

**Montana University System**  
**OPTIONAL RETIREMENT PLAN**

**Report on the History and Operation**  
**May 2006**

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# EXECUTIVE SUMMARY

This report describes the Optional Retirement Plan (ORP) for employees of the Montana University System (MUS). The report discusses why it was created for faculty in 1987, how it works, how it is funded, and the ongoing relationship with the Teachers Retirement System (TRS). In 1999, the Legislature passed legislation allowing future MUS classified employees to choose the ORP as an alternative to PERS. This choice for new hires became effective July 1, 2002. While some information about classified employees and PERS is included, the focus of this report is the history and ongoing relationship between the MUS and TRS.

## **Why was the Optional Retirement Plan created?**

For faculty: To recruit quality faculty for the Montana University System. ORP is comparable to similar plans in most other higher education organizations and other state university systems. ORP is portable from one university employer to another and meets the needs of a mobile workforce.

For classified employees: The ORP was offered as one of three choices for: 1) existing MUS classified employees who were active PERS members on July 1, 2002 and 2) new MUS classified employees hired after July 1, 2002. This was part of a major retirement initiative for the Public Employees' Retirement System to add a Defined Contribution option to the Defined Benefit plan. Only MUS classified employees are offered the additional MUS ORP option.

## **Why did Teachers Retirement System oppose the faculty ORP?**

For fear of adverse selection and cost to TRS. Initially employees could choose either ORP or TRS. TRS worried that only high cost employees would choose TRS (late in career so inadequate contributions would be collected to pay their benefit). Also, TRS was concerned that the MUS would not pay a fair share of the unfunded liability for MUS employees still in TRS. In response to this concern, the MUS agreed to continue to contribute to the TRS each month an amount equal to 4.503% of the ORP members' wages.

## **Did ORP and TRS resolve differences?**

Yes. Compromise legislation was introduced in 1993 based on an independent actuarial study conducted through the Office of the Legislative Auditor. This legislation made the ORP mandatory for all new faculty employees.

## **How is the ORP different from TRS and PERS?**

ORP is a *Defined Contribution* program – both employee and employer contributions go into an individual employee account invested by the employee. The employee's payout is based on the amount of accumulated assets.

TRS and PERS are *Defined Benefit* programs – employer and employee contributions go into a fund invested for the benefit of all members who earn a specific retirement benefit

based on a formula set by law. There are two parts that make up the total contribution rates: “normal cost” (comparable to the defined contribution amount above) and “actuarial unfunded liability” (because any retroactive benefit enhancements must be financed over time as a percentage of future salaries, or funded with excess investment earnings).

PERS also offers a defined contribution option as of July 1, 2002.

**How much goes into the employee ORP account?**

For faculty, the ORP statutes limit the ORP employer contribution to a maximum of 6.0% of the ORP member’s salary, and a maximum employee plus employer contribution of 12.0%. Currently the ORP employee contribution rate is 7.044% and the employer contribution is 4.956%.

For classified employees, ORP member’s contribution is 6.9% of salary. The employer contribution is 4.46% of salary, calculated as 6.9% of salary *less* the PERS Plan Choice Rate of 2.37% and the .04% contribution to PERS educational fund. The amount of the employer’s ORP contribution can go up or down, depending on the Plan Choice Rate amount which is set by the Public Employees’ Retirement Board based on actuarial valuations.

**Why does a portion of the ORP employer contribution go to TRS or to PERS?**

For TRS: The legislature established a supplemental MUS employer contribution rate (19-20-621, MCA) to fund the Actuarial Unfunded Liability costs of those MUS employees, retirees and beneficiaries still in TRS. The MUS supplemental contribution rate is currently 4.04% of the total wages paid to members of the ORP.

For PERS: The legislature required that a portion of the employer contribution rate, called “Plan Choice Rate,” be contributed to the PERS to fund Actuarial Unfunded Liability for MUS members still in the PERS. The current Plan Choice Rate is 2.37%. The statutes also require a .04% contribution to the PERS education fund. (19-3-2117 MCA.)

# I. INTRODUCTION

In 1987 the Montana University System (MUS) successfully promoted legislation to allow an Optional Retirement Plan (ORP) for faculty and certain professional staff of the University System who were members of the Teachers Retirement System. (Title 19 Chapter 21, MCA, and Board of Regents Policy 803.2 in Appendix D) The ORP provided an option to membership in the Teachers Retirement Plan (TRS). Prior to this legislation, participation in TRS was mandatory. The MUS believed that an Optional Retirement Program was consistent with higher education retirement benefits in other states and would aid in faculty recruitment. When the ORP was created in 1987, not all MUS employees chose to leave TRS. Newly hired faculty members were allowed to choose either TRS or OPR until July 1, 1993, when ORP became mandatory for new faculty hires.

What is the cost for the MUS employees and retirees who are still in TRS? The Teachers' Retirement Board is required (19-20-621, MCA) to periodically review the supplemental MUS employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's unfunded liability by July 1, 2033. Unfunded liability costs for MUS members in TRS are based on actuarial assumptions which are updated every few years to reflect actual MUS member experience.

The MUS is occasionally called upon to explain to employees why MUS must make a supplemental contribution to TRS, calculated as a percentage of total ORP members' salaries, even though membership in TRS ceased to be an option for faculty in 1993. The answer involves a discussion about the funding differences between defined benefit plans and defined contribution plans. In a defined benefit plan like TRS the employer, in this case MUS, is responsible for any unfunded liabilities created by the legislature or adverse experience. In a defined contribution plan each participant is responsible for his/her account and its investments gains and/or losses and there is no "unfunded liability."

In 1999, the legislature enacted plan choices for the Public Employees' Retirement System by adding a defined contribution option. For MUS classified employees, the legislature added the MUS ORP as an addition option. This legislation required the all employers, including MUS, to make supplemental contributions (called "Plan Choice Rate") to PERS based on salaries of classified employees who choose a defined contribution option (PERS DC or ORP).

## **II. ACTUARIAL STUDIES OF UNIVERSITY MEMBERS IN TRS**

The bases for the rate of the MUS supplemental contribution to TRS are the actuarial valuation reports of MUS employee costs to the TRS system, conducted by various actuarial firms over the years. These reports looked at the demographics and experience of the MUS members in TRS and drew conclusions about this impact on the TRS. Each report identified a cost to the MUS for the “actuarial unfunded liability” portion of the employer contribution rate. Addendum A summarizes each of the MUS actuarial valuation studies that have been conducted since the inception of the program, and discusses the actuarial assumptions used in the valuations. For the TRS, the MUS supplemental rate identified by the 1992 valuation study (by Buck Consultants for the Office of the Legislative Auditor) was codified into statute by the 1993 legislature. This was updated again by the 1997 legislature with the rate identified by the 1996 valuation study (by Milliman & Robinson for TRS), phased in over five years. It is this rate – 4.05% of OPR members’ compensation – that is currently in statute.

The MUS Plan Choice Rate contribution to the PERS is determined by actuarial valuation studies conducted for the Public Employees’ Retirement Board and must be sufficient to amortize the PERS unfunded liability according to the requirements of 19-3-2121 MCA. The PERS Plan Choice Rate applies to all PERS employers (including the MUS) whose employees choose the PERS Defined Contribution option as well as to the MUS employees choosing the ORP. The current PERS Plan Choice Rate was determined by the actuary contracted by the 1997 Legislative Interim Committee/Legislative Services Division when the PERS Defined Contribution Retirement Plan legislation was drafted. Changes to the current Plan Choice Rate will be determined by the Public Employees’ Retirement Board and their contracted actuary, currently Milliman.

## **III. LEGISLATIVE HISTORY**

The Optional Retirement Plan is codified in Title 19 Chapter 21, MCA. (Appendix D) The program was enacted in 1987 at the request of the Board of Regents and with the support of the Montana Federation of Teachers (MFT). The program was initially opposed by the TRS Board, the Montana Education Association (MEA) and TRS member employers because of concerns that the ORP would result in adverse selection and increased costs to the TRS. The statute has been amended several times over the years, primarily to address the residual cost of MUS participation in TRS. Three major pieces of legislation have shaped the current Montana University System Optional Retirement Plan:

- 1987 (HB300) established the ORP for faculty and some professionals. The ORP was viewed by MUS as essential to recruit quality faculty. The nature of faculty careers is one of mobility which is viewed as good for academia and for students. For this reason, a

traditional retirement plan, that envisions a single employer for one's entire career, was viewed as inadequate for attracting star faculty.

- 1993 (SB407) enacted a compromise worked out by MUS and TRS. Perennial concerns about fairness were resolved, based on an independent study conducted under the auspices of the Office of the Legislative Auditor.
- 1999 (HB79) allowed new MUS classified employees to choose the ORP, the PERS defined benefit plan, or the PERS defined contribution plan.

The provisions of the 1993 compromise have resulted in a fairly amicable relationship between the MUS and TRS, compared to the contentious time preceding. Appendix B summarizes each of the successful ORP bills, the proponents and opponents, and the rationale for positions.

## IV. HOW TRS and OPR WORK

Both TRS and ORP are structured to provide income when employees retire from employment after a full career. TRS is a *Defined Benefit* plan and ORP is a *Defined Contribution* plan. These plan designs are based on different assumptions about an employer's workforce. They also have different responsibilities and risks for employers and employees.

### Types of Plans

The **Teachers Retirement System** is a **Defined Benefit** plan (under Section 401(a) of the Internal Revenue Code). Defined Benefit plans are traditional pension plans with guaranteed benefits based on years of service and salary. Employer and employee contributions are deposited in a common fund, managed by the system. Since the benefit formula is based on years of service, the benefit provides an incentive for employees to stay. Because the benefit is guaranteed, the system (not the employee) bears the risk if contributions and earnings fail to meet the cost. On the other hand, the system determines what to do with any excess funding (i.e., lowering employer cost, increasing employee benefit). Defined benefit plans finance benefits over time. Therefore, changes in the benefit (made by the legislature for TRS) are most often financed as a percentage of future salaries.

The Montana TRS is operated by a six member Board of Directors, appointed by the Governor. Four members are appointed from the teaching profession, one of whom must be an active classroom teacher and one a retired member. The other two are public members. The Board has a staff located in Helena and is administratively attached to the Montana Department of Administration. Montana's public retirement systems are protected under the Montana State Constitution (Article VIII Section 15 approved on November 8, 1994). TRS funds are invested by the Montana State Board of Investment. (From *TRS Summary of Information July 1, 2005 to June 30, 2007*)

The Montana Public Employees' Retirement Administration is operated by a seven member Board of Directors, appointed by the Governor. The Board oversees eight separate public retirement systems, including the PERS. The Board has a staff located in Helena and administratively attached to the Montana Department of Administration.

The **Optional Retirement Plan** is a **Defined Contribution** plan (under Section 401(a) of the Internal Revenue Code). Defined Contribution plans provide members with individual accounts and investment choices. Employer and employee contributions are made to the employee's account. The employee directs the investment of the account among various alternative types and risks. Benefits depend on total contributions and investment earnings, minus administrative expenses. A major feature of defined contribution plans is portability. A mobile workforce, such as university faculty, can take their retirement account with them and continue to build it with a new employer. For a workforce that is mobile by nature, defined contribution provides an incentive for recruitment. In defined contribution, the employer's obligation ends with the upfront contribution. The employee controls the investment choices and bears the risk if earnings are less than expected, reaps the benefit if earnings are high.

The Montana University System ORP is administered by TIAA (Teachers Insurance and Annuity Association) and CREF (College Retirement Equities Fund). These are nonprofit companion organizations that have been providing retirement plans exclusively for people working in education and research organizations for over 85 years. As of June 30, 2004, TIAA-CREF served 3.2 million participants at over 15,000 institutions nationwide, including over 3700 colleges and universities. TIAA and CREF are separate companies, organized under separate laws, each with a separate Board of Overseers and Board of Trustees, joined by a common mission ([www.TIAA-CREF.org](http://www.TIAA-CREF.org)). Montana's Plan is serviced from the TIAA-CREF regional office in Denver. The team of individuals includes an Institutional Representative, two individual Participant Consultants, one individual Participant Wealth Advisor, and an Administration Liaison.

ORP members decide where plan contributions will be placed from among 10 investment choices managed by TIAA-CREF. TIAA is the traditional annuity offering, with a guaranteed annual return of 3% plus dividend income. The current total rate in April 2006 was 5% but changes monthly depending on dividends. The CREF offers nine investment options with variable degrees of risk and return. Employees may participate in an ORP Supplemental Program to invest more of their income.<sup>1</sup> The ORP is designed for retirement and other long-term financial goals.

## **Benefits of Plans**

Which plan benefit is most beneficial? The answer is truly dependent on individual circumstances. Very generally: for younger employees at the beginning of a career that will take them through many employers, defined contribution may be beneficial because of the portability. For older employees nearer retirement or for those employees who intend to spend their career with employers in PERS or TRS, defined benefit may be most advantageous.

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<sup>1</sup> Note: The Board of Regents' policy 803.1 authorizes additional retirement annuities and tax deferred plans for employees. Currently authorized are TIAA-CREF, Valic, T. Row Price, Aetna, Scudder, and Metlife.



In a 1992 report prepared for the Office of the Legislative Auditor, Buck Consultants made the following comparison:<sup>2</sup>

**A TRS member** retiring after 30 of service is guaranteed a benefit equal to 50% of salary (see exact formula below). If the employee is 65 and combines this with social security, retirement income is 75% of salary.<sup>3</sup>

**An ORP member** receives a benefit based on the accumulated assets in the member's individual account. There is no guaranteed (or "defined") benefit. As example, an employee retiring at age 65 after 30 of employment will accumulate assets to equal income at 50% of salary (which added to social security equals 75%) under the following assumptions:

- 12% annual employer/employee combined contribution
- Long-term investment return of 8%
- Average annual pay increases of 6.5%

Changes in these assumptions will cause the benefit to go up or down.

Table 1 in Appendix C compares the benefits of TRS and ORP. PERS benefits are similar to TRS. See MCA Title 19, Chapters 2 and 3, for PERS provisions.

## **University Membership in Plans**

**In the Optional Retirement Plan:** As of July 1, 1993, TRS was no longer an option for University faculty and certain administrators. All have been required to join ORP. The MUS was comfortable with this change in 1993 because 90% or more of new hires were choosing ORP. In 1999, the ORP became available as an option to MUS classified employees who are members of the Montana Public Employees' Retirement System (PERS). Currently, **3915** University employees, retirees and beneficiaries are members of the Option Retirement Plan.<sup>4</sup> Table 2 in Appendix C is a summary of ORP membership and assets over the years.

**In the Teachers Retirement System:** Prior to July 1, 1987, all University faculty and administrators were enrolled in the Teachers Retirement System. After this date, they were offered a one time choice between the two. Many chose to stay with TRS. After July 1, 1993, all new faculty hires were required to enroll in ORP, and TRS was no longer an option. Currently, 2,565 University employees, retirees and beneficiaries continue as members of Teachers Retirement System. Tables 3 and 4 in Appendix C summarize MUS members' current status in the TRS.

**In the Public Employees' Retirement System:** As of June 2005, 2686 MUS employees are members of PERS; 2,642 are members of the PERS Defined Benefit Retirement Plan and 44 are members of the PERS Defined Contribution Retirement Plan. Since July 1, 2002 – when MUS

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<sup>2</sup>*Independent Actuarial Analysis of Optional Retirement Program*, Office of the Legislative Auditor, October 9, 1992, pg 20. These examples were reviewed for this report by David Senn, TRS, and Brad Balkan, TIAA-CREF.

<sup>3</sup> In Addition, the 1999 legislature enacted a 1.5% guaranteed annual benefit increase on January 1 of each year after 36 months of retirement.

<sup>4</sup> Source: Brad Balkan, TIAA-CREF. Number is as of 12-31-05 and includes both MUS faculty and classified employees. TIAA-CREF does not distinguish faculty from classified members.

classified employees first has the option to elect the ORP – 998 MUS employees have elected to join the ORP. Once MUS classified employees opt for ORP option, PERS ceases to track them.

## **Funding of the Plans**

### **Optional Retirement Plan**

As a Defined Contribution plan, an individual employee's ORP is funded with employer contribution, employee contribution and investment earnings. The current total combined employer and employee contribution rate is defined in statute as 12% of salary. This was originally 10% but increased to 12% in 1993. In addition, the MUS contributes a percent of the salaries paid to ORP members to the Teachers Retirement System to fund to the Actuarial Unfunded Liability for MUS members still in Teacher Retirement System.<sup>5</sup> The current TRS supplemental contribution rate is 4.04% for faculty (19-20-621, MCA). For classified employees, the contribution rate to PERS is 2.37% plus .04% to the PERS educational fund. Although this past liability was not created by members in the ORP, the total compensation paid to ORP members has been used as the base for determining the contributions to be paid by MUS employers to TRS and, now, to PERS. Table 5 in Appendix C illustrates the history of employer/employee contributions to the ORP. Table 6 compares the Montana University System contribution rate with other state university systems.

### **Teachers Retirement System**

As a Defined Benefit plan, the system is funded by employer and employee contributions, investment earnings and investment earnings. The Montana Board of Investments directs the investment of the fund. The combined employee and employer contribution rates can be divided into two components:

- **Normal Cost** – cost to fund benefits for an average group of new employees.
- **Actuarial Unfunded Liability** -- amount available to fund any unfunded liabilities, i.e. difference between the sum of the employee and employer contribution rates less normal cost.

Why is there unfunded liability? A Defined Benefit plan has an unfunded liability for several reasons:

1. The **Benefit is guaranteed** for the life of the member. Thus, the plan must make projections into the distance future. Any differences between assumed experience and actual experience, as well as legislative enacted enhancements, can create unfunded liabilities.

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<sup>5</sup>This amount is based on compromise legislation introduced in 1993 and is codified at 19-20-621, MCA.

**2. Increases in the benefit** are made by the legislature from time to time. Rate adjustments for these costs can be made prospectively, but TRS cannot go back and collect retroactively for all the years current employees have already been in the system. Yet, these employees may be entitled to the new benefit.

Examples:

1981 up to 4 years free military service time was credited to TRS years of service for Veterans of the Vietnam War with only minor increases in contributions.

1983 introduced 25 year retirement – all those contributions collected for employees prior to 1983 did not reflect a rate sufficient for a 25 year retirement benefit, yet the benefit enhancement was awarded for all years of service.

1999 1.5% annual cost of living increase was added for all current and future retirees, called the Guaranteed Automatic Benefit Adjustment (GABA) again with only minor contribution rate increases.

**3. Actuarial assumptions can change.** All actuarial assumptions (economic, non-economic, and demographic) are based on the actual experience of TRS. This includes investment earnings. The assumptions are reviewed every six years against updated actual experience. If trends are apparent, the assumptions are changed. Some assumptions like death rates and investment returns are supplemented with industry standards and national experience

Unfunded liabilities require an employer contribution sufficient to amortize the cost of the liability over a number of years, typically 30. This is the *Actuarial unfunded liability* rate, which is in addition to the *normal cost* rate.

### **Public Employees' Retirement System**

As a Defined Benefit plan, the principles are the same as for the Teachers' Retirement System. As example of a benefit increase enacted by the legislature for the PERS is the increase in 2001 of the PERS guaranteed annual benefit adjustment (GABA) from 1.5% to 3%.

## **V. THE FUTURE**

**Teachers Retirement System:** By July 1, 2033, the MUS employer supplemental contribution rate ends. Legislation would be required to change this date or to redirect this contribution to ORP members' accounts after 2033. The 2033 sunset date, the 12% ORP contribution rate (sum of employee and employer), and the amount of the TRS supplemental rate (4.05%) are all established in statute. The most recent actuarial valuation of MUS experience in the TRS, conducted by Milliman USA in 2004, finds that the 4.05% rate is too low and needs to increase. The very nature of a defined benefit plan generally directs future legislative and administrative action toward discussions of the benefit formula and associated costs. The fund currently has inadequate assets to offset the unfunded liability. Cost and benefit discussions are underway before the State Administration and Veterans' Affairs Interim Committee.

**Public Employees' Retirement System:** In 1999 HB79 was enacted, allowing MUS classified employees, currently in PERS, to choose the MUS ORP as an alternative. This legislation was part of a larger change in the PERS which established, for all public employees, a *Defined Contribution* alternative to the *Defined Benefit* PERS. Special provision was added to give MUS classified employees the additional option of the MUS faculty ORP. Further, the legislation required that a portion of the employer contribution rate (called "Plan Choice Rate") for employees choosing either the PERS DC plan or the MUS ORP be contributed to the PERS to fund the Actuarial Unfunded Liability. The plan choice rate is set at 2.37% of salaries of those employees in either the PERS DC or the ORP. An additional .04% of salary is contributed to the PERS educational fund. The plan choice rate is taken from the total Employer contribution rate of 6.9%. The ORP contribution rate is the remainder. This means that if the plan choice rates goes up or down, the ORP contribution rate will go up or down accordingly. For MUS classified employees, all three plan choices are ongoing options, and there is no sunset date. The PERS plan choice rate will be a permanent part of personnel costs for MUS classified employees under current law.

Like TRS, PERS has financial problems caused by assets insufficient for liabilities. Legislative action is likely to address benefits and funding.

**Optional Retirement Plan:** As a defined contribution plan, the ORP is always fully funded. The pressure on this Plan is likely to come from employees desiring to increase their asset accumulation by increasing the employer contribution.

# APPENDIX A

## Summary of Valuation Studies For Montana University System and TRS

1990 Hendrickson, Miller & Associates, *Actuarial Analysis of the Impact of the University's Optional Retirement Program upon the Teachers' Retirement System as of July 1, 1990*.

This report concluded: 1) TRS was not experiencing adverse selection in the type of employee choosing TRS vs. OPR and 2) although the MUS unfunded liability rate was less than other TRS employers (4.503% vs. 5.63%) the lower rate was not having an adverse impact on the amortization of the unfunded liability.

Bottom line: Yes the MUS contribution rate was fair though not perfect.

1992 Office of the Legislative Auditor, *Independent Actuarial Analysis of Optional Retirement Program for Employees of Montana University System, October 2, 1992*, prepared by Buck Consultants.

This report concluded: 1) ORP had no noticeable effect on TRS to date; 2) MUS unfunded liability rate was less than other employers (4.503% vs. 5.676%) but was fair and reasonable.

The report made several recommendations to address concerns of both MUS and TRS, including the following, subsequently enacted: 1) perform a separate valuation for MUS actual experience and set the MUS rate accordingly (this would lower the rate as of 1992 to 2.958% but would result in a volatile rate sure to go up), 2) credit MUS experience with the TRS employer contributions left in the system by MUS employees during their initial transfer to ORP<sup>6</sup>, 3) limit the MUS liability by mandating that all future MUS employees participate in ORP only.

Bottom line: Yes the MUS contribution rate was fair but more precise alternatives could be enacted.

1996 Milliman & Robertson, *Actuarial Valuation of the Montana University System Participation in the Teachers' Retirement System (as of July 1, 1996)*.

This valuation study was required by Section 19-21-203 MCA to determine the Optional Retirement Plan contribution rate necessary to amortize the past service liability of the university system members by July 1, 2033. This valuation found that the MUS rate of 2.503% needed to increase to 3.97%. To mitigate the impact on MUS, TRS Board agreed to phase the increase in over five years (HB121, 1997). The MUS valuation assumptions used in this report were based on a May 2, 1996 Investigation of Experience report which established distinct actuarial assumptions for MUS members participating in the TRS.

Bottom line: No the MUS contribution rate was not adequate, needed to go up.

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<sup>6</sup> Note: employees lost the employer contribution when they moved from TRS to ORP.

2000 Milliman & Robertson, *Actuarial Valuation of the Montana University System Participation in the Teachers' Retirement System (as of July 1, 2000)*.

This report studied MUS members independently and concluded the MUS unfunded liability contribution rate of 4.04% beginning 7-1-01 was sufficient for current benefits but insufficient for a 1.5% GABA (3.59% without GABA. 5.62% with GABA).  
Bottom line: Yes the MUS contribution rate was fair if no GABA.

2004 Milliman USA, *Montana University System Participation in the Teachers' Retirement System Actuarial Valuation (As of July 1, 2005)*.

This report studied MUS members independently and concluded the MUS unfunded liability contribution rate of 4.04% was insufficient for current benefits and even worse with a 1.5% GABA (5.06% without GABA, and. 7.23% with GABA).  
Bottom line: No the MUS contribution rate was not adequate, needed to be raised with or without GABA.

## **Actuarial Assumptions**

Actuarial valuations are made using a set of assumptions comparing expected experience with actual experience. The assumptions used to value MUS experience have become more refined and specific with each valuation. The following is a partial list of assumptions used by Milliman USA in the actuarial valuation of MUS participation in TRS as of July 1, 2004.<sup>7</sup> They are adopted by the TRS Board based on actual MUS experience and are generally updated every six years.

- Mortality – Rates adopted 7-1-00
- Disability – Rates adopted 7-1-96
- Other Termination of Employment – Rates adopted 7-1-02
- Retirement Rates – General Member rates and University Member rates based on actual experience most recently updated 7-1-02.
- Future Salaries – General wage increase of 4.5% plus 1% individual merit and longevity for total 5.5%. Note: TRS does not project annual increases for *positions* or for *individuals*, but rather for wages as a whole reported to the system based on experience. The 4.5% is the expected average salary increase for the MUS population as a whole. In addition, MUS members are assumed to have a 0.63% higher average final compensation than other TRS members, in order to account for larger than average annual compensation increases observed for this population in the years immediately preceding retirement.<sup>8</sup>
- Investment Earnings – annual rate of 7.75%, compounded annually (adopted effective 7-1-04)
- Administrative Expenses – funded by earnings in excess of 7.75%
- Termination Benefits – Rates adopted 7-1-02

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<sup>7</sup> For complete list and tables illustrating each rate, see Milliman USA, *Montana University System Participation in Teachers Retirement System Actuarial Valuation as of July 1, 2004*, Appendix A, page 11

<sup>8</sup> Information supplemented by David Senn, Administrator of Teachers Retirement Division. 4-7-06.

# APPENDIX B



# Optional Retirement Program

## Summary of Legislation<sup>9</sup>

### 1987 – Optional Retirement Plan Created

#### **HB300 – Authorize Optional Retirement Program for Certain University System Faculty and Staff (Rep. Lory) by request of Board of Regents**

Information testimony: Dan Buck, Montana Dept of Revenue

**Proponents:** Carroll Kraus, Commissioner of higher Education; Bruce Carpenter, President of Eastern; Jim Koch, President of U of M; Les Loble, representing TIAA-CREF; Terry Minow and Kathy Horejsi, MFT; Coleen Holmes, Montana College Coalition lobbyist; Matthew Teague and Ken Heikes (Vice President) of Eastern; Dave Evenson, OCHE.

#### **Proponent Arguments:**

Commissioner Kraus presented this bill on behalf of the Montana University System. He described a great deal of study and presented information prepared by TIAA-CREF on the benefits of a defined contribution plan for faculty and certain administrators of the MUS.

The University System and TIAA-CREF argued that an ORP was essential for MUS to be competitive with other institutions of higher learning when recruiting faculty. Attractive candidates were turning down MUS employment offers because of no ORP. Thirty-four states, the District of Columbia and 90% of private colleges and universities currently had TIAA-CREF ORPs. Many prospective employees would not come to work in MUS if they could not bring their TIAA-CREF ORP with them.

Why ORP for faculty? Proponents argued that university professionals are mobile, and this mobility is good for students and for higher education by fostering new and changing ideas and approaches. TIAA-CREF was a non-profit with decades of experience offering retirement plans tailored to a mobile higher education workforce. While TRS was a good system for a long term employee, it has many disadvantages for a mobile workforce. By contrast TIAA-CREF ORP had the following advantages (from HB300 House and Senate hearing minutes and exhibits):

- Instant vesting. All contribution by employee and employer belong to employee from day one. Under TRS, no vesting until five years of employment. Employees leaving sooner lost the employer contribution.
- Portability. Employees moving to a different higher education employer take their tax deferred retirement funds with them and continue to grow them with a new ORP employer. TRS is portable only to another Montana TRS member employer.
- Employee directs investments between TIAA (bonds, mortgages, loans) and CREF (stocks).
- TIAA-CREF is offered in 3700 other colleges and universities.
- ORP is completely funded. There is no unfunded liability accruing to the employer.

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<sup>9</sup> This summary does not include two bills that impacted all pensions: SB226 in 1991 changed income tax for retirement income, and SB374 in 1997 implemented child support provisions.

TIAA-CREF testified that 10% total employee/employer contribution was the floor for a good ORP benefit. MUS proposed contributing the difference to the TRS for the unfunded liability (from draft bill distributed by Jack Noble 11-22-86). MUS believed any impact to TRS would be minimal.

**Opponents:** Dave Senn, Administrator of Teacher Retirement System; Eric Feaver, MEA; Alton Hendrickson, Consulting Actuary for TRS; Tom Ryan, TRS Board member; Jess Long, Executive Secretary for School Administrators of Montana; Bruce Moerer, Montana School Boards Association.

**Opponent Arguments:**

Opponents believed the impact of an ORP on the TRS would be significant because of:

- Adverse selection. The fear was that new MUS employees, who were older and higher paid, would choose TRS over ORP because the benefit would be better. But inadequate contributions would have been collected for this benefit because of the shorter career covered under TRS. Younger employees would choose ORP.
- Losing University employees from the TRS system would increase the cost to the other employers or could decrease benefits or prevent future cost of living increases for TRS members.
- The MUS was not funding their fair share of the unfunded liability.

TRS provided the following to illustrate this last concern:

**1987 TRS Contributions**

	Future Liabilities	Past Liabilities	Total
Employee	7.044%	-0-	7.044%
Employer	1.628%	5.8%	7.428%
Total	8.672%	<b>5.8%</b>	14.472%

**Proposed MUS Contribution to TRS under HB300**

	Future Benefit TIAA-CREF	Past Liabilities TRS	Total
Employee	7.044%	-0-	7.044%
Employer	2.956%	4.472%	7.428%
Total	10.0%	<b>4.472%</b>	14.472%

A major portion of an employer’s contribution to a Defined Benefit plan often is dedicated to an actuarially determined unfunded debt (liability). (See “Section IV. How ORP and TRS Work”) In the case of TRS in 1987, that amount was 5.8%. MUS proposed paying 4.472% toward their portion of that debt. TRS and the other TRS employers did not want to have to make up this difference for MUS employees.

**Compromise:**

To prevent the bill from being killed, MUS proposed – and TRS accepted --compromise amendments which were codified in 19-21-111. (From 1991 SB264 House Exhibit 4 from Dave Evenson)

- An actuarial study would be done July 1, 1990, to see if the ORP impact on TRS was minimal or not. Findings would be reported to 52<sup>nd</sup> Legislature (1991).
- A 4.503% contribution would be made by MUS to TRS in the interim.

- If no impact was found, this contribution would return to ORP participants.
- If adverse impact was found and current contribution was not enough, the MUS would be liable for additional contribution.

## **1991 – University Contests TRS Actuarial Study Cost Figures**

### **SB264 Determine Value of Past Service Liability of U of M Teacher Retirement Members (Fritz)**

**Proponents of Introduced version:** Leroy Schramm representing OCHE; Terry Minow, MFT, who presented written testimony from Western, Eastern and Northern faculty associations; Vance Shelhamer, MSU faculty; Mary Bushing, MSU librarian; Jerry Furniss, U of M Teacher Union.

#### **Proponent Arguments:**

This bill, as introduced, eliminated MUS ORP contribution toward past unfunded liability costs to TRS.

The gist of the proponent argument was that an MUS contribution was unnecessary to keep TRS whole (House Exhibit 5 Karl Ulrich, Western). Therefore, TRS didn't need the money and the ORP employer contribution could be increased by this amount (4.503%) to provide a more competitive ORP benefit compared to other states. (See House hearing Exhibit 7 from Bill Innskeep MSU; and Senate hearing Exhibit 4 Evenson testimony). This was reaction to the actuarial valuation study, required by 19-21-111 in the 1987 law and performed by Hendrickson Miller for TRS. The valuation study found no adverse selection to TRS (that is, members selecting ORP were about the same as those selecting TRS). The report also estimated the impact to TRS of no ORP contribution would extend the unfunded liability amortization 1.5 years from 35.8 to 37.3 years. The report recommended continuing the current contribution, even though it was slightly lower than necessary to fully fund the MUS liability at the same amortization rate as the rest of the TRS liability.

Proponents characterized the impact of the ORP contribution to TRS described in the valuation study as insignificant. They also pointed out that 90% of incoming faculty members were choosing ORP, reducing the long term cost to TRS.

Under questioning, Leroy Shramm acknowledged that unfunded liability was part of a vested benefit and TRS had a legitimate expectation for payment of MUS obligation.

**Opponents of Introduced version:** Dave Senn, TRS; Gene Huntington, Mt Retired Teachers Association; Tom Biladeau, MEA; Bruce Moerer, Mt School Board Association.

#### **Opponent Arguments:**

Opponents argued that the impact of no ORP contribution was indeed significant and that it was unfair for the other TRS employers and members to pay for the MUS debt. Hendrickson Miller submitted a letter (dated 2-6-91. Exhibit 12) illustrating the MUS estimated share of unfunded liability at 16.7%. The share was estimated since TRS assets and liabilities had never been allocated by source. The Hendrickson Miller letter stated that, without the MUS ORP contribution of 4.5%, all other employers' contribution would need to increase by .703%.

#### **Compromise:**

Before leaving the House, the bill was amended to provide for an independent actuarial study to be carried out under the auspices of the Legislative Auditor to determine the portion of

unfunded liability in TRS actually attributable to MUS. The MUS contribution amount would remain the same until the new study was completed and the results presented to the 1993 legislature.

**Proponents:** Dave Evenson and Craig Roloff, OCHE; Dave Senn, TRS; Eric Feaver, MEA.

**Opponents:** Gene Huntington, Mt Retired Teachers; Tom Ryan, retired teacher and former TRS board member.

Opponents argued that commitments were made by the MUS in 1987 to pay their fair share of the TRS unfunded liability.

In the Senate the MUS was accused of renegeing on a deal: “You made a deal in 1987 and now you don’t like the deal.” (Sen. Forrester to Evenson, page 12, 3-14-92 Senate State Admin Committee hearing). The MUS disputed the liability amount estimated by the TRS actuary. The bill was tabled in Committee by a vote of 11 to 8. However, several days later it was taken from table by the Senate, amended and passed.

## **1993 – University & TRS Reach Agreement**

**SB407 Amend University System Optional Retirement Program (Fritz)** by Request of Board of Regents and TRS.

### **Proponents (there were no opponents)**

David Evenson, OCHE; Dave Senn, TRS; Craig Roloff, MSU; Stacy Riley and Terry Minow, MFT; Tom Bilodeau, MEA.

### **Proponent Arguments:**

Dave Evenson and Dave Senn both testified that this bill represented a recent MUS/TRS agreement formally endorsed by both the Board of Regents and the Teachers Retirement Board. (Senator Fritz called it an “amicable divorce.”) This was “a good compromise” that was based on the OLA-sponsored independent Actuarial Analysis of the ORP on TRS conducted by Buck Consulting. Buck Consultants sent a letter to the Senate State Administration Committee (Exhibit 2) confirming that SB407 was consistent with their recommendations. Specifically, the bill:

- Prevented adverse selection to TRS by requiring all new MUS faculty and certain other professionals to participate in ORP exclusively.
- Established a MUS rate of contribution to TRS based on MUS-only experience in TRS.
- Lowered the MUS contribution rate by extending the amortization period for MUS liability by seven years to the year 2033 (40years total). The rate would be reevaluated periodically and updated based on actual MUS experience. The first valuation would take place 1997.
- Increased the ORP total contribution (EE and ER) from 10% to 12% (Dave Evenson called 12% “the minimum necessary to provide adequate retirement benefits.” House hearing page 8)

In response to questions, Mr. Evenson stated that eliminating TRS as an option for faculty was a practical matter, rather than a concession. He stated that 90% of new hires were choosing the ORP and that the ORP was more desirable for MUS recruitment since university faculty tended to have more mobile careers than K-12 instructors.

Mr. Senn responded that the word “optional” (in Optional Retirement Plan) was still appropriate because such plans were called ORP in other states and the MUS had the option to add additional vendors or carriers.

## **1997- Valuation Study for MUS Rate**

**HB121 Adjust the Montana University System Optional Retirement Program Supplemental Employer Contribution Rate to Amortize, by July 1, 2033, the Past Service Liabilities of the University System Members Participating in the Teachers’ Retirement System. (Simpkins) by Request of the TRS.**

**Proponents (there were no Opponents):**

Dave Senn, TRS; David Evenson, OCHE; Tom Bilodeau, MEA.

**Proponent Argument:**

Dave Senn presented this bill to phase in the increase in the MUS supplemental contribution to TRS recommended in the 1996 MUS actuarial valuation study performed by Milliman & Robertson. The original bill phased the increase in over three years, but the TRS Board had recently agreed to amend the bill to phase in over five years. He noted that in the 1993 compromise, the MUS and TRS relied on the Buck Consultant valuation initial contribution rate for 1993. The Buck report noted that the rate would likely increase over time to about 4.4% of pay in 1997 and 4.5% in 2001. The 1996 valuation found a rate of 3.97% effective July 1, 1997. Mr. Senn noted that three actuarial valuations had now been completed (Hendrickson 1990, Buck 1992, and Milliman&Robertson 1996) and all concluded that the required rate should be around 4.0% of salary.

Mr. Evenson presented testimony that agreed with Mr. Senn. However, he testified that the MUS had requested their actuary firm, William M. Mercer, to review and independently verify the M&R report and to make recommendations: “Different actuaries use different assumptions and arrive at different conclusions.” He presented a copy of a letter to him dated 1-15-97 from Gregory Smith of Mercer (Exhibit 14). Mr. Smith found the M & R-determined MUS contribution rate to be based on actual MUS experience in TRS and to be consistent with previous reports and actuarial standards. He suggested MUS ask TRS to revisit economic assumptions and methodology for establishing contribution rates and to test the contribution rate against changes in these assumptions (examples: increase the projected investment income from 8% to 8.5%; increase projected MUS population growth from 0% to 1%). Mr. Evenson conceded in his testimony (House Exhibit 3) that Article VIII, Section 15 of the Montana Constitution approved on November 8, 1994, gives the TRS Board fiduciary responsibility for actuarially sound retirement system, and this likely includes establishing assumptions. In other words, the TRS Board did not have to heed MUS suggestions for revising their actuarial assumptions.

This bill passed unanimously in the Senate and with only 15 dissents in the House.

## **1999 – MUS Classified Employees Allowed To Choose ORP**

### **HB79 – Establish a defined contribution plan within public employees’ retirement system (Brainard)**

#### **Proponents of the Senate version:**

Mike O’Connor, PERS; Tom Schneider, MPEA; John McEwen, Dept of Admin; Glen Leavitt, OCHE; Candice Payne, University teachers union; Bob Frazier, U of M; Willie McCarthy, U of M; John Wing, VALIC Retirement Services; Sen. Taylor, SD37 Proctor; Rep Doug Mood, HD58 Seeley Lake.

#### **Proponent Argument:**

This bill represented the work of an interim legislative committee study of defined contribution and defined benefit retirement systems. This major piece of legislation added a Defined Contribution Retirement Plan (DCRP) option to the defined benefit PERS. For MUS classified employees, the bill added the MUS ORP as a third option. The choices were to begin on or before July 1, 2002.

Testimony from Tom Schneider of MPEA (Senate Exhibit 17) provides a summary of the rationale for allowing classified MUS employees to participate in the ORP:

- It is optional not mandatory. One of three options for University classified employees.
- PERS is good system for employees who work 30 years or until age 60. Otherwise there are penalties. The ORP provides an alternative for employees with a different employment history.

#### **Opponents:**

Tom Bilodeau, MEA; Darrell Holser, AFL-CIO; Vernon Bertelsen, retired teacher.

#### **Opponent Argument:**

Opponents argued that employees choosing defined contribution plans were very likely to have much less retirement income than those remaining in the PERS defined benefit plan. Premature cash outs, loans against assets, lack of disability protection, expensive startup and overhead were among the concerns.

HB79 was among the first bills introduced in 1999 and one of the last to be signed after many hearings, amendments and fairly close votes. The bill established a “Plan Choice Rate” for the actuarial unfunded liability in PERS for MUS ORP or PERS DCRP members. This is comparable to the supplemental rate paid by MUS to TRS under the ORP.

## **2001 – MUS Plan Choice Rate Changes for PERS Members in ORP**

### **HB116 – Generally revise the PERS defined contribution retirement plan (Mood)**

#### **Proponents (there were no Opponents):**

Kelly Jenkins, PERS; Tom Schneider, MPEA; Glen Leavitt, MUS

#### **Proponent Argument:**

This legislation generally provided clarification and correction to the 1999 legislation establishing the PERS Defined Contribution Retirement Plan. Included in the changes was a section to specify the “Plan Choice Rate” to be paid to PERS for the MUS classified employees in the ORP or PERS DCRP (19-21-214 MCA).

## **APPENDIX C – Tables**

**Table 1**  
**COMPARISON OF BENEFITS**  
**Faculty ORP**

BENEFIT	TEACHERS RETIREMENT SYSTEM <sup>10</sup>	OPTIONAL RETIREMENT PLAN <sup>11</sup>
<b>Effective Date</b>	September 1, 1937	July 1, 1987
<b>Vesting Period</b>	5 years. No benefits unless vested, except return of employee contribution plus interest.	Immediate vesting of employer and employee contributions.
<b>Guaranteed Benefit</b>	Yes	Generally, no.*
<b>Who Assumes Risk/Reward</b>	Employer	Employee
<b>Who Invests the Contributions</b>	Montana State Board of Investments	Employee. Employee may choose among 10 TIAA-CREF investments choices with varying degrees of risk and return. Employees can change and transfer allocations at no charge. TIAA-CREF offers personal investment counseling.
<b>Pre-tax Contributions</b>	Yes	Yes
<b>Final Retirement Compensation</b>	Average of highest 3 consecutive years of earned compensation. Benefit = 1/60 of final compensation x years of service	Benefits are determined by the amount and duration of contributions made to employee's account, and investment performance.
<b>When Benefits Are Available</b>	Eligibility: 25 years of service at any age or age 60 and 5 years	Benefits are available at termination of employment or retirement. No minimum age or service requirements apply. **
<b>Early Retirement</b>	Eligibility: 5 years service + age 50  Benefit: same as above but reduced ½ of 1% each of first 60 months early and 3/10 of 1% each of the next 60 months early.	Benefits are available at termination of employment or retirement. No minimum age or service requirements apply. **
<b>Death Benefit</b>	Yes after 5 years of service	Full current value of employee's account accumulation, including employer contributions and all earnings.
<b>Disability Benefit</b>	Yes after 5 years of service	No separate benefit. However, benefits based on full current value of disabled employee's account can begin at any age.
<b>Interest on member contribution</b>	Set annually. No less than 4% (currently 5%)	All earnings accrue to employee, minus small admin fee.
<b>Cost of Living Adjustment</b>	1.5% annually on January 1 after 36 months of retirement.	No guaranteed cost of living increase. However, employee has a number of distribution options. Payouts can be structured to increase over time.
<b>Portability</b>	Within MT state and local government employment covered by TRS or PERS. May also purchase up to 5 years of qualifying out-of-state service.	Among more than 3700 public and private colleges, universities, schools and other nonprofits nationwide. May roll over funds to another employer's plan that accepts them.
<b>Loan Against Assets</b>	No	No. Employees who participate in the ORP Supplemental Program may borrow against that portion.

\* Under the TIAA-CREF-funded ORP plan, the TIAA Traditional Annuity offers a guaranteed benefit. Any guarantees under annuities issued by TIAA-CREF are subject to TIAA's claims-paying ability. Refer to TIAA-CREFF enrollment kit.

\*\* If benefits are received before age 59½, a 10% penalty tax may apply (in addition to ordinary income tax payable on the amount withdrawn). Penalty tax will generally not apply if you terminate employment at age 55 or older.

<sup>10</sup> Source: M&R Report 7-1-2004, page 22. David Senn, TRS.

<sup>11</sup> Source: TIAA-CREF literature: *Choosing a Program* ~1988; *Preliminary Discussion July 1986*; *Choosing the Right Plan Can Make A Difference* ~2000 (for MUS Classified Employees; *Your Plan Summary* 2004 (for MUS Faculty and Professional Employees).



**Table 2<sup>12</sup>**

<b>Participation in Optional Retirement Plan</b>			
<b>Year</b>	<b>Number of ORP Members</b>	<b>Total ORP Eligible Employees</b>	<b>Total ORP Assets</b>
1990	523	2000	--
1991	604	2121	--
1992	675	2175	--
1993*	--	--	--
2002**	--	--	--
2004	3754	--	\$229m
2005	3915	--	\$259m

\* ORP became mandatory for faculty.

\*\*ORP became an option for MUS classified employees.

**Table 3**  
**Montana University System**  
**Members and Beneficiaries in Teachers Retirement System**  
**July 1, 2004\***

<b>MUS Activity in TRS</b>	<b>Number</b>	<b>Annual Salary/Benefit</b>
Active Members**	724	\$44,500,000 Salary
Service Retirees	1155	\$24,900,000 Benefit
Disability Retirees	9	\$ 95,000 Benefit
Survivors of Deceased Members	209	\$ 2,600,000 Benefit
Terminated No Withdrawals	468	NA
<b>Total</b>	<b>2565</b>	

\*Milliman USA *Montana University System Participation in TRS Actuarial Valuation as of July 1, 2004.*

\*\*Includes 88 part-time employees. Excludes 1 employee with less than \$1000 annual compensation.

<sup>12</sup> Complete information was not available. Numbers obtained as follows: 2004/05 from Brad Balkan, TIAA-CREF; 1990 from 1991 Hendrickson Miller letter to Dave Senn (leg hist) & valuation report 1990; 1991/92 from Buck valuation 1992, pg 1.

**Table 4**  
**Distribution of University Active Members in TRS\***  
**Completed Years of Service**

Age	0	1	2	3 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 to 39	40+	Total
<25													0
25 to 29													0
30 to 34			1		4	1							6
35 to 39		1		1	2	6	1						11
40 to 44		1		1	2	13	12	2					31
45 to 49				2	6	28	20	20	2				78
50 to 54	1	2		3	6	27	43	46	20	3			151
55 to 59					4	29	37	56	58	34	6		224
60 to 64					1	7	18	22	33	42	32	2	157
65 to 69				1		2	4	9	4	13	18	4	55
70 +					1	1	1	3	1	3	1		11
<b>Totals</b>	1	4	1	8	26	114	136	158	118	95	57	6	<b>724</b>

\*Milliman USA Montana University System Participation in TRS Actuarial Valuation as of July 1, 2004

**Table 5**

**History of MUS Contributions to ORP/TRS/PERS**

Year	Optional Retirement Plan		Teachers Retirement System		Public Employee Retirement System	
1988*	Employee	7.044%	Employee	7.044%	NA	
	Employer	2.956%	Employer	7.459%		
	TRS Supplement	<u>4.503%</u>				
	Total	14.503%	Total	14.503%		
1993**	Employee	7.044%	Employee	7.044%	NA	
	Employer	4.956%	Employer	7.459%		
	TRS Supplement	<u>2.503%</u>				
	Total	14.503%	Total	14.503%		
July 1, 1997***	Employee	7.044%	Employee	7.044%	NA	
	Employer	4.956%	Employer	7.470%		
	TRS Supplement	<u>2.810%</u>				
	Total	14.810%	Total	14.514%		
July 1, 1998	Employee	7.044%	Employee	7.044%	NA	
	Employer	4.956%	Employer	7.470%		
	TRS Supplement	<u>3.120%</u>				
	Total	15.120%	Total	14.514%		
July 1, 1999	Employee	7.044%	Employee	7.150%	NA	
	Employer	4.956%	Employer	7.470%		
	TRS Supplement	<u>3.420%</u>				
	Total	15.420%	Total	14.620%		
July 1, 2000	Employee	7.044%	Employee	7.150%	Employee	6.900%
	Employer	4.956%	Employer	7.470%	Employer	6.900%
	TRS Supplement	<u>3.730%</u>				
	Total	15.730%	Total	14.620%	Total	13.800%
July 1, 2001 to Present	<b><u>Faculty:</u></b>		Employee	7.470%	Employee	6.900%
	Employee	7.044%	Employer	7.150%	Employer	6.900%
	Employer	4.956%				
	TRS Supplement	<u>4.040%</u>	Total	14.620%	Total	13.800%
	Total	16.040%				
	<b><u>Classified (eff. 7-1-02):</u></b>					
	Employee	6.900%				
	Employer	4.490%				
	PERS Choice Rate	2.370%				
	PERS Education	<u>.040%</u>				
	Total	13.800%				

\*HB300 sets total EE/ER rate at 10% with balance to TRS.

\*\*19-21-203 MCA amended to define total EE/ER contribution rate at 12%. Board of Regents cannot set EE rate less than 6% or ER rate more than 6%.

\*\*\*HB121 establishes a TRS supplemental contribution schedule through 2001.

**Table 6<sup>13</sup>**

**Comparing Montana University System ORP Contribution to Other States**

<b>Institution Name (ORP)</b>	<b>Contribution Rate</b>
University of Alaska 1990	Employer – 8.65% Employee – 11.67%
Arizona Board of Regents 1975	Employer – 7% Employee – 7%
Arizona Community Colleges	Employer – 5.2% Employee – 5.2%
University of Colorado 1924	Employer – 10% Employee – 5%
Colorado State University 1992	Employer – 9% Employee – 8%
University of Northern Colorado 1992	Employer – 11.5% Employee – 8%
University of Southern Colorado and Ft. Lewis College 1994	USC Employer – 11.1% Employee – 8% Ft. Lewis Employer – 11.4% Employee – 8%
Idaho ORP 1990	Employer – 7.72% Employee – 6.97%
Idaho Community Colleges 1997	Employer – 7.72% Employee – 6.97%
<b>Montana University System 1988, 2002</b>	<b>FACULTY</b> <b>Employer – 4.956%</b> <b>Employee – 7.044%</b>  <b>STAFF</b> <b>Employer – 4.49%</b> <b>Employee – 6.90%</b>
University of Nebraska 1961	Optional Employer – 6.5% Employee – 3.5% Or Employer – 8.0% Employee – 5.5%
Nebraska State Colleges 1964	Employer – 8.0% Employee – 6%
Nebraska Community Colleges 1964	Employer - 6%, 7%, 8% Employee- 6%, 7%, 8%
University of Nevada System 1972	Employer – 10% Employee – 10%
New Mexico Alternate Retirement Plan 1991	Employer – 8.60% Employee – 7.6%
North Dakota University System 1964 (Single Plan)	Class I – Teaching and research faculty with ranks of professor or associate professor, research personnel with equivalent rank, and

<sup>13</sup> Source: Brad Balkan, TIAA-CREF, 4-3-06.

	<p>executive and administrative staff.</p> <p>Class II – Teaching and research faculty with ranks of assistant professor or instructor, research personnel and lecturers with equivalent rank, and professional staff.</p> <p>Class I:</p> <table> <thead> <tr> <th>Years of Service</th> <th>Institution's Contribution</th> <th>Your Contribution</th> </tr> </thead> <tbody> <tr> <td>&lt; = 10</td> <td>9.5% of salary</td> <td>1.5% of salary</td> </tr> <tr> <td>&gt; 10</td> <td>10.0%</td> <td>2%</td> </tr> </tbody> </table> <p>Class II:</p> <table> <thead> <tr> <th>Years of Service</th> <th>Institution's Contribution</th> <th>Your Contribution</th> </tr> </thead> <tbody> <tr> <td>&lt; 3</td> <td>4.5%</td> <td>0.5%</td> </tr> <tr> <td>&lt; = 10</td> <td>9.5%</td> <td>1.5%</td> </tr> <tr> <td>&gt; 10</td> <td>10.0%</td> <td>2.0%</td> </tr> </tbody> </table>	Years of Service	Institution's Contribution	Your Contribution	< = 10	9.5% of salary	1.5% of salary	> 10	10.0%	2%	Years of Service	Institution's Contribution	Your Contribution	< 3	4.5%	0.5%	< = 10	9.5%	1.5%	> 10	10.0%	2.0%
Years of Service	Institution's Contribution	Your Contribution																				
< = 10	9.5% of salary	1.5% of salary																				
> 10	10.0%	2%																				
Years of Service	Institution's Contribution	Your Contribution																				
< 3	4.5%	0.5%																				
< = 10	9.5%	1.5%																				
> 10	10.0%	2.0%																				
Oregon State System Of Higher Education 1967 (amended 1996)	<p>PERS I</p> <p>Employer – 9.49%</p> <p>Employee – 6%</p> <p>PERS II</p> <p>Employer – 8.52%</p> <p>Employee – 6%</p> <p>(amended 1996)</p>																					
Oregon Health Sciences University 1996	<p>As of 7/2001</p> <p>Employer – 12%</p>																					
Texas ORP 1968	<p>Faculty, Admin, and Professional</p> <p>Employer – 6%</p> <p>Employee – 6.65%</p>																					
Utah System of Higher Education 1923	<p>Employer – 14.2%</p> <p>Employee – 0%</p>																					
Washington State Institutions of Higher Education 1939	<p>Age &lt; 35:</p> <p>Employer – 5%</p> <p>Employee – 5%</p> <p>Age 35 – 50:</p> <p>Employer – 7.5%</p> <p>Employee – 7.5%</p> <p>Age 50 and above:</p> <p>Employer – 10%</p> <p>Employee – 10%</p>																					
Wyoming ORP – 1970	<p>Employer – 11.25%</p> <p>Employee – 0%</p>																					

# APPENDIX D

## **Title 19, Chapter 21, M.C.A.**

### **University System Optional Retirement Program**

**19-21-101. Authority to establish optional retirement program.** The board of regents may establish an optional retirement program, as provided in this chapter, for the administrative officers and members of the instructional and scientific staff of the Montana university system. The program may be an independent plan or part of a larger plan with respect to some or all of the benefits provided. The benefits under the program must be provided through individual annuity contracts, either fixed or variable, or a combination of contracts, issued to and owned by the participants in the program. The program must comply with applicable sections of the Internal Revenue Code.

**19-21-102. Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

- (1) "Program" means the optional retirement program established pursuant to this chapter.
- (2) "Public employees' retirement system" means the retirement system established in [19-3-103](#).
- (3) "Teachers' retirement system" or "system" means the teachers' retirement system provided for in Title 19, chapter 20.

**19-21-103. Duties of board of regents.** The board of regents shall:

- (1) act as fiduciaries of the program and exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims;
- (2) provide for the administration of the program;
- (3) designate the company or companies from which the contracts are to be purchased and approve the form and content of the contracts, taking into consideration the:
  - (a) nature and extent of the rights and benefits to be provided by the contracts for participants and their beneficiaries;
  - (b) relationship of these rights and benefits to the amount of contributions to be made;
  - (c) suitability of these rights and benefits to the needs of the participants and the interests of the Montana university system in the recruitment and retention of administrative officers and members of the instructional and scientific staff; and
  - (d) ability of the designated company or companies to provide these rights and benefits.

**19-21-104 through 19-21-110 reserved.**

**19-21-111. Repealed.** Sec. 3, Ch. 419, L. 1997.

**19-21-201. Participation in program.** (1) Except as provided in subsection (2), academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the program instead of the teachers' retirement system. This election must be exercised:

- (a) before January 1, 1988, for an eligible person hired before July 1, 1987;
  - (b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and
  - (c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the program by reason of appointment, promotion, transfer, or reclassification to an eligible position.
- (2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the program unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.
- (b) An eligible person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:
- (i) remain with the retirement system of which the person is a member on the date hired; or
  - (ii) become a member of the program.
- (c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

(d) A person is ineligible to make an election under subsection (1) or (2) if the person previously elected to remain in the teachers' retirement system pursuant to subsection (1) or to remain in the public employees' retirement system pursuant to this subsection (2).

(3) The election must be exercised by filing a written irrevocable election with the teachers' retirement system and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

(4) If an eligible officer or staff member fails to exercise the election, as provided by this section, that person shall remain or become a member of the teachers' retirement system.

(5) An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

**19-21-202. Effect on rights under teachers' retirement system.** (1) An election under [19-21-201](#) to participate in the program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.

(2) A member of the teachers' retirement system who elects to participate in the program is considered, for the purpose of determining eligibility for rights and benefits under that system, to be no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the system if qualified under [19-20-303](#), with the rights and privileges provided under [19-20-603](#)(1). A member who elects to participate in the program who does not qualify as an inactive member under [19-20-303](#) is considered a terminated member of the system under [19-20-304](#)(4).

(3) A person who elects to participate in the program is ineligible to be an active member of the teachers' retirement system while continuously employed in a position eligible to participate in the program.

**19-21-203. Contributions -- supplemental and plan choice rate contributions.** The following provisions apply to program participants not otherwise covered under [19-21-214](#):

(1) Each program participant shall contribute an amount equal to the member's contribution required under [19-20-602](#). The board of regents shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, or by employer pickup under section 414(h)(2) of that code, 26 U.S.C. 414(h)(2), as amended.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in [19-20-621](#), to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system.

**19-21-204 through 19-21-210 reserved.**

**19-21-211. Payment of benefits.** No retirement, death, or other benefit may be paid by the state or the board of regents under the optional retirement program. Benefits are payable to a participant and his beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

**19-21-212. Exemption from taxation, legal process, and assessments.** Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the optional retirement program and the earnings on the contributions are:



- (1) except for a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to [15-30-111](#)(2)(c)(ii), exempt from any state, county, or municipal tax;
- (2) not subject to execution, garnishment, attachment, or other process;
- (3) not covered or assessable by an insurance guaranty association; and
- (4) unassignable except as specifically provided in the contracts.

**19-21-213. Participation by employees in positions covered by public employees' retirement system.** Subject to and as provided in [19-3-2112](#), a university system employee in a position covered under the public employees' retirement system may elect to participate in the program.

**19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system.** (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to [19-3-2112](#) are as follows:

- (a) the member's contribution rate must be the rate provided in [19-3-315](#); and
  - (b) the employer's contribution rate must be the rate provided in [19-3-316](#).
- (2) Subject to subsection (3), the employer's contribution under subsection (1)(b) must be allocated as follows:
- (a) 4.49% of compensation must be allocated to the participant's program account;
  - (b) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and
  - (c) 0.04% of compensation must be allocated to the education fund pursuant to [19-3-112](#)(1)(b).
- (3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of [19-3-2121](#).

**TEACHERS RETIREMENT SYSTEM**  
**Title 19-20-621, M.C.A.**

**19-20-621. Montana university system optional retirement program supplemental contributions.** (1) Each employer within the university system with employees participating in the optional retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The optional retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program must increase to:

- (a) 2.81% beginning July 1, 1997;
- (b) 3.12% beginning July 1, 1998;
- (c) 3.42% beginning July 1, 1999;
- (d) 3.73% beginning July 1, 2000; and
- (e) 4.04% beginning July 1, 2001.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033.

**History:** En. Sec. 1, Ch. 419, L. 1997.

## Board of Regents Policy 803.2

### MONTANA BOARD OF REGENTS OF HIGHER EDUCATION Policy and Procedures Manual

#### SUBJECT: COMPENSATION

**Policy 803.2 - Retirement; Optional Retirement Program**  
*Effective May 24, 2002; Issued June 10, 2002*

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#### ***Statutory authority:***

The Optional Retirement Program (ORP) is established in accordance with the provisions of Title 19, Chapter 21, M.C.A., as amended.

#### **Board policy:**

##### I. Eligibility.

A Subject to conditions stated in Section II, all academic and professional administrative personnel with individual contracts under the authority of the Board of Regents shall be eligible to participate in the ORP.

B. Subject to conditions stated in Section XIV, effective July 1, 2002, all employees in positions covered under the public employees' retirement system who elect to participate in the Program pursuant to Title 19, Chapter 3, section 2112 M.C.A., as amended shall be eligible to participate in the ORP.

##### II. Participants - Academic and Professional Administrative Personnel

A. All eligible employees defined in Section I A shall participate in the ORP unless the person is, on the date hired, an active, inactive, or retired member of PERS or TRS who elects to remain with their current retirement system as provided in 4. below. This election must be exercised:

1. before January 1, 1988, for an eligible person hired before July 1, 1987;
2. within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987;
3. within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the ORP by reason of appointment, promotion, transfer, or reclassification to an eligible position; and
4. after July 1, 1993, an eligible person who is an active, inactive, or retired member of TRS or PERS shall elect, within 30 days of being hired, to:

- a. remain with their current retirement system; or
- b. become a member of the ORP.

B. The election must be exercised by filing a written notice with the campus payroll officer. The election is effective as of the date the notice is filed with the payroll officer or January 1, 1988, whichever is later.

C. If an eligible officer or staff member, who is an active, inactive, or retired member of TRS or PERS, fails to exercise the election as provided by this section, that person must remain a member of their current retirement system.

D. An election under this section is not effective, and deferrals will not be made to the applicable retirement system, until an appropriate application for the issuance of a contract or contracts under the program is filed with the campus payroll officer.

### III. Participants - PERS Eligible Employees

A. All eligible employees defined in Section I B shall participate in the ORP unless they elect to remain in the defined benefit plan or the defined contribution plan administered by PERS:

1. an employee who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective, may within 12 months after that date, elect to transfer to and become a participant in the ORP.
2. an employee who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within 12 months after the member's hire date, elect to transfer to and become a participant in the ORP.
3. an employee who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within 12 months of the member's hire date, elect to become a participant in the ORP.

B. Elections made pursuant to this section must be made on a form prescribed by the Public Employees Retirement Board. An employee failing to make an election prescribed by this section remains a member of the Public Employees' Retirement System.

An election under this section, including the default election pursuant to subsection A, is a one-time irrevocable election. Subject to Title 19, chapter 3, section 2113 M.C.A, this subsection does not prohibit a new election after an employee has terminated membership in the ORP and returned to employment in a position covered under the system.

An employee who terminates membership in the defined benefit plan, the defined contribution plan, or the ORP after making an election pursuant to subsection A and who returns to covered employment in less than 24 months shall become a member of the plan that the employee last selected and is not eligible for a new plan choice election.

### IV. Designated Companies

A. TIAA-CREF are the only companies designated by the Board of Regents to provide individual annuity contracts either fixed or variable, or a combination thereof, and owned by the participants.

B. TIAA-CREF shall be subject to the policies established by the administrator regarding the contact of eligible employees to explain the provisions of the ORP.

### V. Plan Administrator

The Board of Regents delegates its duties under Title 19, Chapter 21, M.C.A., to the Office of the Commissioner of Higher Education which is also designated as administrator of the ORP. The Commissioner of Higher Education shall administer the ORP consistent with Board of Regents' policies regarding the administration of employee benefit programs through inter-unit advisory committees.

## VI. Plan Contributions - Faculty and Professional Administrative Personnel

A. Contributions under this retirement plan, referred to as "plan contributions," shall be made at least monthly except for months in which no salary is paid in accordance with the following schedule:

1. each participant shall contribute an amount equal to the member's contribution required under 19-4-602, M.C.A.;
2. the Board of Regents' contribution on behalf of a participant shall be the greater of (a) the employer contribution to TRS not used to amortize past service unfunded liability or (b) an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation;
3. On or after July 1, 1997 the Board of Regents may reduce the participant's contribution rate to an amount not less than 6% of earned compensation, provided the sum of participant and employer contribution remains 12%;
4. Beginning on July 1, 1993 and continuing to June 30, 1997, the employer contributions to TRS to discharge the obligation for past service liability is 2.503%; and
5. After July 1, 1997, the past service liability contribution to TRS may be adjusted based on the actual experience of the Montana University System members of the TRS system.

B. Plan contributions by participants shall be made by employer pick-up under Section 414(h)(2) of the Internal Revenue Codes.

C. Plan contributions shall be forwarded to TIAA-CREF to be applied as premiums on retirement annuities owned by the participant and may be allocated by the participant between TIAA and CREF in whole percentages.

D. The Board of Regents shall make plan contributions for participants who have attained the normal retirement age who continue in employment provided the participant also continues contributions.

E. Contributions to the ORP shall not continue beyond the date a participant receives his or her first annuity payment from a TIAA or CREF retirement annuity unless the participation in the ORP continues as a result of an early or phased retirement agreement between a participant and the Board of Regents.

F. During a paid leave of absence, the Board of Regents shall continue its plan contributions to a participant's annuities on the basis of salary then being paid by the Board of Regents, provided the participant also continues plan contributions.

## VII. Plan Contributions - PERS Eligible Employees

A. Contributions under this retirement plan, referred to as "plan contributions," shall be made at least monthly except for months in which no salary is paid in accordance with the following schedule:

1. each participant shall contribute an amount equal to the member's contribution required under 19-3-315, M.C.A.;
2. the Board of Regents' contribution on behalf of a participant shall be the rate provided in 19-3-316, M.C.A.
3. Subject to Subsection (4), the Board of Regent's contribution under subsection (2) must be allocated as follows:
  - (a) 4.49% of compensation must be allocated to the participant's program account
  - (b) 2.37% of compensation must be allocated to the defined benefit plan under the Public Employees' Retirement System as the plan choice rate; and
  - (c) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(c) M.C.A.

4. The allocations under subsection (3) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121 M.C.A.

B. Plan contributions by participants shall be made by employer pick-up under Section 414(h)(2) of the Internal Revenue Codes.

C. Plan contributions shall be forwarded to TIAA-CREF to be applied as premiums on retirement annuities owned by the participant and may be allocated by the participant between TIAA and CREF in whole percentages.

D. The Board of Regents shall make plan contributions for participants who have attained the normal retirement age who continue in employment provided the participant also continues contributions.

E. Contributions to the ORP shall not continue beyond the date a participant receives his or her first annuity payment from a TIAA or CREF retirement annuity unless the participation in the ORP continues as a result of an early or phased retirement agreement between a participant and the Board of Regents.

F. During a paid leave of absence, the Board of Regents shall continue its plan contributions to a participant's annuities on the basis of salary then being paid by the Board of Regents, provided the participant also continues plan contributions.

#### VIII. Retirement Annuities

A. The participant shall complete a TIAA-CREF application form in order for retirement annuities to be issued. Each TIAA and/or CREF retirement annuity issued under the ORP is for the sole purpose of providing a retirement or death benefit.

B. Provisions of TIAA and CREF retirement annuities are described in the booklet, Retirement Annuities, and shall be distributed to each participant as part of the description of the ORP.

C. All benefits under the ORP shall be provided solely through individually owned, fully funded retirement annuities and, therefore, are not subject to, nor covered by, federal plan termination insurance.

#### IX. Repurchase

A. In the event the participant in the ORP terminates employment for reasons other than retirement or disability and requests that TIAA-CREF repurchase his or her annuity, the Board of Regents may approve such repurchase. These conditions are described in detail in the booklet, Retirement Annuities.

B. Upon repurchase, the entire amount accumulated in the annuities shall be payable by TIAA-CREF to the participant and shall be in full satisfaction of the participant's and his/her spouse's rights to retirement and/or death benefits under the ORP.

#### X. Retirement Benefits

A. Upon retirement at any age, the participant shall be entitled under the term of his or her TIAA and CREF retirement annuities to receive a monthly or periodic income under one of the options set forth in such contracts. All options provide a lifetime income for the participant and, all except one, also provide for income to a surviving spouse or other beneficiary.

B. Total TIAA-CREF annuity income benefits which begin on or after May 1, 1980, shall be calculated on a sex-neutral basis as described in the booklet, Retirement Annuities. Descriptions of the income options are also contained in the booklet.

C. The Board of Regents shall permit the use of the retirement transition benefit described in the booklet, Retirement Annuities.

#### XI. Death Benefits

In the event a participant dies prior to commencement of retirement benefit payments described in Section VIII, the full current value of the annuity accumulation, including the portion attributable to ORP contributions made by the Board of Regents, shall be payable to the beneficiary or beneficiaries named by the participant in a single sum or under any one of the income options offered by TIAA-CREF. The benefit options are described in the booklet, Retirement Annuities.

#### XII. Plan Year

A. The "plan year" is January 1 through December 31 of each year.

B. Records for each participant to whom annuities have been issued shall be maintained on a calendar year basis. TIAA-CREF shall send each annuity owner a report of premiums and benefits summarizing the status of his or her retirement annuities as of December 31 of each year. Similar reports or benefit illustrations may be obtained by a TIAA-CREF annuity owner upon termination of employment or at any other time by writing directly to TIAA-CREF.

#### XIII. Application for Benefits

A. Procedures for receipt of benefits may be initiated by writing directly to TIAA-CREF.

B. Benefits provided by TIAA and CREF retirement annuities to which plan contributions have been applied shall be payable by TIAA-CREF upon receipt by TIAA-CREF of a satisfactorily completed application for benefits and supporting documents, death benefits, or repurchase amounts. The necessary forms may be provided to the participant, the surviving spouse, or the participant's beneficiary by TIAA-CREF.

#### XIV. Amendment and Termination

A. The Board of Regents reserves the right to modify or discontinue the ORP at any time.

B. Any discontinuance or modification of the ORP shall not adversely affect the benefits accrued by participants prior to the date of discontinuance

#### Definitions:

A. "Teachers' Retirement System (TRS)" means the Teachers Retirement System provided for in Title 19, Chapter 20, M.C.A.

B. "Optional Retirement Program (ORP)" means the Optional Retirement Program provided for in Title 19, Chapter 21, M.C.A.

C. "TIAA" means the Teachers Insurance and Annuity Association.

D. "CREF" means the College Retirement Equities Fund.

E. "Normal retirement age" means the last day of the academic year in which age 65 is attained.

F. "Participant" means an employee of the Montana University System who has elected to join the ORP.

G. "PERS" means the Public Employees' Retirement System provided for in Title 19, Chapter 3, M.C.A.

H. "Defined benefit plan" means the defined benefit retirement plan administered by PERS under Title 19, Chapter 3, M.C.A.

I. "Defined contribution plan" means the defined contribution retirement plan administered by PERS under Title 19, Chapter 3, Part 21, M.C.A.

History:

Item 56-004-R0787, Authorization to provide Optional Retirement Program for contract employees; Montana University System, July 24, 1987 as revised July 8, 1993 and May 24, 2002 (Item [114-109-R0302](#)).

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## PERS-related Code

**19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system.** (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to [19-3-2112](#) are as follows:

(a) the member's contribution rate must be the rate provided in [19-3-315](#); and

(b) the employer's contribution rate must be the rate provided in [19-3-316](#).

(2) Subject to subsection (3), the employer's contribution under subsection (1)(b) must be allocated as follows:

(a) 4.49% of compensation must be allocated to the participant's program account;

(b) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund pursuant to [19-3-112](#)(1)(b).

(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of [19-3-2121](#).

**19-3-2112. Plan choices for members employed by university system -- amount available to transfer -- effect on rights.** (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer membership to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within 12 months after that date, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within 12 months after the member's hire or rehire date, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within 12 months of the member's hire date, elect to become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to [19-3-2113](#), this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under chapters 3 and 21 of this title, but must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to [19-3-2111](#). That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to [19-2-907](#) or an execution or income-withholding order pursuant to [19-2-909](#) may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the optional retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to [19-2-708](#), must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under [19-3-2114](#).

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system.

**History:** En. Sec. 48, Ch. 471, L. 1999; amd. Sec. 18, Ch. 490, L. 2001; amd. Sec. 45, Ch. 429, L. 2003; amd. Sec. 29, Ch. 329, L. 2005.

### **19-3-2121. Determination and adjustment of plan choice rate and contribution allocations**

...

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under [19-3-2117\(2\)\(b\)](#) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under [19-3-2117\(2\)\(a\)](#) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under [19-3-2117\(2\)\(a\)](#) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under [19-3-2117\(2\)\(d\)](#) should be increased, the employer contribution to each member's account under [19-3-2117\(2\)\(a\)](#) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under [19-3-2117\(2\)\(d\)](#) should be decreased, the employer contribution to each member's account under [19-3-2117\(2\)\(a\)](#) must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under [19-3-2117\(2\)](#) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under [19-3-2117\(2\)](#) must be adjusted according to the board's determination.

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