OUS, Second Amendment to the 2008 Restatement of the Optional Retirement Plan

BACKGROUND
The Oregon State Board of Higher Education has fiduciary responsibility for amendments and restatements of the Optional Retirement Plan. The Board may initiate or delegate analysis of plan design features, and reviews recommendations of staff and of the Plan’s Investment and Administration Committees. This Second Amendment to the 2008 Restatement of the Oregon University System Optional Retirement Plan (ORP) is recommended for adoption by staff for compliance with Internal Revenue Service regulations. The amendment does not change benefit levels or contributions.

Adoption of this Second Amendment is needed at this time to support an early retirement incentive program at Eastern Oregon University that requires eligible tenured faculty to accept or decline participation in the program by June 13, 2011.

This Second Amendment states the terms under which participants of a retirement incentive program, including tenure relinquishment/reduction agreements, may receive retirement income from their ORP accounts. The amendment clarifies current practice and outlines procedures that have been in operation since July 23, 2003, when the Board added a Retired Participant definition to align eligibility for contributions and distributions with PERS’ retiree rules, to the extent required by the authorizing statute of the ORP (ORS 243.800) and with IRS regulations. In addition, the Second Amendment incorporates new IRS regulations regarding normal retirement date and details retirees’ eligibility for re-employment, contributions, and distribution of their ORP accounts.

This amendment had been scheduled for adoption along with others that the IRS will require for approval of the Plan’s Cycle C determination letter application, but requires immediate action to assist Eastern Oregon University faculty considering participation in the university’s early retirement incentive program.

RECOMMENDATION TO THE COMMITTEE
Staff recommends that the Finance and Administration Committee of the Board approve the adoption of the Second Amendment to the 2008 Restatement of the Oregon University System Optional Retirement Plan and forward to the full Board for approval.

(Committee Action required.)
SECOND AMENDMENT TO THE 2008 RESTATEMENT OF THE OREGON UNIVERSITY SYSTEM OPTIONAL RETIREMENT PLAN

Effective June 3, 2011, the 2008 Restatement of the Oregon University System Optional Retirement Plan, as the 2008 Restatement has been amended to date, is amended as follows:

1. Section 1.20 is amended to read:

   **1.20 Participant**

   “Participant” means any Eligible Employee who qualifies for participation pursuant to Section 2. A Participant’s status may be:

   (a) “Active” while currently employed in a qualifying position as described in Section 1.9;

   (b) “Inactive” if not currently employed in a qualifying position as described in Section 1.9, Disabled, or terminated, and the Participant has not received a full disbursement of vested benefits; or

   (c) “Retired” if:

      (i) The Participant terminated employment on or after reaching the Normal Retirement Date and the Participant has requested a disbursement of vested benefits; or

      (ii) The Employer’s records record that the Participant terminated employment and the Participant participates in one of the Employer’s retirement incentive programs such as, but not limited to, the early retirement incentive or tenure relinquishment/reduction programs.

   OPERS retirement does not confer retiree status on a Plan Participant.

   A Participant shall cease to be a Participant when his or her benefit payments are completed.

2. Section 2.3 is amended to read:

   **2.3 Reemployment after Termination**

   In the event an Employee terminates employment with the Employer, or becomes Retired, and is subsequently reemployed by the Employer:

   (a) Such Employee’s original election, whether to participate in this Plan or to be a member of OPERS, shall remain in effect.
(b) Such Employee, if otherwise eligible, will be eligible for contributions under Sections 3.1 and 3.2 for and after the first calendar month beginning after the date of reemployment, but only if no vested benefit was distributed for the Employee (other than to or for an alternate payee under a Qualified Domestic Relations Order) before the reemployment and the Employee:

(i) Is an Inactive Participant Immediately before the reemployment; and

(ii) Is not and has not been a Retired Participant who participated in one of the Employer's retirement incentive programs as described in Section 1.20(c).

(c) If such Employee does not satisfy the requirements in subparagraph (b) above:

(i) Such Employee will be ineligible for contributions under Sections 3.1 and 3.2 for the period beginning with the reemployment and ending with the completion of the first period of six (6) full calendar months of reemployment in a qualifying position, during which reemployment is not interrupted by more than thirty (30) consecutive working days; and

(ii) If such Employee is or has been a Retired Participant who participated in one of the Employer’s retirement incentive programs as described in Section 1.20(c):

(A) The Employee will also be ineligible for contributions under Sections 3.1 and 3.2 for the period beginning with the date recorded in the Employer's records as the date the Employee terminated employment under the retirement incentive program and continuing during the Employee's participation in the retirement incentive program, which period includes without limitation:

(1) Any period of employment provided to the Employee under the retirement incentive program after such termination of employment; and

(2) Any period for which the Employee receives, or is eligible to receive in the future, any payment or benefit under the retirement incentive program (not including a distribution under Section 5 or under an annuity contract described in Code Section 403(b) or an eligible deferred
compensation plan described in Code Section 457(b)); and

(B) The Employee's “reemployment” for purposes of Sections 2.3(c)(i) and 2.3(e) will not begin before the Employee’s first hour, if any, as an Employee after the end of the period of the Employee's participation in the retirement incentive program.

(d) Any contributions under Sections 3.1 and 3.2 on behalf of an Employee who is an Inactive but not a Retired Participant immediately before reemployment will, during the reemployment, be at the Employee’s Employer Contribution Tier when the Employee was last an Active Participant before the reemployment.

(e) Any contributions under Sections 3.1 and 3.2 on behalf of a Retired Participant, or on behalf of an Employee who was not a Participant immediately before the reemployment because the Employee's participation had ceased under Section 2.4, will, during the reemployment, be at the Employer Contribution Tier for an Active Participant who is first employed with the Employer at the time of the Employee's reemployment.

(f) If the Employee has not previously made an election regarding participation in this Plan, the Employee shall be eligible to elect participation upon meeting the requirements of Section 2.1.

3. Section 5.1 is amended to read:

5.1 Eligibility for Benefits

A Participant shall be eligible to receive a distribution of his or her vested Accounts upon becoming Disabled, becoming Retired and reaching the Normal Retirement Date, termination of employment with the Employer, or Plan termination. A Participant’s Beneficiary shall be eligible to receive a distribution of the remaining balance of the Participant’s vested Accounts upon the death of the Participant.

Notwithstanding the foregoing, in the event a Participant again becomes an Active Participant before benefits commence, he or she shall no longer be eligible to receive a distribution. If benefits have commenced in the form of periodic payments, unpaid benefits shall be suspended until a subsequent event allowing distribution. The preceding sentence shall not apply if the suspension of benefit payments would be prohibited by insurance law or any other applicable law or regulation.
4. Section 5.2(a) is amended to change "A Participant who is eligible for benefits" to "A Participant who is eligible to receive a distribution (because Disabled, because Retired and reached the Normal Retirement Date, because of termination of employment with the Employer, or because of Plan termination)".

5. Section 5.2(c) is amended to change "A Participant or Beneficiary who is entitled to a distribution" to "A Participant who is eligible to receive a distribution (because Disabled, because Retired and reached the Normal Retirement Date, because of termination of employment with the Employer, or because of Plan termination), or a Beneficiary who is eligible to receive a distribution,"

6. Section 5.4(a) is amended to change both "A retired, terminated, or Disabled Participant" and "Upon termination of employment, a Participant" to "A Participant who is eligible to receive a distribution (because Disabled, because Retired and reached the Normal Retirement Date, because of termination of employment with the Employer, or because of Plan termination)"

7. Section 5.4(b) is amended to change "A retired, terminated, or Disabled Participant" to "A Participant who is eligible to receive a distribution (because Disabled, because Retired and reached the Normal Retirement Date, because of termination of employment with the Employer, or because of Plan termination)"

IN WITNESS WHEREOF, the Board has caused this document to be duly executed on this _________ day of June, 2011.

FOR THE OREGON STATE BOARD OF HIGHER EDUCATION

___________________________________________________
Dr. Jay D. Kenton, Vice Chancellor for Finance and Administration
1.1 Redline showing the changes the Second Amendment would make to ORP Sections 1.20, 2.3, 5.1, 5.2, and 5.4

1.2

1.3 1.20 Participant

“Participant” means any Eligible Employee who qualifies for participation pursuant to Section 2. Effective August 1, 2003, a Participant’s status may be:

(a) “Active” while currently employed in a qualifying position as described in Section 1.9;

(b) “Inactive” if not actively at work currently employed in a qualifying position as described in Section 1.9, disabled, or terminated, and the Participant has not received a full disbursement of vested benefits; or

(c) “Retired” if:

   (i) The Participant terminated employment on or after reaching the Normal Retirement Date and the Participant has requested a disbursement of vested benefits; or

   (ii) The Employer’s records record that the Participant terminated employment and the Participant participates in one of the Employer’s retirement incentive programs such as, but not limited to, the Retirement Incentive or Tenure relinquishment/reduction programs.

OPERS retirement does not confer retiree status on a Plan Participant.

A Participant shall cease to be a Participant when his or her benefit payments are completed.

1.4 ** **

1.5 2.3 Reemployment after Termination

In the event an Employee terminates employment with the Employer, or becomes Retired, and is subsequently reemployed by the Employer:

(a) Such Employee’s original election, whether to participate in this Plan or to be a member of OPERS, shall remain in effect.

(b) Such Employee, if otherwise eligible, will be eligible for contributions under Sections 3.1 and 3.2 for and after the first calendar month beginning after the date of reemployment, but only if the Employee was an Inactive Participant immediately before the reemployment and no vested benefit was distributed for the Employee (other than to or for an alternate payee under a Qualified Domestic Relations Order) before the reemployment, and the Employee:

   (i) Is an Inactive Participant Immediately before the reemployment; and

   (ii) Is not and has not been a Retired Participant who participated in one of the Employer’s retirement incentive programs as described in Section 1.20(c).
(c) If such Employee does not satisfy the requirements in subparagraph (b) above,
such:

(i) Such Employee will be ineligible for contributions under Sections 3.1 and 3.2
for the period beginning with the reemployment and ending with the
completion of the first period of six (6) full calendar months of reemployment
in a qualifying position, during which reemployment is not interrupted by
more than thirty (30) consecutive working days; and

(ii) If such Employee is or has been a Retired Participant who participated in one
of the Employer’s retirement incentive programs as described in Section
1.20(c):

(A) The Employee will also be ineligible for contributions under Sections 3.1
and 3.2 for the period beginning with the date recorded in the
Employer's records as the date the Employee terminated employment
under the retirement incentive program and continuing during the
Employee’s participation in the retirement incentive program, which
period includes without limitation:

(1) Any period of employment provided to the Employee under the
retirement incentive program after such termination of
employment; and

(2) Any period for which the Employee receives, or is eligible to
receive in the future, any payment or benefit under the
retirement incentive program (not including a distribution under
Section 5 or under an annuity contract described in Code Section
403(b) or an eligible deferred compensation plan described in
Code Section 457(b)); and

(B) The Employee’s “reemployment” for purposes of Sections 2.3(c)(i) and
2.3(e) will not begin before the Employee’s first hour, if any, as an
Employee after the end of the period of the Employee's participation in
the retirement incentive program.

(d) Any contributions under Sections 3.1 and 3.2 on behalf of an Employee who is an
Inactive but not a Retired Participant immediately before reemployment will, during
the reemployment, be at the Employee's Employer Contribution Tier when the
Employee was last an Active Participant before the reemployment.

(e) Any contributions under Sections 3.1 and 3.2 on behalf of a Retired Participant, or
on behalf of an Employee who was not a Participant immediately before the
reemployment because the Employee's participation had ceased under Section 2.4,
will, during the reemployment, be at the Employer Contribution Tier for an Active
Participant who is first employed with the Employer at the time of the Employee's
reemployment.
1.6 An\(f\) If the Employee who is reemployed by the Employer and has not previously made an election regarding participation in this Plan, the Employee shall be eligible to elect participation upon meeting the requirements of Section 2.1.

* * * *

1.7 5.1 Eligibility for Benefits

A Participant shall be eligible to receive a distribution of his or her Accounts, to the extent vested, Accounts upon becoming Disabled, upon becoming Retired and reaching the Normal Retirement Date, termination of employment with the Employer, or Plan termination. A Participant’s Beneficiary shall be eligible to receive a distribution of the remaining balance of the Participant’s vested Accounts upon the death of the Participant.

Notwithstanding the foregoing, in the event a Participant again becomes an Active Participant before benefits commence, he or she shall no longer be eligible to receive a distribution. If benefits have commenced in the form of periodic payments, unpaid benefits shall be suspended until a subsequent event allowing distribution. The preceding sentence shall not apply if the suspension of benefit payments would be prohibited by insurance law or any other applicable law or regulation.

1.8 5.2 Benefit Commencement

(a) Participant

A Participant who is eligible for benefits to receive a distribution (because Disabled, because Retired and reached the Normal Retirement Date, because of termination of employment with the Employer, or because of Plan termination) may request benefit commencement at any time after becoming eligible for benefits, and on or before April 1 of the calendar year following the later of the calendar year in which (i) the Participant attains age 70½, or (ii) the Participant retires (hereinafter the “Required Beginning Date”).

If a Participant fails to request benefit commencement, the Participant shall be deemed to have requested that benefits equal to the minimum required distribution amount commence on the Required Beginning Date.

(b) Beneficiary

Payment of death benefits to a Beneficiary shall commence as provided in Section 5.7.

(c) Application for Benefits

A Participant or who is eligible to receive a distribution (because Disabled, because Retired and reached the Normal Retirement Date, because of termination of
employment with the Employer, or because of Plan termination), or a Beneficiary who is entitled to receive a distribution, must contact the Fund Sponsor directly to initiate a benefit distribution. A Participant or Beneficiary may request a complete distribution from a Fund Sponsor, or a partial distribution if permitted by the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits, required supporting documents, and confirmation from the Employer that the Participant or Beneficiary is eligible for benefits. Necessary forms will be provided by the Fund Sponsor upon request of the Participant or Beneficiary.

(d) Deemed Cash-out

If a Participant terminates employment prior to fully vesting in the Employer Contribution Account, the Participant shall be deemed to have received a distribution of such non-vested Employer Contribution for purposes of Section 9.5.

* * * *

1.9 5.4 Form of Payment

(a) General

A retired, terminated, or Disabled Participant who is eligible to receive a distribution (because Disabled, because Retired and reached the Normal Retirement Date, because of termination of employment with the Employer, or because of Plan termination) may elect any form of payment offered by a Fund Sponsor at the time of distribution, with respect to the part of his or her Accounts held by that Fund Sponsor. Where the forms of payment offered by a Fund Sponsor at the time of distribution, with respect to any part of the Participant's Accounts held by that Fund Sponsor in a custodial account, are the forms of payment permitted under the Plan (subject to the requirements under Code Section 401(a)), the Participant may elect from among the following forms of payment for distributions from that part:

(i) Full withdrawal: A single payment of the amount of that part.

(ii) Partial withdrawal: A single payment of an amount specified by the Participant.

(iii) Systematic withdrawal: Monthly, quarterly, or yearly installment payments.

(iv) Annuity: Any form of annuity offered for that part by the Fund Sponsor.

Forms of payment offered by each Fund Sponsor may change from time to time. A Fund Sponsor shall provide a written explanation of the currently available forms of payment upon a Participant’s or Beneficiary’s request. Upon a Participant who is eligible to receive a distribution (because Disabled, because Retired and reached the Normal Retirement Date, because of termination of employment with the
Employer, a Participant or because of Plan termination) may elect to leave the part of his or her Accounts held by a Fund Sponsor in the Plan or have the benefit paid in the form of a lump sum. If left in the Plan, benefits will commence as required by Section 5.2 and 5.6.

(b) Limitation on Forms of Payment

A retired, terminated, or Disabled Participant who is eligible to receive a distribution (because Disabled, because Retired and reached the Normal Retirement Date, because of termination of employment with the Employer, or because of Plan termination) may elect a joint annuitant other than his or her spouse only if the percentage of benefits payable to the joint annuitant does not exceed the allowable percentage determined by the Fund Sponsor in accordance with applicable regulations. For distributions made before January 1, 2002, Proposed Treas. Reg. Section 1.401(a)(9)-2 (issued in 1987) requires that a certain percentage of the total benefit be provided to the Participant, determined as of the date payments are to commence under the Plan. For distributions made on or after January 1, 2002, Treas. Reg. Section 1.401(a)(9)-6 limits the percentage of benefits payable to a nonspouse joint annuitant. A Participant must elect a form of payment under which payments will be completed within the Participant’s and Beneficiary’s lifetimes or over a period certain not longer than their life expectancies.

(c) Automatic Form of Benefit at Required Beginning Date

Unless the Participant elects otherwise, benefits required to commence on the Required Beginning Date pursuant to Section 5.2(a) shall be paid in a lump sum.