[Minor revision: January 29, 2013]

Angelo State University
Operating Policy and Procedure

OP 52.29: Optional Retirement Program (ORP)

DATE: January 29, 2013

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish policy and procedures in administering the Optional Retirement Program (ORP) in accordance with Chapter 25 of the Texas Higher Education Coordinating Board.

REVIEW: This OP will be reviewed in January of odd-numbered years by the director of human resources with recommended revisions forwarded through the vice president for finance and administration to the president by February of the same year.

POLICY/PROCEDURE

1. Overview

a. In accordance with the Rules and Regulations of the Texas Higher Education Coordinating Board, Chapter 25, Angelo State University provides employees in eligible positions the opportunity to participate in the Optional Retirement Program (ORP) in lieu of participation in the Teacher Retirement System (TRS) of Texas. The ORP is a tax deferred defined contribution retirement plan authorized under Section 403(b) of the Internal Revenue Code and Section 830 of the Texas Government Code. The plan year for ORP is defined as the tax year as reported on each employee's Form W-2.

b. The Office of Human Resources is responsible for notifying each newly eligible employee of the availability of the program and securing the employee's written acknowledgment.

c. Enrollment in the program is solely at the discretion of each eligible employee, and employees must select the company and annuity contract or mutual fund that best fits their retirement objectives. It is the responsibility of the employee to monitor the company selected and investments.

d. An employee must exercise an option to participate in the ORP within 90 days following the date of eligibility. If no election is made within 90 days, the employee shall be deemed to have chosen membership in the TRS.

e. Individuals employed in ORP eligible positions do not become ORP eligible until they are eligible for TRS membership as determined by TRS rules.

f. The university assumes no liability or responsibility for the income tax aspects of ORP, the terms and provisions of any contract issued hereunder, monitoring of the financial stability of participating companies, or the market condition of the participants'

investments. Office of Human Resources employees are specifically prohibited from providing advice on the above.

2. Eligibility

a. New employees employed on a full-time basis for a period of four and one-half months or more in the following categories are eligible to participate in the ORP:

(1) Faculty Member – A member of the faculty whose duties include teaching and/or research as a principal activity and who holds the title of professor, associate professor, assistant professor, instructor, or equivalent faculty title, including "visiting professor' if the position is at least one full semester in duration.

(2) Faculty Administrator – An administrator responsible for teaching and research faculty whose principal activity is planning, organizing, and directing the activities of faculty and who holds the title of dean, associate dean, assistant dean, director, department chair, or chair of an academic department.

(3) Executive Administrator – An administrator who holds the title of chancellor, deputy chancellor, vice chancellor, associate vice chancellor, assistant vice chancellor, or the equivalent and an administrator who holds the title of president, executive vice president, provost, vice provost, vice president, associate vice president, assistant vice president, or the equivalent.

(4) Other Key Administrator – An administrator other than a faculty administrator or an executive administrator whose position is considered a key administrative position within the institution's organizational structure and that meets the requirements of this paragraph. All positions in this category shall meet the following criteria:

(a) Serves as director or other administrative head of a major department or budget entity;

(b) Is responsible for the preparation and administration of the budget, policies, and programs of the major department or budget entity;

(c) Usually reports to the office of a chancellor, president, vice chancellor, vice president, dean, or equivalent; and

(d) A position shall not be considered ORP eligible under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not ORP eligible.

(5) Librarian – A professional librarian who holds, at a minimum, a master's degree in library science or information science and whose principal activity is library services.

(6) Athletic Coach – An athletic coach, associate athletic coach, or assistant athletic coach whose principal activity is coaching, excluding an athletic trainer and

excluding an athletic director or assistant athletic director unless the principal activity is coaching rather than administrative.

(a) Athletic trainers may be included in the "professional" category if the position requires the trainer to be a physician.

(b) Athletic directors whose principal activity is not coaching normally shall be included in one of the administrator categories.

(7) Professional – An employee whose principal activity is performing the duties of a professional career position including, but not necessarily limited to, physician, attorney, engineer, and architect that meets the following criteria:

(a) Requires a terminal professional degree in a recognized professional career field that requires occupation-specific knowledge and appropriate professional licensure;

(b) Is a non-classified position; and

(c) A position shall not be considered ORP eligible under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not ORP eligible.

b. Position-required Qualifications

An employee who meets the qualifications of a "professional" or a "librarian" as defined above shall not be considered eligible to elect ORP as a professional or librarian unless the position requires the professional or librarian qualifications, respectively, as a principal activity. For example, an attorney who fills a position that does not require that the position be filled by an attorney shall not be considered ORP eligible based solely on the fact that the person is an attorney.

c. Identification

Eligible job categories are identified in the personnel pay plan.

d. Employment Changes Affecting Eligibility

(1) Eligible employees who have elected to participate in ORP for the first time must remain employed in an ORP eligible position on a full-time basis (100 percent effort) for a period of at least one full semester or four and one-half months during their initial ORP eligibility period in order to remain eligible for participation in the ORP program. Employees who fail to satisfy this requirement will be required to return to TRS membership for the remainder of their employment in Texas public higher education.

(2) Employees who are vested in Texas ORP and become employed in a position not eligible for ORP participation will be required to continue to participate in ORP and will not be eligible for TRS membership.

(3) Employees who are vested and participating in ORP must continue to participate if their appointment is reduced, provided it is not reduced below 50 percent time.

(4) Employees who are vested and participating in Texas ORP at another Texas public state institution of higher education and who transfer to the university must continue to participate in ORP. If the transferring participant currently uses an ORP company that is not already approved to do business with Angelo State, the employee must select a new company that is currently approved to conduct business with the university and its employees.

(5) Employees who, at one time, were eligible and participated in ORP at another Texas state institution, but subsequently became employed in the Texas public school system and were required to return to TRS, will not be eligible to participate again in ORP if later employed by Angelo State. It is the option of the employees to either withdraw their ORP account or leave it on deposit.

3. Election to Participate

a. New employees must complete TRS enrollment forms at the time of initial employment in order to facilitate the payroll process. Employees will have 90 days from the first day of ORP eligible employment to make a one-time irrevocable decision to elect and enroll in the ORP.

b. Employees participating in TRS who have a change of status that makes them eligible to participate in ORP are responsible for making the decision to elect ORP within the first 90 days of eligibility and for submitting the appropriate forms to the Office of Human Resources if the election to ORP is desired. .

c. The ORP election decision is available only once during an employee's career in Texas state-supported institutions of higher education.

d. Employees who elect ORP participation choose the ORP in lieu of TRS membership and benefits. Upon election of ORP, members of TRS lose all benefit rights in the TRS, other than a right to the return of annual contributions, even if the member was vested therein. However, employees who are required to return to TRS under a provision of law are entitled to any TRS benefits that may accrue thereafter, in addition to any ORP benefits to which the employee may be entitled. * In accordance with Section 25.172, Rules of the Board of Trustees, Teacher Retirement System

4. Enrollment Procedures

a. The employee must select the company and annuity contract or mutual fund that best fits his or her retirement objectives.

b. A list of currently approved companies and representatives may be obtained from the Office of Human Resources.

c. Failure to select an approved ORP company may result in disciplinary action up to and including termination of employment. Retirement contributions are required by law as a condition of employment.

d. Only authorized representatives from approved companies are permitted to conduct business with eligible employees.

e. Representatives of approved companies are not authorized to initiate contact with employees. Employees interested in ORP should contact one of the listed representatives of the company of their choice to obtain information and to secure forms to apply for the program of their choice.

f. Company solicitation procedures are available through the Office of Human Resources.

g. The following forms must be completed and submitted to the Office of Human Resources by either the employee or the company representative:

(1) ORP *Information Acknowledgement Form*

(2) ORP *Salary Reduction Acknowledgement/Change of Company*

(3) *Notice of Election to Participate in Optional Retirement Program* form (TRS 28)

(4) *Application for Refund* form (TRS 29), if the employee is currently participating in TRS

(5) Copy of the company application/enrollment form (if available)

(6) Original of the company application/enrollment form must be submitted directly to the company selected or company representative or to the Benefits Office if there is no company representative.

5. Effective Date of Participation

The effective date of participation is determined in accordance with the following provisions:

a. The Office of Human Resources will determine the employee's effective date of participation.

b. The effective date of participation will be the first of the month provided all necessary and properly executed forms are signed, received by the Office of Human Resources, and processed before payroll has run for that month.

c. Forms received after the monthly payroll calculation will be effective on the first of the following month.

6. Withdrawal of Teacher Retirement System

a. Employees electing to participate in ORP must withdraw all prior TRS contributions plus any accrued interest. Employer contributions to TRS are not refundable, even to vested members. The employee is responsible for satisfying any federal income tax liability accrued by the withdrawal of a TRS account. Amounts contributed after 1987 will be subject to income taxes and possible early withdrawal penalties unless "rolled over" to

an Individual Retirement Account (IRA) or an eligible employer plan within 60 days of withdrawal.

b. To withdraw TRS deposits, a *Notice of Election to Participate in Optional Retirement Program* form (TRS 28) and an *Application for Refund* form (TRS 29) must be completed and submitted with the ORP *Information Acknowledgment Form* and the ORP *Salary Reduction Acknowledgement/Change of Company* form to the Office of Human Resources.

7. Contributions

a. Both the employee and the employer contribute to the participant's ORP on a tax-deferred basis. Participant and employer contribution rates are established by the Texas legislature and are subject to revision.

b. Internal Revenue Service Code 401(a)(17)(B) limits the amount of compensation that may be considered for purposes of calculating retirement plan contributions. The limit as of the date of this OP is $220,000, indexed annually.

c. An unvested participant's employer contributions are forfeited upon termination. When vesting is completed in subsequent employment, the participant will have a vested right only to employer contributions made during the subsequent and any future employment periods.

d. No participation occurs during any calendar month during which an employee is on leave without pay for the entire month.

8. Vesting

a. Employees shall be considered vested in ORP on the first day of the second year of participation in one or more optional retirement plans operating in one or more public institutions of higher education in Texas. A year shall mean 12 cumulative full months. A full calendar month of leave without pay shall not be included in the calculation of such year. An academic faculty member shall be credited with the summer months toward vesting in ORP, provided the faculty member is employed in an ORP eligible position during the spring semester immediately preceding the summer, and during the fall semester immediately following the same summer.

b. Once a participant has vested in ORP, such participant's vesting status shall not be affected by any partial or total withdrawals made after termination of participation in ORP or attainment of age 70 ½ years. Upon reemployment in a public institution of higher education in Texas, a vested participant shall not be required to satisfy the vesting period again.

c. An ORP participant who terminates employment in all public institutions of higher education in Texas prior to satisfying the vesting requirements shall retain credit for previous ORP participation upon reemployment in an ORP eligible position. Such credit shall not be affected by any partial or total withdrawals made after termination of participation in ORP or attainment of age 70 ½.

9. Change of Companies and Transfers

a. A change of company is the only change a participant can make after the initial election to participate in ORP

(1) Participants may change companies by submitting a new ORP *Salary Reduction Acknowledgement/Change of Company* form and enrollment/application form from the new company to the Office of Human Resources.

(2) The change will be effective on the first day of the month following the receipt of all necessary and properly executed forms in the Office of Human Resources

(3) Participants may change ORP companies without transferring contributions from the prior company to the new company.

b. Participants may transfer prior contributions in connection with or following a company change as follows:

(1) The receiving company completes its rollover/transfer form, including the account number, address where the funds should be sent, and other information appropriate for each company.

(2) The participant must complete an ORP/TSA *Transfer Request* form, including the receiving company information and the name of the company representative who is authorized by the university. The company representative name is not required if the employee is transferring funds to a company that does not have individual company representatives.

(3) Both the ORP/TSA *Transfer Request* form and the receiving company's rollover/transfer form should be forwarded to the Office of Human Resources. An employee may not withdraw accumulated deposits from a previous ORP company before or after a change of companies until termination, retirement, or attainment of age 70 ½.

(4) Upon receipt of the ORP/TSA *Transfer Request* form, the Office of Human Resources will verify that the receiving company is an approved ORP company and forward it to Payroll Services. A transfer may not be made to a grandfathered company unless that employee is currently making contributions through payroll deduction to that company

(5) The completed ORP/TSA *Transfer Request* form, with the attached receiving company's rollover/transfer form, will be forwarded by Payroll Services to the surrendering company. The forms will be returned to the employee if the receiving company is not an approved ORP company or if the representative has not been approved by the university.

(6) All transfers will be made in accordance with IRS Ruling 90-24, which authorizes partial and full transfers to and from 403(b)(7) mutual fund accounts and/or 403(b)(1) annuity accounts, and states that such transfers are nontaxable if the following conditions are met:

(a) A direct transfer from the "old" company to the "new" company is made; and

(b) The transferred funds continue to be subject to the same or more stringent early distribution restrictions.

10. ORP Distribution Rules

a. A distribution of funds will be made only upon the occurrence of a distributable event, defined in Title 8, section 830.105 of the Texas Government Code, as follows:

(1) Death

(2) Retirement (including disability retirement)

(3) Termination of employment in all public institutions of higher education in Texas

(4) Attainment of age 70 ½

b. Distributions may be made only by the company upon receipt of a properly completed and signed *Notice of Final Deposit and Vesting Status* form that has been certified by Payroll Services. All applicable company cash surrender forms, as well as surrender checks, should be sent directly to the former employee of the university. Employer contributions made on behalf of an employee who does not meet the program's vesting requirements at the time of the distributable event will be refunded to Payroll Services.

c. A domestic relations order is a notice of entitlement that awards an interest in the ORP account value to an alternate payee. Title 8, Chapter 804, of the Texas Government Code, makes the company responsible for qualifying a domestic relations order and administering benefits in accordance with the Code. If a dispute arises over determination of whether a domestic relations order is a "qualified" domestic relations order (QDRO) that cannot be resolved by the procedure described in subsection (g) of Section 804.03, the court that issued the order or that otherwise has jurisdiction over the matter shall resolve the dispute.

(1) The following procedure should be used when executing a QDRO for a university ORP participant:

(a) The domestic relations order decree must be sent to the employee's ORP company to determine if the order meets the criteria for a "qualified" domestic relations order (QDRO).

(b) If the company determines that the domestic relations order meets the criteria established in Chapter 804, the company will communicate its determination to the employee and alternate payee in writing. The company also will send a copy of the determination to the Office of Human Resources for inclusion in the employee's benefits file.

(c) The Texas ORP withdrawal restrictions still apply to the employee.

d. A 10 percent additional tax is imposed on distributions made before age 59 ½, regardless of when the contributions to which the accumulations are attributable were made. The 10

percent additional tax does not apply to distributions made prior to age 59 ½ if the distribution is

(1) Made after the employee separates from employment and is part of a scheduled series of substantially equal periodic payments for the life expectancy of the employee, or the joint lives or life expectancies of the employee and a beneficiary;

(2) Made to an employee because of early retirement under the plan after attainment of age 55.

(3) Made to an employee who has separated from service and used to pay medical expenses to the extent that they are tax deductible under the Internal Revenue Code;

(4) A result of a disability retirement;

(5) Made to a beneficiary or the employee's estate after death; or

(6) Subject to a special exception that applies to payments to an alternate payee, not to the employee, according to a QDRO.

e. A participant who has terminated employment must begin to receive benefits no later than April 1 of the calendar year following the year in which he or she attains age 70 ½, if termination of employment occurred prior to age 70 ½. If the participant continues to work in a retirement participation eligible capacity after age 70 ½, then the participant must begin to receive benefits no later than April 1 of the calendar year following the year of eligible employment termination. Distributions that do not begin by these deadlines will be subject to an additional tax equal to 50 percent of the minimum amount that should have been distributed. It is the employee's responsibility to meet these distribution requirements.

f. A participant who is employed in a retirement participation eligible capacity upon attainment of age 70 ½ may begin to receive benefits upon attainment of age 70 ½ without employment termination. An employee who is still actively employed must continue contributions to ORP even if electing to receive benefits from the ORP**. * In accordance with Rules and Regulations of the Texas Higher Education Coordinating Board, Chapter 25**

g. Termination of employment under ORP is defined as removal from the payroll of Angelo State for one full calendar month without any expectation of returning to employment with any Texas public institution of higher education.

h. It is the company's responsibility to process all withdrawals of contributions in compliance with federal regulations, to make required tax withholdings, and to provide employees with any required notices describing the taxation of distributions, rollover rights, and withholding rules.

11. Retiring Under the Optional Retirement Program

a. Participants, regardless of date of termination, may retire under the ORP provided that they: have at least ten years of service creditable under either the ORP, TRS, or the Employees Retirement System (including public community/junior college service); are

at least 65 years of age or their age plus years of creditable service is equal to or exceeds 80; and have not voluntarily forfeited benefits through the withdrawal of ORP service. *** In accordance with Rules and Regulations of the Texas Higher Education Coordinating Board, Chapter 25**

b. Former employees with ten years of service creditable under either ORP, TRS, or the Employees Retirement System are required to complete the appropriate forms no later than 30 days following attainment of age 65, or satisfaction of the Rule of 80 (employee's age plus credible service equals 80) in order to receive retiree insurance benefits.

c. Persons who are approved for ORP disabled retiree status in the GBP and have at least ten years of service credit, of which at least three years (ten years if hired after September 2001) are with a GBP-participating agency or institution, may remain in the GBP indefinitely, provided they are receiving or are eligible to receive an annuity.

   Persons approved for ORP disabled retiree status who have less than ten years of service credit, but at least three years (ten years if hired after September 2001) with a GBP-participating agency or institution, may remain in the GBP for the same number of months for which they have participated in the ORP, provided they are receiving or are eligible to receive an annuity.

d. Vested members of ORP who have terminated employment in all public institutions of higher education in Texas may annuitize their accounts and collect benefits without official retirement under the terms provided by their individual contract(s) without meeting the above requirements.

12. Selection and Approval of Optional Retirement Program Companies

Angelo State University will provide a selection of at least four, and up to ten, ORP companies that are qualified and admitted to do business in the state of Texas. Periodically, but not more frequently than every three years, the university will issue a Request for Proposal (RFP) to all currently approved ORP providers and other companies to apply for the privilege of providing ORP contracts to eligible employees of the university.

a. The RFP submissions will be evaluated against a set of criteria to measure administration, service, and investments.

b. Following the process outlined above, the senior vice chancellor and chief financial officer will submit a recommended list of companies for approval by the Board of Regents.

c. Angelo State will provide a selection of at least four ORP companies that are qualified and admitted to do business in the state of Texas. *** In accordance with Rules and Regulations of the Texas Higher Education Coordinating Board, Chapter 25**

d. Only companies approved by the Board of Regents may enroll new participants in their plans.

e. Approved companies must maintain a minimum of 10 actively contributing participants. Companies not previously approved must achieve this level of participation by the end of

their second year. If a company fails to meet this standard, that company will be removed from the approved list and placed on the grandfathered list effective February 28 following the year of non-compliance.

f. All grandfathered companies will continue to receive monthly remittances from existing participants, but are restricted from conducting new business. Once a grandfathered company no longer has a contributing participant, the provider will be removed from the grandfathered list. Grandfathered providers are required to abide by this policy.

13. Program Subject to Change

The Employee Retirement Income Security Act of 1974 (ERISA), the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Federal Deficit Reduction Act of 1984 (DEFRA), the Retirement Equity Act of 1984 (REACT), the Tax Reform Act of 1986 (TRA), the 1996 Small Business Job Protection Act, the 1997 Tax Reform Act, and the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) all imposed new and/or revised federal regulations on employee benefit plans. Future laws may change the provisions, tax status, and/or benefit available from individual ORP contracts. The Texas Tech Board of Regents and/or university administration also reserve the right to make changes to policies governing ORP.

14. Forms and Procedures

All forms and procedures related to this policy are available at the Office of Human Resources.