

**Date:** Monday, October 5, 2020 at 11:49 AM

**To:** "[UML-MSP@LISTSERV.UML.EDU](mailto:UML-MSP@LISTSERV.UML.EDU)" <[UML-MSP@LISTSERV.UML.EDU](mailto:UML-MSP@LISTSERV.UML.EDU)>

**Subject:** [UML-MSP] Section 60 ORP update

Dear MSP members,

I am writing to those of you who opted for the Section 60 ORP transfer process. Thanks to those of you who shared your questions and concerns about the Section 60 ORP transfer process after our earlier email. Chad Montrie and I prepared a summary of your responses that MSP President Carol McDonough then shared at the Higher Education Leadership Council meeting earlier in the semester. Since then, I have also been communicating with Suzanne Wall, Director of Higher Education at MTA, and I wanted to pass along some of the information that Suzanne has shared with me in our exchanges.

Suzanne assured me that the MTA Legal division already has an attorney assigned to, and actively working on, the Section 60 issues. The attorney is part of the team which meets regularly with the MSRB director, MSRB General Counsel, and DHE retirement plans and legal team. In addition, the MTA retirement counselors work under the direction of the Legal Division. She also assured me that Ed McCourt (MTA Retirement Consultant – Higher Ed) has the tools and abilities to assist members in calculation and research of employee and employer assets and refers legal issues as appropriate. Suzanne also made it clear that MTA Vice President Max Page (who is a faculty member at UMass Amherst) is fully engaged in the multi-year problem of ORP and the Section 60 transfers. He is ready to be involved again if elevated political assistance is warranted or if systemic problems come to light, and would also be interested in hearing about problems we are having.

MTA leadership is also preparing for a high-level meeting to get status reports from DHE, and then a leader meeting with MSRB. The meeting with DHE would hopefully include one leader from each involved Higher Ed local.

They are also pushing DHE to schedule additional webinars (there was a session scheduled for Sept. 30 but it only had 2 RSVPs, so it was cancelled) Dates being finalized are: **10/14, 11/02, 12/07**. An announcement and registration for the Section 60 webinars will be on the DHE website at: <https://www.mass.edu/forfacstaff/orp/section60.asp>. We may also have the opportunity to schedule a group info session solely for MSP members and request someone from MSRB or DHE respond to questions.

Finally, I have attached three documents Suzanne shared with me: one is a new FAQs document on Section 60 transfers, and the others are letters relating to the MTA position on the question of interest being charged during the asset transfer process. This may give you a sense of where MTA stands on this important issue, and why DHE is eager to help employees set up the TPA to safely finalize transfer of assets to MSERS.

If you have additional questions or concerns that may arise, feel free to reach out to me at [anthony\\_szczeniul@uml.edu](mailto:anthony_szczeniul@uml.edu) and I will try to help in any way I can (though it may only be directing you to other people).

Best,  
Tony

Anthony Szczesiul, Ph.D. (he/his/him)  
Professor of English  
University of Massachusetts Lowell  
O'Leary Library 469  
61 Wilder Street  
Lowell, MA 01854  
978-934-4178 / fax:978-934-3097



Merrie Najimy, President  
Max Page, Vice President  
Ann Clarke, Executive Director-Treasurer

January 30, 2019

Deborah Goldberg, Treasurer  
State House, Room 227  
Boston, MA 02133

Nicola Favorito  
Deputy Treasurer and Executive Director  
Massachusetts State Retirement Board  
One Winter Street  
Boston, MA 02108

Dear Treasurer Goldberg and Mr. Favorito:

Since I last wrote to you on December 19, 2018, we understand that the position of the Retirement Board is that it is authorized to charge additional interest on the total balance of Section 60 service costs, including that portion of the service cost attributable to ORP contributions made through December 31, 2013.

- I. The Board's position that it can charge additional interest on contributions made before January 1, 2014 is contrary to Section 60.

Based on our understanding of the Board's position, we believe that the Board is misinterpreting Section 60. Our position is that Section 60 prohibits charging additional interest on ORP contributions made before January 1, 2014. I have attached a memorandum from our General Counsel explaining our position on this.

Here is an example of the difference between our position and that attributed to the Board. The difference is considerable.

One of our members had a total Section 60 Qualifying Service cost of \$218,000. This was the sum of her ORP contributions from May 16, 1996 to October 17, 2015 (as well as pre-ORP MSERS contributions added to her ORP account) plus actuarial assumed interest of 8% through December 31, 2013.

She transferred from her available, liquid ORP assets the sum of \$158,000. She has other ORP assets that are not liquid, because they are in the TIAA Traditional Account.

Her Section 60 service cost balance is \$60,000.

Of that amount, \$17,000 can be attributed to her ORP contributions for the period of January 1, 2014 through her last day in the ORP.

It is our position that the Board clearly cannot charge interest on \$43,000 of the service cost balance. However, we understand from Mr. Favorito that the Board's position is that interest can be charged on the entire \$60,000.



II. Open questions that must be answered before *any* new interest charges are warranted

As to interest on ORP contributions after December 31, 2013, it would be unjust for the Board to charge any additional interest before all aspects of the Section 60 process for which the Board is responsible have been defined.

A. Delay in defining the process

Today, seven years and 97 days since Section 60 was enacted and approved, and five years and 128 days since the IRS letter ruling, members still await answers on major matters:

- MSRB has not finalized the content of billing statements so that they accurately describe the ways in which Section 60 differs from standard Board procedures.
- MSRB has not determined what kind of installment payments members can make toward paying off their Section 60 service cost, especially involving the use of Transfer Payout Annuities (TPA's) from their non-liquid Traditional ORP assets.
- MSRB has not determined whether members can expedite completion of their Section 60 payments by using non-ORP assets to pay the equivalent of employee assets in excess of their Section 60 Qualifying Service cost and all remaining employer assets.
- MSRB has not determined how Section 60 payments should or should not proceed and what rights a Section 60 member (or beneficiary) should have under the MSERS when the member has not completed all Section 60 payments and the member leaves MSERS-covered employment, dies, or has to retire unexpectedly.
- MSRB has not determined the appropriate treatment of assets where a Section 60 member is a QDRO participant but has not completed all Section 60 payments.
- MSRB needs to correct its calculation of creditable service for faculty academic year appointments;

B. A full articulation of the Section 60 process must be completed before interest resumes.

MTA has been working with MSRB staff to complete a Guide to Section 60 which will outline the Section 60 process clearly. Completion of the Guide depends on the Board's resolving the issues listed above.

III. Implementation of additional interest charges would be unjust to members and ill-advised.

After the process has been fully incorporated into the Guide, if interest is to be assessed fairly, a case-by-case review would be required to ascertain how the delays in the Section 60 process impacted the approximately 800 individuals who still have non-liquid ORP assets that must be transferred to the MSERS.

The amount of work to accomplish this would be vastly more than is needed for the Board's usual service cost methodology.

The volume of inquiries this would generate is incalculable.

As a practical matter, charging more interest would create an administrative nightmare.

Here are the considerations that would have to be taken into account in calculating the principal on which additional interest would be charged for 800 Section 60 members

A. Continuing ORP contributions after December 31, 2013

The period of continuing ORP contributions after December 31, 2013 is different for each Section 60 MSERS member and would have to be individually computed in determining the period for which interest should be charged, i.e., the principal.

Information packages containing estimated cost of service and the MSERS election and enrollment forms did not start being mailed to eligible ORP participants until approximately June of 2014. Because no ORP participant could transfer to the MSERS before receiving an information package, this meant that all eligible ORP participants were compelled to remain in the ORP at least six months in 2014. In fact, the earliest MSERS election form received by the Department of Higher Education was November 5, 2014.

Additionally, not all of the information packages were sent out within 180 days of the DHE's receipt of the Notice of Interest. This caused a further delay in the opportunity to end one's interest obligation.

Another delay was experienced by some eligible ORP participants because they received erroneous cost estimates, or cost estimates that raised a question about their accuracy. Those individuals who contacted the MSRB for correction of an error or an explanation as to why there was no error waited months for answers, all the while still making ORP contributions. ORP contributions for that period must not be counted toward the principal on which interest can be charged.

B. Payments toward Section 60 service cost

Once an interest amount has been correctly determined, further interest charges must be suspended upon delivery of a check for payment to the Board's office, regardless of how long it may take for the Board to process the check.

Experience has shown that checks delivered get misplaced, expire, have to be replaced, and in some instances, replacement checks also expire.

C. Adjustment of principal when partial payments are made

Experience has also shown that recalculation of principal may take considerable time even after a payment check has been processed. No interest should be charged during these periods or for some period after the individual receives a new billing letter.

- D. The amount of additional interest the Board would realize would be outweighed by administrative complexity.

It is evident that the Board is not staffed to handle the complexity of determining the impact of delays in the Section 60 process in 800 individual cases. This raises the question of whether further interest should be charged at all.

The Department of Higher Education estimated that there may be some \$50,000,000 in ORP assets remaining in Section 60 members' ORP accounts. Because the share of those assets attributable to pre-2014 ORP contributions and interest is likely to be substantially more than the assets attributable to ORP contributions made after December 31, 2013, it is reasonable to assume that the principal on which interest is permissible might be only about 10% of the total of remaining Section 60 ORP assets.

To illustrate what is at stake, assume that \$5,000,000 would be the total principal on which additional interest can be charged, and that the interest would be 1/2 the actuarial assumed interest rate, i.e., 3.675% and would be compounded annually.<sup>1</sup> Interest for 1 year would be \$183,750.

We urge the Board, for these practical reasons, to reject the imposition of further interest charges.

#### IV. Proposal

- A. That the Board commit to resolving questions and completing the Guide to Section 60 by March 31, 2019.
- B. That the Board issue Section 60 billing letters by May 31, 2019.
- C. That no additional interest be imposed for the period beginning January 1, 2014 and ending 90 days after a member receives the Section 60 billing letter. Interest imposed from that point should be prospective only at no more than one-half the actuarial assumed interest rate, compounded annually.

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<sup>1</sup> Section 60 does not address compounding of additional interest charges after December 31, 2013. Rather than more frequent compounding, annual compounding would be both administratively efficient and fair. It should be based on the balance each December 31<sup>st</sup> for that year.

On behalf of the MTA, I would request an opportunity to arrange a meeting between the Treasurer and MTA higher education leaders to discuss the above with you.

Sincerely,

A handwritten signature in black ink that reads "Ann Clarke". The signature is written in a cursive style with a long, sweeping underline.

Ann Clarke  
Executive Director-Treasurer

Attachment: Legal Opinion Regarding Interest Charges under Section 60

cc: Merrie Najimy, MTA President  
Max Page, MTA President





## Massachusetts Department of Higher Education

MAIN OFFICE  
One Ashburton Place, Room 1401  
Boston, MA 02108  
TEL (617) 994-6950  
WEB [www.mass.edu](http://www.mass.edu)

OFFICE of STUDENT FINANCIAL ASSISTANCE  
75 Pleasant Street  
Malden, MA 02148  
TEL (617) 391-6070  
WEB [www.mass.edu/osfa](http://www.mass.edu/osfa)

Carlos E. Santiago  
*Commissioner*  
Chris Gabrieli  
*Board Chairman*

### **SECTION 60 ASSET TRANSFERS**

## September 10, 2020

There remain Optional Retirement Program (ORP) assets for approximately 700 participants that are due to the Retirement Board under the terms of the “Section 60” law. Overwhelmingly, these assets are held in TIAA’s Traditional Account.

At the very least, participants hold nearly \$13M of Employer Assets that must be transferred to the Retirement Board.

An undetermined amount of Employee Assets, likely also in the millions of dollars, are also due to the Board.

#### **Q. If I have completed my Section 60 service purchase, do I still owe more to the Retirement Board to complete my Section 60 obligations?**

If you still hold assets in the ORP, then you may still owe some, all or none of these assets to the Board. Certainly, all Employer Assets must be remitted to the Retirement Board in order to complete your obligations under Section 60.

Depending on your personal circumstances, you may still owe some, all or none of the Employee Assets to the Board. The Dept. of Higher Education will make this determination when their staff begins working with you to transfer any assets that remain due to the Board.

#### **Q. How can I identify “Employee”, “Employer” and “Rollover” assets in my ORP account at TIAA?**

You can find the “source” breakdown of these assets in your account on TIAA’s web site for participants. If you have difficulty finding the “source breakdown” in your account, then while you are on-line, call TIAA’s service group (800 842 2252) and ask the representative for assistance in finding the source breakdown of your assets on-line.

#### **Q. Why can’t the DHE make asset transfers directly from TIAA’s Traditional Account to the Retirement Board?**

The underlying investments in this account are intended to be held for the long term. This approach enables TIAA to make guarantees of interest in the fund for you. The returns are predictable. This allows the company’s actuaries to determine what interest rates can be supported.



This predictability and stability comes at the cost of ill-liquidity. Liquidating the underlying securities to raise cash to pay benefits and make asset transfers out of the fund detracts from the stability and predictability. Hence, TIAA restricts the fund's liquidity for participants.

**Q How can I begin liquidating my ORP assets in the Traditional Account so I can begin transferring the required funds to the Retirement Board?**

TIAA's mechanism for liquidating Traditional Account holdings in your ORP account is a "Transfer Payout Annuity" (TPA). You can initiate a TPA by calling TIAA (800 842 2252) and ask to start a "TPA to reinvest" (funds released from the Traditional Account are reinvested in another investment fund in your ORP account – one that can be transferred out to the Retirement Board.).

You must allocate 100% of the Traditional Account holdings to the TPA.

**Q. Why should I start liquidating my Traditional Account Assets now?**

It is important to begin transferring ORP assets to the Retirement Board in order to properly fund the benefits that are promised under the MSERS.

It is also important to demonstrate your commitment to funding these MSERS benefits as quickly as possible in order to help avoid the imposition of an interest accrual on outstanding Section 60 service purchase balances. The charging of interest is a decision that would be made by the Retirement Board.

**Q. What ORP assets must I transfer to the Retirement Board?**

At the very least, everyone must transfer 100% of the Employer Assets from their ORP account to the Board.

The law also requires transferring 100% of the Employee Assets from the ORP to the Board, even those assets in excess of the service purchase amount. However, we subtract any Personal Assets (with interest) remitted directly to the Board to help pay-down one's service purchase balance, from the value of their Employee Assets before transferring any Employee Assets. So, depending on personal circumstances, one may owe some, all or none of their Employee Assets to the Board.

The DHE will make this determination when the Retirement Plans Group staff begins working with you to initiate the first asset transfer.

# MASSACHUSETTS TEACHERS ASSOCIATION

## DIVISION OF LEGAL SERVICES

2 HERITAGE DRIVE, 8TH FLOOR  
QUINCY, MASSACHUSETTS 02171-2119

### GENERAL COUNSEL

IRA C. FADER

617.878.8000

1.800.392.6175


FAX: 617.248.6921

### STAFF COUNSEL

MATTHEW D. JONES  
RICHARD A. MULLANE  
LAURIE R. HOULE  
QUESIYAH S. ALI  
RYAN P. DUNN  
ASHLEY F. WALTER  
MARK A. HICKERNELL  
JONATHAN M. CONTI  
JENNIFER L. MACDOUGALL

### PARALEGAL

KATHY NAGLE  
SARAH B. KELLEY

TO: Ann Clarke, MTA Executive Director/Treasurer  
FROM: Ira Fader, MTA General Counsel   
DATE: January 30, 2019  
RE: Interest Charges under Section 60

You have asked about interest that the Massachusetts State Employees Retirement Board (Board) can charge members who have opted to return to the system after participating in an optional retirement program (ORP). Section 60 of chapter 176 of the Acts of 2011 went into effect in 2012 and was subsequently amended in or about August 2014. The law extended to individuals in ORP a one-time right to elect to move into the state retirement system if they met “section 60 financial obligations.” These were the sum of one’s “qualifying service cost,” the amount of employee ORP assets that exceed the qualifying service cost, and all of the employer’s contributions plus earnings. This amount represents “an amount equal to all assets under the [ORP].”

The 2014 amendment was enacted so that eligible employees would be informed in a timely manner about their “estimated” service costs before making an important life decision about retirement. In view of the delay in implementing section 60 transfer rights, the Legislature imposed a moratorium on the accrual of interest on certain payments owed by the transferring member to MSERS. Thus, the 2014 amended law provides that “the accrual of interest for creditable service prior to January 1, 2014... shall be calculated through December 31, 2013.”

Although the law was amended in August 2014, there are hundreds of employees who elected to transfer to the MSERS but still have not paid their qualifying service costs and, in many instances, continued paying into their ORP after December 31, 2013 for months and even years. There are several causes for the delay, but an important issue early on was the time it took (and continues to take) for the Board to provide an accurate estimate of an individual’s costs, thereby enabling the employee to make an informed decision. Later developments have created further delays that would create additional financial liability for our members depending on the Board’s decisions regarding interest accrual.

As a result, some undetermined number of our MTA members have not yet transferred all of their ORP assets to MSERS and, in some instances, continued to pay into their ORP after December 31, 2013, while the system sorted out the many variables that make up a qualifying cost estimate for a section 60 transfer of funds.

Enacted in August 2014, as noted, section 60 clearly sets December 31, 2013, as a cut-off date for interest accruals on creditable service prior thereto. MSERS is entitled to, and the Board has, charged interest on contributions to the ORP prior to that date. The question is whether it can charge interest on ORP contributions made *after* that date.

In my view, any ORP contributions made prior to (and including) December 31, 2013, are immune from any further interest charges. The Legislature could have imposed a temporary suspension of the Board's right to charge accrued interest, but it chose not to, presumably in recognition of the delays – and the financial harm to employees – in getting a complex transfer of assets completed. To the extent an employee's qualifying service cost includes pre-January 1, 2104 ORP contributions, no interest should attach to that amount.

Section 60 does not speak to interest accrual on ORP contributions made *after* January 1, 2014, but fairness, and perhaps law, cut in favor of the waiver of interest charges which can be attributable to delays in implementing the system as a whole. The fact is, employees wishing to transfer assets into the MSERS were unable to do so for reasons beyond their control, including the problem of delays in providing accurate estimates of their costs and the TIAA further complication that certain assets cannot be liquidated until retirement (i.e., the so-called TIAA "Traditional Account").

Accrued interest in these cases can be a considerable burden for the member, far in excess of any burden on a retirement system the size of the MSERS. Legal challenges to Board' decision-making in this area would be brought in the first instance on behalf of a member before the Division of Administrative Law Appeals. I would need to do further research to determine whether legal remedies outside the administrative process are available.