his or her newly selected ORP company.

(E) 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 ORP employer to another ORP company, but only if their current ORP employer authorizes it after confirming that the funds are being transferred to a valid ORP contract. A transfer of prior contributions shall not be counted against the number of changes required under [subparagraph \(B\)](#) of this paragraph.

25.6(c)—continued

(7) Grandfathered Companies.

(A) Removed from Employer's Active List. ORP employers may allow participants to continue contributing to an ORP company that is no longer on the ORP employer's list of authorized companies. Such a company shall be referred to as a grandfathered company.

(B) Transfers from another ORP Employer. Institutions may allow participants who directly transfer from another Texas public institution of higher education to continue contributing to the same ORP company that they were contributing to at their prior ORP employer, provided the institution verifies that the contract includes the statutory distribution restrictions.

(8) Confirmation of ORP Contributions. ORP employers shall require ORP companies that receive contributions for the ORP employer's ORP participants to submit confirmation of receipt of funds directly to each participant at least quarterly. The confirmation shall contain the date and amount of each ORP contribution received during the reporting period.

(9) Confirmation of Funds Transfer. ORP employers shall require ORP companies that receive contributions for the ORP employer's ORP participants to, immediately upon execution of a transfer from one fund or investment or account to another fund or investment or account, submit a confirmation directly to the participant, unless specifically waived by the participant in writing. The confirmation shall include all transfer information, including a statement of any applicable charges.

(10) Required Company Reports. Each ORP employer shall require all ORP companies that receive contributions for the ORP employer's ORP participants to submit, at least annually, a report or reports to each participant having ORP accounts with that company, including accounts that are no longer receiving current contributions, containing the information indicated in paragraphs (11), (12) and (13) of this subsection.

(11) For all accounts, the following information shall be provided:

- (A) name and address of the participant;
- (B) identifying number;
- (C) total payments received during the reporting period;
- (D) expense charges during the reporting period;
- (E) net payments during the reporting period;
- (F) total value of account at the end of the reporting period; and

(G) net cash surrender value of account at the end of the reporting period reflecting all potential charges against the account if it were surrendered for cash as of the last day of the reporting period.

25.6(c)—continued

(12) For fixed and variable annuity accounts, the following additional information shall be provided:

(A) interest rate or rates paid on the account from the previous reporting period to the end of the current reporting period; and

(B) where multilevel rates of interest were paid on an account, a breakdown showing the amount in the participant's account at each interest level, the amount of interest earned at each interest level, and the rates of interest. An ORP company may exclude the information required by this subparagraph concerning multilevel rates of interest from the annual report, but if this information is not provided on at least an annual basis, the company shall provide it at any time upon the participant's request.

(13) For variable annuity and custodial accounts, the following additional information shall be provided:

(A) units of each fund or investment or account purchased during the reporting period;

(B) total units of each fund or investment in the account at the end of the reporting period; and

(C) value of unit of each fund or investment or account at the end of the reporting period.

(14) Optional Information. ORP employers may require ORP companies to provide participants with other information in addition to the reporting requirements in paragraph (10) of this subsection, including, but not limited to:

(A) additional account-related information;

(B) information about the company; and

(C) general educational information related to investments.

(15) Authorized Company Representatives.

[Hyperlink Outline: 25.6\(c\)\(15\) Authorized Company Representatives](#)

(A) [Designated Representatives](#)

(B) [Restricted Number](#)

(C) [Brokers](#)

(D) [Representative's ORP Knowledge](#)

(E) [Responsibility to Correct Mistakes](#)

(A) Designated Representatives. ORP employers may require ORP companies to designate representatives, or may require that the company and

25.6(c)(15)(A)—*continued*

the ORP employer jointly designate representatives, who are authorized to communicate directly with the ORP employer's ORP-eligible employees concerning the company and its products.

(B) **Restricted Number.** ORP employers may restrict the number of representatives authorized to represent each company.

(C) **Brokers.** ORP employers may authorize brokers who represent more than one authorized company. Such authorization may be in addition to the number of designated representatives of a particular company.

(D) **Representative's ORP Knowledge.** ORP employers may require ORP companies to certify that their designated representatives are sufficiently trained and knowledgeable about ORP, including an understanding of the statutory distribution restrictions that must be included in all ORP contracts.

(E) **Responsibility to Correct Mistakes.** ORP employers may require a company to fully rectify, at the company's cost, any mistakes made by a designated company representative concerning the delivery of incorrect ORP information and any resulting problems.

(16) **Solicitation Practices.** Each ORP employer shall establish the following procedures related to company solicitation practices.

Hyperlink Outline: [25.6\(c\)\(16\) Solicitation Practices](#)

- (A) [Sales Presentations](#)
- (B) [Prohibited Gifts](#)
- (C) [Bulk Campaigning Prohibited](#)
- (D) [Violations](#)

(A) **Sales Presentations.** Authorized representatives shall be permitted to make sales presentations to ORP-eligible employees on the ORP employer's premises, under the following conditions:

- (i) only at the employee's request;
- (ii) as a guest of the employee and ORP employer; and
- (iii) in compliance with the ORP employer's applicable policies and procedures.

(B) **Prohibited Gifts.** ORP company representatives shall be prohibited from providing gifts or monetary rewards directly or indirectly to any employee of the ORP employer for information on newly eligible employees.

(C) **Bulk Campaigning Prohibited.** Authorized representatives shall be responsible for providing appropriate sales literature and service at locations designated by the ORP employer. Unless specifically authorized by the ORP employer, ORP company representatives shall be prohibited from using campus bulk mailing (including electronic mail) or telephone campaigning.

25.6(c)(16)—continued

(D) Violations. ORP employers shall reserve the right to restrict solicitation privileges of authorized representatives based on violations of the solicitation procedures in this paragraph and each ORP employer's local policies and procedures.

(d) Qualified Domestic Relations Orders (QDROs).

(1) Company Responsibilities. Each ORP employer shall ensure that all ORP contracts include a provision that the ORP company is solely responsible for determining whether a domestic relations order is qualified and payable in accordance with Texas Government Code, Chapter 804. In lieu of requiring a contractual provision, ORP employers may require companies to certify, as part of the ORP employer's ORP company authorization process as provided in [subsection \(c\)](#) of this section, that the ORP company is solely responsible for determining whether a domestic relations order is qualified and payable in accordance with Texas Government Code, Chapter 804.

(2) Company Interpretation. ORP employers may include criteria relating to an ORP company's interpretation of Texas Government Code, Chapter 804, in the ORP employer's ORP company authorization or certification process as provided in [subsection \(c\)](#) of this section.

(e) Investment Advisory Fees. Participants may pay certain investment advisory fees with tax-deferred funds in their ORP account in accordance with the following conditions.

[Hyperlink Outline: 25.6\(e\) Investment Advisory Fees](#)

- (1) Use of ORP Funds
 - (A) No More than Two Percent
 - (B) Direct Payment
 - (C) Full-time Registered Advisor
 - (D) No More than One-Year Contract
- (2) Employee Right
- (3) Permissible Employer Prohibition
- (4) Signing of Forms by Employer

(1) Use of ORP Funds. Investment advisory fees may only be paid with amounts in a participant's ORP account in accordance with the following provisions.

(A) No More than Two Percent. 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) Direct Payment. The fees shall be paid directly to a registered investment advisor that provides advice to the participant.

(C) Full-time Registered Advisor. 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.

25.6(e)(1)—continued

(D) No More than One-Year Contract. 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) Employee Right. An ORP employer shall not prohibit participants from utilizing this right and shall not restrict the payment percentage to less than two percent.

(3) Permissible Employer Prohibition. An ORP employer may include in its ORP company authorization or certification process, as provided in [subsection \(c\)](#) of this section, a provision that prohibits commissions to an individual who also receives investment advisory fees for the same ORP account.

(4) Signing of Forms by Employer. An ORP company may request the ORP employer to sign a statement that investment advisory fees are permissible under the plan to provide assurance to the company that it is releasing ORP funds to the advisor in accordance with applicable ORP provisions.

(A) An ORP employer shall not sign the company's form indicating that investment advisory fees are permissible under the plan unless the ORP employer has received satisfactory documentation that the four conditions described in [paragraph \(1\)](#) of this subsection have been met.

(B) An ORP employer shall not sign a form that actually authorizes the payments because that is a relationship between the advisor, the participant and the company.

(f) Distribution Restrictions.

Hyperlink Outline: [25.6\(f\) Distribution Restrictions](#)

- (1) [Restricted Access](#)
- (2) [Authorization to Release ORP Funds](#)
- (3) [Prohibited Distribution by ORP Company](#)

(1) Restricted Access.

Hyperlink Outline: [25.6\(f\)\(1\) Restricted Access](#)

- (A) [No Pre-Termination Access unless Age 70-1/2](#)
- (B) [No Loans or Hardship Withdrawals](#)
- (C) [Previously Contributed Amounts](#)
- (D) [Employment Transfer is not a Termination](#)
- (E) [Transfer of Funds is not a Termination](#)
- (F) [Simultaneous Contributions and Withdrawals](#)
- (G) [Documentation of Restrictions](#)

25.6(f)(1)–*continued*

(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 shall not be 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](#), as defined in §25.3 of this title (relating to Definitions), shall not be considered a termination of employment for ORP purposes, unless the new position is non-benefits-eligible, as defined in §25.5(g) of this title (relating to [Employment in a Non-Benefits-Eligible Position](#)).

(E) Transfer of Funds is not a Termination. A transfer of ORP funds between ORP accounts or ORP companies shall not be 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.

(G) Documentation of Restrictions. ORP employers shall ensure that all ORP contracts specifically contain the statutory ORP distribution restriction provisions, which are sometimes referred to as the ORP endorsement.

(2) Authorization to Release ORP Funds. An ORP company shall not release any ORP funds to a participant until receipt of notification from the participant's ORP employer that a break in service has occurred, except when the participant has reached age 70-1/2, in which case, the ORP company may release funds upon

25.6(f)(2)—continued

verification that the participant has reached age 70-1/2. The ORP employer's termination notification may be referred to as a vesting letter because it indicates whether the participant has met the ORP vesting requirement.

(A) Unvested Participants. If a participant terminates prior to meeting the vesting requirement, the ORP employer's notification shall include a request for the return of the participant's forfeited ORP employer contributions, as provided in §25.6(a)(11) of this title (relating to [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 Company. If an ORP company 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, then that company shall be responsible for making a prohibited distribution and the following provisions apply.

Hyperlink Outline: [26.6\(f\)\(3\) Prohibited Distribution by ORP Company](#)

- (A) [Redeposit Required](#)
- (B) [Company Suspension](#)
- (C) [Separate Transaction Not Related to ORP](#)

(A) Redeposit Required. The participant's ORP employer shall require the company to:

- (i) redeposit funds to the employee's ORP account as if no withdrawal had been made; and
- (ii) provide written verification to the ORP employer that the account has been fully restored with no adverse impact to the employee.

(B) Company Suspension. The ORP employer may suspend a company from doing further business with the ORP employer's participants at any time a company fails to comply with these provisions.

(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 company and the individual, for example, as an unsecured loan.

(g) ORP Employer Reports.

25.6(g)–continued

(1) Required Information. All ORP employers shall submit the following information to the Board:

- (A) number of ORP participants;
- (B) amount of contributions sent to ORP companies;
- (C) list of ORP-eligible positions; and
- (D) any other information required by the Board.

(2) Annual Report.

(A) Format. The required information shall be provided in a reporting format developed by the Board, which may include an electronic format.

(B) Due Date. The required information shall be reported on a fiscal year basis and shall normally be due on November 1 of each year for the most recent fiscal year ending August 31.

(3) Additional Information as Needed. ORP employers shall provide additional information to the Board as needed to carry out its functions under the ORP statute, which may be in the form of *ad hoc* reports, formal or informal surveys, or other format, and may be requested in an electronic format.

(h) Required Notices to Employees.

Hyperlink Outline: [25.6\(h\) Required Notices to Employees](#)

- (1) [Basic Information for Newly Eligible Employees](#)
- (2) [ORP Election Period Dates](#)
- (3) [Participant's ORP Responsibilities](#)
- (4) [Possible Retiree Group Insurance Eligibility](#)
- (5) [Verification of Notification Receipt](#)

(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 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.](#)"

Hyperlink Outline: [25.6\(h\)\(1\) Basic Information for Newly Eligible Employees](#)

- (A) [Uniform and Unbiased](#)
- (B) [Electronic Notification](#)

(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.

25.6(h)(1)—*continued*

(B) Electronic Notification. An institution may meet this notification requirement by:

(i) placing on its website the electronic version of the Overview document that is provided by the Board, and/or placing a link on its website to the [Overview document](#) that is available on the Board's 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.

(2) ORP Election Period Dates. Each ORP employer 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 local procedures for submitting the election form and additional required paperwork.

(3) 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 ORP employer shall provide written notification to the ORP-eligible employee that:

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

(B) No Employer Fiduciary Responsibility: the ORP employer has no fiduciary responsibility for the market value of a participant's ORP investments or for the financial stability of the ORP companies chosen by the participant.

(4) Possible Retiree Group Insurance Eligibility. ORP employers shall include in their normal out-processing procedures for terminated employees, a notification to ORP participants that includes the following information:

[Hyperlink Outline: 25.6\(h\)\(4\) Possible Retiree Group Insurance Eligibility](#)

- (A) [Possible Future Eligibility](#)
- (B) [ORP Employer's Certification Policies](#)
- (C) [Caution to Retain ORP Funds](#)
- (D) [General or Specific](#)

(A) Possible Future Eligibility: the participant's possible future eligibility for retiree group insurance as an ORP retiree;

25.6(h)(4)—*continued*

(B) ORP Employer's Certification Policies: the ORP employer's policies for handling certification that an ORP participant meets the eligibility requirements for enrollment in retiree group insurance as an ORP retiree; and

(C) Caution to Retain ORP Funds: for employers that are covered under the group insurance program administered by ERS, a caution to the participant to refrain from withdrawing all of his or her ORP funds if the participant anticipates enrolling in the group insurance program administered by ERS as an ORP retiree at a later date.

(D) General or Specific: The notification may be either general in nature or specific to each participant.

(5) Verification of Notification Receipt. ORP employers shall develop forms and/or procedures to carry out the notification requirements in this subsection that provide documentation of the employee's acknowledgement of receipt of this information, including the date of receipt, such as a signature or electronic verification.