

BACKGROUND INFORMATION

TSERS

Recent changes in federal tax law will require some changes in the UNC Phased Retirement Program for Tenured Faculty. Historically, defined benefit plans like TSERS have been precluded from making distributions to participants who have not completely terminated their employment with their employer. This restriction has led to considerable confusion over what constitutes a complete termination of employment.

As part of the Pension Protection Act that was enacted in 2006, Section 401(a)(36) was added to the Code. This section permits defined benefit plans like TSERS to commence retirement benefits after a participant who is still actively employed has reached normal retirement age. Recently issued regulations confirm this and establish standards for determining whether a stated normal retirement age is appropriate under the facts and circumstances of the employer's retirement practices. Specifically, the new rules, which are now effective, provide that any normal retirement age that is on or after age 62 is appropriate for all employers. If an eligible participant has met a normal retirement date under TSERS and has attained age 62 with at least 5 years of service, UNC General Administration's outside legal counsel has advised that the Program should meet the Code's requirements for that participant.

With respect to State law, there is currently a provision in the statute that exempts tenured faculty who participate in the UNC Phased Retirement Program from TSERS legislation that requires a six-month break in service at retirement prior to returning to work and from the ban on pre-termination rehiring agreements. This exemption is scheduled to sunset the earlier of June 30, 2010 or 12 months after the issuance of final phased retirement regulations by the IRS. General Administration will seek a permanent exemption from this legislation.

ORP

Because ORP is designed as a defined contribution plan, special rules apply to the commencement of benefits while participants are still employed. In particular, defined contribution plans are permitted to make in-service distributions of accounts derived from employer and employee contributions to participants who have attained age 59 ½. Such plans are also permitted to make in-service distributions of accounts derived from employer contributions to participants who have participated in the plan for 60 or more consecutive months.

Therefore, the changes in the UNC Phased Retirement Program's to permit participants who have attained age 59 1/2 (with at least 5 years of service) to take in-service distributions of amounts derived from employer and employee contributions fall within the rules described above.