

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 979

(Senator Peters)

Budget and Taxation

Appropriations

Optional Retirement Program - Eligibility - Alterations

This bill *requires* specified individuals to continue to participate in the Optional Retirement Program (ORP) if the individuals were eligible to participate in ORP but were reclassified by their employer to a position that would no longer be eligible for participation in ORP. It also changes the eligibility criteria for participation in ORP for employees of Morgan State University (MSU) and St. Mary's College of Maryland (SMCM).

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: No material effect on State finances. Due to changes in federal law, existing employees participating in ORP will no longer be eligible to participate; by requiring these employees to remain in ORP, the status quo is maintained. Several employing institutions, which are responsible for determining their employees' eligibility for ORP, indicate that changes to the eligibility criteria in the bill codify their current practice.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Employees of MSU who are in positions designated as executive or professional administrative are eligible to participate in ORP. Employees of SMCM who are in positions designated as exempt, rather than professional or faculty, are eligible to participate in ORP.

ORP members who are no longer eligible to participate in ORP because their positions were reclassified *must* continue to participate in ORP if:

- they were eligible to participate in ORP but, as of August 23, 2004, their position was reclassified by the University System of Maryland (USM) or MSU and they would otherwise be eligible for membership in the State Retirement and Pension System (SRPS) as an employee of an employing institution; *or*
- they are no longer eligible to participate in ORP because their position was reclassified by an employing institution or the Secretary of Higher Education, they were participating in ORP immediately preceding the reclassification, and they would otherwise be eligible for membership in SRPS as an employee of an employing institution.

Current Law: ORP is a tax-favored defined contribution retirement savings plan available to designated employees of the institutions listed below as an alternative to membership in SRPS:

- USM;
- MSU;
- SMCM;
- the Maryland Higher Education Commission (MHEC); and
- community colleges or regional community colleges in the State, including Baltimore City Community College.

To join ORP, individuals in employing institutions must be eligible for membership in SRPS and be:

- members of the faculty of an employing institution;
- eligible (professional) employees of MHEC;
- professional employees of a community college;
- employees of USM exempt from the federal Fair Labor Standards Act (FLSA);
- professional or administrative employees of MSU; or
- professional employees or faculty members of SMCM.

Under specified conditions, an individual who is eligible to participate in ORP but whose position was reclassified either by USM or MSU as no longer eligible for ORP *may* continue to participate in ORP.

ORP provides an employer contribution of 7.25% of a member's compensation, which is

paid by employing institutions. Unlike SRPS plans, there is no mandated employee contribution in ORP; in fact, employee contributions are not authorized. Vesting in ORP is immediate, member accounts are portable, and members may invest their accounts in any of many investment options offered by the plan administrators, which are selected by the Board of Trustees of SRPS. Current plan administrators are TIAA-CREF and Fidelity Investments. Upon retirement, members may elect to purchase annuities with their accumulated funds.

ORP is authorized under § 403(b) of the federal Internal Revenue Code, which applies only to employees of educational institutions and specified nonprofit organizations. A decision to join ORP is a one-time, irrevocable decision that must be made within one year of becoming eligible to join ORP. ORP members are not eligible to participate in any of the defined benefit plans offered by the State.

With regard to ORP, SRPS is charged with the selection of plan vendors and the approval of the form and content of annuity contracts offered by the vendors. It is explicitly not responsible for (1) retirement counseling; (2) preparing or disseminating information with respect to annuity contracts; or (3) enrolling, terminating, or retiring participating employees. Those tasks typically are carried out by employing institutions. ORP assets are not considered assets of the State, and payment of ORP benefits is not an obligation of the State.

Background: USM advises that, under new FLSA guidelines issued by the U.S. Department of Labor (DOL), some of its employees who are currently exempt will become nonexempt. As statute links employees' eligibility for ORP to their FLSA status, some ORP-eligible employees will lose their eligibility under the new federal guidelines. Moreover, the new DOL guidelines include salary indexing, so the reclassification of current positions may be ongoing. The statutory authority to allow some reclassified employees to remain in ORP does not address this particular circumstance.

Additional Information

Prior Introductions: None.

Cross File: HB 926 (Delegate Lierman) - Appropriations.

Information Source(s): Maryland Higher Education Commission, St. Mary's College of Maryland, Maryland State Retirement Agency, University System of Maryland, Maryland Supplemental Retirement Plans, Department of Legislative Services

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