

# **TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM**

## **CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[**Authority:** 74 O.S., §§ 901 et seq.]  
[**Source:** Codified 12-27-91]

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **590:1-1-1. Purpose**

The purpose of Chapter 1 is to outline the administrative structure of the Oklahoma Public Employees Retirement System, including the Board of Trustees and Executive Director. It further provides the procedures for enforcing administrative rights of members of the System.

#### **590:1-1-2. System purpose and authority**

(a) This agency, known as the Oklahoma Public Employees Retirement System, was established to provide:

- (1) an orderly means whereby employees, of participating employers, who are eligible as set by statute, may transfer to inactive service without undue hardship and without prejudice;
- (2) for said employees to accumulate reserves adequate to provide for themselves and their dependents;
- (3) to effectively and efficiently administer the programs necessary to attain these goals for public employees;
- (4) to effectively and efficiently administer the programs necessary to attain these goals for Justices and Judges; and
- (5) to effectively and efficiently administer the Defined Contribution Plans for state employees.

(b) The System shall be vested with the powers and duties specified in Title 74 O.S. Sections 901 to 935 and Title 20 O.S. Sections 1101 to 1112 and such other powers as may be necessary to enable it, its officers, employees, and agents to carry out fully and effectively the purpose and intent of said retirement laws.

[**Source:** Amended at 22 Ok Reg 125, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1353, eff 5-26-05]

#### **590:1-1-3. Board of Trustees**

(a) The membership of the Board of Trustees shall be governed by statute, namely 74 O.S., Section 905.

(b) The Board shall serve the System without compensation but shall receive their actual and necessary expenses, subject to statutory limitations applying to other State employees, as are incurred in the performance of duties of the Board, which shall be paid as an operating expense from the appropriate operating fund of the System.

(c) The Board shall elect one of its Members as Chairman of the Board at its annual meeting and shall also elect another Member to serve as Vice

Chairman and the Vice Chairman shall perform the duties of the Chairman in the absence of the latter.

(d) The Board may establish such committees as may be needed. Each committee shall be composed of not more than five (5) members of the Board of Trustees, appointed by the Chairman of the Board. The committees shall make recommendations on any matters before them, but shall have no authority to act on behalf of the Board. No recommendations of any committee shall have effect without approval of the Board of Trustees.

[Source: Amended at 12 Ok Reg 3235, eff 7-27-95]

#### **590:1-1-4. Executive Director**

(a) The Executive Director is appointed by the Board of Trustees and is the administrative officer for the Board. He is responsible for the general administration of the Retirement System.

(b) The Executive Director shall have the following powers and duties:

(1) Responsibility for maintaining records of the individual Members, records of all types of funds, reserves, and equipment necessary for the operation of the accounting procedures.

(2) Under his direction, coordination of investments with the Investment Managers; establishing and monitoring acceptable methods for receipt, recording and depositing of all funds of the System; and directing the implementation of investment policies of the Board by coordination with the Investment Managers.

(3) Under his direction, approval of Enrollment Applications, responsibility for the proper enrollment of members, and providing information to Retirement Coordinators and participants as to the benefits.

(4) Withholding income tax from benefits paid by the Oklahoma Public Employees Retirement System, unless election is made to make an estimated payment directly to the IRS. Alternatives are available to retirants for withholding purposes.

(c) The Executive Director and Deputy Director are authorized to sign all vouchers for the State Retirement System. Persons authorized by the Executive Director shall sign the vouchers in the event of the absence of the Executive Director or the Deputy Director.

[Source: Amended at 12 Ok Reg 3235, eff 7-27-95 ; Amended at 13 Ok Reg 3325, eff 7-25-96]

#### **590:1-1-5. Retirement Coordinators**

(a) **Appointment.** Retirement Coordinators shall be appointed for each participating county, city, town or county hospital and each State agency to serve as a representative between the Retirement Board and the participating Employer.

(b) **Responsibilities.** These Retirement Coordinators shall be responsible for the enrollment, assistance of the completion of forms, and instructions to the members on behalf of the participating employer relating to the Oklahoma Public Employees Retirement System.

(c) **Notice to members; Plan information.** The Retirement Coordinator shall be responsible for ensuring that each participating member of the System is provided basic Plan information in the form of the most current Member Handbook or other similar publications from the System, and all other official notices from the System. The member shall also be directed to the website of the System, [www.opers.ok.gov](http://www.opers.ok.gov), for more specific Plan information. Each Retirement Coordinator shall establish and maintain sufficient documentation to verify compliance with this rule, and shall furnish the verification upon request by the System.

(d) **Employment; training; liability.** The Retirement Coordinator is employed by and under the authority of each participating county, city, town or county hospital and each State agency and is not an employee of the System. The System will make available information and training opportunities, however, it is the responsibility of the Coordinator to become familiar with the Plan provisions and keep abreast of all changes and amendments. Neither the System nor the Board will be liable for or bound by any mistakes, errors or misrepresentations of the Retirement Coordinators.

[Source: Amended at 12 Ok Reg 3235, eff 7-27-95 ; Amended at 13 Ok Reg 3325, eff 7-25-96 ; Amended at 20 Ok Reg 1747, eff 6-12-03 ; Amended at 25 Ok Reg 994, eff 5-11-08 ; Amended at 29 Ok Reg 497, eff 5-11-12]

#### **590:1-1-6. Hearing procedures [REVOKED]**

[Source: Amended at 12 Ok Reg 3235, eff 7-27-95 ; Amended at 19 Ok Reg 798, eff 2-13-02 (emergency); Amended at 19 Ok Reg 1474, eff 5-28-02 ; Amended at 20 Ok Reg 1747, eff 6-12-03 ; Revoked at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-1-7. Declaratory rulings [REVOKED]**

[Source: Revoked at 26 Ok Reg 120, eff 9-18-08 (emergency); Revoked at 26 Ok Reg 951, eff 4-25-09]

#### **590:1-1-8. Petitions for rulemaking**

(a) Any interested person may petition the Board of Trustees requesting the promulgation, amendment, or repeal of a rule. Any such petition must be in writing and shall specify the requested action, the impact of the requested action and the desired outcome.

(b) The Board shall act upon the petition within 30 days of receipt. Failure to act within 30 days shall be deemed a denial of the petition.

#### **590:1-1-9. Designee Board members**

(a) The State Insurance Commissioner, the Director of the Office of Management and Enterprise Services, and the Corporation Commission are authorized to designate an individual to act in his or her place as a member of the Board of Trustees. This designation must be in writing, signed by the designating official and filed with the System. The designation must clearly indicate the identity of the designee and whether the designation is limited as to duration or is an on-going designation. The designation should also set forth instructions as to

membership on any Committees where the official is a member. Absent specific instructions regarding committee attendance, it is assumed that the designee is authorized to appear at both Committee and Board meetings. Once a proper designation is filed, the designee may appear at meetings and may act on any items properly before the Board.

(b) The Corporation Commission and the Oklahoma Tax Commission shall each select a member of the respective Commission to serve on the Board of Trustees. Each Commission shall provide a notification of the selection in writing, signed by the Chairman of the respective Commission to be filed with the System. In lieu of such selection of a member, the Corporation Commission may select a designee of the Commission with notification as provided in subsection (a) of this section.

[Source: Added at 22 Ok Reg 125, eff 10-6-04 (emergency); Added at 22 Ok Reg 1353, eff 5-26-05 ; Amended at 31 Ok Reg 2313, eff 9-12-14]

## **SUBCHAPTER 3. ADMINISTRATIVE REVIEW AND HEARINGS**

### **590:1-3-1. Purpose and general overview of administrative hearings**

(a) **Purpose.** The purpose of this Subchapter is to give the member or participating employer, or in the case of a deceased member a joint annuitant or beneficiary, a reasonable way to have a disagreement or controversy considered fairly. In all cases, the member or participating employer, or the joint annuitant or beneficiary of a deceased member, shall have an opportunity to resolve disagreements with the System without a formal hearing.

(b) **Formal hearing.** If a case cannot be resolved informally, the provisions of this Subchapter provide for a formal hearing before a Hearing Examiner, who is not an employee or officer of the System. The Hearing Examiner makes proposed findings, conclusions and recommendations which are reviewed and acted upon by the Board of Trustees.

(c) **Right to appeal.** The member or participating employer, or the joint annuitant or beneficiary of a deceased member, retains the right to seek relief from a final order in an administrative hearing by the Board of Trustees by way of appeal to the District Court of Oklahoma County.

(d) **Governing rules.** The rules set forth in this Subchapter shall govern all contested proceedings before the System or its delegated Hearing Examiner. These rules shall be given the most reasonable meaning, taken in their total context, and will be construed to secure due process in the proper resolution of each controversy.

[Source: Added at 25 Ok Reg 994, eff 5-11-08 ; Amended at 26 Ok Reg 951, eff 4-25-09]

### **590:1-3-2. Definitions**

For purposes of this Subchapter:

**"Claimant"** means the member or participating employer, or in the case of a deceased member a joint annuitant or beneficiary, filing an appeal with the System.

**"System"** means the Oklahoma Public Employees Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma State Employees Deferred Compensation Plan, and the Oklahoma State Employees Deferred Savings Incentive Plan.

[Source: Added at 25 Ok Reg 994, eff 5-11-08 ; Amended at 26 Ok Reg 951, eff 4-25-09]

### **590:1-3-3. Commencement of hearing**

(a) **Appeal.** A decision of the System affecting service credit, contributions, benefits, eligibility or any other rights of a claimant may be appealed to the Board of Trustees. The appeal must be commenced by filing a timely written request with the General Counsel. In order for the appeal to be considered timely, it must be filed within thirty (30) days after the date of mailing of the decision.

(b) **Contents of appeal.** The appeal shall be in writing and shall set forth the following:

- (1) the name, address and Social Security number of the claimant;
- (2) a statement regarding the nature or amount of the disagreement or dispute;
- (3) a clear and concise assignment of each error alleged to have been committed;
- (4) a brief summary of the argument and relevant legal authority upon which each assignment of error is made; provided, the claimant shall not be bound or restricted in the hearing, or on appeal, to the arguments and legal authorities contained and cited in this initial writing; and
- (5) a statement of the relief sought.

(c) **Assignment of hearing number; pre-hearing conference date.**

The General Counsel shall assign a hearing number to the appeal, create a court file, notify the Hearing Examiner, and set a date for a pre-hearing conference between the parties and the Hearing Examiner.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

### **590:1-3-4. Hearing Examiner**

Appeals to the Board of Trustees shall be assigned to a Hearing Examiner who will conduct a pre-hearing conference and an evidentiary hearing and prepare a proposed order for the Board of Trustees. The Chair of the Board of Trustees, or a designee of the Chair, shall appoint the Hearing Examiner from a list of individuals previously selected by the Board of Trustees to act in this role.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

### **590:1-3-5. Representation and participation in administrative proceedings**

(a) **Pro se or legal counsel.** Claimant may appear pro se at any stage of the proceeding or may be represented by legal counsel, provided such counsel must be duly licensed to practice law in the State of Oklahoma, and that such counsel has the right to appear and act for and on behalf of the claimant.

(b) **Other representation.** If the claimant wants to be represented by someone other than himself/herself or an attorney, the Hearing Examiner may require that such person, before being recognized as a representative of the claimant, make a proper showing that he or she has the necessary qualifications to enable the representative to render such services to the claimant. Upon such showing by the representative, the Hearing Examiner shall certify the representative.

(c) **Proof of authority to represent.** Any person representing a claimant may be required to show written proof, in a form satisfactory to the System, of his or her authority to represent the claimant in the matter.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-3-6. Location of hearings**

All hearings shall take place in the offices of the Oklahoma Public Employees Retirement System. The hearing may be relocated upon a showing that extreme or unusual circumstances exist which would prejudice the claimant. Any such request for relocating the hearing shall be made to the Hearing Examiner who may approve only upon good cause shown or if agreed to by the System.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-3-7. Pre-hearing conference**

(a) **General provisions.** A pre-hearing conference shall be scheduled with the Hearing Examiner within sixty (60) days of receipt by the System of the appeal and at least thirty (30) days prior to the hearing, unless such time periods are waived by the parties. The conference shall be informal, structured by the Hearing Examiner, and not open to the public. The purpose of the pre-hearing conference is to allow the parties, before the Hearing Examiner, to attempt to resolve the case or parts of it, to discuss the facts, identify legal issues, present discovery requests, make appropriate stipulations, and to propose a procedural schedule. A record of the pre-hearing conference shall not be made unless requested by the parties and ordered by the Hearing Examiner. If ordered, a stenographic record shall be made in accordance with and pursuant to 590:1-3-8(d).

(b) **Notice and continuance.** The claimant shall be notified by the System of the date and time at least seven (7) calendar days prior to the scheduled conference. A request for a continuance shall be filed with the System no less than three (3) calendar days prior to the scheduled conference. A lesser period of time may be permitted for good cause shown.

(c) **Rulings; pre-hearing conference order.** During the pre-hearing conference, the Hearing Examiner shall make all the necessary rulings. At the conclusion of the pre-hearing conference, the Hearing Examiner shall issue a pre-hearing conference order which shall set forth the agreements reached at the pre-hearing conference. The pre-hearing conference order shall be signed by the parties and the Hearing Examiner. The pre-hearing conference order shall set forth, among other things, the following information:

- (1) the date and time of the hearing;
- (2) the date to file a written brief or statement of the case;
- (3) the date to file a list of witnesses, documents and exhibits. Any witnesses for whom a subpoena is required shall include the name, address and a brief statement of the testimony to be offered; and
- (4) any requirements or request for discovery.

(d) **Failure to appear.** If the claimant fails to appear at the scheduled pre-hearing conference or to timely request a continuance of the pre-hearing conference, the Hearing Examiner shall dismiss the appeal and notice shall be sent to the claimant of the dismissal.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

### **590:1-3-8. Hearing procedure**

(a) **Purpose and process.** The hearing provides each party the opportunity to present witnesses and evidence in support of his or her respective case. Hearings shall be conducted in accordance with the Administrative Procedures Act and the rules in this Subchapter. The hearing shall be structured by the Hearing Examiner and open to the public. The Hearing Examiner may order parts of the proceedings closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons.

(b) **Party responsibility.** Each party shall be present, on time, and prepared. Failure to do so may result in dismissal of the appeal unless good cause is shown.

(c) **Hearing Examiner responsibility.** The Hearing Examiner will convene the hearing, note appearances, and consider any motions or preliminary matters. The Hearing Examiner shall administer oaths or affirmations of the witnesses. The Hearing Examiner may also:

- (1) question any party or any witness;
- (2) establish a scheduling order for the hearing to include time lines for further filings and the date of the hearing before the Board of Trustees;
- (3) rule on any request for an extension of time, or on any other motions or other procedural matters;
- (4) regulate the course of the hearing, rule on admissibility of all evidence, and regulate the conduct of the participants;
- (5) request additional briefs on issues or law as may be reasonably necessary;

(6) take official notice of any material fact not appearing as evidence in the record if the fact is among traditional matters of judicial notice;

(7) recess and reconvene the hearing; or

(8) order the proceedings to be expedited in the event of severe financial hardship, upon good cause shown, in accordance with 590:1-3-17.

(d) **Transcript of hearing.** The System shall cause a full stenographic record of the hearing to be made by a competent court reporter. A copy of the stenographic record shall be provided to any party to the proceeding at the request and expense of such party.

(e) **Arguments; witnesses; evidence.** The party requesting the hearing shall be heard first and has, unless otherwise provided by law, the burden of proof to show in what respect the action or proposed action of the System is incorrect. Each party shall have the opportunity to present its case, to make opening statements, to call and examine witnesses, to offer documentary evidence into the record and to make closing arguments. Each party shall also have the opportunity to cross-examine opposing witnesses on matter covered in direct examination and, in the discretion of the Hearing Examiner, upon matter relevant to the issues even though not covered in direct examination. Any objection to testimony or evidentiary offers should be made, and the basis of the objection stated on the record.

(f) **Scheduling order.** Prior to the closing of the record, each party shall agree to a proposed scheduling order which shall include deadlines for submitting a proposed final order, filing objections to the Hearing Examiner's Proposed Final Order, rebuttals to any objections, requesting a rehearing, and the date of the hearing before the Board of Trustees. The Hearing Examiner shall sign the agreed scheduling order and each party shall receive a copy.

(g) **Closing the record.** The record shall be closed when each party has had an opportunity to be heard and present evidence. Once the record is closed, no additional evidence or arguments shall be considered. The Hearing Examiner may grant a rehearing, reopening or reconsideration of the hearing upon a showing of good cause by either party prior to the date of the scheduled hearing before the Board of Trustees.

[Source: Added at 25 Ok Reg 994, eff 5-11-08 ; Amended at 29 Ok Reg 497, eff 5-11-12]

### **590:1-3-9. Pleadings; filing; order**

(a) **Filing of pleadings; paper size.** The General Counsel serves as the "Court Clerk" for the administrative hearing process and all original pleadings shall be filed therein. All pleadings shall be filed with the System no later than 5:00 PM on the required date. Pleadings not received by the deadline will be considered as filed out of time. The General Counsel shall forward copies of all original pleadings or other documents filed with the System in the hearing process to the Hearing Examiner in a timely manner. All pleadings shall be signed, dated and filed on letter size 8 ½" x 11" paper and double spaced in 12 point type with 1" margins.

(b) **Electronic filing; facsimiles.** Electronic filing is encouraged. Electronic copies or facsimiles will be accepted but must be signed and filed by the appropriate deadline. Electronic copies shall be sent to the General Counsel as an email attachment. The attachment must be a scanned document in a pdf format reflecting the signature of the claimant or the representative of the claimant. Any exhibits filed electronically shall be contained in a separate pdf file and each exhibit properly labeled. It shall be the responsibility of the claimant to verify that the System has received the electronic copy or facsimile and that it is legible and acceptable to the System.

(c) **Order of filing briefs.** Each party shall have the opportunity to file a written brief or statement of the case setting forth the facts, arguments, and legal authorities. The briefs shall be included in the record. The claimant or party requesting the hearing shall submit a brief according to the pre-hearing conference order. The System shall respond to such brief within twenty (20) days of the filing of the claimant's brief. At the discretion of the Hearing Examiner, the claimant may file a reply to the System's response within seven (7) days of the filing of the System's response.

(d) **Continuances or extensions.** A party seeking a continuance or extension shall file a proper motion, and for good cause shown, a continuance or extension will be granted by the Hearing Examiner.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

### **590:1-3-10. Discovery**

(a) **Authority of the Hearing Examiner.** The Hearing Examiner may, upon his or her own motion, or on the motion of either party, allow the use of discovery available in a civil action in the District Courts of Oklahoma. The failure of a party to have sufficient time to exercise any discovery mechanism on account of a lack of time shall not of itself constitute good cause for the granting of a continuance of a hearing.

(b) **Subpoenas; costs; fees; service.** Subpoenas to compel the attendance of witnesses, for the furnishing of information required by the Hearing Examiner, and/or for the production of evidence or records of any kind may be issued by the Executive Director of the System. Subpoenas shall be served, and a return made, in any manner prescribed for the service of a subpoena in a civil action. The party requesting the subpoena shall bear the cost of serving it. Fees for a non-party witness who is subpoenaed to appear shall be the same as those fees allowed to witnesses in a civil matter. Party witnesses shall not be entitled to witness fees.

(c) **Confidentiality.** Any information obtained through discovery proceedings shall be used only for matters pending in the case in which they were discovered, and shall be accorded the same degree of confidentiality as any other document or information filed with or generated by the System.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

### **590:1-3-11. Rules of evidence**

The rules of evidence used during a hearing shall be those specified by the Oklahoma Administrative Procedures Act.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

### **590:1-3-12. Proposed order; objections; rehearing**

(a) **Proposed order.** After the close of the hearing, each party shall be permitted the opportunity to submit a proposed final order which shall include findings of fact and conclusions of law to the Hearing Examiner. The Hearing Examiner shall prepare and file with the System a proposed final order which shall include findings of fact, conclusions of law, and a recommended order to the Board of Trustees. A copy of the proposed order shall be provided to all parties by the System as soon as practical and at least twenty (20) days prior to the scheduled hearing before the Board of Trustees. The parties may waive the twenty-day requirement by written stipulation.

(b) **Objections to proposed order.** Each party shall have the opportunity to file a written statement setting forth any objections, exceptions and/or arguments they desire the Board of Trustees to consider in its review of the proposed order by the Hearing Examiner. This statement shall be filed with the System within the time limit prescribed by the Hearing Examiner in the scheduling order and a copy shall be provided to the other party. The parties may prepare a written response in rebuttal to the other party's objecting statement within the time limit prescribed by the Hearing Examiner in the scheduling order and a copy shall be provided to the other party. In no event shall the objections or the response in rebuttal be filed less than seven (7) days prior to the hearing before the Board. New or additional evidence or materials may not be introduced by either party in the objections or in the responses.

(c) **Rehearing before the Hearing Examiner.** Each party shall have the opportunity to request a rehearing before the Hearing Examiner. Such request must be filed with the System and made within the time limit prescribed by the Hearing Examiner in the scheduling order. A copy shall be provided to the other party.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

### **590:1-3-13. Hearing before the Board of Trustees**

(a) **Procedure.** On a date set forth in the scheduling order, the Hearing Examiner's proposed order shall be set before the Board of Trustees for consideration. The parties shall have a reasonable opportunity to make a brief statement to the Board concerning the facts and any arguments and will be allowed to respond to any questions from the Trustees. The Board may review the complete record, including a transcript of the original hearing conducted by the Hearing Examiner and all documentary evidence. The Chair of the Board shall have authority to set the amount of time any party may have to present information to the Board.

(b) **Remand.** If the Board determines the facts to be in error or incomplete, the Board may remand the case, with instructions, to the Hearing Examiner for further evidentiary hearing.

(c) **Final order.** After consideration of the record and arguments, the Board shall accept, reject or modify the Hearing Examiner's proposed order. The final order shall include findings of fact and conclusions of law, separately stated. As in all matters before the Board, eight (8) affirmative votes are necessary to accept, reject or modify the order under consideration. A copy of the Board's final order shall be delivered to the claimant or the representative of the claimant within fifteen (15) days of final action by the Board.

[Source: Added at 25 Ok Reg 994, eff 5-11-08 ; Amended at 36 Ok Reg 1944, eff 9-13-19]

#### **590:1-3-14. Rehearing; appeal**

(a) **Rehearing.** Any party receiving an adverse order from the Board may file a petition for rehearing, reopening or reconsideration of the final order of the Board. Such application shall be filed with the System within ten (10) days from the date of the entry of the Board's order and must be in compliance with 75 O.S. § 317.

(b) **Appeal.** Any party aggrieved by the order of the Board may, within thirty (30) days from the date the aggrieved party is notified of the order, file an action for judicial review in the District Court of Oklahoma County.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-3-15. Settlement**

Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default. The Executive Director or the General Counsel shall report to the Board of Trustees any settlement that occurs after the filing of the proposed order by the Hearing Examiner.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-3-16. Prohibited communications**

The Administrative Procedures Act prohibits direct or indirect communications by any party or representative of a party with the Hearing Examiner or the Board of Trustees in connection with any issue of fact or law regarding an appeal before the Hearing Examiner or Board, except upon notice which provides an opportunity for all parties to participate. The Hearing Examiner and the Board shall not consider any evidence or statements made to them by a party or a representative of a party in connection with a pending appeal.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-3-17. Expedited proceedings**

(a) **Cases which may be expedited.** In an appeal before the Hearing Examiner, the System and the claimant may stipulate to expedite the

hearing proceedings in the following cases:

(1) a decision by the System that a claimant does not meet the requirements for a severe financial hardship under the System's deferred compensation plan; or

(2) a decision that has created a severe financial hardship under any other of the System's plans.

(b) **Motion to expedite.** If the parties cannot agree to expedite the proceedings, the aggrieved party may file a motion to expedite proceedings. The Hearing Examiner shall rule on the motion within seven (7) days after the filing of the motion with the System.

(c) **Proposed schedule to expedite.** The parties shall be permitted to submit a proposed schedule of the proceedings in the event the Hearing Examiner grants the motion. If the motion is granted, the Hearing Examiner shall file an expedited schedule of the proceedings.

(d) **Conduct of expedited hearing.** In all other aspects, the hearing shall be conducted in a similar manner as a hearing which has not be expedited.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

### **590:1-3-18. Declaratory rulings**

(a) **General provisions.** The Board of Trustees may issue declaratory rulings as to the applicability of any rule or principle of law embodied in an order of the Board which is requested by or on behalf of any member, joint annuitant or beneficiary directly affected thereby subject to the terms and conditions set forth in this section.

(b) **Form of petition; where to file.** A declaratory ruling petition must be made in writing, be signed by the petitioner or an authorized representative or agent, and filed with the General Counsel of the System. The petition must state:

(1) that a declaratory ruling is requested pursuant to 590:1-3-18;

(2) the petitioner's name, address, phone number, and Social Security number;

(3) the issue(s) and all relevant facts on which a declaratory ruling is requested, stated clearly and concisely;

(4) the petitioner's desired result and legal basis for that result, including reference to the applicable statutes, rules and case law; and

(5) whether the petitioner is presently pursuing any administrative review, litigation, or negotiation on the issue with the System, as well as the name of any other person or entity that the petitioner or a duly authorized representative knows is involved with the identical issue pending before or with the System.

(c) **Proposed draft.** The petitioner may provide a proposed draft ruling for consideration by the Board of Trustees.

(d) **Additional information.** The Board may request additional information from the petitioner as deemed necessary to issue a declaratory ruling. Failure to provide the requested information shall result in denial of the petition.

(e) **Effect of a declaratory ruling.** A declaratory ruling shall have the following effect:

- (1) the ruling shall apply only to the particular fact situation stated in the petition;
- (2) the ruling shall apply only to the petitioner;
- (3) the ruling shall bind the Board and the System only prospectively; and
- (4) the ruling may be revoked, altered or amended by the Board at any time.

(f) **Exceptions to binding effect of declaratory ruling.** The declaratory ruling shall cease to be binding if:

- (1) a pertinent change is made in the applicable law by the Legislature;
- (2) a pertinent change is made in the rules of the Board or the System;
- (3) a pertinent change in the interpretation of the law is made by a court or administrative tribunal; or
- (4) the actual facts are determined to be materially different from the facts set out in the petitioner's declaratory ruling petition.

(g) **Issuance of a declaratory ruling.** The Board shall make a good faith effort to issue a declaratory ruling within ninety (90) days from the date of receipt of a complete and proper petition unless, in the discretion of the Board, the issue is of such complexity or novelty that additional time is required.

(h) **Contents of a declaratory ruling.** A written response from the Board or any employee or agent of the Board or System to any inquiry from any person or entity shall not be construed to be a declaratory ruling unless made in conformity with this subsection. A declaratory ruling shall contain:

- (1) a statement that: "This is a declaratory ruling issued by the Board of Trustees of the Oklahoma Public Employees Retirement System pursuant to 75 O.S. § 307" or similar wording; and
- (2) the signature of the Chair or Vice-Chair of the Board of Trustees.

(i) **Denial of a petition for declaratory ruling.** The Board, in its discretion, may deny a petition for declaratory ruling for good cause. In this instance, the Board shall indicate in writing the reasons for refusing to issue a declaratory ruling. Good cause includes, but is not limited to, the following:

- (1) the petition does not substantially comply with the information required by this section;
- (2) the petition involves hypothetical situations or alternative plans;
- (3) the petitioner requests the Board to interpret or apply a statute, or requests a determination as to whether a statute is constitutional under the Oklahoma Constitution or the United States Constitution;
- (4) the facts or issues presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory ruling;

- (5) the issue about which the declaratory ruling is requested is primarily one of fact;
- (6) the issue is presently being considered in a rulemaking, administrative or judicial proceeding that may definitively resolve the issue;
- (7) the issue cannot be reasonably resolved prior to the issuance of rules;
- (8) the issue is the subject of an administrative proceeding or litigation; or
- (9) the petitioner is not identified or is anonymous.

(j) **Withdrawal of petition for declaratory ruling.** The petitioner may withdraw the petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling.

(k) **Judicial review.** A declaratory ruling, or refusal to issue such ruling, shall be subject to a judicial review, pursuant to the Administrative Procedures Act, in the same manner as individual proceedings.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

# CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM

[Authority: 74 O.S., §§ 901 et seq.]  
[Source: Codified 12-27-91]

## SUBCHAPTER 1. GENERAL PROVISIONS

### **590:10-1-1. Purpose**

The Rules of this Chapter have been adopted to establish policies and procedures for implementing and administering the Oklahoma Public Employees Retirement System. The procedures are also used to implement and administer the Uniform Retirement System for Justices and Judges, the Oklahoma State Employees Deferred Compensation Plan and the Oklahoma State Employees Savings Incentive Plan where specifically noted.

[Source: Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

### **590:10-1-2. Subsequent ineligibility**

Members who have been declared eligible to participate in the Oklahoma Public Employees Retirement System, but subsequently fall below the level of eligibility for a new member, shall continue to participate in the System.

### **590:10-1-3. Authorized member signature**

(a) A signature other than that of the member, joint annuitant or beneficiary will not be accepted on System forms, applications or requests for confidential information unless the individual signing presents a power of attorney, papers of guardianship or conservatorship, or a legal court order. No person may act on behalf of the member, joint annuitant or beneficiary including a spouse or parent, except as provided herein.

(b) The System will accept documents signed by an authorized attorney-in-fact, pursuant to a durable or statutory power of attorney. The power of attorney must be in substantial compliance with Oklahoma law and/or the Oklahoma Uniform Durable Power of Attorney Act, must contain the statutorily prescribed language and/or witnesses and must be filed with and approved at the sole discretion of the System. The member, joint annuitant or beneficiary will retain the right to act regarding his or her retirement account. Any conflict in direction or instruction between the member, joint annuitant or beneficiary and the attorney-in-fact shall be resolved in favor of the member, joint annuitant or beneficiary. The right to act under a durable or statutory power of attorney terminates at the death of the principal.

(c) If a guardian or conservator has been appointed for a member, joint annuitant or beneficiary by a court of proper jurisdiction, only the named guardian or conservator can act on behalf of the member, joint annuitant or beneficiary. A certified copy of the filed court order of appointment

must be filed with the System and will be effective until amended or withdrawn by subsequent court order. The guardian or conservator shall have exclusive authority to act on behalf of the member, joint annuitant or beneficiary unless the court instructs otherwise.

(d) Any person authorized to act on behalf of the member, joint annuitant or beneficiary as provided herein is prohibited from self-dealing relating to the benefit, account or funds of said member, joint annuitant or beneficiary. For purposes of this rule, self-dealing consists of any change or action which alters a previous instruction or document or makes an election or selection, either of which would result in a benefit or pecuniary interest to said attorney-in-fact, guardian, conservator, custodian or trustee or to the spouse or children of said attorney-in-fact, guardian, conservator, custodian or trustee absent a court order specifically permitting or approving such self-dealing issued by a court of proper jurisdiction. For illustrative purposes, an attorney-in-fact, operating under a durable power of attorney is prohibited from changing the member's beneficiary designation to him or her self and/or prohibited from naming his or her spouse as the joint annuitant under a retirement option.

(e) In the event that a named joint annuitant or beneficiary is a minor, the System will accept documents signed by a guardian appointed for the minor by a court of proper jurisdiction. If the property belonging to the minor is \$10,000 or less, the System will accept documents signed by an authorized parent, relative or custodian pursuant to the Oklahoma Uniform Transfers to Minors Act. The parent, relative or custodian must provide all required forms and documentation for approval at the sole discretion of the System.

(f) This rule is applicable to any plan or account managed or administered by the Board.

[Source: Amended at 21 Ok Reg 1759, eff 6-11-04]

#### **590:10-1-4. Health insurance contribution**

(a) The Oklahoma Public Employees Retirement System shall contribute the amount required by law towards the cost of health insurance coverage under the State and Education Employees Group Insurance Plan or other eligible group insurance plans only for retired members who actually receive a monthly retirement benefit for that month. This contribution shall not be made for beneficiaries, survivors or directly to the retired member.

(b) For eligible group health insurance plans other than the State and Education Employees Group Insurance Plan, the System will contribute the amount required by law after the group insurance plan has made application to the System and completed any necessary and required forms and/or agreements. The group insurance plan must be in compliance with Oklahoma law and offer insurance to all of the covered participating employer's employees, former employees who are vested and former employees who retired from that covered employer. The insurance plan shall provide a certification monthly detailing each covered retired member in the form and manner required by the System.

The subsidy shall be paid in arrears for each eligible retired member.  
(c) Pursuant to the federal Internal Revenue Code Section 401(h) and Treasury Regulation §1.401-14, the Retirement Medical Benefit Fund shall be maintained as a sub-account of the Oklahoma Public Employees Retirement Fund. From the Retirement Medical Benefit Fund, OPERS shall remit the amount specified in 74 O.S. Section 1316.2 for health insurance premiums.

(d) All contributions to the Retirement Medical Benefit Fund shall be reasonable and ascertainable.

(e) Contributions to the Retirement Medical Benefit Fund must be subordinate to the contributions to the Oklahoma Public Employees Retirement Fund for retirement benefits. At no time shall the aggregate actual contributions to the Retirement Medical Benefit Fund (when added to actual contributions for life insurance protection under the plan, if any) be in excess of twenty-five percent (25%) of the total aggregate actual contributions made to the Oklahoma Public Employees Retirement Fund (not including contributions to fund past service credits). The Board shall annually determine whether the twenty-five (25%) test has been met. If at any time the Retirement Medical Benefit Fund contributions (plus any life insurance contributions) would exceed the twenty-five percent (25%) test, the excess amount of contributions shall be transferred to the Oklahoma Public Employees Retirement Fund for retirement benefits.

(f) Forfeitures in the Retirement Medical Benefit Fund shall not be allocated to individual accounts under the fund, but shall be used for account expenses.

(g) At no time prior to the satisfaction of all liabilities under the Retirement Medical Benefit Fund or termination of the fund shall any assets in the fund be used for, or diverted to, any purpose other than the providing of payment of the Oklahoma Public Employees System's portion of the monthly retiree health insurance premium benefit described by Title 74 O.S. Section 1316.2 and the payment of administrative expenses. Assets in the Retirement Medical Benefit Fund may not be used for retirement or disability benefits or any other purposes for which other assets held in the Oklahoma Employees Retirement Fund are used.

(h) The provisions of section 401(h)(5) of the Internal Revenue Code of 1986, as amended from time to time, shall apply upon the satisfaction of all liabilities under law and the Oklahoma Public Employees Retirement Fund.

[Source: Amended at 20 Ok Reg 1750, eff 6-12-03 ; Amended at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 22 Ok Reg 2679, eff 6-7-05 (emergency); Amended at 23 Ok Reg 1482, eff 5-25-06]

#### **590:10-1-5. Withdrawal of contributions**

(a) A member of the System who has terminated employment with a participating employer shall be eligible to withdraw the amount of employee contributions and money he or she has paid into the System provided that the employee does not return to employment with such participating employer, or with another participating employer, within four (4) calendar months.

(b) The member shall file the proper application with the System. Payment shall be made by the System after receipt of all required forms and after four (4) calendar months have elapsed. Any member who applies for a withdrawal of his or her contributions and is eligible for a vested benefit shall be notified of the value of the benefit and when they would be eligible to begin receiving a benefit. The member must sign a written waiver of that benefit before withdrawal will be processed for payment. Payment of the withdrawal may be delayed beyond four (4) months in order to complete the offer of the vested benefit.

(c) In the event that a member is paid his or her contributions and the System discovers that the employee returned to employment with a participating employer within four (4) months, the employee shall be required to repay the withdrawal immediately. If the employee fails to repay the ineligible withdrawal, he or she shall not be entitled to any subsequent withdrawals until six (6) calendar months have elapsed in order to verify that they are no longer employed.

(d) Payment of these accumulated contributions may be made in less than four (4) calendar months only in the event that a member is not eligible to elect a vested benefit pursuant to this section and said member is terminally ill, as evidenced by a physician's certification that the member is not expected to live beyond four (4) months.

[Source: Amended at 21 Ok Reg 1759, eff 6-11-04]

#### **590:10-1-6. Dual membership**

It may be possible for a member of this System to participate in another state retirement system during the same time period, due to separate employments. No member shall be allowed to purchase credited service from another state retirement system which represents the same time period as service already credited under this System, except as provided in Subchapter 11 of these rules.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95]

#### **590:10-1-7. Non-state agency contributions**

Any participating county, county hospital, city or town, conservation district, or circuit engineering district or trust shall contribute to the System all required retirement contributions due on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. Any non-state agency employer who remits contributions later than thirty (30) days following the due date, will be assessed a late charge of three percent (3%). The late charge will be calculated on the unpaid balance and will compound monthly until paid.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 13 Ok Reg 3327, eff 7-25-96 ; Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

#### **590:10-1-8. Reinstated entry date**

Any former member of OPERS who has previously withdrawn contributions and who repays said withdrawal as permitted by law, shall have his or her initial entry date into the System reinstated. Any person who transports service from Teachers' Retirement System shall be eligible to use his or her initial entry date into the Teachers' System for OPERS purposes.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95]

#### **590:10-1-9. Receipt of documents**

Except as provided in 590:10-1-7 and 590:10-7-6 of these rules and except for the Retirement Notice and Application form, any notices, letters, payments or other documents will be considered received on the date actually received in the offices of the System, as evidenced by the OPERS date stamp, or the date of postmark on the envelope, whichever is earliest.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 20 Ok Reg 1750, eff 6-12-03]

#### **590:10-1-10. Recordkeeping requirements**

(a) The System reserves the right to use any information contained in a member's file, in the format necessary, for the recordkeeping, data processing and administrative use of the System. This includes, but is not limited to, use of names or initials, social security numbers, birth dates and zip codes. All formatting and data requirements shall be determined by the System, upon review from time to time.

(b) Any participating employer shall be responsible to furnish all required information reasonably requested by the System to insure compliance with all applicable federal and state laws, rules and regulations. The System reserves the right to withhold activity pending timely receipt of this information, including but not limited to, refunds, withdrawal payments and retirement processing.

[Source: Added at 13 Ok Reg 3327, eff 7-25-96]

#### **590:10-1-11. De minimis provisions**

(a) In any circumstance involving an error or miscalculation concerning a retirement account or record, including, but not limited to employer and/or employee contributions and interest, in the amount of \$25.00 or less, the System shall not be required to correct such error or miscalculation, solely at the discretion of the System. The System shall also not be required to correct an error or miscalculation involving a monthly retirement benefit in the amount of \$5.00 or less, solely at the discretion of the System. The amounts set forth in this subsection are determined to be de minimis due to the cost to calculate, invoice, collect or correct such error or miscalculation which would exceed the amount to be corrected. This de minimis amount may be used in any plan or account managed or administered by the Board.

(b) The System shall not be required to make efforts to contact inactive members or beneficiaries if the total amount due to the member or

beneficiary is One Hundred Dollars (\$100.00) or less. However, the amount shall remain payable to the member or beneficiary upon his or her request. This amount of \$100.00 or less is determined to be de minimis due to the cost in personnel, location services, postage, copying and other reasonable expenses necessary to locate such members and beneficiaries which would exceed the de minimis amount. This de minimis amount may be used in any plan or account managed or administered by the Board.

(c) In any circumstance involving a payment to be made by the System which represents employee contributions in the amount of \$500.00 or less, where the member is deceased and has not named a beneficiary, the beneficiary is deceased or where the beneficiary cannot be located, the System may pay to any person claiming such amount on behalf of the member's estate, solely at the discretion of the System. This provision shall be applicable only after the System has made reasonable efforts to locate a named beneficiary and has been unable to do so. This amount of \$500.00 or less is determined to be de minimis and reasonable in order to permit the System to make payments which would otherwise remain with the System due to the inability to locate a beneficiary or the cost to probate the member's estate. This de minimis amount may be used in any Plan or account managed or administered by the Board.

[Source: Added at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 20 Ok Reg 1750, eff 6-12-03 ; Amended at 28 Ok Reg 664, eff 5-12-11]

#### **590:10-1-12. George Nigh Rehabilitation Institute employees**

Any member employed at the George Nigh Rehabilitation Institute who elected to retain membership in the Oklahoma Public Employees Retirement System pursuant to 74 O.S. 99 Supp. Section 913.7 shall continue to be an OPERS eligible employee for all purposes. George Nigh Rehabilitation Institute shall be designated and considered an OPERS participating employer for these eligible employees only. The University of Oklahoma and the OU Health Sciences Center shall not be considered as a participating employer for any purpose and shall not be designated as such.

[Source: Added at 17 Ok Reg 893, eff 2-10-00 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

#### **590:10-1-13. Medical Technology and Research Authority employees**

Any member employed by the Medical Technology and Research Authority of Oklahoma on June 30, 2001, who elected to retain membership in the Oklahoma Public Employees Retirement System pursuant to 74 O.S. Section 7068 shall continue to be an OPERS eligible employee for all purposes. OU Health Sciences Center shall be designated and considered an OPERS participating employer for these eligible employees only. The University of Oklahoma and/or the Health Sciences Center shall not be considered as participating employers for any other purpose.

[Source: Added at 19 Ok Reg 741, eff 12-20-01 (emergency); Added at 19 Ok Reg 1477, eff 5-28-02]

#### **590:10-1-14. Compensation for retirement purposes [SUPERSEDED]**

[Source: Added at 20 Ok Reg 319, eff 1-1-03 through 4-14-03 (emergency)<sup>1</sup>; Added at 20 Ok Reg 2809, eff 6-19-03 (emergency)<sup>2</sup>; Added at 21 Ok Reg 1759, eff 6-11-04]

**Editor's Note:** <sup>1</sup>*This emergency action was terminated upon the Governor's disapproval of a proposed permanent rule that was intended to supersede the emergency rule. Upon disapproval of a proposed permanent rule intended to supersede an emergency rule, the emergency rule is considered terminated [see 75 O.S., § 303.2]. Therefore, upon disapproval of the proposed permanent rule on 4-14-03, Section 590:10-1-14 was no longer effective, and remained as such until the next emergency action took effect on 6-19-03.*

**Editor's Note:** <sup>2</sup>*This emergency rule was superseded on 6-11-04 by a permanent rule added at a different number (590:10-5-8).*

#### **590:10-1-15. Hazardous Duty Members [REVOKED]**

[Source: Added at 20 Ok Reg 1750, eff 6-12-03 ; Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05 ; Revoked at 38 Ok Reg 2459, eff 9-11-21]

#### **590:10-1-16. Facsimile copies; electronic signatures**

An original document containing a member's, joint annuitant's or beneficiary's signature is generally required on all System forms, applications or requests for confidential information except as provided herein or in 590:10-1-3. Retirement notice forms, beneficiary designation forms, Step-Up election forms, and any form which requires a notarized signature, must always be provided as original signed documents. Electronic signatures may be accepted if the System provides for means of electronic submission with an electronic signature. At the sole discretion of the System, a facsimile copy of certain types of other documents may be accepted if the copies are clear, legible and sufficient for imaging purposes. In some instances, these other documents may be accepted by facsimile only if followed by later delivery of an original document. The decision to accept facsimile copies shall be made on a case-by-case basis upon request of the member, joint annuitant or beneficiary. It is the member, joint annuitant or beneficiary's responsibility to verify that the System has received the facsimile copy and that it is legible and acceptable to the System. This rule is applicable to any plan or account managed or administered by the Board.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 32 Ok Reg 2176, eff 9-11-15]

#### **590:10-1-17. Offset and recovery**

In any circumstance involving an overpayment to any person or entity, to recover judgments or settlements relating to OPERS, or concerning a fraudulent or improper payment, OPERS has the right to utilize any monies available as an offset to recover the overpayment, judgment, settlement or improper payment. This right of offset and recovery has priority over any other claim to said monies, including, but not limited to, the right of any survivor or beneficiary. This right of offset and recovery may be utilized in any plan or account managed or administered by the Board.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-1-18. Release of records**

(a) Pursuant to 74 O.S. § 932, a retired, vested or active member's name, age, amount of contributions paid in, benefits being paid, amount of credited service and documents verifying credited service or benefits may be released. All other information in a member's retirement file remains confidential, including information or documents pertaining to joint annuitants or beneficiaries.

(b) The System will only disclose information or records that are clearly required to be disclosed under the law. All requests for information must be in writing and state the specific information requested and the purpose for the request. The request must also specify the plan that it applies to. Requests which do not specify the plan name shall be presumed to apply to OPERS only. In addition, the request must provide sufficient information to easily identify the member. While a Social Security number may not be required, the date of birth, agency number, first and middle initial or other identifying information must be provided. Search and copy fees will be in accordance with OPERS adopted and published fee schedule.

(c) Information which does not currently exist does not have to be "created" nor does information have to be provided in a format or medium that does not currently exist.

(d) In order to comply with this provision, the following information may be supplied upon request:

(1) Member's name - OPERS, URSJJ and SoonerSave computer records maintain only first and middle initials, and not the full name.

(2) Member's age - In order to protect our members from potential identity theft, only the current age of the member expressed in whole years shall be provided in response to a general request for the age of a member.

(3) Amount of contributions paid in - Contribution statements will show only employee contributions into OPERS and URSJJ. Employer contributions for individual employees are not complete. In response to a general request for a member's "contributions", only the employee contributions will be provided. If a specific request for employer contributions is made, we will provide a copy of the incomplete record with an explanation of the time period covered. For the SoonerSave accounts, the

deferral amounts into the 457 Plan are not "contributions" and will not be disclosed. The employer contributions and the transfer of contributions to the Savings Incentive Plan will be provided if specifically requested, however, the amount of interest or earnings will not be released as it is not a "contribution". All account balances for the SoonerSave plans which reflect investment earnings will not be released.

(4) Benefits being paid - This information is available only for retired members of OPERS and URSJJ who are currently receiving benefits. SoonerSave does not pay "benefits", therefore, payments from the plan including any distribution amounts, hardship distributions or distribution schedules will not be released.

(5) Amount of credited service - This information may not be available for OPERS or URSJJ members who are active and have never had a benefit estimate completed. Therefore, general requests for credited service will be provided on retired or vested members only, and specific requests for credited service for active members will be provided only if the information exists in the file. Credited service is not relevant to or contained in the SoonerSave plans' records and cannot be provided.

(6) Any documents verifying credited service or benefits - This information will be provided only if specifically requested for OPERS and URSJJ. The decision whether a document is used to verify credited service or benefits is discretionary and any release of these documents will be approved by the Executive Director on a case-by-case basis. The documents must have all confidential information redacted prior to being released. SoonerSave accounts do not contain information on either credited service or benefits, therefore, documents will not be released from the SoonerSave files.

(e) Information that is released must always have all Social Security numbers, home addresses and all telephone, pager or cell phone numbers redacted from any records or documents released, pursuant to 74 O.S. § 840-2.11. This will be done by removing or covering the confidential information to ensure that the information cannot be seen from either side of the page.

(f) Certain information contained in a member's file will remain confidential and will not be released without the member's permission.

Examples of such information are:

- (1) Change of address records
- (2) Insurance information or documents
- (3) Any health care information
- (4) Any educational records
- (5) Tax records
- (6) Payroll deductions and withholdings
- (7) Medical documents of any kind
- (8) Copies of driver's license
- (9) Social Security numbers or copies of cards
- (10) Copies of birth certificates, death certificates or baptism documents
- (11) Copies of military records

- (12) Any bank account or banking information
  - (13) Copies of passports or other forms of identification
  - (14) Any unemployment information
  - (15) Any worker's compensation information
- (g) This rule is applicable to any plan or account managed or administered by the Board.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 24 Ok Reg 1135, eff 5-11-07]

#### **590:10-1-19. Mailing lists**

The addresses of all OPERS members are confidential and will not be disclosed to any person or entity. Pursuant to Title 74 O.S. Section 935, any statewide organization of state employees with a minimum membership of 1,000 dues-paying members may annually send one general mailing to all retired members of OPERS and shall pay for the total cost. In order to preserve the confidentiality of the addresses and to comply with the provisions, the System shall not provide the list of retiree addresses directly to the organization. At the sole discretion of the System, the System may require the use of a third-party mailing service. Appropriate agreements shall be entered into between OPERS, the statewide organization, and the third-party mailing service to conduct the mailing, with provisions to protect the confidentiality of the addresses and to prohibit furnishing them to any other person or entity. All costs associated with the mailing or services of the third-party mailing service shall be paid entirely by the statewide organization. The organization shall file a copy of any such mailing with the System.

[Source: Added at 22 Ok Reg 351, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

#### **590:10-1-20. Actuarial cost to withdraw from system**

Actuarial cost for the purpose of withdrawing from the System pursuant to Section 910 of Title 74 of the Oklahoma Statutes shall be determined in accordance with the generally accepted actuarial principles and procedures using methodologies and assumptions which are consistent with those utilized in the actuarial valuation report for the most recent Fiscal Year ending June 30. The actuarial cost to withdraw from the System shall be calculated by the consulting actuary for the System. The employer requesting the withdrawal shall be responsible for paying any fees, costs and expenses for professional services associated with determining the actuarial cost to withdraw from the System. The employer shall also be responsible for any reasonable costs and expenses of the System to retrieve documents for the determination of the actuarial cost to withdraw from the System.

[Source: Added at 23 Ok Reg 515, eff 12-19-05 (emergency); Amended at 23 Ok Reg 1482, eff 5-25-06]

#### **590:10-1-21. Department of Public Safety Chief of Administration**

A person appointed to the position of Chief of Administration of the Department of Public Safety, pursuant to 47 O.S. Supp. 2018, Section 2-

104, shall be eligible to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Law Enforcement Retirement System or the OPERS-administered systems shall be made in writing within thirty (30) days from such appointment and is irrevocable.

[Source: Added at 37 Ok Reg 140, eff 10-2-19 (emergency); Added at 37 Ok Reg 2409, eff 9-11-20]

**590:10-1-22. Retired members-State Department of Education**

A retired member of the Oklahoma Teachers Retirement System who becomes employed by the State Department of Education for the first time on or after November 1, 2019, shall have the option to remain a member of the Oklahoma Teachers Retirement System subject to any applicable post retirement limitations placed on retired members returning to work, or to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Teachers Retirement System or the OPERS-administered systems shall be made in writing within thirty (30) days from the initial date of hire with the State Department of Education and is irrevocable.

[Source: Added at 37 Ok Reg 140, eff 10-2-19 (emergency); Added at 37 Ok Reg 2409, eff 9-11-20]

**590:10-1-23. Transferred employees-board of trustees for the Quartz Mountain Arts and Conference Center**

An employee of the board of trustees for the Quartz Mountain Arts and Conference Center who is transferred to the Oklahoma Tourism and Recreation Department pursuant to 74 O.S. Section 2229.1B who is a member of the Oklahoma Teachers Retirement System or the Oklahoma Law Enforcement Retirement system may elect to remain a member of the applicable system or may elect to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Teachers Retirement System, the Oklahoma Law Enforcement Retirement System or the OPERS-administered systems shall be made with the applicable system not later than November 1, 2020. If no election is made, the employee shall become a member of the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable.

[Source: Added at 38 Ok Reg 60, eff 9-2-20 (emergency); Added at 38 Ok Reg 2459, eff 9-11-21]

## **SUBCHAPTER 2. DEFINITIONS**

**590:10-2-1. General Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Participating employer"** as defined in Section 902(25) of Title 74 of the Oklahoma Statutes means an eligible employer who has agreed to make contributions to the System on behalf of its employees provided such employer is the State, a political subdivision of the State, or an agency or instrumentality of the State. Participating employer shall not include any employer which is not permitted to participate in a qualified governmental pension plan as defined in Internal Revenue Code Section 414(d), 26 U.S.C. §414(d).

[Source: Added at 26 Ok Reg 768, eff 3-4-09 (emergency); Added at 27 Ok Reg 1032, eff 5-13-10]

**590:10-2-2. Normal retirement age**

(a) In addition to any other vesting provided under state law, and except as provided in 51 O.S. §24.1, a member's normal retirement benefit is nonforfeitable upon the attainment of the following normal retirement ages and the completion of the specified years of service:

(1) For a member who is a state, county, and local agency employee, joining before November 1, 2011, age sixty-two (62), with a minimum of six (6) years of full-time-equivalent employment if actively employed by a participating employer on their 62<sup>nd</sup> birthday, otherwise a member must have eight (8) years of service.

(2) For a member who is a state, county, and local agency employee, joining on or after November 1, 2011, age sixty-five (65), with a minimum of six (6) years of full-time-equivalent employment if actively employed by a participating employer on their 65<sup>th</sup> birthday, otherwise a member must have eight (8) years of service.

(3) For a member who is a legislative session employee, joining before November 1, 2011, age sixty-two (62), with a minimum of three (3) or more years of full-time-equivalent employment if actively employed by a participating employer on their 62<sup>nd</sup> birthday, otherwise a legislative session employee must have four (4) years of service.

(4) For a member who is a legislative session employee, joining on or after November 1, 2011, age sixty-five (65), with a minimum of three (3) or more years of full-time-equivalent employment if actively employed by a participating employer on their 65<sup>th</sup> birthday, otherwise a legislative session employee must have four (4) years of service.

(5) For an elected official elected or appointed before November 1, 2011, age sixty (60) with a minimum of six (6) years of participating service.

(6) For an elected official elected or appointed on or after November 1, 2011, age sixty-five (65) with a minimum of eight (8) years of participating service, or age sixty-two (62) with a minimum of ten (10) years of participating service.

(b) A member is also vested in full retirement benefits under the following conditions:

(1) Except as otherwise provided in this subsection, for a member who is a state employee (including a legislative session employee), county employee, and local agency employee, joining before July 1, 1992, when the sum of the member's age and years of credited service equals or exceeds 80 (Rule of 80), and for any person who became a member after June 30 1992, when the sum of the member's age and years of credited service equals or exceeds 90 (Rule of 90). For a member joining on and after November 1, 2011, the Rule of 90 is only applicable if the member has reached age 60.

(2) Notwithstanding (b)(1) above, for an elected official elected or appointed before November 1, 2011, the Rule of 80 is applicable.

(3) Notwithstanding (b)(1) above, for an elected official elected or appointed on or after November 1, 2011, the Rule of 80 is not applicable.

(c) A hazardous duty employee is treated as a state, county, or local employee for purposes of this section. In addition, a hazardous duty employee is also vested in a full retirement benefit upon the completion of twenty (20) years of service.

[Source: Added at 30 Ok Reg 550, eff 5-11-13]

## **SUBCHAPTER 3. CREDITED SERVICE**

### **590:10-3-1. Creditable prior service dates**

In accordance with the provisions of 74 O.S. 1981, § 913, as amended, reference to creditable prior service, the period of employment in State agencies preceding the establishment of their retirement programs has been determined to be:

- (1) Wildlife Commission prior to November 1, 1964.
- (2) Employment Security Commission prior to August 1, 1960.
- (3) Highway Patrol prior to May 16, 1947.
- (4) Teachers' Retirement System prior to July 1, 1943.
- (5) Tourism and Recreation Department employees made eligible for retirement administratively, effective March, 1969, shall be given credit for prior service for all service performed up to that date.

### **590:10-3-2. Oklahoma school districts**

Members who have been granted prior service due to employment by an Oklahoma school district shall be granted a year of prior service for each school year they were employed.

### **590:10-3-3. Optional members prior service [REVOKED]**

[Source: Revoked at 12 Ok Reg 3237, eff 7-27-95]

#### **590:10-3-4. Purchase Limits [REVOKED]**

[Source: Revoked at 12 Ok Reg 3237, eff 7-27-95]

#### **590:10-3-5. Teachers' system credit**

Members who have a purchased service from the Oklahoma Teachers' Retirement System shall be granted one (1) year of participating service for each school year they were employed. If they work less than a full school year, they will be credited with the number of actual months worked.

#### **590:10-3-6. Full-time-equivalent employment**

(a) Full-time-equivalent employment is a term which refers to a member's actual employment with a participating employer of the System. Full-time-equivalent employment with a participating Employer must have been service for which required contributions have been paid to the System.

(1) Members obtain full-time-equivalent employment in two ways:

(A) actual employment with a participating employer of the System, while participating and paying contributions to the System; and/or

(B) making certain types of purchases of service credit which represent actual employment with a participating employer of the System.

(2) Each month for which full-time retirement contributions are paid shall credit the member with one month of full-time-equivalent employment. Members shall receive one month of full-time-equivalent employment if the contributions submitted by the employer reflect the member's full-time salary as reported by the employer. For any pay period in which the member received less than the full-time salary, the service credit shall be reduced proportionally.

(3) Examples of service and/or employment which do not constitute full-time-equivalent employment include, but are not limited to: overtime, leave without pay, unused sick leave, bonus years, temporary or seasonal employment, prior service or military service granted free of charge, purchased military service credit other than purchases pursuant to the Uniformed Services Employment and Reemployment Rights Act, service purchased from another retirement system including transported service except as provided in Sections 590:10-11-4 and 590:10-11-13, and purchased incentive, severance or termination credit.

(4) Examples of service and/or employment which do constitute full-time-equivalent employment include, but are not limited to: purchased prior service, repayment of withdrawn contributions, purchase of elected service, purchased temporary total disability credit, purchases pursuant to the Uniformed Services Employment and Reemployment Rights Act, and delinquent service paid for by the employer.

(b) For purposes of determining the full-time-equivalent employment for elected officials, if the elected official is in office and participating for fifteen (15) days or more in either the first or last month in such office, the full month will be credited as service for such official. If an elected official resigns from office effective on a day other than the last day of the month, then such elected official shall not receive credit for a full month, but only those hours of full-time-equivalent employment service for that month.

(c) Elected officials who elect to participate within ninety (90) days after taking office, and those elected officials who fail to file an election within the ninety-day period and are automatically enrolled in the System, shall be deemed to begin service in the System on the date the elected official takes office. The elected official and the employer shall be responsible for the necessary contributions and any applicable delinquent service cost to cover such time period.

[Source: Amended at 17 Ok Reg 3178, eff 7-27-00 ; Amended at 20 Ok Reg 1750, eff 6-12-03 ; Amended at 23 Ok Reg 1482, eff 5-25-06 ; Amended at 25 Ok Reg 1001, eff 5-11-08 ; Amended at 28 Ok Reg 664, eff 5-12-11 ; Amended at 36 Ok Reg 1944, eff 9-13-19 ; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

#### **590:10-3-7. Unused sick leave credit payment**

Any unused sick leave to be credited for retirement purposes shall be paid by the Employer who granted the sick leave or by the Employer who accepted the accumulated sick leave upon the Employee's transfer.

#### **590:10-3-8. Actuarial cost for purchases; delinquent service cost**

(a) **Actuarial Costs.** Effective January 1, 1991, all purchases of service credit, including incentive credit pursuant to 74 O.S. §913.5, or employer error costs pursuant to 74 O.S. §917(7), shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions utilized in the actuarial valuation report for the Fiscal Year ending June 30 of the prior year.

(2) The actuarial value shall be based upon the member's age, salary and contribution level at the time of purchase, together with the earliest age for retirement with maximum benefits and actuarially assumed salary at the time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of determining this actuarial cost, the member's exact age in months shall be used in the calculation.

(4) For purposes of determining this actuarial cost, the mortality tables shall be formulated as a unisex table assuming a 50% male and a 50% female population, based upon the actuarial assumptions in paragraph (1) of this section.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, his salary shall be averaged based upon the most current month's payroll information.

(6) In the event that the actuarial cost is less than the contributions that would have been required by law, the member and/or the employer shall pay the actual contributions cost.

(b) **Delinquent service costs.** The cost for purchases of delinquent service credit for service of one (1) month or less which is based on employer error and which is one (1) or more years past due shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum. If delinquent service of one (1) year or less is identified and paid for within one (1) year from the beginning service date, the cost will be calculated at employer and employee contributions only. The cost for delinquent service credit for service of more than one (1) month and which is over one (1) year past due shall be calculated at actuarial cost. The cost for any delinquent service credit for a retiree returning to work shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum. If an employee is no longer a participating member of the System and payment of delinquent service will not result in a change of the employee's eligibility for retirement or eligibility for any other purposes and will not change the number of years of service, the cost for delinquent service shall be calculated at contributions plus ten percent (10%) simple interest per annum. When the employer is responsible for the cost of delinquent service based on employer error pursuant to 74 O.S. § 917(7), the employer shall provide records documenting the salary, hours and contribution level of such member during the time period for which the delinquent service is to be billed. If the employer is unable to locate or otherwise provide the required records within a reasonable time as determined by the System, the System may use the available payroll records nearest the time of such delinquency for that member.

(c) **Remittance errors.** In the event a participating employer timely remits contributions for an individual member which are determined to be insufficient as a result of being based on an incorrect contribution rate or incorrectly-reported compensation, the employer shall be notified and pay the amount of the insufficiency plus ten percent (10%) simple interest per annum. The provisions of this paragraph shall not be applicable to employer remittances not received in a timely manner and which are subject to the provisions of paragraphs (a) and (b) of this section and 74 O.S. §920B.

(d) **Service Purchases.** Purchases of service credit are irrevocable, except when the purchase is determined by the System to not be authorized by statute or rule. Purchases of service credit shall be in whole months only. Except as otherwise provided by statute or rule, purchases of service credit can only be made by a member who is actively participating and who is not a retiree returning to work for a participating employer under 74 O.S. § 914 (E). Provided, a retiree returning to work may be permitted to purchase service pursuant to 74 O.S. § 913 (A)(8).

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 28 Ok Reg 664, eff 5-12-11 ; Amended at 29 Ok Reg 498, eff 5-11-12 ; Amended at 31 Ok Reg 2314, eff 9-12-14 ; Amended at 32 Ok Reg 2176, eff 9-11-15 ; Amended at 36 Ok Reg 1944, eff 9-13-19]

### **590:10-3-9. Purchase price payments**

(a) An active member of the System may elect the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other purchase or repayment permitted and authorized by the statutes governing the System, to be amortized in monthly installments to the extent allowed by law.

(1) A payment schedule may be established allowing the member to make monthly payments through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to the System. Payments remitted by an employer for its employees must be kept separate from employer's regular retirement contributions or any other payments to the System including Deferred Compensation. Such payments do not qualify as "pre-tax" contributions under "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.

(2) The installment payment schedule provided for in this section must be in monthly or bi-weekly increments. The minimum total monthly payment is \$25.00. The minimum bi-weekly payment is \$12.50. The member shall be responsible for maintaining the payment schedule. The payment due date will be based on the payroll schedule set by the member's employer. An installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in subsection (4) of this section.

(3) The installment payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the payment schedule is commenced.

(4) Except as provided in subsection (8) of this section, if the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or the beneficiary of the member will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated for only the principal amount paid and rounded to the last full month paid for. No refunds will be paid to the member.

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective retirement date of the member. If any member or beneficiary elects to pay the balance during the 6 month period provided for in Subsection (4) of this Section, no benefits will be payable until

the completion of said 6 month period, or receipt of a signed waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

(6) Payments may be made directly to the System by the member or beneficiary if the member is in an unpaid leave status, if the payroll is not sufficient to handle the entire payment, in the event of payroll error where employer fails to withhold the proper amount or during the six (6) month period referred to in subsection (4) of this Section.

(7) Except as provided in subsection (8) of this section, if the purchase is terminated for any reason, the purchase cannot be made at any time in the future following the 6 month option referred to in Subsection (4) of this Section. By failing to complete this purchase, the member or beneficiary forfeits the right to the purchase at any other time.

(8) If the installment payment for the repayment of a previous withdrawal is terminated for any reason, the member, upon returning to employment and meeting the eligibility requirements for membership, may pay the remaining principal balance at any time prior to the month of the effective retirement date. The total due shall be the unpaid principal balance, plus interest pursuant to 74 O.S. § 917(5), calculated from the date of the last installment payment received and paid in a one-time lump sum amount.

(b) Effective January 1, 2002, in lieu of installment payments, an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee to trustee transfer from a 457 deferred compensation plan or a 403(b) tax sheltered annuity program.

(c) Effective January 1, 2002, in lieu of installment payments or a direct transfer an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by a rollover. The payment may be made by participant rollover contributions and/or direct rollovers of eligible rollover distributions made after December 31, 2001, from the following:

- (1) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code;
- (2) an annuity contract described in section 403(b) of the Internal Revenue Code;
- (3) an eligible plan under section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or

(4) a participant rollover contribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over.

(d) Any payments permitted and authorized by this section or by the statutes governing the System which are elected by a member in lieu of installment payments shall be made no later than the month prior to the effective retirement date of the member.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96 ; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 18 Ok Reg 9, eff 10-3-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3258, eff 7-26-01 ; Amended at 19 Ok Reg 741, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1477, eff 5-28-02 ; Amended at 25 Ok Reg 1001, eff 5-11-08 ; Amended at 26 Ok Reg 952, eff 4-25-09 ; Amended at 31 Ok Reg 2314, eff 9-12-14 ; Amended at 36 Ok Reg 1944, eff 9-13-19]

### **590:10-3-10. Incentive credit**

(a) Pursuant to 74 O.S. §913(b) certain eligible members of the System may purchase up to two (2) full years of incentive credit at actuarial value. Incentive credit may be used as participating service or addition to age.

(b) Those eligible to purchase incentive credit include the following:

- (1) Employees who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age;
- (2) members who have accumulated at least 78 points toward the Rule of 80, and/or members who have accumulated at least 88 points towards the Rule of 90;
- (3) elected officials who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age; and
- (4) Hazardous Duty Members who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age, or to qualify for the Rule of 80 or 90. Hazardous Duty Members are not eligible to purchase incentive credit to qualify for retirement pursuant to the twenty (20) years of full-time-equivalent employment requirement.

(c) Incentive credit cannot be used as full time equivalent employment. Members must have at least four (4) years of the required six (6) years of full time equivalent employment in order to be eligible for this purchase and must accrue six (6) years of full time equivalent employment prior to retirement.

(d) Members must be active and participating at the time of purchase or at the time of the transfer pursuant to subsection (f) of this section.

(e) This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

(f) Eligible members purchasing incentive credit pursuant to this section may transfer a participating service purchase to an addition to age purchase or an addition to age purchase to a participating service purchase. This transfer applies to purchases already made by an eligible member or to purchases currently being made through installment

payments pursuant to 590:10-3-9. Full or partial installment payments made pursuant to this section shall not be refundable under any circumstances. Transferring an incentive purchase to another incentive purchase pursuant to this paragraph may not result in an equal transfer.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 20 Ok Reg 1750, eff 6-12-03 ; Amended at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 24 Ok Reg 1135, eff 5-11-07 ; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12 ; Amended at 31 Ok Reg 2314, eff 9-12-14]

### **590:10-3-11. Termination credit**

- (a) Pursuant to 74 O. S. §913c, certain eligible members of the System may purchase up to three (3) full years of termination credit.
- (b) Following official notice from a participating employer of an approved reduction-in-force on or after July 1, 1998, and of those employees subject to the reduction-in-force, the System will communicate detailed instructions about the purchase of termination credit to those members affected.
- (c) Purchase of termination credit allows an eligible member to constructively participate as if still employed by a participating employer until reaching eligibility for a normal retirement date as defined in 74 O.S. §902(24). The purchase of termination credit represents the amount of service which would have accrued through the member's normal retirement date had they not been terminated due to a reduction-in-force and will allow an eligible member to preserve the same normal retirement date as he or she would have had if the member's position had not been terminated by a reduction-in-force.
- (d) Members must have at least six (6) years of full-time equivalent employment with a participating employer in order to be eligible to purchase termination credit.
- (e) Members who are within three (3) years of achieving eligibility for a normal retirement date based on age as set forth in 74 O.S. §902(24), or who have accumulated at least 74 points toward the Rule of 80 or 84 points toward the Rule of 90 (those members who are within six (6) years of achieving eligibility for normal retirement under the 80/90 point provisions), are eligible to purchase termination credit if they are subject to a reduction-in-force.
- (f) Members cannot purchase both termination credit and incentive credit.
- (g) Members may purchase termination credit not to exceed the amount of years and months required to reach normal retirement. The maximum amount of termination credit which may be purchased is three (3) years of service.
- (h) The cost to purchase termination credit will be an amount equal to the employee and employer contributions which would have been paid to the System based upon the last full month of compensation.
- (i) To purchase termination credit, the member must file a written election of intent within six (6) months from the date the member is terminated. Payment in full must be received by the System within sixty (60) days of the filing of the election to purchase.
- (j) Failure to make payment in full by the due date, returning to employment with a participating employer or retirement by the member

or surviving spouse at any time prior to the normal retirement date will void the purchase of termination credit. The System will return the purchase price tendered.

[Source: Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

**590:10-3-12. Military service credit**

(a) Any member who joined the System on or before June 30, 2000, can receive up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. If eligible, a retired member shall receive an increase in his or her monthly benefit as a result of the addition of the military service credit effective with the month following the receipt of the documents and approval by the System.

(b) Any active member who joined the System on or after July 1, 2000, can purchase up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. The member must make payment in the amount determined by the Board pursuant to Section 913.5 of Title 74 of the Oklahoma Statutes and 590:10-3-8. This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

(c) Military service credit will be credited or purchased in full months only. The initial month of military service will be accepted only if the service began on or before the 15<sup>th</sup> day of the month. The final month of military service will be accepted only if the service was completed on or after the 16<sup>th</sup> day of the month.

(d) Members who joined the System on or after July 1, 2003, can make the purchase set forth in paragraph (b) of this rule only if the member has not received credit for the same period of military service for retirement from another retirement system created pursuant to the Oklahoma Statutes. For such members, the military credit shall be granted or purchased in the retirement system from which the member retires first. In the event such a member fails to disclose a previous grant or purchase of military credit, the purchase will be voided, his or her service credit will be adjusted to remove the military service credit and

only the purchase price shall be returned to the member.

(e) It is the responsibility of the member wishing to receive or purchase military service credit to complete the application provided by the System for this purpose and to provide all documentation necessary to support the application. Military service will not be credited until all required documentation is provided by the member to the System, the System has approved the grant or purchase and any required payments are made.

(f) Retired members who are not credited with military service prior to or at the time of retirement may make application for the credit at any time. After approval by the System, the military service credit will be added to the member's record and increased retirement benefits, if any, as a result of the addition of the military service credit, shall begin with the first month following said approval. Retroactive payments will not be made under any circumstances. This subsection only applies to members whose initial membership in the System began on or before June 30, 2000.

(g) Members who served in the Armed Forces of the United States during a war or combat military operation other than World War I, World War II, the Korean War, the Vietnam War or the Gulf War as provided in Section 902 (23) of Title 74 of the Oklahoma Statutes, may be eligible to purchase or receive military service credit for the period of time that he or she actually served in an area of responsibility for a war or combat military operation which lasted for a period of at least ninety (90) days. It is the responsibility of the member to provide sufficient documentation to support his or her eligibility for this credit as requested by the System, including, but not limited to, documents showing specific service areas and times.

(h) The provisions for granting or purchasing military service credit shall be in addition to any contributions, benefits and service credit with respect to qualified military service in accordance with Section 414 (u) of the Internal Revenue Code of 1986.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 37 Ok Reg 2049, eff 9-11-20]

### **590:10-3-13. Credit for involuntary furlough**

(a) **Office of Personnel Management approved furloughs.** A leave of absence as a result of an involuntary furlough established by the Office of Personnel Management under OPM Rule 530:10-15-48 *Involuntary leave without pay (furlough)*, or as it may be amended, may be credited as participating service. It is the responsibility of the employer to provide a copy of the furlough plan approved by the Administrator of the Office of Personnel Management.

(b) **District Attorneys Council approved furloughs.** The employees of a district attorney may receive participating service credit for a leave of absence due to an involuntary furlough after July 1, 2004, provided the furlough was conducted in substantial compliance with OPM Rule 530:10-15-48 *Involuntary leave without pay (furlough)*, or as it may be amended. It is the responsibility of the district attorney to provide a copy of the furlough plan approved by the District Attorneys Council. The approved furlough plan must include a certification from the Council that

the plan was in substantial compliance with the OPM rule.

(c) **Legislative or Supreme Court approved furloughs.** A leave of absence as a result of an involuntary furlough of legislative employees pursuant to a furlough plan adopted by the President Pro Tempore of the Senate or the Speaker of the House of Representatives as authorized by 74 O.S. §840-5.1, and involuntary furloughs of court employees authorized by the Oklahoma Supreme Court may be credited as participating service. It shall be the responsibility of the employer to provide a copy of the adopted furlough plan.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 28 Ok Reg 95, eff 9-17-10 (emergency); Amended at 28 Ok Reg 664, eff 5-12-11]

### **590:10-3-14. Elected official service credit**

(a) **First elected service on or after August 22, 2008.** Any member of the System before August 22, 2008, who is first elected or appointed on or after August 22, 2008, but prior to November 1, 2011, and who retires as an elected official with at least six (6) years in elected office, may count all of his or her non-elected service which occurred prior to the elected service, if any, as if it were elected service. The applicable contribution rate selected by the elected official shall apply and the calculation of the benefit shall be made in accordance with the provisions of 74 O.S. §913.4. However, in no event shall the retirement benefits be more than one hundred percent (100%) of his or her highest contiguous twelve (12) months of compensation earned as an elected official or as a non-elected member.

(b) **Joining System on or after August 22, 2008.** Any member who first joins the System on or after August 22, 2008, and who is first elected or appointed prior to November 1, 2011, shall have elected and non-elected service separately calculated as follows:

(1) All non-elected credited service will be calculated at the applicable factor multiplied by the member's final average compensation and multiplied by the non-elected years.

(2) All elected service will be multiplied by the appropriate computation factor corresponding to the contribution rate selected by the member as an elected official. The salary used for the benefit formula for elected service shall be the elected official's single highest annual compensation as an elected official.

(3) The calculations provided for in paragraphs (1) and (2) of this subsection (b) will then be added together to determine the total benefit for such member. Under no circumstances shall the elected official be entitled to apply the contribution rate and the corresponding computation factor selected pursuant to 74 O.S. §913.4(A) or the compensation received as an elected official to the computation of any non-elected service.

(4) Fractional year computations made under this section shall be calculated in accordance with 590:10-7-9.

(c) **Elected service prior to August 22, 2008.** The amendments to 74 O.S. §913.4(C)(3) and (4) in Enrolled Senate Bill 1641 of the 2<sup>nd</sup> Regular Session of the 51<sup>st</sup> Legislature (2008), Section 1, Chapter 105, O.S.L.

2008, did not amend or affect the calculation of service credit for any elected official who was a member of this System and who served as an elected official prior to August 22, 2008.

(d) **Effective date.** The authorizing legislation for determining elected official service credit provided by subsections (a) through (c) of this section is Enrolled Senate Bill 1641 of the 2<sup>nd</sup> Regular Session of the 51<sup>st</sup> Legislature (2008), Section 1, Chapter 105, O.S.L. 2008. The emergency clause in SB 1641 failed thereby making the effective date of the legislation ninety (90) days following sine die adjournment, or August 22, 2008.

(e) **First elected on or after November 1, 2011.** Pursuant to 74 O.S. §913.4(A)(5) and §913.4(B), as amended in Enrolled Senate Bill 794 of the 1<sup>st</sup> Regular Session of the 53<sup>rd</sup> Legislature (2011), Section 2, Chapter 206, O.S.L. 2011, any member of the System joining prior to or on or after November 1, 2011, and who is first elected or appointed on or after November 1, 2011, shall have the contribution rate specified in 74 O.S. §919.1(1)(a) and the amount of the benefit for all elected and non-elected service credit shall be based on the provisions of 74 O.S. §915(A)(1), and §915(A)(2) if applicable, including the calculation of final average compensation pursuant to 74 O.S. §902(18).

[Source: Added at 26 Ok Reg 120, eff 9-18-08 ; Added at 26 Ok Reg 952, eff 4-25-09 ; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12 ; Amended at 31 Ok Reg 2314, eff 9-12-14]

## **SUBCHAPTER 5. CONTRIBUTIONS AND COMPENSATION**

### **590:10-5-1. Maximum level**

(a) For service prior to July 1, 1994, members may elect to have a maximum compensation level for retirement purposes of up to Forty Thousand Dollars (\$40,000.00) per annum. For service after July 1, 1994, contributions are required on all allowable compensation up to the maximum compensation level set by Statute.

(b) Effective with respect to plan years beginning on and after July 1, 1996, and before July 1, 2002, the annual compensation of a plan member which exceeds One Hundred Fifty Thousand Dollars (\$150,000.00) (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of computing employee and employer contributions to or benefits due from the retirement system. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age 19 before the close of the year.

(c) Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member which exceeds Two

Hundred Thousand Dollars (\$200,000.00) (as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code) may not be taken into account in determining benefits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(d) As used in this section, the term "eligible member" means a person who first became a member of the retirement system prior to the plan year beginning after December 31, 1995. Pursuant to Section 13212(d)(3)(A) of the Omnibus Budget Reconciliation Act of 1993, and the regulations issued under that section, eligible members are not subject to the limits of Section 401(a)(17) of the Internal Revenue Code, and the maximum compensation used in computing employee and employer contributions to or benefits due from the retirement system for eligible members shall be the maximum amount allowed by the retirement system to be so used on July 1, 1993. The limits referenced in subsections (b) and (c) above apply only to years beginning after December 31, 1995, and only to individuals who first become plan members in plan years beginning on and after July 1, 1996.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 19 Ok Reg 741, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1477, eff 5-28-02 ; Amended at 27 Ok Reg 1032, eff 5-13-10]

### **590:10-5-2. Initial opportunity to elect**

Initial opportunity to increase annual maximum compensation level for service prior to July 1, 1994, is as follows:

(1) The date of a member's initial opportunity to make the election to increase his or her maximum annual compensation level to \$40,000 (including longevity) shall be July 20, 1987 if the member's annual compensation (12 months of salary plus longevity) exceeded \$25,000 on July 20, 1987.

(2) If a member's annual compensation (including longevity) did not exceed \$25,000 on July 20, 1987, the date of the member's initial opportunity to make the election to increase his or her maximum annual compensation level shall be the member's date of reclassification or pay raise which results in an annual (12 months of salary plus longevity) compensation which exceeds \$25,000.

(3) If a member receives a retroactive reclassification or pay raise which results in an annual compensation (12 months of salary plus longevity) which exceeds \$25,000, the initial opportunity to make the election to increase his or her maximum compensation shall be the date to which the reclassification and pay raise is retroactively paid.

(4) The member's longevity date shall be the date of a member's initial opportunity to make the election to increase his or her annual compensation level if only the longevity payment caused the member's annual compensation to exceed \$25,000.

(5) For a member who is a local government employee, the date of the initial opportunity to elect to increase the maximum annual compensation shall be the date of the governing body's approval of the member's reclassification or pay raise which results in an annual compensation (12 months of salary plus longevity) which exceeds \$25,000.

(6) A timely election is an election that was completed by filing the appropriate forms and completing the payment of all contributions required within three (3) years of the member's initial opportunity to make said election. For active members whose initial opportunity to make the election was on or after July 1, 1991, but no later than June 30, 1994, a timely election must be completed by filing the appropriate forms and completing the payment of all contributions required no later than February 1, 1995. For all active members who fail to make a timely election as provided in this Section, the election may be made at anytime prior to the member's retirement, provided the member pays all contributions required plus interest in the amount of seven and one-half percent (7 1/2%) compounded annually. Any election to increase the maximum compensation level for service prior to July 1, 1994, which is filed and/or completed on or after February 2, 1995, is not considered a timely election. Any election filed and/or completed on or after July 1, 1994 by any member whose initial opportunity to make the election was prior to July 1, 1991, is not considered a timely election.

(7) Members who have stopped the payment plan before completing all required contributions for any reason prior to July 1, 1998, will not be treated as having made a timely election. Members who were making payments of the required contributions and whose payments ceased by operation of law on July 1, 1998 will be treated as having made a timely election without regard to not completing the payment of the entire amount of required contributions.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99]

### **590:10-5-3. Required contributions**

Prior to July 1, 1998, a member who chose to increase his or her maximum annual compensation level for service prior to July 1, 1994 must have paid the required statutory contributions on all compensation

received each year above \$25,000 up to the maximum \$40,000, plus interest in the amount of seven and one-half percent (7 1/2%) compounded annually. Said interest accrues from the date of the members initial opportunity to make the election. The election is not considered complete until all required contributions and interest have been paid, unless terminated by operation of law.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99]

#### **590:10-5-4. Refund election [REVOKED]**

[Source: Revoked at 12 Ok Reg 3237, eff 7-27-95]

#### **590:10-5-5. Effective date of election [REVOKED]**

[Source: Revoked at 12 Ok Reg 3237, eff 7-27-95]

#### **590:10-5-6. Member responsibility [REVOKED]**

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Revoked at 16 Ok Reg 610, eff 12-2-98 (emergency); Revoked at 16 Ok Reg 2010, eff 6-11-99]

#### **590:10-5-7. Statutory compensation contributions**

(a) All currently appointed members of the Oklahoma Tax Commission on July 1, 2000, may make an election to contribute on the highest statutory salary for his or her position. This irrevocable election shall be made in writing and must be received by the System no later than September 28, 2000. This election to make additional contributions is binding upon all future appointments to the same Tax Commission office. The required contributions shall be made beginning with the first of the month following the filing of the election or the first of the month following the month in which the statutory salary is constitutionally limited, whichever is later.

(b) New members appointed to the Oklahoma Tax Commission after July 1, 2000, shall make an election to contribute on the highest statutory salary for his or her position within 90 days of taking such office. This election shall be effective upon the constitutional limitation of his or her **salary at some** later time during his or her appointment to the Oklahoma Tax Commission. This election to make additional contributions is binding upon all future appointments to the same Tax Commission office.

(c) Upon making the election provided in subsection (a) or (b) of this section, the employer and the employee contributions statutorily required for the System shall be remitted utilizing the normal payroll process. In the event the payroll process is unable to withhold and remit the contributions for the statutory salary amount, it shall be the responsibility of the Oklahoma Tax Commission to develop a process to withhold or receive the appropriate employee contribution and then to remit the appropriate employee and employer contributions for the

statutory salary amount directly to the System.

(d) Upon making the election provided in subsection (a) of this section, a member of the Oklahoma Tax Commission whose salary is constitutionally limited on July 1, 2000, may also elect to use the highest salary allowed by law for the position to which the member was appointed which occurred prior to the election. To complete the election, the member must pay all employee contributions which would have been made since the time his or her salary became constitutionally limited, subject to any statutory salary caps under the Plan. This irrevocable election shall be made in writing and must be received by the System no later than September 28, 2000. Payment of all contributions due, plus an amount equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings, must be remitted to the System by both the employer and the employee no later than December 31, 2000. Such payments do not qualify as "pre-tax" contributions under the "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.

[Source: Added at 18 Ok Reg 9, eff 10-3-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

#### **590:10-5-8. Compensation for retirement purposes**

(a) Compensation for retirement purposes, as determined by the Board of Trustees, shall be limited to salary and wages as follows:

(1) "Salary" means a predetermined or fixed amount of cash remuneration that is made payable by the participating employer to the employee in exchange for services rendered personally by the employee for the participating employer but excluding any type of overtime payments paid to an employee for service rendered in excess of full-time;

(2) "Wages" means cash remuneration, dependent upon the hours of work, that is made payable by the participating employer to the employee in exchange for services rendered personally by the employee for the participating employer excluding any type of overtime payments paid to an employee for service rendered in excess of full-time.

(b) Subject to the limitations contained elsewhere in the retirement act or in these rules, salary and wages include, by way of example and not by limitation, the following:

(1) any longevity payments made to employees based upon a standardized plan which recognizes length of service to the employer,

(2) pay differential which is paid to employees in return for special or hazardous shifts or in return for additional training or duties,

(3) amounts deducted from the employee's paycheck for retirement and deferred compensation contributions,

(4) pre-tax cafeteria purchases which are not funded by the employer or the employee's benefit allowance,

(5) performance, skill, or mission critical based pay adjustments.

(c) Any payments made by an employer to an employee which do not meet the definition of salary or wages as set forth in subsection (a) of this rule are not to be considered compensation for retirement purposes, including but not limited to the following:

- (1) payments which are for reimbursement for expenses incurred by the employee,
- (2) payments for maintenance or allowances, including, but not limited to, uniform allowances, clothing allowances, or housing allowances,
- (3) any payments or amounts made available to an employee for insurance benefits or benefits allowances, including any amounts paid directly to the employee,
- (4) illegal payments made to an employee by an employer,
- (5) payments made in error to an employee,
- (6) payments made by the employer for services rendered by the employee, which services are not part of the employee's job duties and responsibilities of his or her job position with the participating employer,
- (7) payments in the form of tips or commissions paid to an employee in the course of his or her employment,
- (8) payments made to other than the employee by the participating employer which are not deducted from the employee's paycheck,
- (9) workers compensation benefit payments,
- (10) any payments made by a participating employer to a non-employee, such as compensation to Board or Commission members,
- (11) payments made in anticipation of employment, such as signing bonuses,
- (12) any payments which are excluded from retirement compensation by law.

(d) The provisions of this rule shall be effective for all compensation paid for service by an employee to the employer on or after July 1, 2003. It shall be the responsibility of the employer to ensure that the appropriate retirement contributions are deducted or paid correctly and in accordance with this rule.

(e) The compensation of each member as set forth above shall be used for calculating the monthly retirement compensation for each retiring member. Provided, however, the calculation shall include the compensation prior to July 1, 2003, for which retirement contributions were withheld in determining the final average compensation, if applicable, for the highest three (3) years of the last ten (10) years of service.

[Source: Added at 20 Ok Reg 2809, eff 6-19-03 (emergency); Added at 21 Ok Reg 1759, eff 6-11-04]

### **590:10-5-9. Changes to contribution rates; deadline for notifying System**

Any county, county hospital, city or town, conservation district, circuit engineering district or any public or private trust in which a

county, city or town participates and is the primary beneficiary, which is a participating employer and which is permitted pursuant to 74 O.S. §920A to modify the amount of contributions paid by the employer and employee shall make such modification and notify the System no later than June 30 of each year for a July 1 effective date. Any contribution modification adopted, approved or received after June 30 shall not be effective until July 1 of the following fiscal year.

[Source: Added at 30 Ok Reg 550, eff 5-11-13]

## **SUBCHAPTER 7. RETIREMENT BENEFITS**

### **590:10-7-1. Computing final average compensation**

For those members with a retirement date prior to July 1, 1998, to achieve equity among all members in computing the final average compensation, the highest thirty-six months of salary, excluding longevity payments, earned during the last one hundred twenty months of participation separately for service prior to July 1, 1994 and for service after July 1, 1994, subject to the maximum compensation level, will be averaged. Exceptions are yearly contract employees at the School for the Blind and the School for the Deaf for whom the two highest annual salaries will be used and the third year (twelve months) will be composed of the next twelve highest average monthly salaries. To compute the final average compensation for Post July 1994, (1) annualize using the full months of salary only, and (2) add the pro-rated longevity to the product of #1 before dividing. This Post July final average compensation procedure will apply to all such members vesting or retiring with less than three (3) years of salary after July 1, 1994. Those members paid bi-weekly will have twenty-six pay periods included in each annual (twelve months) salary total.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96 ; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99]

### **590:10-7-2. Involuntary furlough**

In computing the final average compensation, the monthly base salary will be used for each month a retiring member has leave without pay due to an involuntary furlough under 590:10-3-13. *Credit for involuntary furlough.*

[Source: Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

### **590:10-7-3. Longevity and other annual lump-sum payments**

(a) The three (3) highest annual longevity payments will be added into the sum of three years of salary (thirty-six months) used in computing the final average compensation for members whose first participating service occurs before July 1, 2013. The five (5) highest annual longevity payments will be added into the sum of five years of salary (sixty months)

used in computing the final average compensation for members whose first participating service occurs on or after July 1, 2013. If a retiring member is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payments will be used only in the amount actually paid and if it is one of the three highest longevity payments for members whose first participating service occurs before July 1, 2013, or one of the five highest longevity payments for members whose first participating service occurs on or after July 1, 2013. The final average salary shall not be reduced if the annual longevity payment causes any one month's salary to exceed the maximum monthly compensation level, provided the annual salary including longevity does not exceed the maximum compensation level.

(b) Other lump-sum annual payments that are included as compensation for retirement purposes shall be averaged over the previous twelve (12) months of salary immediately preceding the month of payment for use in computing the final average compensation. These lump-sum payments include those which are paid on an annual basis at the discretion of the employer such as performance or skill based pay adjustments.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96 ; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 20 Ok Reg 319, eff 1-1-03 (emergency); Amended at 20 Ok Reg 1750, eff 6-12-03 ; Amended at 31 Ok Reg 53, eff 8-28-13 (emergency); Amended at 31 Ok Reg 2314, eff 9-12-14]

#### **590:10-7-4. Early retirement factor**

The monthly benefit to be paid under early retirement shall be based on the actual age in years and months the retirement member has attained on the date retirement benefits are to begin. The reduction factor is based on a level interpolation, between ages 55 and 62 for members whose first participating service occurs before November 1, 2011, and between ages 60 and 65 for members whose first participating service occurs on or after November 1, 2011.

[Source: Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

#### **590:10-7-5. Selecting an option**

(a) The member may choose to receive the maximum benefit or receive benefits under any one of the retirement Options provided in 74 O.S. § 918.

(1) The type of retirement benefit selected by the member and/or the member's spouse, if applicable, cannot be changed under any circumstances on or after the effective date of retirement, except as provided in this Section.

(2) In the event of the death of the named joint annuitant after the member's retirement date, the member shall provide the System with a copy of the joint annuitant's death certificate as notice of said death. The member's benefit will "pop-up" to reflect the amount of benefit the member would be entitled to absent the selection of an option. The "pop-up" increase becomes effective the first day of the month following the death of the joint

annuitant, provided the member has given notice of said death. If the death of the joint annuitant occurred prior to June 30, 1994, the benefit increase may become effective with the July 1994 benefit payment, provided the member has given notice of said death. Retrospective benefits will not be paid for any month prior to July 1994 and are limited to a maximum of six (6) months. The "pop-up" increase is limited to members retiring with an Option A or Option B.

(b) A member choosing Option C provided in 74 O.S. § 918 shall be subject to the following provisions:

(1) In the event of the death of the retired member within the ten-year certain period under Option C, and there are no living designated beneficiaries, the person responsible for the estate of the deceased retired member shall be given the option for the estate to receive monthly benefits for the remainder of the ten-year period, or receive the present value of the remaining benefit payments in a one-time, lump-sum distribution.

(2) In the event the retired member predeceases a designated beneficiary within the ten-year certain period, and the designated beneficiary dies after the beneficiary has begun to receive benefits, the person responsible for the estate of the beneficiary shall be given the option for the beneficiary's estate to receive monthly benefits for the remainder of the ten-year period, or receive the present value of the remaining benefit payments in a one-time, lump-sum distribution.

(3) For purposes of this subsection:

(A) "person responsible for the estate" means the personal representative, executor or administrator of the estate as determined by a court of competent jurisdiction, or in the case of a probate waiver as permitted by 74 O.S. § 916.1, the appropriate claiming heir; and

(B) "present value of the remaining benefit payments" means the lump-sum distribution shall be discounted using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the election is made pursuant to this subsection.

(4) The following shall be provided by the person responsible for the estate before any benefits will be paid:

(A) taxpayer identification number (TIN) for the estate, if applicable;

(B) legal documents naming the personal representative, executor or administrator of the estate, or in the case of a probate waiver, the appropriate documents as set forth in 74 O.S. § 916.1;

(C) copy of the death certificate for the member or beneficiary; and

(D) statement in writing from the person responsible for the estate selecting either the monthly or lump-sum payout method.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 24 Ok Reg 47, eff 8-24-06 (emergency); Amended at 24 Ok Reg 1135, eff 5-11-07 ; Amended at 37 Ok Reg 2409, eff 9-11-20]

#### **590:10-7-6. Failure to submit documents; benefit estimates**

(a) If all of a retired member's required documents have not been received by the fifteenth day of the month in which the first retirement benefit payment is to be issued, the System will withhold payment of any benefit until all required documents have been received. If all the required documents are not received within six (6) months after the requested retirement date, the retirement shall be cancelled and no retroactive benefits shall be paid. In the event the retirement is cancelled pursuant to this section, the member shall be required to reapply for a new retirement date which shall be considered as having met the sixty (60) day notice requirement.

(b) In order to receive a benefit estimate, a member shall provide all the required documents necessary for the System to calculate the benefit estimate. No benefit estimate shall be processed until such documents have been received. The System shall determine which documents are necessary to calculate a benefit estimate.

[Source: Amended at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 31 Ok Reg 2314, eff 9-12-14]

#### **590:10-7-7. Allowable adjustments**

Any adjustments made to the retirement benefit due to credit given for unused sick leave, longevity payment or delinquent service shall be retroactive to the effective date of retirement.

[Source: Amended at 25 Ok Reg 1001, eff 5-11-08]

#### **590:10-7-8. Direct deposit and benefit deductions**

(a) For members or annuitants retiring prior to July 1, 2001, a Retirant or annuitant may authorize the Oklahoma Public Employees Retirement System to deposit their monthly retirement benefit directly to a checking or savings account in a bank, Credit Union and/or Savings and Loan by electronic fund transfer or by paper check. Application for direct deposit will only be accepted on properly completed forms provided by OPERS. Prior to June 30, 2001, the direct deposit may be discontinued at any time upon thirty (30) days' written notice by the member, annuitant or OPERS. After July 1, 2001, if the electronic fund transfer creates an undue hardship on the retiree, the direct deposit may be discontinued only if the member or annuitant makes application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the member or annuitant. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.

(b) Effective July 1, 2001, newly retired members or annuitants shall be required to receive monthly benefit payments via electronic fund transfers to a banking or financial institution designated by the member.

The retiree or annuitant and receiving institution must complete the form prescribed for this purpose by OPERS. In the event the electronic fund transfer creates an undue hardship on the retiree or annuitant, the member or annuitant may make application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the member or annuitant. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.

(c) A retired member or annuitant who is receiving benefits from the System may authorize deductions from his or her monthly benefit for certain eligible products or association dues, provided the benefit amount is sufficient to allow the entire deduction considering any previously existing deductions. No partial deductions are permitted. The System will not be responsible for any errors in the deductions and no adjustments for incorrect deductions will be permitted in subsequent months. The System will only recognize instructions received through the eligible product vendor or association, and not directly from the member or annuitant. The allowance of benefit deductions does not under any circumstances constitute an endorsement for any particular product or association.

(1) The only products that are eligible for deduction are those products which are currently offered to active state employees through the Employees Benefits Council and which are offered to state retirees as a group. Any vendor offering such a product must present proof of participation by at least five hundred (500) state retirees, in such form or manner as may be required by the System, prior to any deductions being authorized.

(2) The only associations that are eligible for deduction for membership dues are the Oklahoma Public Employees Association and/or any other Statewide associations that are limited to state employees and have at least one thousand (1000) dues-paying members, either retired or active. Certification from the Administrator of the Office of Personnel Management that an association is eligible for payroll deductions for active state employees is required prior to that association being eligible for dues deductions pursuant to this rule.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 18 Ok Reg 3258, eff 7-26-01 ; Amended at 19 Ok Reg 741, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1477, eff 5-28-02]

### **590:10-7-9. Fractional year computations**

(a) **Rounding of fractional year.** Pursuant to 74 O.S. §913(C), a fractional year of six (6) months or more shall be considered as one (1) year and less than six (6) months shall be disregarded. This round-up provision may be used one time for credited service of a member to establish the benefit of the member. This rule is necessary to prevent the gain or loss of service credit to a member. In no event shall the rounding up provisions apply if it would result in any member receiving an additional year or years that the member would not otherwise be entitled to receive.

**(b) Rounding for members joining on or after November 1, 2012.**

Notwithstanding the provisions of subsection (a) of this section, for members who join the System on or after November 1, 2012, rounding of fractional years shall not be permitted. The number of years of credited service shall be based on the actual years and months of credited service without rounding up or down. Unused sick leave, as provided for in 74 O.S. §913(B)(7)(a), shall be credited at the same rate but not used to round up to another year. Any additional months of unused sick leave credit shall be added to other service credit without any rounding.

**(c) Correctional and probation and parole officers.** Pursuant to 74 O.S. §915(A), the computation of retirement benefits of Department of Corrections Correctional and Probation and Parole Officers is 2.25% for certain credit prior to July 1, 1990, and 2.5% for certain credit after July 1, 1990, and 2% for all other credit.

(1) Such members may retire with fractional years of service credit in the 2.25% and the 2.5% categories and the statutes only provide for computation at these rates on full years of service. Due to the fact that only the total credited service can be rounded up, some members may face losing a year of service credit when the fractional years of credit are disregarded.

(2) To prevent such a loss of service credit, the fractional portions of years in the 2.25% and the 2.5% categories will be added to the years of credit used in the 2% category and rounded up therein, if applicable. If a member still loses a year of service credit after adding the fractional years to the 2% category, the fractional years may be added to the 2.25% category and rounded up therein, if applicable.

**(d) Hazardous Duty Members.** Hazardous Duty Members who elect to participate or are required to participate at the higher employee contribution rate will receive retirement benefits at the 2.5% category only on full years of service as Hazardous Duty Members for which the higher contributions have been paid. The fractional portions of years in the 2.5% category will be added to any other service credit, calculated in the 2% category and rounded up therein, if applicable, for the computation of the retirement benefit.

**(e) Elected officials.**

(1) If first elected or appointed prior to November 1, 2011, elected officials who do not participate in an elected status for at least six (6) full years will receive retirement benefits on the years and months of elected service instead of full years. The benefit shall be calculated using the computation factor corresponding to the contribution rate the official paid during those years and months of elected service and on the highest annual salary earned as an elected official. Non-elected service credit will be calculated using the applicable computation factor. The elected and non-elected service shall be added to determine the total credited service. If this total results in a fractional year of six (6) months or more, it shall be considered as one year, and less than six (6) months shall be disregarded. The years and months of elected service shall then be deducted from the total credited service and the remaining balance of service shall be calculated using the

applicable non-elected service computation factor.

(2) If first elected or appointed on or after November 1, 2011, elected officials who do not participate in an elected status for at least eight (8) full years will receive retirement benefits on the years and months of elected service instead of full years. The contribution rate for such officials shall be as specified in 74 O.S. §919.1(1)(a) and the amount of the benefit shall be based on the provisions of 74 O.S. §915(A)(1).

**(f) Elected officials participating at more than one rate.** Elected officials who participate at more than one contribution rate during their elected service will receive retirement benefits calculated using (1) the computation factor assigned for each contribution rate paid and (2) the highest annual salary for which that particular contribution rate was paid for each full year of elected service credit. Fractional years of elected service credit will be added to the years of elected service for which the highest contribution rate was paid and rounded up therein, if applicable, for the computation of the retirement benefit.

**(g) Rounding for elected officials joining System on or after November 1, 2011.** Elected officials who are first elected or appointed on or after November 1, 2011, rounding of fractional years shall not be permitted. The number of years of credited service shall be based on the actual years and months of credited service without rounding up or down.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 20 Ok Reg 1750, eff 6-12-03 ; Amended at 25 Ok Reg 1001, eff 5-11-08 ; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12 ; Amended at 30 Ok Reg 550, eff 5-11-13]

### **590:10-7-10. Final benefit**

The retirement benefit payable for the month of death of a member, joint annuitant or survivor shall be payable to said member, joint annuitant, or surviving spouse. In the event the final benefit is returned to the System or is not otherwise paid, the benefit shall be paid to the member's named beneficiary. If there is no named beneficiary or estate, the final monthly benefit payment shall be paid to the first of the following:

- (1) surviving spouse;
- (2) surviving children in equal shares;
- (3) surviving parents in equal shares;
- (4) surviving siblings in equal shares;
- (5) member's estate.

[Source: Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 31 Ok Reg 53, eff 8-28-13 (emergency); Amended at 31 Ok Reg 2314, eff 9-12-14]

### **590:10-7-11. Minimum final average compensation**

(a) All members retiring on or after July 1, 1994 shall have benefits calculated using a final average compensation of not less than Thirteen Thousand Eight Hundred Dollars (\$13,800.00), provided they became members of the System prior to July 1, 1995.

(b) For all persons who become members of the System on or after July 1, 1995, the minimum final average compensation shall be determined by the number of years of credited service they have at the time of retirement. For those members with twenty (20) or more years of credited service, they shall have benefits calculated using a final average compensation of not less than Thirteen Thousand Eight Hundred Dollars (\$13,800.00). For those members with fifteen (15) to nineteen (19) years of credited service, they shall have benefits calculated using a final average compensation of Six Thousand Nine Hundred Dollars (\$6,900.00). For those members with less than fifteen (15) years of credited service, there shall be no minimum final average compensation.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96]

### **590:10-7-12. Unpaid leave**

Any period of unpaid leave approved and authorized by the employer, shall not constitute a break in service for retirement purposes; however service credit shall not accrue during any such periods of unpaid leave. This section applies to any unpaid leave status, including but not limited to family medical leave, worker's compensation leave, or military leave.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95]

### **590:10-7-13. Filing for retirement and Initial retirement benefit**

(a) It is the responsibility of all members to file a notice of retirement form with the System at least sixty (60) days but not more than one hundred eighty (180) days prior to the member's requested effective retirement date. Any member who has previously filed an application for vested benefit form or who has been identified by the System as eligible to receive a retirement benefit due to reaching the age requiring mandatory distribution will be considered to have met the sixty (60) day notice requirement; however, it is the responsibility of any such vested or other member to file a retirement form selecting the type of benefit to be paid prior to the member's requested retirement date. All retirement forms shall be prescribed, produced and approved by the System in order to constitute proper notice and retirement selection.

(b) The sixty (60) day notice requirement can be waived by application to the Executive Director. The application for waiver must state the reason for the request and the decision to grant the waiver is up to the Executive Director. Upon request of the member, the Board may review at its next regular meeting any denial of a waiver by the Executive Director. Members are presumed to be familiar with the plan provisions and aware of the notice requirement and the Executive Director will grant the waiver only for good cause shown. Good cause is generally shown in cases of an unforeseen hardship, such as illness of the member or a member's family or a reduction in force, layoff of employment, or other unexpected change in job status. Good cause is also generally shown in cases of error or delay on the part of the employer and the error or delay is due to no fault of the member.

(c) No retirement benefits are payable until the System verifies that the member has been removed from the payroll; therefore, the initial retirement benefit payment to new retirees shall be made at the end of the month following the month of retirement. Two benefit payments will be made at that time representing the month of retirement and the current month. Following this initial verification period, retirement benefits will be payable each month on the last day of that month.

(d) No retirement benefits shall be payable until the System receives a properly completed retirement form requesting such benefits. Unless otherwise specifically provided by law or by these rules, no benefits shall be payable retroactively for any time period prior to receiving the member's properly completed retirement form regardless of when the member may have become eligible for such benefits. The requested retirement date of the member shall be made in accordance with the requirements of this section.

[Source: Added at 13 Ok Reg 3327, eff 7-25-96 ; Amended at 18 Ok Reg 3258, eff 7-26-01 ; Amended at 24 Ok Reg 1135, eff 5-11-07 ; Amended at 25 Ok Reg 46, eff 8-16-07 (emergency); Amended at 25 Ok Reg 1001, eff 5-11-08 ; Amended at 26 Ok Reg 952, eff 4-25-09]

#### **590:10-7-14. Permanent part-time employment**

(a) For purposes of this rule, permanent part-time employment is less than full time employment and is defined as employment with a participating employer of the System in a position which is certified by the employer to require, on an on-going basis, less than forty (40) hours of work per week, or 173 hours per calendar month, or 80 hours per bi-weekly payroll period. If a question exists as to whether or not a member's employment is permanent part-time employment, written certification signed by the participating employer or an agent of the participating employer will be required to qualify a member as a permanent part-time employee for the purpose of computing the member's final average compensation under the provisions of 74 O.S. §915(D).

(b) The provisions of this rule for the computation of an annualized final average compensation shall not apply to retirees who have returned to work unless they have waived receipt of their benefit and subsequently re-retire with a recomputation of their benefit.

(c) The phrase "last ten (10) years immediately preceding termination or retirement" is defined as the last ten (10) years of participation in the System. Any breaks in participation are not counted as part of the ten (10) years.

(d) Any employee having thirty-six (36) or more months of full-time participation in the last ten (10) years of participation is not considered to be permanent part-time for the purposes of annualization of the final average compensation.

(e) For members whose first participating service occurs before July 1, 2013, only the salary received during the last ten (10) years of participation in the System shall be considered in the actual calculation of the final average compensation for permanent part-time members. Out of these ten (10) years, the System will use the 36 monthly entries of salary at the highest hourly rates received by the member. The gross

salaries for each of the 36 months shall be added together. The number of hours of work reported for each of these 36 months shall be added together. The total salary will be divided by the total number of hours reported, multiplied by 6,240 hours plus the three (3) highest eligible longevity payments (if any), and divided by three (3) to arrive at the final average compensation.

(f) For members whose first participating service occurs on or after July 1, 2013, only the salary received during the last ten (10) years of participation in the System shall be considered in the actual calculation of the final average compensation for permanent part-time members. Out of these ten (10) years, the System will use the 60 monthly entries of salary at the highest hourly rates received by the member. The gross salaries for each of the 60 months shall be added together. The number of hours of work reported for each of these 60 months shall be added together. The total salary will be divided by the total number of hours reported, multiplied by 10,400 hours plus the five (5) highest eligible longevity payments (if any), and divided by five (5) to arrive at the final average compensation.

[Source: Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 31 Ok Reg 53, eff 8-28-13 (emergency); Amended at 31 Ok Reg 2314, eff 9-12-14]

#### **590:10-7-14.1. Seasonal or temporary employment; calculation of 1,000 hours**

(a) **Definition.** Seasonal or temporary employment shall mean employment that is limited in term, where the employee is only expected to remain in the position for a certain period of time. The employment can be seasonal or until the specific job or duty is completed. Employees who are hired in a job or position, that is non-seasonal with full-time work load and undefined duration or that requires more than 1,000 hours per year, whether designated as seasonal, temporary, probationary, provisional, or some other label, must be enrolled and participate in the System on the date of the hire and not at the end of a temporary, probationary, provisional, or some other labeled period. Employees hired purely for seasonal or temporary duties are excluded from participation in the System pursuant to 74 O.S. §902(14).

(b) **Failure to enroll employees.** Participating employers who fail to enroll employees when required by law shall be subject to the provisions of 74 O.S. §917(7) and any other provision of law which may be applicable.

(c) **Calculation of 1,000 hours.** In determining the eligibility of an employee in relation to the requirement of at least 1,000 hours of employment per year pursuant to 74 O.S. §902(14), the System shall calculate the hours using a rolling year or a rolling 12 consecutive months. If an employee has at least 1,000 hours of work during any consecutive 12 month period, the employee shall meet the hours of work eligibility requirement. The determination or calculation of 1,000 hours shall not be based on a calendar year, fiscal year, or from the date of employment.

[Source: Added at 30 Ok Reg 550, eff 5-11-13]

**590:10-7-15. Post-retirement employment - calculation of benefits and service**

**590:10-7-15.<sup>2</sup> Post-retirement employment - calculation of benefits and service**

A year of post-retirement service shall be determined as 2076 hours of participation. All retired members who have post-retirement service with a participating employer and are eligible for an additional monthly benefit on or after January 1, 2000, pursuant to 74 O.S. § 914(E) shall have the additional benefit calculated using the actual hours worked and reported and the actual compensation reported for which contributions have been paid for each 2076 hour period. Each 2076 hour period shall be calculated separately and benefits added each January 1 as appropriate. All applicable option and early retirement reductions selected by the member at the time of retirement shall be applied to the additional benefit. Contributions received on such service shall be credited for the fiscal year in which the hours were actually worked.

(b) The initial addition of post-retirement benefits shall be made effective with the January, 2000 benefit payment. The additional benefits shall be cumulative and paid for the initial period to the extent OPERS can identify and verify post-retirement participation. Post-retirement employment for which the retired member has previously been granted additional benefits or for which a refund of contributions has been made will not be included.

(c) The addition of post-retirement benefits shall be available to retired members who remain members on or after July 1, 1999. Joint Annuitant benefits shall be increased only if the member would have otherwise been eligible for the increase in benefits.

(d) For those retired members who have returned to employment with a participating employer and waived receipt of their monthly retirement benefit pursuant to 74 O.S. § 914(E), retirement benefits will be recalculated only upon termination of employment after completion of thirty-six (36) consecutive months of full-time-equivalent employment, as that term is defined under 590:10-3-6 of these rules.

[Source: Added at 17 Ok Reg 608, eff 12-2-99 through 7-14-00 (emergency)<sup>1</sup>; Added at 17 Ok Reg 3178, eff 7-27-00 ; Amended at 20 Ok Reg 1750, eff 6-12-03 ; Amended at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 25 Ok Reg 1001, eff 5-11-08 ; Amended at 32 Ok Reg 2176, eff 9-11-15]

**Editor's Note:** <sup>1</sup>*This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-00 (after the 7-14-00 expiration of the emergency action), the text of Section 590:10-7-15 was no longer effective, and remained as such until added again by permanent action on 7-27-00.*

**Editor's Note:** <sup>2</sup>*On 12-28-00, a different rule called "Rollovers" was added by emergency rulemaking at this number (590:10-7-15), creating a duplication in numbering. The number was later changed to 590:10-7-16 in permanent rulemaking.*

### **590:10-7-16. Rollovers**

(a) This section applies to the Oklahoma Public Employees Retirement System and to the Uniform Retirement System for Justices and Judges.

(b) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to Section 401(a)(31) of the federal Internal Revenue Code.

(c) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than Two Hundred Dollars (\$200.00) during the year. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(d) Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(1) To an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(2) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(3) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code.

(e) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(1) An individual retirement account described in Section 408(a) of the Internal Revenue Code;

(2) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

- (3) an annuity plan described in Section 403(a) of the Internal Revenue Code;
- (4) a qualified trust described in Section 401(a) of the Internal Revenue Code;
- (5) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;
- (6) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system; or
- (7) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(f) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purposes of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(g) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

[Source: Added as 590:10-7-15 at 18 Ok Reg 548<sup>1</sup>; eff 12-28-00 through 7-14-01 (emergency)<sup>2</sup>; Added at 18 Ok Reg 3258, eff 7-26-01 ; Amended at 22 Ok Reg 2679, eff 6-7-05 (emergency); Amended at 23 Ok Reg 1482, eff 5-25-06 ; Amended at 24 Ok Reg 1135, eff 5-11-07 ; Amended at 27 Ok Reg 1032, eff 5-13-10 ; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

**Editor's Note:** <sup>1</sup>This rule was first added by emergency action using a different number (590:10-7-15), which created a duplication in numbering. The rule was later added at this section number (590:10-7-16) by permanent action. See also Editor's Note below.

**Editor's Note:** <sup>2</sup>This emergency rule expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new section, the section is no longer effective. Therefore, on 7-15-01 (after the 7-14-01 expiration of this emergency action), the emergency rule called "Rollovers" and numbered as 590:10-7-15 was no longer effective, and remained as such until added by permanent action at this number (590:10-7-16) on 7-26-01.

### **590:10-7-17. Disability certification after early retirement**

(a) Effective January 1, 2004, a member who incurred a disability which would qualify that member for disability retirement benefits pursuant to

subsection B. of Section 915 of Title 74 of the Oklahoma Statutes and who elected early retirement pending the receipt of the disability certification may elect to receive disability retirement in lieu of the previously selected early retirement. In order to be eligible for this election, the disability must have been incurred on or after July 1, 1999, and the member must meet all statutory requirements for disability retirement. The member's effective retirement date will not change, however, the member shall be entitled to receive the difference, if any, in the amount of the early benefit and the disability benefit as of the date the member would have been eligible for the disability benefit.

(b) The only retirement options available for disability retirement pursuant to subsection B. of Section 915 of Title 74 of the Oklahoma Statutes are a maximum benefit with no survivor options and Option A, with married members being required to elect to retire under Option A unless the member's spouse consents in writing to waive the survivor benefit and permit the member to receive the maximum benefit. A member who chooses to change his or her retirement from early to disability must maintain the survivor option selections originally chosen under early retirement to the extent permitted under the disability plan provisions and pursuant to this rule. The joint annuitant named at the time of early retirement cannot be changed.

(1) If the member, and the member's spouse if applicable, elected to receive the maximum retirement benefit with no survivor option at early retirement, the disability benefit will be paid as a maximum retirement benefit with no survivor option. Spouse consent for maximum benefits obtained at early retirement is effective for the disability retirement and no additional spouse consent is required.

(2) If the member, and the member's spouse if applicable, selected a retirement Option A at early retirement, the disability benefit will be paid as an Option A with the same named joint annuitant.

(3) If the member, and the member's spouse if applicable, selected a retirement Option B at early retirement, the disability benefit will be paid as an Option A with the same named joint annuitant under disability retirement. The member's named joint annuitant will be notified of the change to disability retirement under an Option A and of the reduction in the survivor benefit amount.

(4) If the member, and the member's spouse if applicable, selected a retirement Option C at early retirement, the disability benefit will be paid as a maximum retirement benefit with no survivor option. Since the member retains the right to change the named beneficiary for the Option C benefits and therefore the named beneficiary obtains no property rights, the spouse consent for Option C obtained at early retirement is effective for the maximum disability retirement and no additional spouse consent is required, however, the member's named beneficiary for Option C will be notified of the change to maximum disability retirement with no survivor benefit.

(c) In the event of the death of the named joint annuitant, the benefit shall only be paid as a maximum non-survivor benefit and no other person shall be substituted as joint annuitant. The member shall not be permitted to change the option or joint annuitant selection in the event of a divorce and/or remarriage after the effective date of the member's early retirement.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04]

**590:10-7-18. Post-retirement employment - eligibility**

(a) **Retiree subject to restrictions.** Returning to work for a participating employer may affect the retirement benefit of a retiree. A retiree returning to work for a participating employer is subject to various state and federal restrictions, including, but not limited to, the requirements set forth in 74 O.S. §914 and certain Internal Revenue Service regulations.

(b) **Bona fide termination of employment.** Prior to the payment of any retirement benefit to a member, the participating employer shall certify in writing to the System that the member has terminated employment. Termination of employment shall be governed by guidelines and regulations set forth by the Internal Revenue Service, and shall generally mean the member must have experienced a bona fide separation, severance or termination of employment or service in which the employer and employee relationship is completely severed. Changing from full-time to part-time employment with the same participating employer does not qualify as a bona fide termination.

(c) **Returning to work for former employer.** A retiree may not be rehired in any capacity by the retiree's same participating employer for a period of one (1) year after the retiree ended his or her employment with such same participating employer. A retiree may not enter into an employment contract of any kind, including through a third party, with the same participating employer for a period of one (1) year after ending his or her employment with such same participating employer. The provisions of this subsection shall not apply if the retiree waives his or her benefit as provided under 74 O.S. §914(E)(2).

(d) **Pre-arranged rehires.** If any agreement is made between the employee and the employer prior to the retirement of the employee which would allow the employee to return to work for the same participating employer, the retirement of such employee shall not be considered a bona fide termination of employment. Upon discovery of such an agreement, the employee shall be subject to having the retirement benefits stopped pursuant to 74 O.S. §914(D).

(e) **Independent contractors.**

(1) A retired member who provides services as an independent contractor to a participating employer shall not participate in the System. However, the employer must submit a copy of the contract to OPERS for approval in advance of the effective date of the contract. The contract must be a true contract labor situation where the individual engages to perform certain services according to his or her own method and manner, free from control

and direction of the employer in the performance of the service except the result thereof. Review of the contract shall include, but not be limited to:

- (A) the degree of the right to control or supervise the work of the individual;
- (B) payment of self-employment taxes;
- (C) whether any benefits or leave time are paid;
- (D) the nature and length of the contract;
- (E) whether the work is part of the regular business of the employer, and;
- (F) the right of either party to terminate the relationship without liability.

(2) If an individual after retirement is doing the same work for the same employer as the individual did prior to retirement, the System will consider the individual to be an employee and not an independent contractor. In no event will an employment contract be accepted by the System if it is determined that the contract was arranged or agreed to prior to the retirement of the employee. In such cases, the System will consider the relationship to be that of employer and employee, and the employer and employee will be subject to the laws and rules regarding post-retirement employment.

[Source: Added at 25 Ok Reg 1001, eff 5-11-08 ; Amended at 26 Ok Reg 120, eff 9-18-08 (emergency); Amended at 26 Ok Reg 952, eff 4-25-09 ; Amended at 28 Ok Reg 95, eff 9-17-10 (emergency); Amended at 28 Ok Reg 664, eff 5-12-11]

### **590:10-7-19. Required minimum distributions**

(a) The retirement system will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The retirement system is subject to the following provisions:

(1) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age 72 or such other date as may be permitted by the federal Internal Revenue Code or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in 74 O.S. §901 et seq.

(2) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.

(3) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution

before the member's death.

(4) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

(A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death (or, if the designated beneficiary is the member's surviving spouse, beginning no later than the date on which the member would have attained age 72 or such other date as may be permitted by the federal Internal Revenue Code), or

(B) distributed within five (5) years of the member's death.

(5) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(6) The death and disability benefits provided by the retirement system are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent (25%) of the cost for all of the members' benefits received from the retirement system.

(b) Notwithstanding the other provisions of this rule or the provisions of Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(c) The retirement system shall make reasonable efforts to locate missing members, survivors and beneficiaries in order to comply with the required minimum distribution provisions of Section 401(a)(9). Reasonable efforts may include using any contact information the retirement system may have available for a member or any type of locator service.

[Source: Added at 27 Ok Reg 1032, eff 5-13-10 ; Amended at 28 Ok Reg 664, eff 5-12-11 ; Amended at 38 Ok Reg 2459, eff 9-11-21]

#### **590:10-7-20. Actuarial assumptions**

Effective as of July 1, 1989, the System will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board of Trustees by resolution. Such benefits will not be subject to employer discretion. The resolutions adopted by the Board of Trustees for this purpose are incorporated as part of the plan document.

[Source: Added at 27 Ok Reg 1032, eff 5-13-10]

#### **590:10-7-21. Reemployed veterans; compliance with Code Section 414(u)**

Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

[Source: Added at 27 Ok Reg 1032, eff 5-13-10]

**590:10-7-22. Federal qualified military service rights**

(a) **Additional benefits if provided by Plan.** Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would otherwise provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) **Differential wage payments.** Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

[Source: Added at 27 Ok Reg 1032, eff 5-13-10 ; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

**590:10-7-23. Compliance with Section 415 limitations on contributions and benefits**

(a) **General provisions.** Notwithstanding any other provisions of the retirement system to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

(b) **Participation in other qualified plans: Aggregation of limits.**

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1)

plan.

(c) **Basic 415(b) limitation.**

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) **Adjustments to basic 415(b) limitation for form of benefit.** If the benefit under the plan is other than the form specified in subsection (c) (2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (that is, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

(B) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent

(5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (that is, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(C) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period))) and (i) for years prior to January 1, 2009, the applicable mortality tables described

in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) **Benefits not taken into account for 415(b) limitation.** For purposes of this section, the following benefits shall not be taken into account in applying these limits:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) that portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- (3) any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) **Other adjustments in 415(b) limitation.**

- (1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a One Hundred Sixty Thousand Dollar (\$160,000.00) (as adjusted) annual benefit beginning at age sixty-two (62).
- (2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in paragraph (1) of this subsection shall not apply.
- (3) The reductions provided for in paragraph (1) of this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) **Less than ten (10) years of service adjustment for 415(b) limitations.** The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under subsection (c) of this section multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below ten percent (10%). The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(h) **Ten Thousand Dollar (\$10,000.00) limit.** Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified

defined benefit pension plans to which the member's employer contributes, do not exceed Ten Thousand Dollars (\$10,000.00) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

**(i) Effect of COLA without a lump sum component on 415(b) testing.** Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

- (1) A member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost-of-living adjustments under Title 74 O.S. §901 et seq;
- (2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost-of-living increases until such time as the benefit plus the accumulated increases are less than the Limit; and
- (3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost-of-living increases under Title 74 O.S. §901 et seq, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

**(j) Effect of COLA with a lump sum component on 415(b) testing.** On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost-of-living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

**(k) Section 415(c) limitations on contributions and other additions.** After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of Forty Thousand Dollars (\$40,000.00) (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or one hundred percent (100%) of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other

payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2 1/2 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

- (i) The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
- (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued.

(C) Any payments not described in subparagraph (B) of this paragraph are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(D) An employee who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(E) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

**(l) Service purchases under Section 415(n).**

(1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(A) The requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(B) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(2) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this paragraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(3) For purposes of this section the term "permissive service credit" means service credit:

(A) Recognized by the system for purposes of calculating a member's benefit under the system,

(B) which such member has not received under the system, and

(C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subparagraph (B) of this paragraph, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(4) The system will fail to meet the requirements of this section if:

- (A) More than five (5) years of nonqualified service credit are taken into account for purposes of this paragraph, or
- (B) any nonqualified service credit is taken into account under this paragraph before the member has at least five (5) years of participation under the system.

(5) For purposes of paragraph (4) of this subsection, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

- (A) Service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code),

- (B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (A) of this paragraph) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

- (C) service as an employee of an association of employees who are described in subparagraph (A) of this paragraph, or

- (D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

(6) In the case of service described in subparagraphs (A), (B), or (C) of this paragraph, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue

Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):

(A) The limitations of paragraph (4) of this subsection will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the system before January 1, 1998.

**(m) Modification of contributions for 415(c) and 415(n) purposes.**

Notwithstanding any other provision of law to the contrary, the system may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

(2) If payment pursuant to paragraph (1) of this subsection will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

**(n) Repayments of cashouts.** Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

**(o) Reduction of benefits priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to

the agreement of the plan and the plan administrator of all other plans covering such member.

[Source: Added at 27 Ok Reg 1032, eff 5-13-10]

## **SUBCHAPTER 8. DEPARTMENT OF CORRECTIONS BENEFITS**

### **590:10-8-1. Department of Corrections Hazardous Duty Members**

Any correctional officer, probation and parole officer or fugitive apprehension agent employed by the Department of Corrections shall participate in the Hazardous Duty benefit provisions of the System.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

### **590:10-8-2. Post-Hazardous Duty Members**

Post-Hazardous Duty Members are considered to be those employees of the Department of Corrections who are required to continue participation in the special benefit structure within the System for Hazardous Duty Members and as provided in this Subchapter.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

### **590:10-8-3. Continuation of Hazardous Duty benefits**

(a) Any employee of the Department of Corrections who participated in the System as a Hazardous Duty Member as a result of employment as a correctional officer, probation and parole officer or fugitive apprehension agent shall be required to continue to participate as a hazardous duty employee for all future periods of employment with the Department of Corrections, provided that:

- (1) the member was employed by the Department of Corrections as a correctional officer, probation and parole officer or fugitive apprehension agent on June 30, 2004, or was first hired by the Department of Corrections as a correctional officer, probation and parole officer or fugitive apprehension agent after June 30, 2004; and
- (2) the member received a promotion or change in job classification after June 30, 2004; and
- (3) the member has participated as a Hazardous Duty Member as a correctional officer, probation and parole officer or fugitive apprehension agent at least five (5) full years.

(b) For purposes of this rule, the requirement of five (5) full years of participation as a Hazardous Duty Member means five (5) years of full-time-equivalent employment as provided in 590:10-3-6 of these rules for which the required higher contribution for Hazardous Duty Members is paid.

(c) The requirements of this rule shall be applicable for all future employment with the Department of Corrections for any Post-Hazardous

Duty Member. Breaks in service will not affect this requirement.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-8-4. Maximum Participation as a Hazardous Duty Member**

Hazardous Duty Members and Post-Hazardous Duty Members who are employed by the Department of Corrections shall pay the higher contribution rate set forth in Title 74 O. S. Section 919.1 (1)(c) and (d) for a maximum of twenty (20) full years. If the Hazardous Duty Members and Post-Hazardous Duty Members remain employed by the Department of Corrections after twenty (20) full years of payment of the higher contribution rate, the required employee contribution rate shall be as provided in 919.1 (1) (a) and (b).

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-8-5. Normal retirement date for Post-Hazardous Duty Members**

In addition to a normal retirement date as defined in 74 O.S. §902(24), Post-Hazardous Duty Members who are employed by the Department of Corrections at the time of retirement are eligible to retire after completion of at least twenty (20) years of full-time-equivalent employment as provided in 590:10-3-6 of these rules; provided, the required higher contribution for Hazardous Duty Members is paid or the member was employed, pursuant to 74 O.S. §915(A)(8), as a correctional officer or probation and parole officer at the Department of Corrections.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

**590:10-8-6. Employer Responsibility for Continuation of Hazardous Duty Benefits**

It is the responsibility of the Department of Corrections to ensure that the correct employee contributions are withheld for all employees. It is also the responsibility of the Department of Corrections to provide any necessary documentation to confirm eligibility of any current or former employee for benefits under this Subchapter.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**SUBCHAPTER 9. SURVIVORS AND BENEFICIARIES**

**590:10-9-1. Survivors' benefits**

(a) If an active or retired elected official with a minimum of six (6) years of participating service, who was first elected or appointed before November 1, 2011, or an active or retired elected official with a minimum of eight (8) years of participating service who was first elected or appointed on or after November 1, 2011, dies, the surviving spouse is eligible to receive one half (1/2) of the elected official's benefit provided

the elected official had met the service requirements for retirement. If a retired elected member selected an Option to apply to his/her service, the joint annuitant receives the Option benefit instead of the one half (1/2) benefit to the spouse.

(b) At the death of a member who is eligible to retire pursuant to law but is not actually retired, or is eligible to vest or had elected a vested benefit, the surviving spouse shall be entitled to receive the appropriate Option benefit as provided by law beginning at the date the deceased member would have become eligible to receive such benefits had the member survived. The System may withhold benefits to the surviving spouse until the necessary documentation is received and verified. The benefits payable shall accrue from the first day of the month following the death of the member if the deceased member met the requirements for an early or normal retirement.

[Source: Amended at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 24 Ok Reg 1135, eff 5-11-07 ; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

### **590:10-9-2. Death benefit payment**

(a) **Payment of benefit.** The four thousand dollars (\$4,000) death benefit, available for any retired member who died on or after July 20, 1987, shall be payable to the beneficiary listed by the member or to the member's estate. This beneficiary designation is not affected by any designation of joint-annuitant, deferred compensation beneficiary or insurance beneficiary, unless otherwise specifically designated in writing by member. For any retired member who died on or after July 1, 1999, the death benefit amount shall be five thousand dollars (\$5,000).

(b) **Assignment of benefit.** The beneficiary, or if none the member's estate or the heirs of the member in the case of a probate waiver, may assign the death benefit to a person licensed as a funeral director or to a lawfully recognized business entity licensed as required by law to provide funeral services for the deceased member.

[Source: Amended at 17 Ok Reg 608, eff 12-2-99 through 7-14-00 (emergency)<sup>1</sup>; Amended at 17 Ok Reg 3178, eff 7-27-00 ; Amended at 28 Ok Reg 95, eff 9-17-10 (emergency); Amended at 28 Ok Reg 664, eff 5-12-11]

**Editor's Note:** <sup>1</sup>*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 7-15-00 (after the 7-14-00 expiration of the emergency action), the text of Section 590:10-9-2 reverted back to the permanent text that was effective prior to enactment of the emergency action on 12-2-99, as was last published in the 1996 Edition of the OAC, and remained as such until amended by permanent action on 7-27-00.*

### **590:10-9-3. Divorced spouse beneficiaries**

All designations of beneficiaries to a divorced spouse of accumulated employee contributions or the death benefit will be void, unless the divorced spouse has been named after the divorce decree is

rendered or if the divorce decree specifies the divorced spouse is entitled to receive the benefits. The System shall void such designation of beneficiary only upon receipt of the divorce decree. The System is not responsible for any payments made in good faith without notice of divorce. The provisions of this rule are applicable for any Plan or account managed or administered by the Board.

[Source: Amended at 20 Ok Reg 1750, eff 6-12-03]

#### **590:10-9-4. Probate waivers**

(a) In the event a member dies, leaving no living beneficiary or having designated his Estate as beneficiary, the System may require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. This requirement may be waived for payments in an amount of Twenty Five Thousand Dollars (\$25,000) or less upon presentation of the member's valid Last Will and Testament, trust documents or affidavit that a will does not exist, an Affidavit of Heirship naming all heirs to the member's estate, a Hold-Harmless Agreement signed by all heirs, a corroborating affidavit from someone other than an heir who is familiar with the deceased member, and proof of payment of all last debts of the member. These documents shall comply with the provisions of 74 O.S. §916.1. If there is any question as to the validity of any document herein required, the judicial appointment shall not be waived.

(b) If the System is paying a benefit or unpaid contributions under this rule, the payment shall be paid to the first of the following:

- (1) surviving spouse;
- (2) surviving children in equal shares;
- (3) surviving parents in equal shares;
- (4) surviving siblings in equal shares;
- (5) member's estate.

[Source: Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96 ; Amended at 19 Ok Reg 741, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1477, eff 5-28-02 ; Amended at 31 Ok Reg 53, eff 8-28-13 (emergency); Amended at 31 Ok Reg 2314, eff 9-12-14 ; Amended at 34 Ok Reg 1897, eff 9-11-17]

## **SUBCHAPTER 10. DEPARTMENT OF CORRECTIONS DEATH IN PERFORMANCE OF DUTY BENEFITS**

#### **590:10-10-1. Eligibility for Benefit**

The Surviving Spouse and the Surviving Child or children of any correctional officer or probation and parole officer employed by the Department of Corrections who is killed or mortally wounded on or after January 1, 2000, and of any employee of the Department of Corrections who is killed or mortally wounded on or after July 1, 2004, shall be eligible for the benefits as set out in this Subchapter, provided said employee was a participating member of the Oklahoma Public Employees Retirement System at the time of his or her death and his or her death occurred as a direct result of the performance of his or her duties for the

Department.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-10-2. Killed in Performance of Duty**

Killed in the performance of duty means an employee's death as a direct result of an action, whether felonious or accidental, occurring as a direct result of performing his or her assigned work-related functions for the Department of Corrections. Work-related function means action that the employee is authorized or obligated to perform by law, rule, regulation, or condition of employment or service, which is performed while on paid duty with the Department of Corrections.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-10-3. Mortally Wounded in Performance of Duty**

Mortally wounded means a personal injury where death occurs within one (1) year as a direct and proximate result of an injury which would have qualified for death benefits as provided in this Subchapter. Direct and proximate result means that the injury sustained in the performance of duty is the primary and substantial factor in the resulting death.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-10-4. Exclusions**

No benefits shall be paid under this subchapter:

- (1) if the death was caused by the intentional misconduct of the employee or if the employee intended to bring about his or her death;
- (2) if the death is an accidental death as a result of travel to and from work;
- (3) if the employee was intoxicated with a blood alcohol level of .10 or greater at the time of death or injury;
- (4) if the employee was under the influence of illegal drugs or improperly used prescription drugs at the time of death or injury;  
or
- (5) if death is the natural death of the employee or death is the primary result of a disease or medical condition.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-10-5. Surviving Spouse Benefit**

The Surviving Spouse of an employee killed or mortally wounded in the performance of his or her duties with the Department of Corrections shall receive benefits as provided in Title 74 O.S. Section 916.3. Surviving Spouse means a person who was legally married to the employee at the time of the employee's death. The burden of proof regarding establishing and proving the existence of the marriage shall rest with the person claiming Surviving Spouse status.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-10-6. Surviving Spouse Benefit Election**

An otherwise eligible Surviving Spouse of an employee killed or mortally wounded in the performance of his or her duties with the Department of Corrections shall not receive benefits as provided in Title 74 O.S. Section 916.3 if he or she is receiving or elects to receive any type of survivor benefits from the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System or the Oklahoma Law Enforcement Retirement System on account of this or any spouse. The Surviving Spouse must make an irrevocable election of benefits within ninety (90) days of eligibility for benefits. The Surviving Spouse cannot receive surviving spouse benefits for more than one member of the specified retirement systems. Receipt of benefits from any such retirement system shall be presumed to constitute such an election. The Surviving Spouse must certify annually that he or she is not receiving any type of survivor benefits from another state retirement system.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-10-7. Surviving Child Benefit**

(a) A total monthly benefit amount as set by statute shall be paid where an employee of the Department of Corrections is killed or mortally wounded in the performance of his or her duty and leaves one or more Surviving Children. This benefit is paid in addition to the Surviving Spouse benefit.

(b) Surviving Child means a minor child under the age of eighteen (18) years or a child between the ages of eighteen (18) and twenty-two (22) who is attending school. Surviving Child further means a child who is the natural or legally adopted child of the deceased employee.

(c) Any child of any age who is or has been married is considered emancipated and is not considered to be a Surviving Child for purposes of payment of this benefit.

(d) Attending school means enrolled in and regularly attending on a full-time basis an accredited public or private secondary school or institution of higher education. Proof of attending school shall be provided by the person receiving the benefit at the beginning of each semester as well as a copy of grades received at the end of each semester. If there is more than one Surviving Child, proof of school attendance shall not be required unless that child is the sole basis for payment of the benefit or

the sole basis for payment of a part of the benefit if the benefit is divided as provided in subsection (e) below. If the Surviving Child drops classes and becomes a part-time student or withdraws from the school or institution of higher education, then benefits shall cease the last day of the month in which the child becomes a part-time student or withdraws. It is the responsibility of both the Surviving Child and the person receiving the benefit payment to provide the proof of attendance and to notify the System of any change in student or marital status of the child.

(e) In the event that there is more than one Surviving Child and the children are in the care and custody of different individuals, the benefit shall be divided pro-rata for each child.

(f) The burden of proof of the relationship of the child to the deceased employee and to the person claiming payment shall be upon the person claiming entitlement to the payment. If a guardian has been named for a Surviving Child, the guardian shall be entitled to receive the benefit payment. A certified copy of the Order must be provided to the System. A Surviving Spouse who is the natural parent of the Surviving Child shall be presumed to have care and custody of said child unless the System receives a claim containing information to the contrary.

(g) Benefits terminate the last day of the month in which the last Surviving Child becomes twenty-two (22) or becomes ineligible for benefits under this Subchapter. Any benefits paid on behalf of an ineligible Surviving Child must be repaid to the System immediately.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

#### **590:10-10-8. Filing for Surviving Spouse and Surviving Child Benefits**

(a) Claims for Surviving Spouse and/or Surviving Child benefits should be made as soon as possible following the employee's date of death. Benefits shall be payable beginning with the month following the employee's date of death, however, benefit payments will not commence until all required documentation has been furnished and a final determination has been made by the System. Required documentation to be provided by the claimant include, but are not limited to, a completed application for benefits, a copy of the employee's death certificate, a copy of the public record of marriage and copies of birth certificates for Surviving Children.

(b) It is the responsibility of the Department of Corrections to assist the Surviving Spouse or the person with the care and custody of a Surviving Child with the completion of all necessary forms. It is also the responsibility of the Department of Corrections to provide any necessary documentation to confirm eligibility of any person for benefits under this Subchapter. Required documentation to be provided by the Department of Corrections include, but are not limited to, a completed report of death form which shall include a notarized statement from the deceased employer's supervisor describing in detail the duties being performed by the employee at the time and the circumstances under which death occurred, all workers' compensation claim information in the possession of the employer, a certified copy of the autopsy report, and any medical records in the possession of the employer.

(c) In addition to the information supplied by the claimant and the employer, the System may require a medical statement from a treating physician which includes a detailed analysis of the cause of death and the circumstances surrounding the death.

(d) Where the System feels that it is necessary or appropriate, it may, at its own expense, have the medical and other records reviewed and evaluated by an independent physician of its own choosing. The System may also use the services of law enforcement agencies or may contract for a licensed investigator for any situations that it deems necessary or appropriate.

(e) The System shall make a determination on all claims for benefits under this Subchapter within ninety (90) days following receipt of all required documentation and reviews and shall notify the employer and the claimant in writing.

[Source: Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 37 Ok Reg 2409, eff 9-11-20]

## **SUBCHAPTER 11. TRANSPORTED AND STATE PORTABLE SERVICE CREDIT**

### **590:10-11-1. Transported service credit**

All service which is credited to a member pursuant to 74 O.S. Section 913 (G) or transferred out of OPERS pursuant to 70 O.S. Section 17-116.2 (L.) shall be called transported service. Such transported service shall be governed by those statutory provisions and the rules contained in this subchapter.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 20 Ok Reg 1750, eff 6-12-03]

### **590:10-11-2. Election to transport**

The election to transport service into or out of OPERS is a voluntary action on the part of the member or former member. Only members or former members who have terminated participation with OPERS shall be eligible to transport service. In the event of an election to transport into OPERS, all service certified by Teachers' Retirement System shall be eligible to transport into OPERS, subject to any statutory limitations. OPERS shall certify to Teachers' Retirement System all service credited to the member or former member as of the date of election. Once the election to transport is successfully completed, all service credit of said member under OPERS shall be cancelled, including service not accepted by Teachers' Retirement System.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95]

**590:10-11-3. Member's entry date**

If a member has transported service from Teachers' Retirement System, the member's entry date into OPERS shall be replaced with the entry date in Teachers' if that date is earlier.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95]

**590:10-11-4. Use of transported service**

Transported service cannot be used to satisfy the full-time-equivalent employment with a participating employer service requirement. However, in any case where such full-time-equivalent service was transported to the Teachers' Retirement System and is later transported back to OPERS, such service may be deemed to satisfy the full-time-equivalent employment requirement. Transported service may be used to determine eligibility for retirement or vesting purposes and to determine the amount and type of retirement benefit.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 28 Ok Reg 664, eff 5-12-11]

**590:10-11-5. Former members reinstated**

Any former member of OPERS who elects to transport service from OPERS must reinstate such service in OPERS by paying all contributions and interest due prior to or concurrently with the final election to transport. If the election is terminated or voided for any reason, the reinstatement of the withdrawal shall be also voided and the repayment remitted to OPERS shall be returned to the former member, unless he or she is otherwise eligible for repayment of the withdrawal.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95]

**590:10-11-6. Completion of election**

Any person making an election to transport service must sign a final election option form after having been given notice of the certified service credit to be transported, the amount of funds eligible for transfer from the appropriate retirement system, any amounts required to be paid by the member or former member, and the method of payment selected. The final election form must be submitted within sixty (60) days of this notice or the election shall be deemed canceled. The election to transport is not complete until the final election form is submitted and full remittance of any amounts required to be paid by the member.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96]

**590:10-11-7. Funds transfer**

No retirement funds shall be transferred or accepted for transported service until receipt of the signed final election form. The amount of funds transferred by OPERS shall be based upon the service credit accepted by Teachers' Retirement System.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95 ; Amended at 32 Ok Reg 2176, eff 9-11-15]

**590:10-11-8. Previous transfers or purchases**

Service credit from Teachers' Retirement System previously transferred or purchased shall not be refunded or cancelled due to this statutory amendment. Service credit from OPERS which was previously transferred or withdrawn and purchased in Teachers' is not eligible for reinstatement.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95]

**590:10-11-9. State portable service credit**

All service that is credited to a member pursuant to 74 O.S. Section 913 (H.) or transferred out of OPERS pursuant to 70 O.S. Section 17-116.2 (Q.) shall be called state portable service. Such transferred portable service shall be governed by those statutory provisions and the rules contained in this subchapter.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

**590:10-11-10. Eligibility to transfer portable service**

Only those members whose last participation in Teachers' Retirement System was with one of the employers named in 74 O.S. Section 913 (H.)(1) are eligible for this transfer. Teachers' shall certify the last service the member has on the election form.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

**590:10-11-11. Election to transfer portable service**

The election to transfer state portable service into or out of OPERS is a voluntary action on the part of the member. Only current members of OPERS or Teachers' shall be eligible to transfer state portable service. In the event of an election to transfer state portable service into OPERS, all service certified by Teachers' Retirement System shall be eligible to transfer into OPERS, subject to any statutory limitations. OPERS shall certify to Teachers' Retirement System all service credited to the member or former member as of the date of election. Once the election to transfer state portable service is successfully completed, all service credit of said member under OPERS shall be cancelled, including service not accepted by Teachers' Retirement System.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

#### **590:10-11-12. Member's entry date after transfer**

If a member has transferred state portable service from Teachers' Retirement System, the member's entry date into OPERS shall be replaced with the entry date in Teachers' if that date is earlier.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

#### **590:10-11-13. Use of transferred state portable service**

Transferred state portable service cannot be used to satisfy the full-time-equivalent employment with a participating employer service requirement. However, in any case where such full-time-equivalent service was transferred to the Teachers' Retirement System and is later transferred back to OPERS, such service may be deemed to satisfy the full-time-equivalent employment requirement. Portable service may be used to determine eligibility for retirement or vesting purposes and to determine the amount and type of retirement benefit.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01 ; Amended at 28 Ok Reg 664, eff 5-12-11]

#### **590:10-11-14. Completion of transfer election**

Any person making an election to transfer portable service must sign a final election option form after having been given notice of the certified service credit to be transferred and the amount of funds eligible for transfer from the appropriate retirement system. The final election form must be submitted within sixty (60) days of this notice or the election shall be deemed cancelled. The election to transfer state portable service is not complete until the final election form is submitted and full remittance of any amounts required by the retirement system.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

#### **590:10-11-15. Funds transfer for portable service**

No retirement funds shall be transferred or accepted for transferred state portable service until receipt of the signed final election form. Funds shall be credited to the member in the same manner as they were held in the sending system. For example, employer contributions in the sending system shall be maintained as employer contributions in the receiving system and pre-tax employee contributions in the sending system shall be maintained as pre-tax employee contributions in the receiving system.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01 ; Amended at 32 Ok Reg 2176, eff 9-11-15]

**590:10-11-16. Previous transfers, purchases or transports**

Service credit from Teachers' Retirement System previously transferred, purchased or transported shall not be refunded or cancelled due to the new statutory provisions permitting state portability. Service credit from OPERS that was previously transferred, purchased or transported to Teachers' is not eligible for reinstatement.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

**SUBCHAPTER 13. EXCESS CONTRIBUTIONS**

**590:10-13-1. Purpose and intent**

By adoption of the rules set out in this Subchapter, the Board represents that:

- (1) With respect to the transfer of certain Excess Contributions and Earnings from the System to the Incentive Plan, the Board intends to comply in all respects with the tax qualification requirements for governmental plans applicable to such refunds or transfers as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto ("Tax qualification requirements").
- (2) The procedures in this Subchapter will not be implemented until the Board has received a favorable private letter ruling from the Internal Revenue Service that the transfers described in this Subchapter satisfy the tax qualification requirements.
- (3) Only voluntary member contributions will be transferred to or for eligible members.
- (4) In administering this Subchapter, the Board will comply with the legislative intent as contained in the Transfer Legislation.

[Source: Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3178, eff 7-27-00]

**590:10-13-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto.

**"Earnings"** means an amount to be transferred along with the Excess Contributions which amount represents the actuarial assumed annual earnings of the System of seven and one-half percent (7 ½ %), calculated upon the principal amount of Excess Contributions, and compounded at least annually on the principal Excess Contributions until the date of transfer.

**"Eligible Member"** means a member of the System who was an active participating employee on July 1, 1998, and whose compensation for services exceeded Twenty-five Thousand Dollars (\$25,000) per annum prior to July 1, 1994, and who, prior to July 1, 1998, had voluntarily elected to pay retirement contributions on the maximum compensation level pursuant to statutes in effect at that time, provided such retirement contributions remain on deposit with the System as of the date of the transfer.

**"Excess Contributions"** means the contributions made by an Eligible Member on compensation in excess of Twenty-five Thousand Dollars (\$25,000) per annum prior to June 30, 1994, that remain on deposit with the System as of the date of the transfer, and includes both Pre-tax Excess Contributions and Post-tax Excess Contributions.

**"Incentive Plan"** means the Oklahoma State Employees Deferred Savings Incentive Plan.

**"Pre-tax Excess Contributions"** means the Excess Contributions which were picked up by the employer under the provisions of Code Section 414(h)(2).

**"Post-tax Excess Contributions"** means the Excess Contributions which were employee contributions and which were not picked up by the employer under the provisions of Code Section 414(h)(2).

**"Private Letter Ruling"** means the private letter ruling issued by the Internal Revenue Service to the Board.

**"System"** means the Oklahoma Public Employees Retirement System.

**"Transfer Legislation"** means Enrolled Senate Bill 295, as it amends Section 910.5 of Title 74 of the Oklahoma Statutes.

[Source: Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3178, eff 7-27-00]

### **590:10-13-3. Post-tax excess contributions [REVOKED]**

[Source: Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99 ; Revoked at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Revoked at 17 Ok Reg 3178, eff 7-27-00]

### **590:10-13-4. Transfer of excess contributions**

Within ninety (90) days from the receipt of a favorable Private Letter Ruling with respect to the Transfer Legislation, the Board will implement the following procedures for the transfer of Excess Contributions:

- (1) The Board shall cause to be sent a notice of transfer to each Eligible Member who has Excess Contributions. The notice of transfer will contain the following:
  - (A) The amount of the Excess Contributions to be transferred;
  - (B) The amount of Earnings to be transferred;
  - (C) The effective date of the transfer, which must be at least ninety (90) days from the date of mailing of the

notice of transfer;

(D) A description of the appropriate tax treatment of the transfer, as prescribed by the Private Letter Ruling;

(E) A statement that the amount will be credited to the Eligible Member in the Incentive Plan and will not trigger an employer contribution to that Plan;

(F) For Eligible Members who are not state employees or otherwise a participant in the Incentive Plan, a statement that the Eligible Member is only permitted to participate in the Incentive Plan to the extent of the Excess Contributions and will not be eligible to make additional contributions to the Incentive Plan;

(G) An enrollment form to be completed by those Eligible Members who are not state employees or otherwise a participant in the Incentive Plan;

(H) A statement which indicates the investment vehicle chosen by the Board for the initial investment of the transfer amounts and the date the transfer amount will be available for participant directed investment.

(2) In the event an Eligible Member disputes the amount of transfer as set forth in the Notice, the Eligible Member shall provide a written objection to the Board within 30 days of the date of the Notice of Transfer. The objection shall set forth the basis for the objection, including the specific error and the amount the Eligible Member believes is correct. The Board shall respond to the complaint within 30 days. If the Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.

(3) The Board will direct that the Excess Contributions and Earnings are transferred to the Incentive Plan as stated in the notice of transfer.

[Source: Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3178, eff 7-27-00]

### **590:10-13-5. Tax treatment of excess contributions**

(a) To the extent permitted by the Private Letter Ruling, the Excess Contributions and Earnings that are transferred to the Incentive Plan will not be considered as an annual addition to the Incentive Plan for purposes of Code Section 415(c).

(b) To the extent required by the Private Letter Ruling, the Board will report the Excess Contributions and Earnings that are transferred to the Incentive Plan on 1099-Rs for the year of the transfer. The entire amount will be reported as non-taxable.

(c) To the extent permitted by the Private Letter Ruling, all Post-tax Excess Contributions transferred will be identified in the Incentive Plan and on 1099-Rs as the Eligible Member's tax basis.

[Source: Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99 ; Amended at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3178, eff 7-27-00]

#### **590:10-13-6. Calculation of Earnings**

(a) Earnings shall be calculated at the actuarial assumed annual earnings of the System of seven and one-half percent (7 ½%), which shall be compounded at least annually until the date of transfer.

(b) Earnings shall be computed on the principal Excess Contribution for the first compounding period and then added to the principal Excess Contribution. For the second compounding period, the Earnings are computed on the principal Excess Contribution plus the Earnings from the first compounding period, and so on, until the date of transfer.

(c) Earnings shall be calculated on the principal Excess Contribution beginning with the month the contribution was deposited with the System under the normal payroll system. Any withdrawal and repayment of Excess Contributions prior to July 1, 1998, shall have Earnings calculated only from the time of repayment of the withdrawal. Earnings shall not accrue or be calculated from the initial Excess Contribution date nor will Earnings accrue for any period of time prior to the repayment of the Excess Contributions.

(d) If any amount of Excess Contributions was paid pursuant to the installment payment program provided in 590:10-3-9, Earnings shall not accrue nor be calculated on any Excess Contributions until the purchase was completed and the installment payments were transferred to the Eligible Member's ledgers. By way of example, if the Eligible Member elected to amortize the payment of Excess Contributions over a sixty-month period, the Earnings do not accrue until the month following completion of the sixty-month period.

[Source: Added at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

#### **590:10-13-7. Residual transfer**

(a) The initial transfer of Excess Contributions and Earnings shall include all Eligible Members who did not object to the transfer amount. If an Eligible Member objects to the transfer amount and said objection is not resolved by the date of transfer, the Excess Contributions shall not be included in the initial transfer. The Board shall provide for a residual transfer date to occur at least one year following the initial transfer date.

(b) A member of the System who has Excess Contributions in the Plan but was not identified or included in the initial transfer must notify the System within one year of date of the initial transfer to request the transfer of the Excess Contributions and Earnings. The final transfer of all Excess Contributions shall occur at the time of the residual transfer at least one year following the initial transfer date.

[Source: Added at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

#### **590:10-13-8. Deceased Eligible Members**

If the Excess Contributions of a deceased Eligible Member remain in the Member's account in the System at the time of transfer, the Excess Contributions and Earnings shall be transferred to the Incentive Plan in

the same manner as if the Eligible Member were not deceased. Once transferred to the Incentive Plan, distribution shall be governed by the Incentive Plan provisions as provided in 590:35-13-5 and 590:35-13-6. For purposes of a deceased retired Eligible Member, the Excess Contributions shall be considered on deposit if no accumulated employee contributions have been disbursed to a beneficiary.

[Source: Added at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

## **SUBCHAPTER 15. LIMITED RETIREMENT BENEFIT**

### **590:10-15-1. Purpose and intent**

By adoption of the rules set out in this Subchapter, the Board represents that:

(1) With respect to the payment of the limited retirement benefits, the Board intends to comply in all respects with the tax qualification requirements for governmental plans applicable to such benefit payments as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto ("Tax qualification requirements").

(2) In administering this Subchapter, the Board will comply with the legislative intent as contained in the Limited Benefit Legislation.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

### **590:10-15-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Determination Letter"** means the favorable determination letter issued by the Internal Revenue Service to the Board on October 10, 2000, and received by the System on October 30, 2000, applicable to continued qualification of the plan in its present form.

**"Excess Contributions"** means the contributions and payments actually made by a Limited Eligible Member on compensation in excess of Twenty-five Thousand Dollars (\$25,000) per annum prior to June 30, 1994, that remain on deposit with the System as of the date of the receipt of retirement benefits, and includes both pre-tax Excess Contributions and post-tax Excess Contributions.

**"Limited Benefit"** means an additional benefit amount to be paid in addition to the Limited Eligible Member's Regular Retirement Benefit, for only so long as the Regular Retirement Benefit is payable, in the amount of \$200 per month or the amount of Excess Contributions actually paid, whichever is less, until the total amount of Excess Contributions made by that Eligible Member has been paid.

**"Limited Benefit Legislation"** means Enrolled Senate Bill 386, enacted in 1999, as it amends Section 910.5 of Title 74 of the Oklahoma Statutes.

**"Limited Eligible Member"** means a member of the System who was vested or eligible to vest on July 1, 1998, but who was not active and participating nor retired, and whose compensation for services exceeded Twenty-five Thousand Dollars (\$25,000) per annum prior to July 1, 1994, and who, prior to July 1, 1998, had voluntarily elected to pay retirement contributions on the maximum compensation level pursuant to statutes in effect at that time, provided such retirement contributions remain on deposit with the System.

**"Maximum Limited Benefit"** means the amount equal to the total Excess Contributions made by that Limited Eligible Member which has been paid to the Limited Eligible Member in monthly payments or any lesser amount of Limited Benefits which have been paid in the event the normal retirement benefit of the Eligible Member ceases due to death or forfeiture.

**"Regular Retirement Benefit"** means the monthly retirement benefit that the Limited Eligible Member has elected to receive and includes normal, early and disability retirements, excluding retroactive lump-sum disability payments.

**"System"** means the Oklahoma Public Employees Retirement System.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

### **590:10-15-3. Initial payment of limited benefits**

Within ninety (90) days from the receipt of the favorable Determination Letter, the Board will implement the following procedures for the payment of the Limited Benefit:

- (1) The Board shall cause to be sent a letter of eligibility to each Limited Eligible Member who has Excess Contributions and who is already receiving a Regular Retirement Benefit from the System as of December 31, 2000. The letter of eligibility will contain the following:
  - (A) The amount of the Excess Contributions determined by the System;
  - (B) The amount and duration of the Limited Benefit payments;
  - (C) The effective date of the first Limited Benefit payment, which must be at least ninety (90) days from the date of mailing of the letter of eligibility;
  - (D) A description of the appropriate tax treatment of the Limited Benefit.

- (2) In the event a Limited Eligible Member disputes the amount of Excess Contributions determined by the System as set forth in the letter of eligibility, the Limited Eligible Member shall provide a written objection to the Board within 30 days of the date of the letter of eligibility. The objection shall set forth the basis for the objection, including the specific error and the amount the Limited

Eligible Member believes is correct. The Board shall respond to the objection within 30 days. If the Limited Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.

(3) The Board will direct that the Limited Benefit be paid to the Eligible Member as stated in the letter of eligibility.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

#### **590:10-15-4. Subsequent payment of limited benefits**

Within ninety (90) days after the effective date of this rule, the Board will implement the following procedures for the payment of the Limited Benefit:

(1) The Board shall cause to be sent a letter of eligibility to each Limited Eligible Member who had not previously been provided a letter of eligibility. The letter of eligibility will contain the following:

(A) The amount of the Excess Contributions determined by the System;

(B) The amount and duration of the Limited Benefit payments;

(C) A description of the expected effective date of the first Limited Benefit payment to coincide with the payment of the third Regular Retirement Benefit;

(D) A description of the appropriate tax treatment of the Limited Benefit.

(2) In the event a Limited Eligible Member disputes the amount of Excess Contributions determined by the System as set forth in the letter of eligibility, the Limited Eligible Member shall provide a written objection to the Board within 30 days of the date of the letter of eligibility. The objection shall set forth the basis for the objection, including the specific error and the amount the Limited Eligible Member believes is correct. The Board shall respond to the objection within 30 days. If the Limited Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.

(3) The Board will direct that the Limited Benefit be paid to the Limited Eligible Member as stated in the letter of eligibility provided that the Limited Eligible Member begins to receive a Regular Retirement Benefit.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

#### **590:10-15-5. Tax treatment of limited benefit**

The Board will report the Limited Benefit payments on 1099-Rs for each year in which payments are made. The entire amount of Limited Benefit payments shall be reported as taxable. The Limited Eligible Member's tax basis shall not be affected by these payments.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

#### **590:10-15-6. Omitted limited eligible members**

A Limited Eligible Member who has Excess Contributions in the Plan but was not identified by the System or was not sent a letter of eligibility for the initial or subsequent Limited Benefit payments is responsible to notify the System of his or her eligibility and to request the payment of the Limited Benefit. For any omitted Limited Eligible Member who requests Limited Benefit payments, the Board shall determine eligibility and implement the notice procedures as provided in Sections 3 and 4 of this Subchapter and Chapter of these Rules for such omitted Limited Eligible Members. The Limited Benefit shall be paid only on a prospective basis.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

#### **590:10-15-7. Limited benefit amount**

The Limited Benefit shall be paid in an amount not to exceed \$200 per month. The Limited Benefit shall not be subject to cost-of-living adjustments or other similar benefit increases. It shall be payable monthly so long as Limited Eligible Member is receiving a Regular Retirement Benefit until the Limited Eligible Member has received the Maximum Limited Benefit amount. As a result, the final Limited Benefit may be in an amount less than \$200.

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

#### **590:10-15-8. Deceased limited eligible members**

In the event of the death of a Limited Eligible Member prior to payment of the Maximum Limited Benefit amount, the remaining Limited Benefit shall be payable only if monthly retirement benefits continue to be paid to a joint annuitant under Options A or B or a beneficiary under Option C. The Limited Benefit payment shall be paid to such joint annuitant or beneficiary in the same manner as if the Limited Eligible Member were not deceased, only so long as he or she continues to receive monthly retirement benefits. The Limited Benefit payments shall not count against the contribution amounts payable to a beneficiary pursuant to Title 74 O.S. Section 917 (4).

[Source: Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

## **SUBCHAPTER 17. STEP-UP ELECTION AND BENEFITS**

#### **590:10-17-1. Step-Up**

An enhanced benefit computation factor is available to certain members of the Oklahoma Public Employees Retirement System provided an election form is properly completed and filed and additional actuarially determined contributions are paid. This enhanced benefit shall be called "Step-Up".

[Source: Added at 21 Ok Reg 1759, eff 6-11-04]

#### **590:10-17-2. Eligibility for Step-Up**

All state, county and local government employees who are active participants, including retired members who have returned to work, are eligible to make the Step-Up election, with the exception of hazardous duty employees as provided in 590:10-1-15 of these rules (such as correctional officers, probation and parole officers, fugitive apprehension agents and Military Department firefighters) and elected officials elected or appointed before November 1, 2011. Elected officials who are first elected or appointed on or after November 1, 2011, shall be eligible to make the Step-Up election.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 30 Ok Reg 550, eff 5-11-13]

#### **590:10-17-3. Irrevocable election of Step-Up**

(a) Eligible OPERS members may make an irrevocable election to Step-Up or increase their benefit computation factor from 2.0% to 2.5%. Participating members will not be permitted to revoke the Step-Up election or stop the Step-Up contributions once the election has been made. The election is considered to be made upon the earliest of OPERS receipt of a member's completed election form or deposit of the member's Step-Up contributions.

(b) The Step-Up election is an irrevocable election and is binding on all future participation in OPERS, even if there is a break in service, a change in jobs, a change in participating employers or a change in elected or non-elected status.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 34 Ok Reg 1897, eff 9-11-17]

#### **590:10-17-4. Step-Up effective date**

Participation in the Step-Up can be effective as early as the first payroll period following January 1, 2004, provided that the member has signed and filed the election form with his or her Retirement Coordinator prior to that date. After January 1, 2004, the election can be made at enrollment or at any time while participating as an active member. The Step-Up will be effective the first payroll period following the member's election and acceptance of the election by the member's participating employer.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04]

#### **590:10-17-5. Step-Up contributions**

After election of the Step-Up, the employee member is required to make a higher retirement contribution rate during all future participation. The contribution rate is actuarially determined and may be raised or lowered by law in the future.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04]

**590:10-17-6. Termination, withdrawal and repayment of Step-Up**

Participating members are not permitted to withdraw any retirement contributions unless the member terminates employment and membership in the System. The Step-Up is binding on future participation in the event that the member elects the Step-Up, and subsequently terminates employment and takes a withdrawal of his or her employee contributions. In the event that such a member returns to employment with a participating employer, he or she must resume participation in the Step-Up. If such a member desires to repay the withdrawal, he or she is required to repay all amounts withdrawn, including any previous Step-Up contributions in order to reinstate the service credit.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04]

**590:10-17-7. Step-Up participating service calculations**

The Step-Up will increase the member's computation factor to 2.5% for participating service which is accrued after the election. It will be computed for full years (12 months) of participating service only. Partial years of service (including participation in the Step-Up for partial years), service prior to the Step-Up election, purchased credit, prior service, military service, transported service, bonus years and unused sick leave will all be calculated at the regular 2% computation factor.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

**590:10-17-8. Step-Up and post-retirement employment**

(a) A retired member who returns to work with a participating employer and who made an election to participate in the Step-Up prior to his or her retirement, is bound by that election and must continue to participate in the Step-Up for all periods of post-retirement participation. A retired member who returns to work with a participating employer and who either did not have an opportunity to make the election to participate in Step-Up or who was eligible but chose not to make the election can begin participation in the Step-Up at any time during his or her post-retirement employment after January 1, 2004.

(b) For purposes of calculating post-retirement benefits for retired members who choose the Step-Up post-retirement, the addition of post-retirement benefits shall not be calculated at 2.5% until the additional Step-Up contribution has been paid on the entire 2076 hours of participation being used to calculate the member's benefit increase for that year in accordance with 590:10-7-15 and 74 O.S. Section 914.

(c) It is the responsibility of the retired member to select the appropriate time, if ever, to elect the Step-Up for post-retirement participation. For illustrative purposes, if a retired member has participated in post-retirement employment for 1400 hours prior to making the Step-Up election, makes the Step-Up election and continues to participate as a retired member, the next 676 hours of participation while making Step-Up contributions will be combined with the previous 1400 hours and calculated at 2%. All future post-retirement participation will be calculated at 2.5%.

(d) The member cannot change the Step-Up election date and cannot receive a refund of Step-Up contributions made for any periods which are not calculated at 2.5%.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04]

### **590:10-17-9. Step-Up decision [REVOKED]**

[Source: Added at 21 Ok Reg 1759, eff 6-11-04 ; Revoked at 38 Ok Reg 2459, eff 9-11-21]

### **590:10-17-10. Step-up benefits not eligible for Excess Benefit Plan**

Participating members in the Step-Up shall not be permitted to participate in the Excess Benefit Plan as set forth in 590:10-21-1 et seq. adopted pursuant to 74 O.S. §915.1 and which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, to the extent any excess benefit, as defined in 590:10-21-2, is attributable to the Step-Up election.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

## **SUBCHAPTER 19. MEDICARE GAP BENEFIT OPTION**

### **590:10-19-1. Purpose and intent**

By adoption of the rules set out in this Subchapter which implement a "Medicare Gap" benefit option, the Board intends to comply in all respects with IRS tax qualification requirements for governmental plans applicable to such benefit option payments. Specifically, the rules contained in the subchapter will not be fully implemented, and a member will not be eligible to select such a benefit option, until the Board *"receives official written notice that this alternative retirement benefit option satisfies the tax qualification requirements for governmental plans applicable to such benefit options as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto."* [74:915.3]

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

### **590:10-19-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Board"** means the Board of Trustees for the Oklahoma Public Employees Retirement System.

**"Eligible Member"** means a member of the System who retires on or after the Option Effective Date and who is not Medicare-eligible at the time of retirement, except as otherwise provided in this Subchapter.

**"Medicare Gap Benefit"** means an adjusted retirement benefit which is greater than the member's Regular Retirement Benefit for months of payments prior to and including the month the member becomes Medicare-eligible and an actuarially reduced benefit which is less than the member's Regular Retirement Benefit for months of payments after becoming Medicare-eligible and for the remaining lifetime of the member.

**"Medicare Gap Benefit Election"** means an irrevocable election made by an Eligible Member prior to his or her effective date of retirement to receive the alternative benefit option payable pursuant to this Subchapter.

**"Medicare-eligible"** means age 65 or older, or such other age at which a member becomes eligible for Medicare benefits under federal law in effect at the time a member applies for an OPERS retirement benefit. For purposes of this Subchapter, age is calculated as of the first day of the month of birth. For example, a member born September 15, 1940, is considered to be 65 and Medicare-eligible on or after September 1, 2005.

**"Minimum Medicare Gap Benefit"** means a gross monthly benefit payment of \$200.00 per month after all applicable actuarial reductions for either the Pre-Medicare benefit or the Post Medicare benefit.

**"Option Effective Date"** means May 1, 2006, which is the date when the System made the Medicare Gap Benefit option available to Eligible Members.

**"Post Medicare Benefit"** means the actuarially reduced monthly benefit payment for all months of retirement after the member becomes Medicare-eligible.

**"Pre-Medicare Benefit"** means the increased monthly benefit payment for all months of retirement prior to and including the month the member becomes Medicare-eligible.

**"Pre-Medicare Increase"** means the amount added to the Regular Retirement Benefit to equal the Pre-Medicare Benefit.

**"Regular Retirement Benefit"** means the monthly retirement benefit that the Eligible Member would receive absent the Medicare Gap Benefit Election, which includes the actuarial adjustments as a result of the member's election of early retirement and/or survivor benefit options. It does not include amounts refunded of additional contributions paid to a member in the form of a limited retirement benefit under 74 O.S. § 910.5.

**"System" or "OPERS"** means the Oklahoma Public Employees Retirement System.

### **590:10-19-3. Medicare Gap Benefit option**

(a) An alternate retirement benefit option is available to members of the Oklahoma Public Employees Retirement System provided an election form is properly completed and filed with the System after the Option Effective Date and prior to the member's effective retirement date. This alternate benefit option shall be called the Medicare Gap Benefit option. The Medicare Gap Benefit option is intended to permit certain members of the System to elect to receive an increased retirement benefit amount to help cover the cost of the health insurance premiums prior to the time that the member becomes Medicare-eligible, however, the Medicare Gap Benefit may not equal or cover the entire cost of the member's actual health insurance premiums.

(b) As a result of the passage of Section 2 of Enrolled Senate Bill 1112 from the 1<sup>st</sup> Session of the 51<sup>st</sup> Oklahoma Legislature (2007), members electing the Medicare Gap Benefit Option with a retirement effective date on or after July 1, 2007, shall have the Medicare Gap Benefit determined in accordance with these rules.

(c) Despite any provision to the contrary, all members who made the Medicare Gap Benefit Election with a retirement effective date from May 1, 2006, the Option Effective Date, through June 30, 2007, Medicare Gap Benefit means an adjusted retirement benefit which is greater than the member's Regular Retirement Benefit beginning with the first retirement benefit payment through December of the year the member becomes Medicare-eligible. Beginning in January of the year following such year that the member becomes Medicare-eligible, the retirement benefit will be actuarially reduced making the member's benefit less than the Regular Retirement Benefit for the remaining lifetime of the member.

(d) Any member who has previously filed an application for vested benefits or any other non-active vested member who is considered to have met the sixty (60) day notice requirement for filing his or her retirement application may be permitted to file the election form provided by this section after the member's effective retirement date. However, this filing shall only be permitted if the System determines the member was unable to timely make such election prior to the effective retirement date. In no event shall the filing of this election form be permitted less than fifteen (15) days prior to the first benefit payment to the member. Any election form received and approved by the System within this fifteen-day period shall result in the retirement date of the member being moved to the next month.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 25 Ok Reg 46, eff 8-16-07 (emergency); Amended at 25 Ok Reg 1001, eff 5-11-08 ; Amended at 26 Ok Reg 952, eff 4-25-09]

### **590:10-19-4. Irrevocable election of Medicare Gap Benefit option**

The Medicare Gap Benefit option election is an irrevocable election. This election shall not be changed under any circumstances on or after the effective date of the member's retirement.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 24 Ok Reg 1135, eff 5-11-07]

#### **590:10-19-5. Medicare Gap Benefit**

(a) The formula for the Pre-Medicare Increase is not an individualized actuarial calculation. The formula shall be based upon the difference between the average of the non-Medicare Supplement premiums and average of the Medicare Supplement premiums for all health insurance plans offered by the Oklahoma State and Education Employees Group Insurance Board to inactive or retired OPERS members. The formula shall use the average premium amounts for the member only and shall include as an offset the amount of the health insurance subsidy payment made by the System. The Pre-Medicare Increase to a retiree's benefit prior to becoming eligible for Medicare, will not always equal the additional cost of the retiree's health insurance.

(b) The Pre-Medicare Increase shall be reviewed and adopted by the Board prior to January 1 of each year to ensure that the formula is based upon new health insurance data.

(c) The Post Medicare Benefit is calculated using actuarially determined factors to reduce the benefit of the retiree thereby ensuring an actuarially neutral cost to the System.

(d) The Board shall adopt the appropriate actuarial tables to ensure the neutral actuarial cost to the System.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 24 Ok Reg 1135, eff 5-11-07]

#### **590:10-19-6. Eligible Members**

Only Eligible Members may elect the Medicare Gap Benefit option. Any member who has retired prior to the Option Effective Date of the Medicare Gap Benefit option is not eligible to make this election or change the type of retirement benefit previously selected. The Medicare Gap Benefit shall be paid only on a prospective basis.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 24 Ok Reg 1135, eff 5-11-07]

#### **590:10-19-7. Eligibility exclusions**

Eligible Member specifically excludes any member who receives retirement benefit payments for any months prior to the Option Effective Date, any member who is retiring under Disability Retirement, and any member electing an Option C. Surviving spouses are not eligible to elect the Medicare Gap Benefit option.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 24 Ok Reg 1135, eff 5-11-07]

#### **590:10-19-8. Calculation of the Medicare Gap Benefit**

(a) The mortality tables used in the calculation of the Medicare Gap Benefit shall be the same tables adopted by the Board for other OPERS calculations.

(b) The Pre-Medicare and Post Medicare Benefit payment amounts shall be calculated at the time of retirement and shall not be re-calculated after the member's effective retirement date except to correct errors or as specifically provided in these rules.

(c) The formula for the Pre-Medicare Increase is applied after the calculation of the Eligible Member's Regular Retirement Benefit which includes any required actuarial reductions made for early retirement or selection of Option A or B and shall be applied based upon the age of the member at time of retirement.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 24 Ok Reg 1135, eff 5-11-07]

**590:10-19-9. Medicare Gap Benefit Inapplicable for joint annuitants**

(a) The Medicare Gap Benefit does not apply to the benefit amount of a joint annuitant or surviving spouse of a member when the member dies prior to his or her effective retirement date.

(b) Following the death of the member after retirement and election of the Medicare Gap Benefit option, the survivor benefit payments to a named joint annuitant under an Option A or to the surviving spouse of a deceased elected official shall be one-half or 50% of the Regular Retirement Benefit plus any necessary adjustments for COLA's.

(c) Following the death of the member after retirement and election of the Medicare Gap Benefit option, the survivor benefit payments to a named joint annuitant under an Option B shall be 100% of the Regular Retirement Benefit plus any necessary adjustments for COLA's.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-19-10. Pop-up of the Medicare Gap Benefit [REVOKED]**

[Source: Added at 22 Ok Reg 1354, eff 5-26-05 ; Revoked at 38 Ok Reg 2459, eff 9-11-21]

**590:10-19-11. Minimum benefit amount**

An Eligible Member may not elect the Medicare Gap Benefit option if the calculation of either the Pre-Medicare or Post Medicare Benefit amounts would result in a gross benefit payment amount of less than \$200.00 per month calculated at the time of retirement.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-19-12. Calculation of Cost-of-Living Adjustments**

Unless otherwise specified by law, any cost-of-living adjustments to a member's Medicare Gap Benefit shall be calculated based upon the benefit the member is actually receiving at the time of the adjustment. Upon becoming Medicare-eligible, the Post Medicare benefit amounts shall be adjusted to receive the appropriate percentage equivalent of the cost-of-living adjustments granted during the Pre-Medicare Benefit payment period.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-19-13. Medicare Gap benefits and post-retirement employment**

(a) A retired member who returns to work with an OPERS participating employer and who has elected a Medicare Gap Benefit option shall have his or her post-retirement participation calculated in accordance with 590:10-7-15 of these rules. Any additional benefit from post-retirement employment will be calculated and paid without adjustment for either the Pre-Medicare Benefit or Post Medicare Benefit.

(b) A retired member who returns to work with an OPERS participating employer and who has elected a Medicare Gap Benefit option is not eligible to waive receipt of their monthly retirement benefit pursuant to 74 O.S. Section 914 (E) or to have retirement benefits recalculated upon termination of employment after completion of thirty-six (36) consecutive months of full-time-equivalent employment.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

#### **590:10-19-14. Payments to an alternate payee under a QDRO**

(a) An Eligible Member for whom a qualified domestic relations order has been filed and previously accepted by the System prior to the effective date of these rules may elect a Medicare Gap Benefit only if the Pre-Medicare and/or Post Medicare Benefit amounts are sufficient to make the required payment to the alternate payee under the QDRO and result in a payment amount to the member of at least \$100.00 per month.

(b) All qualified domestic relations orders filed with the System after the effective date of these rules shall include a provision requiring that the award will only be made for members electing a Medicare Gap Benefit if the member's Pre-Medicare and/or Post Medicare Benefit amounts are sufficient to make the required payment to the alternate payee under the QDRO and result in a payment amount to the member of at least One Hundred Dollars (\$100.00) per month.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05 ; Amended at 23 Ok Reg 1482, eff 5-25-06]

## **SUBCHAPTER 21. EXCESS BENEFIT PLAN AND TRUST**

### **590:10-21-1. Establishment and purpose**

(a) **Establishment.** The "Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust" is hereby established effective as of November 1, 2010, pursuant to Code Section 415, 74 O.S. §915.1, and the Excess Benefit Plan and Trust document which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, and as adopted by the Board of Trustees.

(b) **Purpose.** The purpose of this Excess Benefit Plan is solely to provide the part of a Participant's Retirement Benefit that would otherwise have been payable by the System except for the limitations of Code Section 415(b). This Excess Benefit Plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Code Section 415(m)(3) and shall be interpreted and construed consistently with such intent. This Excess Benefit Plan is an "exempt governmental deferred compensation plan" described in Code Section 3121(v)(3). Code

Sections 83, 402(b), 457(a), and 457(f)(1) shall not apply to this Excess Benefit Plan.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

### **590:10-21-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Administrator"** means the System.

**"Beneficiary"** means any person named by a member to receive any benefits as provided by 74 O.S. §§901 et seq. If there is no beneficiary living at the time of member employee's death, the member's estate shall be the beneficiary.

**"Board"** means the Oklahoma Public Employees Retirement System Board of Trustees.

**"Code"** means the Internal Revenue Code of 1986, as amended, as applicable to a governmental plan, or corresponding provisions of any subsequent federal income tax law.

**"Excess Benefit"** means the benefit determined in accordance with 590:10-21-5(a) and Section 4.01 of the Excess Benefit Plan document.

**"Excess Benefit Fund"** means the trust fund established by the Board pursuant to Article VI of the Excess Benefit Plan document, pursuant to the provisions of 74 O.S. §915.1, and as set forth in 590:10-21-7.

**"Excess Benefit Plan"** means the "Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust" established pursuant to Code Section 415 and 74 O.S. §915.1.

**"OPERS Plan"** refers to the retirement plan administered by the Oklahoma Public Employees Retirement System. The OPERS Plan document consists of the applicable Oklahoma statutes and rules and regulations.

**"Participant"** means a Retiree or Beneficiary who is entitled to benefits under the Excess Benefit Plan.

**"Participating Employer"** means an eligible employer who has agreed to make contributions to the System on behalf of its employees, provided such employer is the State, a political subdivision of the State, or an agency or instrumentality of the State. No employer which is not permitted to participate in a qualified governmental pension plan as defined in Code Section 414(d) shall be permitted to participate in the Excess Benefit Plan.

**"Plan Year"** means the calendar year for the purpose of this Excess Benefit Plan.

**"Retiree"** means a member who has retired under the System.

**"Retirement Benefit"** means a monthly income with benefits accruing from the first day of the month coinciding with installments by the Plan, whether payable for a temporary period or following retirement and ending on the last day of the month in which death occurs throughout the future life of a Retired Member or the actuarial equivalent thereof paid in such manner as specified by the member

pursuant to 74 O.S. §§901 et seq. or as otherwise allowed to be paid at the discretion of the Board, without regard to any limitations on such retirement income or benefit under Code Section 415(b).

**"Retirement Fund"** means the reserves of the System.

**"State"** means the State of Oklahoma.

**"System"** means the Oklahoma Public Employees Retirement System.

**"Trustees"** means the members of the Board.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

### **590:10-21-3. Construction**

Whenever any actuarial present value or actuarial equivalency is to be determined under the Excess Benefit Plan to establish a benefit, it shall be based on such reasonable actuarial assumptions as may be approved in the sole discretion of the Board, and shall be determined in a uniform manner for all similarly situated Participants.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

### **590:10-21-4. Participation**

All Retirees and Beneficiaries of the System are required to participate in the Excess Benefit Plan if their Retirement Benefit from the System for a Plan Year is limited during the applicable Calendar Year by Code Section 415(b). The Board shall determine for each Plan Year which Retirees and Beneficiaries are required to participate in the Excess Benefit Plan. Participation in the Excess Benefit Plan shall commence each Plan Year once a Retiree or Beneficiary has an Excess Benefit in that Plan Year as determined by the Calendar Year Code Section 415 limits. Participation in the Excess Benefit Plan shall cease for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or if all benefit obligations under the Excess Benefit Plan to the Retiree or Beneficiary have been satisfied.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

### **590:10-21-5. Payment of benefits**

(a) **Benefit amount.** A Participant in the Excess Benefit Plan shall receive a benefit in an amount equal to the amount of Retirement Benefit that would have been payable to, or with respect to, a Participant by the System that could not be paid because of the application of the limitations on such Retirement Benefit under Code Section 415(b). Provided, however, that the Excess Benefit Plan will not pay any Excess Benefit which results from the 2.5% step-up election pursuant to 74 O.S. §919.1(1)(e). An Excess Benefit under the Excess Benefit Plan shall be paid only if and to the extent the Participant is receiving a Retirement Benefit from the System.

(b) **No election to defer.** No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Excess Benefit Plan.

(c) **Time for Payment.** Each Plan Year, the Excess Benefit to which a Participant is entitled under the Excess Benefit Plan shall be paid from the Excess Benefit Fund commencing during or with the month in which all monthly payments of the Retirement Benefit (as limited by Code Section 415(b)) under the System have been paid, and such Excess Benefit shall be paid from that month to the end of the Calendar Year falling within the applicable Plan Year.

(d) **Form of Benefit.** The form of the Excess Benefit shall be the same form as the Participant's Retirement Benefit.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

### **590:10-21-6. Contributions and funding**

(a) **Funding.** The Excess Benefit Plan shall be, and remain, unfunded, and the rights, if any, of any person to any benefits hereunder shall be those specified herein. The Excess Benefit Plan constitutes a mere unsecured promise by the Participating Employers, on whose behalf the Retirement Benefit and Excess Benefits are paid to the Participant, to make benefit payments in the future.

(b) **Contributions.** The Administrator shall determine the amount necessary to pay the Excess Benefit under the Excess Benefit Plan for each Plan Year for each Employer. The required contribution for all participating employers shall be the aggregate of the Excess Benefits payable to all Participants of all participating employers for such Plan Year plus an amount determined by the Board to be a necessary and reasonable expense of administering the Excess Benefit Plan. The amount determined to be necessary to pay the Excess Benefit of a Participant and administrative expenses of the Excess Benefit Plan shall be withheld from contributions to the System before being credited to the Retirement Fund and deposited into the Excess Benefit Fund established under Article VI of the Excess Benefit Plan document and 590:10-21-7. Participating Employer contributions shall be made at a time or times determined by the Board, but shall be made no less frequently than annually. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Excess Benefit Fund, shall be first used to pay the administrative expenses of the Excess Benefit Plan, then shall be deposited to the Excess Benefit Fund and used to fund Excess Benefits of Participants in future Plan Years.

(c) **Contributions not to be credited to OPERS Plan.** Under no circumstances will Employer contributions to fund the Excess Benefits under the Plan be credited to the OPERS Plan. The amounts determined to be necessary to provide the Excess Benefit under the Excess Benefit Plan for each Participant shall be accounted for separately. However, such separate accounting shall not be deemed to set aside such amounts for the benefit of a Participant. Benefits under the Excess Benefit Plan shall be paid from the Excess Benefit Fund.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

### **590:10-21-7. Trust fund**

(a) Establishment of Excess Benefit Fund. A trust fund, referred to as the Excess Benefit Fund, is established as a valid trust under the law of the State, which is separate from the Retirement Fund, to hold contributions of the Participating Employers. Contributions to the Excess Benefit Fund shall be held separate and apart from the funds comprising the Retirement Fund and shall not be commingled with assets thereof. The Board shall prescribe a detailed accounting system for the Excess Benefit Fund, which shall allocate the expenses of the Excess Benefit Plan to the Excess Benefit Fund.

(b) **Excess Benefit Fund Purpose.** The Excess Benefit Fund is maintained solely for the purpose of providing Excess Benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m).

(c) **Excess Benefit Fund Assets.** All assets held by such Excess Benefit Fund to assist in meeting the Participating Employers' obligations under the Excess Benefit Plan, including all amounts of Participating Employers' contributions made pursuant to the Excess Benefit Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, shall be, and remain, the general, unpledged, unrestricted assets of the Excess Benefit Fund. The Excess Benefit Fund shall be held separate and apart from other funds of the Employers and shall be used exclusively for the uses and purposes of Participants and general creditors as set forth herein. Participants shall have no preferred claim on, or any beneficial interest in, any assets of the Excess Benefit Fund. Any assets held by the Excess Benefit Fund shall be subject to the claims of the contributing Employer's general creditors under federal and state law in the event of insolvency, to the extent of the affected Employer's undistributed contributions, if any.

(d) **Grantor Trust.** The Excess Benefit Fund is intended to be a grantor trust, of which the contributing Participating Employers are the grantors, within the meaning of Code Sections 671 through 679 and shall be construed accordingly. This provision shall not be construed to create an irrevocable trust of any kind.

(e) **Excess Benefit Fund Income.** Income accruing to the Excess Benefit Fund in respect of the Excess Benefit Plan shall constitute income derived from the exercise of an essential governmental function upon which the Excess Benefit Fund shall be exempt from tax under Code Section 115, as well as Code Section 415(m)(1).

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

### **590:10-21-8. Administration**

(a) **Administrative Authority.** The Board shall have the authority to control and manage the operation and administration of the Excess Benefit Plan. The Board and the Administrator shall have the same rights, duties and responsibilities respecting the Excess Benefit Plan as the Board and the Administrator have with respect to the OPERS Plan pursuant to 74 O.S. §§909, 909.1 and 909.2, unless modified by Code Section 415 and its implementing regulations, or 74 O.S. §915.1.

(b) **Powers of the Board.** The Board shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Board:

(1) to establish procedures with respect to administration of the Excess Benefit Plan not inconsistent with the Excess Benefit Plan and the Code, and to amend or rescind such procedures;

(2) to determine, consistent with the Excess Benefit Plan, the OPERS Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Excess Benefit Plan and eligibility for distribution of benefits from the Excess Benefit Plan, and the status of any person claiming benefits under the Excess Benefit Plan;

(3) pursuant to Article IV of the Excess Benefit Plan, to make payments from the Excess Benefit Fund to Participants;

(4) to contract with a third party to perform designated administrative services under this Excess Benefit Plan;

(5) subject to and consistent with the Code, to construe and interpret the Excess Benefit Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Excess Benefit Plan with respect to same.

(c) **Action by the Board.** Any action by the Board that is supported by competent, material, and substantial evidence and that is not found to be an abuse of discretion shall be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board shall be the sole and final judge of such expediency.

(d) **Payment of benefits and erroneous payments.** The Board, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the Participant to receive the payment. Any benefit payment that according to the terms of the Excess Benefit Plan and the benefits provided hereunder should not have been made may be recovered as provided in 74 O.S. §924.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

#### **590:10-21-9. Plan amendments**

The Board from time to time may amend, suspend, or terminate any or all of the provisions of this Excess Benefit Plan as may be necessary to comply with Code Section 415(m) and to maintain the Excess Benefit Plan's or the System's qualified status under the Code.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

#### **590:10-21-10. Nonassignability and exemption from taxation and execution**

The interests of Participants under this Excess Benefit Plan are hereby exempt from any state, county, municipal or local tax, and shall

not be subject to execution, garnishment, attachment, or any other process of law whatsoever, and shall be unassignable, to the extent and except as otherwise provided by 74 O.S. §§923 and 924.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

#### **590:10-21-11. Federal and state taxes**

The Board, the Participating Employers, and the Administrator do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Excess Benefit Plan.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

#### **590:10-21-12. Investment**

The Board may hold such portion of the Excess Benefit Plan uninvested as the Board deems advisable for making distributions under the Excess Benefit Plan, or may invest assets of the Excess Benefit Plan pending the Excess Benefit payments. The Board shall not purchase an annuity contract with the assets of the Excess Benefit Fund.

[Source: Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

#### **590:10-21-13. Conflicts and limitation of rights**

(a) **Conflicts.** In resolving any conflict between provisions of the Excess Benefit Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Excess Benefit Plan, the interpretation that (i) causes the Excess Benefit Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Excess Benefit Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Excess Benefit Plan to comply with all applicable requirements of the Code, and (iii) causes the Excess Benefit Plan to comply with the System Plan and all applicable Oklahoma statutes and rules, shall prevail over any different interpretation.

(b) **Limitation of rights.** Neither the establishment nor maintenance of the Excess Benefit Plan, nor any amendment thereof nor any act or omission under the Excess Benefit Plan (or resulting from the operation of the Excess Benefit Plan) shall be construed as:

- (1) conferring upon any Participant or any other person a right or claim against the Board, Trustees, Participating Employers, or Administrator, if any, except to the extent that such right or claim shall be specifically expressed and provided in the Excess Benefit Plan;
- (2) creating any responsibility or liability of the Participating Employers for the validity or effect of the Excess Benefit Plan;
- (3) a contract between the Participating Employers and any Participant or other person; or
- (4) being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or

restricting in any manner or to any extent whatsoever the rights or obligations of the Participating Employers or any Participant or other person to continue or terminate the employment relationship at any time.

**[Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

# CHAPTER 15. UNIFORM RETIREMENT SYSTEM FOR JUSTICES AND JUDGES

[**Authority:** 20 O.S., §§ 1101 et seq.]  
[**Source:** Codified 12-27-91]

## SUBCHAPTER 1. GENERAL PROVISIONS

### **590:15-1-1. Purpose; defined benefit plan**

(a) The rules of this Chapter have been adopted to establish policies and procedures for implementing and administering the Uniform Retirement System for Justices and Judges. The Board of Trustees of the Oklahoma Public Employees Retirement System shall be responsible for the general oversight of the Judicial System and shall generally manage the two Systems in the same manner, except where the statutes or rules specifically provide otherwise.

(b) The Judicial System is established as a qualified defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable Treasury regulations and other guidance.

[**Source:** Amended at 22 Ok Reg 131, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05 ; Amended at 27 Ok Reg 1040, eff 5-13-10]

### **590:15-1-2. Administration**

(a) **Administration of Plan.** The Oklahoma Public Employees Retirement System shall administer the Uniform Retirement System for Justices and Judges, in accordance with the provisions outlined in 20 O.S. §§ 1101 et seq., and will coordinate with the Administrative Director of the Courts in the administration of the Uniform Retirement System for Justices and Judges.

(b) **Remittance of contributions.** The Administrative Director of the Courts shall remit all required court and employee contributions on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. The Administrative Director of the Courts will be assessed a late charge of 1.5% for any contributions remitted later than thirty (30) days following the due date. The late charge will be calculated on the unpaid balance and will compound monthly until paid.

(c) **Allocation of expenses.** The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Uniform Retirement System for Justices and Judges, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the 401(a) plan and the 457(b) plan of the Defined Contribution System, the Uniform Retirement System for Justices and Judges ("URSJJ"), the

Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the 401(a) plan and the 457 (b) plan of the Defined Contribution System, URSJJ, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

[Source: Amended at 22 Ok Reg 131, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05 ; Amended at 29 Ok Reg 503, eff 5-11-12 ; Amended at 34 Ok Reg 1898, eff 9-11-17]

### **590:15-1-3. Withholding [REVOKED]**

[Source: Revoked at 38 Ok Reg 2461, eff 9-11-21]

### **590:15-1-4. Average monthly salary and maximum compensation**

(a) **Retiring prior to June 30, 2004.** For any Justice or Judge retiring prior to June 30, 2004, average monthly salary shall be computed averaging the last thirty-six (36) consecutive months of salary received as an active Justice or Judge. Partial months will be included in the average.

(b) **Retiring after June 30, 2004.** For any Justice or Judge retiring after June 30, 2004, average monthly salary shall be calculated as follows:

(1) The highest thirty-six (36) months of salary, excluding longevity payments, received as a Justice or Judge will be determined and totaled;

(2) If applicable, the three (3) highest annual longevity payments upon which retirement contributions have been paid will be added to the sum of the highest thirty-six (36) months of salary. If a Justice or Judge is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payment will be used only in the amount actually paid for which contributions are withheld and if it is one of the three (3) highest longevity payments;

(3) Average monthly salary will be determined by adding the total of the highest thirty-six (36) months of salary to the highest three (3) longevity payments if applicable, and dividing by thirty-six (36). This calculation is illustrated by the following formula: Total of Thirty-six Months of Highest Salaries + Three Highest Longevity Payments ÷ 36 = Average Monthly Salary;

(c) **Multiplier; benefit limit.** The monthly benefit amount shall be determined by multiplying four percent (4%) of the average monthly salary by the total number of years of credited service, provided the monthly benefit may not exceed one hundred percent (100%) of the average monthly salary calculated in subsection (b) of this rule.

(d) **Prior reported compensation.** Except for errors in contribution or service, any amounts of compensation reported to the System as salary prior to June 30, 2004, and for which retirement contributions were paid may be used in the calculations provided in this rule.

(e) **Limits from July 1, 1996 to June 30, 2002.** Effective with respect to plan years beginning on and after July 1, 1996, and before July 1, 2002, the annual compensation of a plan member which exceeds One Hundred Fifty Thousand Dollars (\$150,000.00) (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of computing employee and employer contributions to or benefits due from the retirement system. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age 19 before the close of the year.

(f) **Limits from July 1, 2002.** Effective with respect to plan years beginning on or after July 1, 2002, the annual compensation of a plan member which exceeds Two Hundred Thousand Dollars (\$200,000.00) (as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code) may not be taken into account in determining benefits or contributions due for any plan year. "Annual compensation" means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(g) **Definitions.** As used in this section, the term "eligible member" means a person who first became a member of the retirement system prior to the plan year beginning after December 31, 1995. Pursuant to Section 13212(d)(3)(A) of Omnibus Budget Reconciliation Act of 1993, and the regulations issued under that section, eligible members are not subject to the limits of Section 401(a)(17) of the Internal Revenue Code, and the maximum compensation used in computing employee and employer contributions to or benefits due from the retirement system for eligible members shall be the maximum amount allowed by the retirement system to be so used on July 1, 1993. The limits referenced in subsections (e) and (f) above apply only to years beginning after December 31, 1995, and only to individuals who first become plan members in plan years beginning on and after July 1, 1996.

[Source: Amended at 12 Ok Reg 3245, eff 7-27-95 ; Amended at 12 Ok Reg 3664, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3331, eff 7-25-96 ; Amended at 19 Ok Reg 744, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1479, eff 5-28-02 ; Amended at 22 Ok Reg 131, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05 ; Amended at 27 Ok Reg 1040, eff 5-13-10]

**590:15-1-5. Final benefit and Death benefit**

(a) The retirement benefit payable for the month of death of a member or survivor shall be payable to said member or survivor, whichever is applicable. In the event the final benefit is returned to the System or is not otherwise paid, said benefit will be paid to the member's estate or survivor's estate, whichever is applicable.

(b) The four thousand dollars (\$4,000) death benefit available for any retired member who dies on or after July 20, 1987, shall be payable to the beneficiary listed by the member or to the member's estate. This beneficiary designation is not affected by any designation of joint-annuitant, deferred compensation beneficiary or insurance beneficiary, unless otherwise specifically designated in writing by member. For any retired member who died on or after July 1, 1999, the death benefit amount shall be five thousand dollars (\$5,000).

[Source: Amended at 12 Ok Reg 3245, eff 7-27-95 ; Amended at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3183, eff 7-27-00 ; Amended at 22 Ok Reg 131, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05 ; Amended at 23 Ok Reg 1485, eff 5-25-06]

**590:15-1-6. Revoking survivor benefits [REVOKED]**

[Source: Amended at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3183, eff 7-27-00 ; Revoked at 23 Ok Reg 1485, eff 5-25-06]

**590:15-1-7. Refund of survivor contributions [REVOKED]**

[Source: Revoked at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Revoked at 17 Ok Reg 3183, eff 7-27-00]

**590:15-1-8. Re-entry after revocation [REVOKED]**

[Source: Revoked at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Revoked at 17 Ok Reg 3183, eff 7-27-00]

**590:15-1-9. Actuarial cost for purchases**

Effective January 1, 1991, all purchases of service credit pursuant to 20 O.S. §1103G., shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions utilized in the actuarial valuation report for the Fiscal Year ending June 30 of the prior year.

(2) The actuarial value shall be based upon the member's age, salary and contribution level at the time of purchase, together with the earliest age for retirement with maximum benefits and actuarially assumed salary at the time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of determining this actuarial cost, the member's age shall be rounded up or down to the nearest birthday.

(4) For purposes of determining this actuarial cost, the mortality tables shall be formulated as a unisex table assuming a 50% male and a 50% female population, based upon the actuarial assumptions in subsection (1) of this Section.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, his salary shall be averaged based upon the most current months payroll information.

(6) In the event that the actuarial cost is less than the contributions that would have been required by law, the member and/or the employer shall pay the actual contributions cost.

[Source: Amended at 12 Ok Reg 3245, eff 7-27-95]

### **590:15-1-10. Purchase price payments**

(a) An active member of the System may elect the payment of the actuarial purchase price, the repayment of a previous withdrawal, or any other purchase or repayment permitted and authorized by the statutes governing the System, to be amortized in monthly installments to the extent allowed by law.

(1) A payment schedule may be established allowing the member to make monthly payments through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to the System. Payments remitted by an employer for its employees must be kept separate from employer's regular retirement contributions or any other payments to the System including Deferred Compensation. Such payments do not qualify as "pre-tax" contributions under "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.

(2) The installment payment schedule provided for in this section must be in monthly increments not to exceed sixty (60) months. The minimum total monthly payment is \$25.00. The member shall be responsible for maintaining the payment schedule. The payment due date will be based on the payroll schedule set by the member's employer. An installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in subsection (4) of this section.

(3) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the payment schedule is commenced.

(4) Except as provided in subsection (8) of this section, if the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation

of payments, the member or the beneficiary of the member will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated for only the principal amount paid and rounded to the last full month paid for. No refunds will be paid to the member.

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective retirement date of the member. If any member or beneficiary elects to pay the balance during the six (6) month period provided for in Subsection (4) of this Section, no benefits will be payable until the completion of said six (6) month period, or receipt of a signed waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

(6) Payments may be made directly to the System by the member or beneficiary if the member is in an unpaid leave status, if the payroll is not sufficient to handle the entire payment, in the event of payroll error where employer fails to withhold the proper amount or during the six (6) month period referred to in subsection (4) of this Section.

(7) Except as provided in subsection (8) of this section, if the purchase is terminated for any reason, the purchase cannot be made at anytime in the future, following the six (6) month option referred to in Subsection (4) of this Section. By failing to complete this purchase, the member or beneficiary forfeits the right to the purchase at any other time.

(8) If the installment payment for the repayment of a previous withdrawal is terminated for any reason, the member, upon returning to employment and meeting the eligibility requirements for membership, may pay the remaining principal balance at any time prior to the month of the effective retirement date. The total due shall be the unpaid principal balance, plus interest pursuant to 20 O.S. § 1103C, calculated from the date of the last installment payment received and paid in a one-time lump sum amount.

(b) Effective January 1, 2002, in lieu of installment payments, an active member may elect to make the payment of the actuarial purchase price, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee to trustee transfer from a 457 deferred compensation plan or a 403(b) tax sheltered annuity program.

(c) Effective January 1, 2002, in lieu of installment payments or a direct transfer, an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by a rollover. The payment may be made by participant rollover contributions and/or direct rollovers of eligible

rollover distributions made after December 31, 2001, from the following:

- (1) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code;
- (2) an annuity contract described in section 403(b) of the Internal Revenue Code;
- (3) an eligible plan under section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or
- (4) a participant rollover contribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled.

[Source: Added at 12 Ok Reg 3245, eff 7-27-95 ; Amended at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3183, eff 7-27-00 ; Amended at 19 Ok Reg 744, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1479, eff 5-28-02 ; Amended at 25 Ok Reg 1006, eff 5-11-08 ; Amended at 26 Ok Reg 956, eff 4-25-09]

### **590:15-1-11. Maximum benefits**

(a) **General provisions.** Notwithstanding any other provisions of the System to the contrary, the member contributions paid to and retirement benefits paid from the Plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415(b) of the Internal Revenue Code for a qualified pension plan.

(b) **Participation in other qualified plans: Aggregation of limits.**

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

(c) **Basic 415(b) limitation.**

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal

Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

**(d) Adjustments to basic 415(b) limitation for form of benefit.** If the benefit under the plan is other than the form specified in subsection (c) (2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (that is, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent (5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (that is, a lump sum benefit), the

actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(C) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period))) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

**(e) Benefits not taken into account for 415(b) limitation.** For purposes of this section, the following benefits shall not be taken into account in applying these limits:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) that portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- (3) any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

**(f) Other adjustments in 415(b) limitation.**

- (1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a One Hundred Sixty Thousand Dollar (\$160,000.00) (as adjusted) annual benefit beginning at age sixty-two (62).
- (2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in paragraph (1) of this subsection shall not apply.
- (3) The reductions provided for in paragraph (1) of this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

**(g) Less than ten (10) years of service adjustment for 415(b) limitations.** The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under subsection (c) of this section multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below ten percent (10%). The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

**(h) Ten Thousand Dollar (\$10,000.00) limit.** Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed Ten Thousand Dollars (\$10,000.00) for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

**(i) Effect of COLA without a lump sum component on 415(b) testing.** Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

- (1) A member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost-of-living adjustments;

(2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost-of-living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost-of-living increases, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

**(j) Effect of COLA with a lump sum component on 415(b) testing.**

On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost-of-living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

**(k) Section 415(c) limitations on contributions and other additions.**

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of Forty Thousand Dollars (\$40,000.00) (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or one hundred percent (100%) of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a),

402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2 1/2 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

- (i) The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
- (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued.

(C) Any payments not described in subparagraph (B) of this paragraph are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(D) An employee who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if

shorter, the period of employment immediately preceding the qualified military service).

(E) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

**(l) Service purchases under Section 415(n).**

(1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(A) The requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(B) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(2) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this paragraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(3) For purposes of this section the term "permissive service credit" means service credit:

(A) Recognized by the system for purposes of calculating a member's benefit under the system,

(B) which such member has not received under the system, and

(C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subparagraph (B) of this paragraph, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(4) The system will fail to meet the requirements of this section if:

(A) more than five (5) years of nonqualified service credit are taken into account for purposes of this paragraph, or  
(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five (5) years of participation under the system.

(5) For purposes of paragraph (4) of this subsection, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(A) Service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (A) of this paragraph) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(C) service as an employee of an association of employees who are described in subparagraph (A) of this paragraph, or

(D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

(6) In the case of service described in subparagraphs (A), (B), or (C) of paragraph (5) of this subsection, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):

(A) The limitations of paragraph (4) of this subsection will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to

an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the system before January 1, 1998.

**(m) Modification of contributions for 415(c) and 415(n) purposes.**

Notwithstanding any other provision of law to the contrary, the system may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

(2) If payment pursuant to paragraph (1) of this subsection will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

**(n) Repayments of cashouts.** Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

**(o) Reduction of benefits priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

[Source: Added at 18 Ok Reg 551, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3264, eff 7-26-01 ; Amended at 27 Ok Reg 1040, eff 5-13-10]

**590:15-1-12. Rollovers**

(a) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at a time and in the manner prescribed by the Board of Trustees, to have any portion of an

eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than Two Hundred Dollars (\$200.00) during the year. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(c) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(1) To an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(2) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(3) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code.

(d) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(1) An individual retirement account described in Section 408(a) of the Internal Revenue Code,

(2) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code,

(3) an annuity plan described in Section 403(a) of the Internal Revenue Code,

(4) a qualified trust described in Section 401(a) of the Internal Revenue Code,

- (5) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code,
- (6) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or
- (7) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(e) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(f) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

[Source: Added at 18 Ok Reg 551, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3264, eff 7-26-01 ; Amended at 27 Ok Reg 1040, eff 5-13-10 ; Amended at 29 Ok Reg 503, eff 5-11-12]

### **590:15-1-13. Survivor distributions**

If a member dies after the distribution of the member's benefits has begun, the remaining portion of the member's interest will be distributed at least as rapidly as under the method of distribution being used for the member as of the date of the member's death.

[Source: Added at 18 Ok Reg 551, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3264, eff 7-26-01]

### **590:15-1-14. Direct deposit**

(a) For members or survivors retiring prior to July 1, 2001, a Retirant or survivor may authorize the Uniform Retirement System for Justices and Judges to deposit their monthly retirement benefit directly to a checking or savings account in a bank, Credit Union and/or Savings and Loan by electronic fund transfer or by paper check. Application for direct deposit will only be accepted on properly completed forms provided by URSJJ. Prior to June 30, 2001, the direct deposit may be discontinued at any time upon thirty (30) days' written notice by the member, survivor or URSJJ. After July 1, 2001, if the electronic fund transfer creates an undue hardship on the retiree or survivor, the direct deposit may be discontinued only if the member or survivor makes application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be

in the best interest of the member or survivor. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.

(b) Effective July 1, 2001, newly retired members or survivors shall be required to receive monthly benefit payments via electronic fund transfers to a banking or financial institution designated by the member or survivor. The retiree or survivor and receiving institution must complete the form prescribed for this purpose by URSJJ. In the event the electronic fund transfer creates an undue hardship on the retiree or survivor, the member or survivor may make application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the member or survivor. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.

[Source: Added at 18 Ok Reg 3264, eff 7-26-01 ; Amended at 19 Ok Reg 744, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1479, eff 5-28-02]

#### **590:15-1-15. Salary for retirement purposes [REVOKED]**

[Source: Added at 20 Ok Reg 2867, eff 8-4-03 (emergency); Revoked at 21 Ok Reg 38, eff 9-17-03 (emergency)]

#### **590:15-1-16. Longevity and other annual lump-sum payments [REVOKED]**

[Source: Added at 20 Ok Reg 2559, eff 7-11-03 ; Revoked at 20 Ok Reg 2810, eff 6-19-03 (emergency); Revoked at 21 Ok Reg 1759, eff 6-11-04]

#### **590:15-1-17. Military service credit**

(a) Any active member who joined the System on or before June 30, 2000, can receive up to five (5) years of prior military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service.

(b) Any active member who joined the System on or after July 1, 2000, can purchase up to five (5) years of prior military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. The member must make payment in the amount determined by the Board pursuant to Section 1103G of Title 74 of the Oklahoma Statutes and 590:15-1-9. This purchase may be amortized over sixty (60) months as provided for in 590:15-1-10.

(c) Military service credit will be credited or purchased in full months only. The initial month of military service will be accepted only if the service began on or before the 15<sup>th</sup> day of the month. The final month of military service will be accepted only if the service was completed on or after the 16<sup>th</sup> day of the month.

(d) Members who joined the System on or after July 1, 2003, can make the purchase set forth in paragraph (b) of this rule only if the member has not received credit for the same period of military service for retirement from another retirement system created pursuant to the Oklahoma Statutes. For such members, the military credit shall be granted or purchased in the retirement system from which the member retires first. In the event such a member fails to disclose a previous grant or purchase of military credit, the purchase will be voided, his or her service credit will be adjusted to remove the military service credit and only the purchase price shall be returned to the member.

(e) It is the responsibility of the member wishing to receive or purchase military service credit to complete the application provided by the System for this purpose and to provide all documentation necessary to support the application. Military service will not be credited until all required documentation is provided by the member to the System, the System has approved the grant or purchase and any required payments are made.

(f) Retired members who are not credited with military service prior to or at the time of retirement may make application for the credit at any time. After approval by the System, the military service credit will be added to the member's record and increased retirement benefits, if any, as a result of the addition of the military service credit, shall begin with the first month following said approval. Retroactive payments will not be made under any circumstances.

(g) Members who served in the Armed Forces of the United States during a war or combat military operation other than World War I, World War II, the Korean War, the Vietnam War or the Gulf War as provided in Section 902 (23) of Title 74 of the Oklahoma Statutes, may be eligible to purchase or receive military service credit for the period of time that he or she actually served in an area of responsibility for a war or combat military operation which lasted for a period of at least ninety (90) days. It is the responsibility of the member to provide sufficient documentation to support his or her eligibility for this credit as requested by the System, including, but not limited to, documents showing specific service areas and times.

(h) The provisions for granting or purchasing military service credit shall be in addition to any contributions, benefits and service credit with respect to qualified military service in accordance with Section 414 (u) of the Internal Revenue Code of 1986.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04 ; Amended at 22 Ok Reg 131, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05]

### **590:15-1-18. Federal qualified military service rights**

(a) **Additional benefits if provided by Plan.** Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would otherwise provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) **Differential wage payments.** Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

[Source: Added at 27 Ok Reg 1040, eff 5-13-10 ; Amended at 29 Ok Reg 503, eff 5-11-12]

#### **590:15-1-19. Actuarial assumptions**

Effective as of July 1, 1989, the Board will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board of Trustees by resolution. Such benefits will not be subject to employer discretion. The resolutions adopted by the Board of Trustees for this purpose are incorporated as part of the plan document.

[Source: Added at 27 Ok Reg 1040, eff 5-13-10]

#### **590:15-1-20. Employee contributions vested; forfeiture**

(a) **Vesting of contributions.** A plan member shall be one hundred percent (100%) vested in his or her accumulated contributions at all times in compliance with Section 401(a)(7) of the Internal Revenue Code.

(b) **Forfeitures under Internal Revenue Code.** In conformity with section 401(a)(8) of the Internal Revenue Code, any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

[Source: Added at 27 Ok Reg 1040, eff 5-13-10]

#### **590:15-1-21. Required minimum distributions**

(a) The retirement system will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The retirement system is subject to the following provisions:

(1) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age 72 or such other date as may be permitted by the federal Internal Revenue Code or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in 20 O.S. §1101 et seq.

(2) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.

(3) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

(4) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

(A) Distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death (or, if the designated beneficiary is the member's surviving spouse, beginning no later than the date on which the member would have attained age 72 or such other date as may be permitted by the federal Internal Revenue Code), or

(B) distributed within five (5) years of the member's death.

(5) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(6) The death and disability benefits provided by the retirement system are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent (25%) of the cost for all of the members' benefits received from the retirement system.

(b) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(c) The retirement system shall make reasonable efforts to locate missing members, survivors and beneficiaries in order to comply with the required minimum distribution provisions of Section 401(a)(9). Reasonable efforts may include using any contact information the retirement system may have available for a member or any type of

locator service.

[Source: Added at 27 Ok Reg 1040, eff 5-13-10 ; Amended at 28 Ok Reg 672, eff 5-12-11 ; Amended at 38 Ok Reg 2461, eff 9-11-21]

**590:15-1-22. Health insurance contribution**

(a) The Oklahoma Public Employees Retirement System as administrator of the Uniform Retirement System for Justices and Judges shall contribute the amount required by law towards the cost of health insurance coverage under the State and Education Employees Group Insurance Plan or other eligible group insurance plans only for retired members who actually receive a monthly retirement benefit for that month. This contribution shall not be made for beneficiaries, survivors or directly to the retired member.

(b) For eligible group health insurance plans other than the State and Education Employees Group Insurance Plan, the System will contribute the amount required by law after the group insurance plan has made application to the System and completed any necessary and required forms and/or agreements. The group insurance plan must be in compliance with Oklahoma law and offer insurance to all of the covered participating employer's employees, former employees who are vested and former employees who retired from that covered employer. The insurance plan shall provide a certification monthly detailing each covered retired member in the form and manner required by the System. The subsidy shall be paid in arrears for each eligible retired member.

(c) Pursuant to the federal Internal Revenue Code Section 401(h) and Treasury Regulation §1.401-14, the Retirement Medical Benefit Fund shall be maintained as a sub-account of the State Judicial Retirement Fund. From the Retirement Medical Benefit Fund, OPERS shall remit the amount specified in 74 O.S. Section 1316.2 for health insurance premiums.

(d) All contributions to the Retirement Medical Benefit Fund shall be reasonable and ascertainable.

(e) Contributions to the Retirement Medical Benefit Fund must be subordinate to the contributions to the State Judicial Retirement Fund for retirement benefits. At no time shall the aggregate actual contributions to the Retirement Medical Benefit Fund (when added to actual contributions for life insurance protection under the plan, if any) be in excess of twenty-five percent (25%) of the total aggregate actual contributions made to the State Judicial Retirement Fund (not including contributions to fund past service credits). The Board shall annually determine whether the twenty-five (25%) test has been met. If at any time the Retirement Medical Benefit Fund contributions (plus any life insurance contributions) would exceed the twenty-five percent (25%) test, the excess amount of contributions shall be transferred to the State Judicial Retirement Fund for retirement benefits.

(f) Forfeitures in the Retirement Medical Benefit Fund shall not be allocated to individual accounts under the fund, but shall be used for account expenses.

(g) At no time prior to the satisfaction of all liabilities under the Retirement Medical Benefit Fund or termination of the fund shall any

assets in the fund be used for, or diverted to, any purpose other than the providing of payment of the URSJJ's portion of the monthly retiree health insurance premium benefit described by Title 74 O.S. Section 1316.2 and the payment of administrative expenses. Assets in the Retirement Medical Benefit Fund may not be used for retirement or disability benefits or any other purposes for which other assets held in the State Judicial Retirement Fund are used.

(h) The provisions of section 401(h)(5) of the Internal Revenue Code of 1986, as amended from time to time, shall apply upon the satisfaction of all liabilities under law and the State Judicial Retirement Fund.

[Source: Added at 30 Ok Reg 552, eff 5-11-13]

### **590:15-1-23. Normal retirement age**

(a) In addition to any other vesting provided under state law, and except as provided in 51 O.S. Section 24.1, a member's normal retirement benefit is nonforfeitable upon the attainment of the following normal retirement ages and the completion of the specified years of service:

(1) For a judge whose initial service as a member began prior to January 1, 2012, age sixty-five (65) upon completion of at least eight (8) years of service, or age sixty (60) upon completion of at least ten (10) years of service.

(2) For a judge whose initial service as a member began on or after January 1, 2012, age sixty-seven (67) upon the completion of at least eight (8) years of service, or age sixty-two (62) upon completion of at least ten (10) years of service.

(b) A member joining before January 1, 2012, is also vested in full retirement benefits upon when the sum of the member's age and years of credited service equals or exceeds 80 (Rule of 80). This provision is not applicable to those members joining on or after January 1, 2012.

(c) In determining the number of years of credited service, a major fraction of a year, as set forth in 20 O.S. § 1102(A), shall be six (6) months or more and shall be considered as one (1) year. Credited service of less than six (6) months shall be disregarded.

[Source: Added at 30 Ok Reg 552, eff 5-11-13 ; Amended at 35 Ok Reg 1938, eff 9-14-18]

## **SUBCHAPTER 3. EXCESS CONTRIBUTIONS**

### **590:15-3-1. Purpose and intent**

By adoption of the rules set out in this Subchapter, the Board represents that:

(1) With respect to the transfer of certain Excess Contributions which represent the additional three percent (3%) spousal contributions from the System to the Incentive Plan, the Board intends to comply in all respects with the tax qualification requirements for governmental plans applicable to such refunds or transfers as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental

plans and the relevant regulatory provisions and guidance related thereto ("Tax qualification requirements").

(2) The procedures in this Subchapter will not be implemented until the Board has received a favorable private letter ruling from the Internal Revenue Service that the transfers described in this Subchapter satisfy the tax qualification requirements.

(3) In administering this Subchapter, the Board will comply with the legislative intent as contained in the Transfer Legislation.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

### **590:15-3-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Board"** means the Board of Trustees of the Oklahoma Public Employees Retirement System which administers the Uniform Retirement System for Justices and Judges.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto.

**"Eligible Member"** means a member of the System who was an active participating justice or judge and a single unmarried individual on September 1, 2005, and who, prior to September 1, 2005, made the additional three percent (3%) spousal contributions pursuant to statutes in effect at that time, provided such additional spousal contributions have not been previously refunded by the System.

**"Excess Contributions"** means the additional three percent (3%) spousal contributions for a survivor benefit made by an Eligible Member while the member was married, but who is unmarried on September 1, 2005, and which contributions remain on deposit with the System as of the date of the transfer, and includes both Pre-tax Excess Contributions and Post-tax Excess Contributions.

**"Incentive Plan"** means the Oklahoma State Employees Deferred Savings Incentive Plan, which is a qualified plan under Code Section 401(a).

**"Post-tax Excess Contributions"** means the Excess Contributions which were employee contributions and which were not picked up by the employer under the provisions of Code Section 414(h)(2).

**"Pre-tax Excess Contributions"** means the Excess Contributions which were picked up by the employer under the provisions of Code Section 414(h)(2).

**"Private Letter Ruling"** means the private letter ruling issued by the Internal Revenue Service to the Board.

**"System"** means the Uniform Retirement System for Justices and Judges.

**"Transfer Legislation"** means Enrolled House Bill 1858 of the 1<sup>st</sup> Session of the 50<sup>th</sup> Legislature, as it amends Section 1102A of Title 20 of the Oklahoma Statutes.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

**590:15-3-3. Transfer of excess contributions**

On or about September 1, 2005, the Board will implement the following procedures for the transfer of the excess contributions:

(1) The Board shall cause to be sent an Application for Transfer of Excess Contributions to each member that appears to be an Eligible Member. The Application for Transfer of Excess Contributions will contain the following:

(A) An election to transfer the excess contributions or to waive the transfer and retain the option to elect at retirement a survivor benefit;

(B) A statement that by making the election to transfer the excess contributions, an Eligible Member forfeits any rights to future survivor benefits of any kind from the System;

(C) The amount of the contributions to be transferred;

(D) A statement that the Application for Transfer of Excess Contributions must be received by the System on or before December 1, 2005;

(E) A statement that failure to sign and return the Application for Transfer of Excess Contributions results in the Eligible Member waiving the option to make the transfer and such waiver is irrevocable; and

(F) A statement that the election to transfer the excess contributions shall not take effect until the Board receives official written notice that this distribution satisfies the tax qualification requirements for governmental plans applicable to such transfers as specified in the Internal Revenue Code.

(2) In the event an Eligible Member disputes the amount of transfer as set forth in the Application for Transfer of Excess Contributions, the Eligible Member shall provide a written objection to the Board within 30 days of the date the Application for Transfer of Excess Contributions was mailed to the Eligible Member. The objection shall set forth the basis for the objection, including the specific error and the amount the Eligible Member believes is correct. The Board shall respond to the complaint within 30 days of receipt. If the Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.

(3) The Board will direct that the Excess Contributions are transferred to the Incentive Plan or maintained in the System as stated in the Application for Transfer of Excess Contributions.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

**590:15-3-4. Limitations on transfer of excess contributions**

(a) The Pre-tax Excess Contributions that are transferred to the Incentive Plan may not exceed the limitations on annual additions imposed by Code Section 415(c).

(b) The Post-tax Excess Contributions that are transferred to the Incentive Plan have already been tested against the limitations imposed by Code Section 415(c) as mandatory employee contributions to a defined benefit plan and therefore will not be tested again.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

#### **590:15-3-5. Initial and residual transfers**

(a) The initial transfer of Excess Contributions shall include all Eligible Members who elected to transfer their Excess Contributions and who did not object to the transfer amount. If an Eligible Member objects to the transfer amount and the objection is not resolved by the date of the initial transfer, the Excess Contributions shall not be included in the initial transfer. The Board shall provide for a residual transfer date to occur at least one year following the initial transfer date.

(b) An Eligible Member of the System who has Excess Contributions in the Plan but was not identified or included in the initial transfer must notify the System within one year of date of the initial transfer to request the transfer of the Excess Contributions as part of the residual transfer. The final transfer of all Excess Contributions shall occur at the time of the residual transfer at least one year following the initial transfer date.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

#### **590:15-3-6. Deceased Eligible Members**

In order for the election for transfer to be effective, an Eligible Member must be living at the time the Board receives official written notice from the Internal Revenue Service that this distribution satisfies the tax qualification requirements for governmental plans applicable to such transfers as specified in the Internal Revenue Code. If an Eligible Member dies after the Board receives such official written notice, but before the actual transfer, the Excess Contributions shall be transferred to the Incentive Plan in the same manner as if the Eligible Member were not deceased. Once transferred to the Incentive Plan, distribution shall be governed by the Incentive Plan provisions as provided in 590:35-13-5 and 590:35-13-6. If an Eligible Member dies prior to the Board receiving such official written notice, the Eligible Member's election shall be deemed invalid and shall not be accepted by the System.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

## **SUBCHAPTER 5. EXCESS BENEFIT PLAN AND TRUST**

#### **590:15-5-1. Establishment and purpose**

(a) **Establishment.** The "Uniform Retirement System for Justices and Judges Excess Benefit Plan and Trust" is hereby established effective as of November 1, 2010, pursuant to Code Section 415, 20 O.S. §1104.1, and the Excess Benefit Plan and Trust document which was approved by the Internal Revenue Service in a private letter ruling dated June 24,

2010, and as adopted by the Board of Trustees.

(b) **Purpose.** The purpose of this Excess Benefit Plan is solely to provide the part of a Participant's Retirement Benefit that would otherwise have been payable by the System except for the limitations of Code Section 415(b). This Excess Benefit Plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Code Section 415(m)(3) and shall be interpreted and construed consistently with such intent. This Excess Benefit Plan is an "exempt governmental deferred compensation plan" described in Code Section 3121(v)(3). Code Sections 83, 402(b), 457(a), and 457(f)(1) shall not apply to this Excess Benefit Plan.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

### **590:15-5-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Administrator"** means the Oklahoma Public Employees Retirement System.

**"Beneficiary"** means any person named by a member to receive any benefits as provided by 20 O.S. §§1101 et seq. If there is no beneficiary living at time of member employee's death, the member's estate shall be the beneficiary.

**"Board"** means the Oklahoma Public Employees Retirement System Board of Trustees.

**"Code"** means the Internal Revenue Code of 1986, as amended, as applicable to a governmental plan, or corresponding provisions of any subsequent federal income tax law.

**"Employer"** means the State of Oklahoma, which has agreed to make contributions to the URSJJ Plan on behalf of its employees.

**"Excess Benefit"** means the benefit determined in accordance with 590:15-5-5(a) and Section 4.01 of the Excess Benefit Plan document.

**"Excess Benefit Fund"** means the trust fund established by the Board pursuant to Article VI of the Excess Benefit Plan document, pursuant to the provisions of 20 O.S. §1104.1, and as set forth in 590:15-5-7.

**"Excess Benefit Plan"** means the "Uniform Retirement System for Justices and Judges Excess Benefit Plan and Trust" established pursuant to Code Section 415 and 20 O.S. §1104.1.

**"Participant"** means a Retiree or Beneficiary who is entitled to benefits under the Excess Benefit Plan.

**"Plan Year"** means the calendar year for the purpose of this Excess Benefit Plan.

**"Retiree"** means a member who has retired under the URSJJ Plan.

**"Retirement Benefit"** means a monthly income with benefits accruing from the first day of the month coinciding with installments by the URSJJ Plan, whether payable for a temporary period or following retirement and ending on the last day of the month in which death occurs throughout the future life of a Retired Member or the actuarial equivalent thereof paid in such manner as specified by the member

pursuant to 20 O.S. §§1101 et seq. or as otherwise allowed to be paid at the discretion of the Board, without regard to any limitations on such retirement income or benefit under Code Section 415(b).

**"Retirement Fund"** means the reserves of the URSJJ Plan.

**"State"** means the State of Oklahoma.

**"Trustees"** means the members of the Board.

**"URSJJ Plan"** means the retirement plan administered by the Oklahoma Public Employees Retirement System. The URSJJ Plan document consists of the applicable Oklahoma statutes and rules and regulations.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

### **590:15-5-3. Construction**

Whenever any actuarial present value or actuarial equivalency is to be determined under the Excess Benefit Plan to establish a benefit, it shall be based on such reasonable actuarial assumptions as may be approved in the sole discretion of the Board, and shall be determined in a uniform manner for all similarly situated Participants.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

### **590:15-5-4. Participation**

All Retirees and Beneficiaries of the URSJJ Plan are required to participate in the Excess Benefit Plan if their Retirement Benefit from the URSJJ Plan for a Plan Year is limited during the applicable Calendar Year by Code Section 415(b). The Board shall determine for each Plan Year which Retirees and Beneficiaries are required to participate in the Excess Benefit Plan. Participation in the Excess Benefit Plan shall commence each Plan Year once a Retiree or Beneficiary has an Excess Benefit in that Plan Year as determined by the Calendar Year Code Section 415 limits. Participation in the Excess Benefit Plan shall cease for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or if all benefit obligations under the Excess Benefit Plan to the Retiree or Beneficiary have been satisfied.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

### **590:15-5-5. Payment of benefits**

(a) **Benefit amount.** A Participant in the Excess Benefit Plan shall receive a benefit in an amount equal to the amount of Retirement Benefit that would have been payable to, or with respect to, a Participant by the URSJJ Plan that could not be paid because of the application of the limitations on such Retirement Benefit under Code Section 415(b). An Excess Benefit under the Excess Benefit Plan shall be paid only if and to the extent the Participant is receiving a Retirement Benefit from the URSJJ Plan.

(b) **No election to defer.** No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this

Excess Benefit Plan.

(c) **Time for Payment.** Each Plan Year, the Excess Benefit to which a Participant is entitled under the Excess Benefit Plan shall be paid from the Excess Benefit Fund commencing during or with the month in which all monthly payments of the Retirement Benefit (as limited by Code Section 415(b)) under the URSJJ Plan have been paid, and such Excess Benefit shall be paid from that month to the end of the Calendar Year falling within the applicable Plan Year.

(d) **Form of Benefit.** The form of the Excess Benefit shall be the same form as the Participant's Retirement Benefit.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

### **590:15-5-6. Contributions and funding**

(a) **Funding.** The Excess Benefit Plan shall be, and remain, unfunded, and the rights, if any, of any person to any benefits hereunder shall be those specified herein. The Excess Benefit Plan constitutes a mere unsecured promise by the Employer, on whose behalf the Retirement Benefit and Excess Benefits are paid to the Participant, to make benefit payments in the future.

(b) **Contributions.** The Administrator shall determine the amount necessary to pay the Excess Benefit under the Excess Benefit Plan for each Plan Year for the Employer. The required contribution for the Employer shall be the aggregate of the Excess Benefits payable to all Participants of the Employer for such Plan Year plus an amount determined by the Board to be a necessary and reasonable expense of administering the Excess Benefit Plan. The amount determined to be necessary to pay the Excess Benefit of a Participant and administrative expenses of the Excess Benefit Plan shall be withheld from contributions to the URSJJ Plan before being credited to the Retirement Fund and deposited into the Excess Benefit Fund established under Article VI of the Excess Benefit Plan document and 590:15-5-7. Employer contributions shall be made at a time or times determined by the Board, but shall be made no less frequently than annually. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Excess Benefit Fund, shall be first used to pay the administrative expenses of the Excess Benefit Plan, then shall be deposited to the Excess Benefit Fund and used to fund Excess Benefits of Participants in future Plan Years.

(c) **Contributions not to be credited to OPERS Plan.** Under no circumstances will Employer contributions to fund the Excess Benefits under the Plan be credited to the URSJJ Plan. The amounts determined to be necessary to provide the Excess Benefit under the Excess Benefit Plan for each Participant shall be accounted for separately. However, such separate accounting shall not be deemed to set aside such amounts for the benefit of a Participant. Benefits under the Excess Benefit Plan shall be paid from the Excess Benefit Fund.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

### **590:15-5-7. Trust fund**

(a) **Establishment of Excess Benefit Fund.** A trust fund, referred to as the Excess Benefit Fund, is established as a valid trust under the law of the State, which is separate from the Retirement Fund, to hold contributions of the Employer. Contributions to the Excess Benefit Fund shall be held separate and apart from the funds comprising the Retirement Fund and shall not be commingled with assets thereof. The Board shall prescribe a detailed accounting system for the Excess Benefit Fund, which shall allocate the expenses of the Excess Benefit Plan to the Excess Benefit Fund.

(b) **Excess Benefit Fund Purpose.** The Excess Benefit Fund is maintained solely for the purpose of providing Excess Benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m).

(c) **Excess Benefit Fund Assets.** All assets held by such Excess Benefit Fund to assist in meeting the Employer's obligations under the Excess Benefit Plan, including all amounts of Employer's contributions made pursuant to the Excess Benefit Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, shall be, and remain, the general, unpledged, unrestricted assets of the Excess Benefit Fund. The Excess Benefit Fund shall be held separate and apart from other funds of the Employer and shall be used exclusively for the uses and purposes of Participants and general creditors as set forth herein. Participants shall have no preferred claim on, or any beneficial interest in, any assets of the Excess Benefit Fund. Any assets held by the Excess Benefit Fund shall be subject to the claims of the contributing Employer's general creditors under federal and state law in the event of insolvency, to the extent of the affected Employer's undistributed contributions, if any.

(d) **Grantor Trust.** The Excess Benefit Fund is intended to be a grantor trust, of which the contributing Employer is the grantor, within the meaning of Code Sections 671 through 679 and shall be construed accordingly. This provision shall not be construed to create an irrevocable trust of any kind.

(e) **Excess Benefit Fund Income.** Income accruing to the Excess Benefit Fund in respect of the Excess Benefit Plan shall constitute income derived from the exercise of an essential governmental function upon which the Excess Benefit Fund shall be exempt from tax under Code Section 115, as well as Code Section 415(m)(1).

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

### **590:15-5-8. Administration**

(a) **Administrative Authority.** The Board shall have the authority to control and manage the operation and administration of the Excess Benefit Plan. The Board and the Administrator shall have the same rights, duties and responsibilities respecting the Excess Benefit Plan as the Board and the Administrator have with respect to the URSJJ Plan pursuant to 20 O.S. §1108, unless modified by Code Section 415 and its implementing regulations, or 20 O.S. §1104.1.

**(b) Powers of the Board.** The Board shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Board:

(1) to establish procedures with respect to administration of the Excess Benefit Plan not inconsistent with the Excess Benefit Plan and the Code, and to amend or rescind such procedures;

(2) to determine, consistent with the Excess Benefit Plan, the URSJJ Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Excess Benefit Plan and eligibility for distribution of benefits from the Excess Benefit Plan, and the status of any person claiming benefits under the Excess Benefit Plan;

(3) pursuant to Article IV of the Excess Benefit Plan document, to make payments from the Excess Benefit Fund to Participants;

(4) to contract with a third party to perform designated administrative services under this Excess Benefit Plan;

(5) subject to and consistent with the Code, to construe and interpret the Excess Benefit Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Excess Benefit Plan with respect to same.

**(c) Action by the Board.** Any action by the Board that is supported by competent, material, and substantial evidence and that is not found to be an abuse of discretion shall be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board shall be the sole and final judge of such expediency.

**(d) Payment of benefits and erroneous payments.** The Board, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the Participant to receive the payment. Any benefit payment that according to the terms of the Excess Benefit Plan and the benefits provided hereunder should not have been made may be recovered as provided in 20 O.S. §1111.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

#### **590:15-5-9. Plan amendments**

The Board from time to time may amend, suspend, or terminate any or all of the provisions of this Excess Benefit Plan as may be necessary to comply with Code Section 415(m) and to maintain the Excess Benefit Plan's or the System's qualified status under the Code.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

#### **590:15-5-10. Nonassignability and exemption from taxation and execution**

The interests of Participants under this Excess Benefit Plan are hereby exempt from any state, county, municipal or local tax, and shall

not be subject to execution, garnishment, attachment, or any other process of law whatsoever, and shall be unassignable, to the extent and except as otherwise provided by 20 O.S. §1111.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

#### **590:15-5-11. Federal and state taxes**

The Board, the Participating Employers, and the Administrator do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Excess Benefit Plan.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

#### **590:15-5-12. Investment**

The Board may hold such portion of the Excess Benefit Plan uninvested as the Board deems advisable for making distributions under the Excess Benefit Plan, or may invest assets of the Excess Benefit Plan pending the Excess Benefit payments. The Board shall not purchase an annuity contract with the assets of the Excess Benefit Fund.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

#### **590:15-5-13. Conflicts and limitation of rights**

(a) **Conflicts.** In resolving any conflict between provisions of the Excess Benefit Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Excess Benefit Plan, the interpretation that (i) causes the Excess Benefit Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Excess Benefit Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Excess Benefit Plan to comply with all applicable requirements of the Code, and (iii) causes the Excess Benefit Plan to comply with the System Plan and all applicable Oklahoma statutes and rules, shall prevail over any different interpretation.

(b) **Limitation of rights.** Neither the establishment nor maintenance of the Excess Benefit Plan, nor any amendment thereof nor any act or omission under the Excess Benefit Plan (or resulting from the operation of the Excess Benefit Plan) shall be construed as:

- (1) conferring upon any Participant or any other person a right or claim against the Board, Trustees, Employer or Administrator, if any, except to the extent that such right or claim shall be specifically expressed and provided in the Excess Benefit Plan;
- (2) creating any responsibility or liability of the Employer for the validity or effect of the Excess Benefit Plan;
- (3) a contract between the Employer and any Participant or other person; or
- (4) being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights

or obligations of the Employer or any Participant or other person to continue or terminate the employment relationship at any time.

**[Source:** Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

## CHAPTER 20. INVESTMENTS

[**Authority:** 20 O.S., §§ 1101 et seq.; 74 O.S., §§ 901 et. seq.; 74 O.S., §§ 935.1 et. seq.; 74 O.S., §§ 1701 et. seq.]

[**Source:** Codified 12-27-91]

### **590:20-1-1. Purpose**

The rules in this Chapter are designed to implement the policies and procedures necessary to insure the efficient, prudent and diversified investments of the funds of the Oklahoma Public Employees Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma State Employees Deferred Compensation Plan, the Oklahoma State Employees Savings Incentive Plan, and the Defined Contribution System.

[**Source:** Amended at 32 Ok Reg 2178, eff 9-11-15]

### **590:20-1-2. Investment policy**

The investment policy, guidelines and objectives which govern the investment of monies from the Oklahoma Public Employees Retirement System fund and the Uniform Retirement System for Justices and Judges fund shall be developed and adopted by the Board of Trustees at a regularly scheduled public Board meeting, at least annually, prior to August 1 of each year.

### **590:20-1-3. Amendments**

Changes to the investment policy may be made, as necessary, at any public meeting of the Board, in compliance with the Open Meeting Act.

### **590:20-1-4. Deferred Compensation, Savings Incentive Plan, and Defined Contribution System assets**

The Board shall have the responsibility to determine appropriate investment options for the assets of the Deferred Compensation Plan, the Savings Incentive Plan, and the Defined Contribution System composed of defined contribution plans pursuant to Sections 401(a) and 457(b) under the Internal Revenue Code. The Board shall adopt an investment policy, guidelines and objectives in the same manner as provided in Sections 2 and 3 of this Chapter. This investment policy shall also contain the procedure for selection, retention, or elimination of the investment options and service providers for each plan.

[**Source:** Added at 12 Ok Reg 3247, eff 7-27-95 ; Amended at 18 Ok Reg 551, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3265, eff 7-26-01 ; Amended at 32 Ok Reg 2178, eff 9-11-15]

### **590:20-1-5. Self-directed brokerage investments**

The Board may offer to participants in the Deferred Compensation Plan, the Savings Incentive Plan, and the Defined Contribution System a self-directed brokerage investment option for the selection of additional mutual funds. The Board may establish the program structure, limits and maximums on investments in this option, as may be set forth in the

investment policy or by the recordkeeper. The Board has no responsibility to review the mutual funds available in this option or to determine the appropriate investment choices for participants selecting this option. The Board further has no responsibility to determine if the selection of the self-directed brokerage option is appropriate for any particular participant. The self-directed brokerage option is designed for knowledgeable investors and any participant selecting this option will be required to sign an election form containing at least the following:

- (1) That the participant understands and accepts any and all risks associated with this selection;
- (2) That the participant understands and accepts that none of the mutual funds available in the self-directed brokerage option have been reviewed for suitability or endorsed by the Board;
- (3) That the participant is solely responsible for determining the suitability or appropriateness of any selected mutual fund; and
- (4) That the participant agrees to hold the Plan and the Board harmless against any claims, damages or other causes of actions which may arise as a result of any negative consequences resulting from use of the self-directed brokerage option.

**[Source:** Added at 18 Ok Reg 551, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3265, eff 7-26-01 ; Amended at 32 Ok Reg 2178, eff 9-11-15]

## CHAPTER 25. DEFERRED COMPENSATION

[Authority: 74 O.S., §§ 1701 et seq.]

[Source: Codified 12-27-91]

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 590:25-1-1. Purpose

The rules in this Chapter are adopted to insure the efficient and orderly administration of the State Employees Deferred Compensation Plan and to provide guidelines for the investment of funds which have been deferred from the salaries of state employees. The Plan and Trust are intended to meet the requirements of Internal Revenue Code Sections 457 and 501(a).

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98]

#### 590:25-1-2. Statutory citations

The rules contained in this Chapter are the adopted Oklahoma State Employees Deferred Compensation Plan, as authorized by Sec. 457 of the Internal Revenue Code and in accordance with the provisions of Chapter 45 of Title 74, Oklahoma Statutes. The Plan consists of the following provisions and is applicable to each State employee who enrolls in the Plan.

#### 590:25-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Account"** means any of the accounts established for a Participant under the Plan, as described in Section 8 of Subchapter 5 of Chapter 25. The following Accounts may be established for a Participant within the 457(b) Plan:

- (A) A Pre-Tax Elective Deferral Subaccount to reflect the Participant's interest in the 457(b) Plan attributable to their Pre-Tax Elective Deferrals;
- (B) A Roth Elective Deferral Subaccount to reflect the Participant's interest in the 457(b) Plan attributable to their Roth Elective Deferrals;
- (C) A Rollover Contribution Account to reflect the Participant's interest in the 457(b) Plan attributable to their rollover contributions, made pursuant to Section 590:25-9-16. To the extent that Roth Rollover Contributions are made to the Plan, a separate subaccount under the Rollover Account shall be established to hold the Roth Rollover Contributions; and
- (D) A Transfer Contribution Account to reflect the Participant's interest in the 457(b) Plan attributable to amounts transferred to the Plan pursuant to 590:25-9-13. To the extent that such transferred amounts constitute

amounts from a designated Roth Account, a separate subaccount under the Transfer Contribution Account shall be established to hold such amounts from a designated Roth Account.

**"Amendments, alterations and changes"** means all Annuities, Mutual Fund(s), and Savings contracts can be altered, amended, changed or substituted for, from time to time by action of a majority of the Board and such altered, amended, changed, or substituted contract or contracts thereafter shall be used in the Plan.

**"Beneficiary"** means beneficiary or beneficiaries designated by the Participant in his Agreement with the Employer. If more than one designated beneficiary survives the participant, payments shall be made equally to the surviving beneficiaries unless otherwise provided in the Agreement. Nothing herein shall prevent the Participant from designating primary and secondary beneficiaries.

**"Board"** means the Oklahoma Public Employees Retirement System Board of Trustees, acting by and through the Plan Administrator.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Contracts and savings"** means any deferred fixed annuity, variable annuity, mutual fund, common trust fund, savings account, or any combination thereof, authorized by applicable law or regulation to be sold or made available in the State of Oklahoma by any company or companies approved by the Board.

**"Deferral"** means a postponement of recognition of income taxes to be paid on salary withheld and invested with the Oklahoma State Employees Deferred Compensation Plan.

**"Deferred compensation"** means that portion of the Participant's compensation which the Participant and the Employer mutually agree to defer until the conditions set forth in the Deferred Compensation Plan are met.

**"De-minimis account"** means an inactive plan account that does not exceed the amount allowed by the Internal Revenue Code.

**"Disability"** means an actual and continuous physical or mental incapacity which causes the Participant to be retired with a disability retirement under the Participant's retirement plan.

**"Emergency withdrawals"** means withdrawals of amounts because of an unforeseeable emergency and are only permitted to the extent reasonably needed to satisfy the emergency need.

**"Employee"** means any officer or employee of the executive, legislative, or judicial branches of the Employer who is an active member of a public retirement system of this state, but does not include:

(A) Employees of the public elementary, secondary, or area vocational school districts;

(B) Employees of The Oklahoma State System of Higher Education except employees of the Oklahoma State Regents of Higher Education, the employees of the governing boards and the employees at the George Nigh Rehabilitation Institute or the Medical Technology and Research Authority of Oklahoma who remain participating members of OPERS;

- (C) Persons on temporary, student, internship, or other limited-term appointments except for Executive Fellows in the Carl Albert Public Internship Program;
- (D) Persons employed pursuant to Section 1.6a of Title 53 of the Oklahoma Statutes or Section 1806.1 of Title 74 of the Oklahoma Statutes.

**"Employer"** means The State of Oklahoma, its agencies and any duly constituted authority or instrumentality of the State of Oklahoma.

**"Gender and number"** Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine, and the definition of any terms herein in the singular may also include the plural.

**"Normal retirement age"** means not later than April 1 of the calendar year following that in which the Participant attains age seventy (70) years and six (6) months if the Participant is no longer employed by the Employer or April 1 of the calendar year following that in which the Participant severs employment after attaining the age seventy (70) years and six (6) months and beginning no earlier than the earliest age at which the Participant can retire under any state retirement system with full benefits.

**"Participant"** means an individual who is eligible and agrees to defer compensation under the Plan.

**"Plan"** means the current Oklahoma State Employees Deferred Compensation Plan and as it may be amended from time to time.

**"Plan Administrator"** means the person or persons appointed by the Executive Director of the Oklahoma Employees Retirement System to administer the Plan pursuant to Section 1 of Subchapter 13 of this Chapter 25.

**"Plan Year"** means the twelve month period ending on June 30.

**"Pre-Tax Elective Deferrals"** means pre-tax voluntary deferrals made to the Plan pursuant to a Participant's election.

**"Qualified Distribution"** means a distribution from a Roth Elective Deferral Subaccount after the Participant has satisfied a five-year holding period and has attained age 59½, died, or become disabled within the meaning of Code Section 72(m)(7), in accordance with Code Section 402A(d). Within the meaning of this definition, the five-year holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Elective Deferral under the Plan or to another retirement plan which amount was directly rolled over to the Plan and ends when five consecutive taxable years have been completed.

**"Recordkeeper"** means the company designated by the Board to perform recordkeeping, administrative, and/or investment services to the Plan.

**"Retirement"** means the first date upon which each of the following shall have occurred: Separation from Service and attainment of Normal Retirement Age.

**"Roth Elective Deferrals"** means after-tax voluntary deferrals designated by the Participant as Roth Elective Deferrals that are being made in lieu of all or a portion of the Pre-Tax Elective Deferrals the Participant is otherwise eligible to make under the Plan.

**"Roth Rollover Contribution"** means an eligible rollover distribution from another applicable retirement plan in accordance with Code Section 402A(e)(1) only if it is a direct rollover, and only to the extent the rollover is permitted under the rules of Code Sections 402(c) and 402A(c).

**"Termination of service"** means the severance of the Participant's employment relationship with the Employer prior to his retirement, death or disability.

**"Trust"** means the provisions of this document that comprise the trust established hereunder, effective January 1, 1998.

**"Trust Fund"** means the fund established under the Trust, with the Board of Trustees as trustee, and held by said trustee in accordance with this Plan and Trust, to which deposits and Deferred Compensation under this Plan and Trust will be made and out of which benefits under this Plan and Trust will be provided.

**"Trustee"** means the individuals appointed to the Board of Trustees to administer the Trust Fund in accordance with this Plan and Trust.

**"Valuation Date"** means each business day of the calendar year. On each Valuation Date, the Recordkeeper shall determine the value of the Trust Fund.

**"Unforeseeable emergency"** means severe financial hardship to the Participant, resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

(A) The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

(i) Through reimbursement or compensation by insurance or otherwise.

(ii) By liquidation of the Participant's assets, to the extent the liquidation of these assets would not itself cause severe financial hardship, or

(iii) By cessation of deferrals under the Plan.

(B) Foreseeable personal expenditures normally budgetable, such as a down payment for a home, mortgage payments, rent, credit card debt, the purchase of an automobile, college or other schooling expense, etc., will not constitute an unforeseeable emergency.

**"Variable annuity contract"** means a Group Variable Annuity Contract approved for sale in the State of Oklahoma by any company or companies approved by the Board.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 13 Ok Reg 3333, eff 7-25-96 ; Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 17 Ok Reg 894, eff 2-10-00 through 7-14-00 (emergency); Amended at 17 Ok Reg 3185, eff 7-27-00 ; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 20 Ok Reg 1753, eff 6-12-03 ; Amended at 40 Ok Reg 2343, eff 9-11-23]

## **SUBCHAPTER 3. ELECTION TO DEFER COMPENSATION**

### **590:25-3-1. Election limits**

(a) The Employee may elect to participate in this Plan and consent to the Employer deferring a predetermined amount equivalent to at least Twenty-Five Dollars (\$25.00) a month, including Roth Elective Deferrals. Effective January 1, 2002, the maximum that may be deferred under the Plan for the taxable year shall not exceed the lesser of the maximum amount allowed each year as determined by the Internal Revenue Service or one hundred percent (100%) of the employee's includable compensation. For purposes of the Plan, only compensation from the Employer that is attributable to services performed for Employer may be includable in gross income. Compensation includes payments made by the later of 2 1/2 months after severance from employment or the end of the calendar year that includes the date of the Participant's severance from employment if they are payments that, absent a severance from employment, would have been paid had the Participant continued in employment with the Employer and are:

- (1) Regular compensation for services during the Participant's regular working hours, or compensation for services outside the Employee's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and the compensation would have been paid to the Participant prior to a severance from employment if the Participant had continued employment with the Employer; or
- (2) payments for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued; or
- (3) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Qualified Participant at the same time if the Participant had continued employment with the Employer and only to the extent that the payment is includible in the Qualified Participant's gross income.

(b) Includable compensation excludes amounts converted under the State's Internal Revenue Code Section 125 Plan and employee retirement contributions that are tax-deferred. The deferral will commence no sooner than the first pay period of the month following the date the enrollment application is properly completed by the Employee and accepted by the Plan Administrator.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 20 Ok Reg 1753, eff 6-12-03 ; Amended at 27 Ok Reg 1047, eff 5-13-10 ; Amended at 40 Ok Reg 2343, eff 9-11-23]

### **590:25-3-2. Catch-up election**

(a) In addition to the maximum limits under 590:25-3-1, the Plan provides for a limited catch-up election which will permit a Participant to defer the lesser of (i) \$15,000.00 annually or (ii) his or her regular maximum as allowed under the plan plus any allowable amounts that were not used for the years after 1978 ("alternate catch-up limit"). Effective January 1, 2002, the Plan provides for a limited catch-up election which will permit a Participant to defer the lesser of two times the applicable IRS limit for the year or the alternate catch-up limit.

(b) This election is only available once. A Participant may use the catch up limitation only if not previously used under this or any other plan. The election may be made no sooner than the last three taxable years immediately preceding the taxable year in which the Participant reaches Normal retirement age. It can be made with respect to all three (3) years.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 21 Ok Reg 1766, eff 6-11-04]

### **590:25-3-3. Discontinuation and deferral change**

(a) The election of the Employee to participate under this Plan and the amount of compensation to be deferred is continuous, except that the Employee may discontinue participation, change his or her deferral amount, or change the amount designated as Pre-Tax Elective Deferrals or Roth Elective Deferrals, at any time during the year by giving authenticated notice the month prior to the effective date of such change. Unless otherwise designated by the Participant, any deferrals under the Plan shall be treated as Pre-Tax Elective Deferrals.

(b) An Employee who elects to discontinue participation shall not again become eligible to participate in the Plan until one (1) month has elapsed from the Discontinuation Date, or as provided in 590:25-9-12.

(c) For purposes of this rule, authenticated notice means participant communication through the Plan's website, through the Recordkeeper's dedicated toll-free telephone service or by approved written form.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 18 Ok Reg 552, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3266, eff 7-26-01 ; Amended at 20 Ok Reg 1753, eff 6-12-03 ; Amended at 21 Ok Reg 1766, eff 6-11-04 ; Amended at 36 Ok Reg 1947, eff 9-13-19 ; Amended at 40 Ok Reg 2343, eff 9-11-23]

### **590:25-3-4. New employees**

Any person who becomes a new Employee after the effective date of the Plan, shall have the option upon his employment to become a Participant by electing to defer a portion of his prospective compensation for the balance of the year in which he becomes a new Employee.

### **590:25-3-5. Over Age 50 Catch-up Limits**

In addition to the maximum limits under 590:25-3-1, the Plan provides for a special catch-up for all employees who have attained age 50 before the close of the plan year. Such additional contributions shall be in accordance with, and subject to the limitations of Section 414(v) of the Internal Revenue Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the plan

implementing the required limitations of section 457 of the Internal Revenue Code. This catch-up may not be used in the same years the employee is using the election under 590:25-3-2.

[Source: Added at 19 Ok Reg 746, eff 12-20-01 (emergency); Added at 19 Ok Reg 1481, eff 5-28-02]

## **SUBCHAPTER 5. ASSETS, CREDITS, ACCOUNTS AND REPORTS**

### **590:25-5-1. Remittance**

The Employer shall remit Deferred Compensation in a timely manner so that participation amounts may be posted and transferred to the investment option selected by the state employee within ten (10) business days of the payday, end of payroll period or process date, whichever is later. The Board shall have no duty to determine whether the funds remitted by the Employer are correct nor to collect or enforce such payment. The Deferred Compensation of the Employee shall be invested in accordance with the investment election of the Participant as provided in 590:25-7-3 of these rules.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 20 Ok Reg 1753, eff 6-12-03]

### **590:25-5-2. Investment options [REVOKED]**

[Source: Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-5-3. Option transfers [REVOKED]**

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 13 Ok Reg 3333, eff 7-25-96 ; Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-5-4. Accounting [REVOKED]**

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-5-5. Individual account ownership [REVOKED]**

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-5-6. Records**

Subject to the provisions of 590:10-1-18 of these rules, all information, documents and copies thereof contained in a Participant's Plan file shall be given confidential treatment and shall not be made public by the Plan without prior written consent of the Participant to which it pertains, but shall be subject to subpoena or court order.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 22 Ok Reg 133, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1365, eff 5-26-05]

### **590:25-5-7. Asset ownership [REVOKED]**

[Source: Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-5-8. Establishment of Accounts**

The Plan Administrator shall cause Accounts to be established for each Participant, to reflect such Participant's Deferred Compensation. Each Account shall be subdivided further and separate records shall be maintained showing the manner in which each such Account is invested. Roth Elective Deferrals will be credited and debited to the Roth Elective Deferral Subaccount maintained for each Participant. Separate records also shall be maintained with respect to each such Account showing the amount of Deferred Compensation thereto, distributions therefrom, and the amount of income, expenses, gains and losses attributable thereto. No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to the Roth Elective Deferral Subaccount. All such subaccounts are referred to herein as a Participant's "Account." In general, the interest of each Participant hereunder at any time shall consist of the amount in his Account, as determined under Section 10 of this Subchapter, plus credits (representing the Participant's Deferred Compensation, profits, income, and other increments attributable to such Deferred Compensation) and minus debits (representing the Participant's proportionate share of losses and other decrements or expenses under the Plan and any and all distributions under the Plan made to or in respect of that Participant). These records shall be maintained by the Plan on a calendar quarter-end basis only and available for a period of three (3) years.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 20 Ok Reg 1753, eff 6-12-03 ; Amended at 40 Ok Reg 2343, eff 9-11-23]

### **590:25-5-9. Statement of a Participant's Account**

The Recordkeeper, as soon as practicable after the end of each calendar quarter of the year, or more frequently, as the Plan Administrator may determine, shall mail or distribute to each Participant (including those who have incurred a Termination of Service) a statement setting forth the Account of such Participant as of the end of such period. Such statement shall be deemed to have been accepted as correct unless written notice to the contrary is received by the Plan Administrator and/or Recordkeeper within sixty (60) days after the mailing or distribution of such statement to the Participant.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-5-10. Valuation of Accounts**

The Recordkeeper shall value the investments each business day. On each Valuation Date, there shall be allocated to the Accounts of each Participant the proportionate share of the increase or decrease in the fair market value of the Participant's Accounts in each of the investments, based on the beginning balance of such Accounts for such day. The Recordkeeper for the Plan may determine the increase or decrease in the fair market value of the Participant's Account in each of the investments on a cash, share or unit accounting basis. Whenever an event requires a determination of the value of the Participant's Accounts, the value shall be computed as of a Valuation Date coincident with or following the date of the event. These daily valuation records shall be maintained by the Recordkeeper for a period of one (1) year. Thereafter, Account information will be available on a quarter-end basis as provided in 590:25-5-8 of these rules.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 20 Ok Reg 1753, eff 6-12-03]

#### **590:25-5-11. Deemed deferrals**

This section shall apply if an employee has made a proper election to defer compensation and the election forms are received by the Plan on a timely basis but the deferral is not made at the first available payroll period through no fault of the employee. Upon approval of the Plan Administrator, the employee may double the deferral in the first possible month following discovery of the error in order to establish participation as originally intended. Solely for purposes of determining eligibility for any employer contribution, the employee's participation in the Plan will then be deemed to have begun in the month for which that deferral should have originally occurred. The deemed deferral provision of this section shall not alter any tax ramifications that are otherwise applicable.

[Source: Added at 15 Ok Reg 1239, eff 1-26-98 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 17 Ok Reg 610, eff 12-2-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3185, eff 7-27-00]

## **SUBCHAPTER 7. INVESTMENT OF DEFERRED AMOUNTS**

#### **590:25-7-1. Investment contracts**

The deferred amount shall be delivered by the Employer to the Board to be invested in one or more of the following types of contracts or accounts issued or made available by a company or companies approved by the Board:

- (1) Make deposits through a savings account in an institution or institutions as determined by the Board;
- (2) Make deposits to a deferred fixed interest contract or other type of investment;
- (3) Make deposits to a deferred variable interest contract or other type of investment;

- (4) Make deposits to a mutual fund, common trust fund, or separate account;
- (5) Make deposits to any combination of the investment options in subparagraphs (1) through (4) of this Section may be selected by the employee.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 13 Ok Reg 3333, eff 7-25-96 ; Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 18 Ok Reg 552, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3266, eff 7-26-01 ; Amended at 39 Ok Reg 2080, eff 9-11-22]

#### **590:25-7-2. Investment authority**

The investment options shall be selected in accordance with Section 1701 of Title 74 of the Oklahoma Statutes and Section 4 of Subchapter 1 of Chapter 20 of these Rules.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

#### **590:25-7-3. Participant directed investments**

(a) A Participant's Account shall be invested in accordance with the investment election of the Participant in accordance with the limitations established by the Board of Trustees pursuant to these rules, the investment policy or any pertinent contractual or investment fund provisions. The Employer, Board, Plan Administrator, Coordinator, and Recordkeeper shall be under no duty to question any investment direction of a Participant, or to review any directed investments, or to make suggestions to the Participant, nor shall they be held responsible in any manner for investment loss or depreciation in asset value of any investment.

(b) In the event of termination or elimination of any investment option from continued offering under the Plan, the Board may select default investment options for placement of affected funds. The Board may also designate periods where participants may have no access to select investment options.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 18 Ok Reg 552, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3266, eff 7-26-01]

## **SUBCHAPTER 9. BENEFITS**

#### **590:25-9-1. Commencement of benefits**

(a) The payment of amounts deferred under the Plan will become payable:

- (1) No earlier than thirty (30) days after the Participant separates from service with the State, through termination or retirement; or
- (2) No later than April 1 of the calendar year after the year the participant attains the applicable age as required by the federal Internal Revenue Code or such other date as may be permitted by the federal Internal Revenue Code, except as provided in 590:25-

9-5. Roth Elective Deferral Subaccounts and Roth Rollover Contribution Accounts are not subject to the requirements of Section 401(a)(9)(A) of the federal Internal Revenue Code.

(3) Plan-to plan transfers as described in 590:25-9-13 are not subject to the requirements for separation of service and shall be available for distribution within 45 days of acceptance of the properly completed distribution form as prescribed by OPERS.

(b) Rollover contributions as described in 590:25-9-16 are not subject to the requirements for separation of service and shall be available for distribution within 45 days of acceptance of a properly completed distribution form as prescribed by OPERS.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 28 Ok Reg 677, eff 5-12-11 ; Amended at 33 Ok Reg 1815, eff 9-11-16 ; Amended at 37 Ok Reg 2051, eff 9-11-20 ; Amended at 38 Ok Reg 2462, eff 9-11-21 ; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

### **590:25-9-2. Distribution schedule**

Distributions must be made primarily for the benefit of the Participant. A distribution which begins prior to the death of a Participant must be in a form so the total benefit amount will be paid over a period not to exceed the life expectancy of the Participant and a designated beneficiary.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 28 Ok Reg 677, eff 5-12-11]

### **590:25-9-3. Benefit totals**

The Participant shall be entitled to have paid to him the benefits created by his participating in this Deferred Compensation Plan, in accordance with the provisions of this Chapter. Generally, the benefits payable to the Employee will be the equivalent of the total benefits created by the investment selection made by the Participant, taking into consideration market losses and gains where applicable.

### **590:25-9-4. Normal retirement [REVOKED]**

[Source: Revoked at 12 Ok Reg 3249, eff 7-27-95]

### **590:25-9-5. Late retirement**

If the Participant continues employment after attaining such applicable age as set forth under the federal Internal Revenue Code Section 401(a)(9)(C)(v), all benefits payable under the Plan may be deferred until the Participant retires, terminates employment, dies or when the Participant is faced with an unforeseeable emergency. If the Participant is not an active State employee, the payment of benefits must begin no later than April 1 of the calendar year following the calendar year in which the Participant attained such age as set forth under the federal Internal Revenue Code Section 401(a)(9)(C)(v). Roth Elective Deferral Subaccounts and Roth Rollover Contribution Accounts are not subject to the requirements of Section 401(a)(9)(A) of the federal Internal

Revenue Code. No additional deferral under this Plan may be made by the Participant after termination of employment.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 38 Ok Reg 2462, eff 9-11-21 ; Amended at 39 Ok Reg 2080, eff 9-11-22 ; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

#### **590:25-9-6. Disability retirement**

If an Employee becomes permanently disabled in accordance with any State retirement system disability provision, the Participant shall be deemed to be retired and will be paid the benefits appropriate to such retirement.

#### **590:25-9-7. Termination of employment**

Effective January 1, 2002, if a Participant terminates his employment with the State before reaching Normal retirement age, the total accumulated benefits under the Plan will be payable to him in accordance with his election under 590:25-9-11.

[Source: Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02]

#### **590:25-9-8. Death prior to January 1, 2022**

This Section shall be effective for Participant deaths prior to January 1, 2022. If the Participant dies prior to receiving Plan benefits, the benefits payable under this Plan shall be paid to his or her designated beneficiary in accordance with the distribution option selected by the designated beneficiary. If the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated beneficiary in accordance with the distribution option selected by the Participant unless the beneficiary selects a different distribution option in accordance with Plan provisions.

[Source: Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 20 Ok Reg 1753, eff 6-12-03 ; Amended at 28 Ok Reg 677, eff 5-12-11 ; Amended at 39 Ok Reg 2080, eff 9-11-22]

#### **590:25-9-9. Designated beneficiary**

The Participant shall have the right to file with the Board, a beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the Participant's death. Following the death of the Participant, the beneficiary shall also have the right to file with the Board, a beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the beneficiary's death.

(1) The form for this purpose shall be provided by the Board and will have no effect until it is signed, filed with the Board by the Participant or the beneficiary, and accepted by the Board.

(2) If the Participant or beneficiary dies without having a beneficiary form on file, the payments shall be made to the

properly appointed fiduciary of the Participant's probate estate. Provided that if a fiduciary has not been appointed and qualified within one hundred twenty (120) days after the death, the payment may be made first, to a surviving spouse, second, to a surviving child or children, third, to a surviving parent or parents. (3) The Participant and the beneficiary accepts and acknowledges that he has the burden for executing and filing, with the Board, a proper beneficiary designation form.

[Source: Amended at 20 Ok Reg 1753, eff 6-12-03 ; Amended at 36 Ok Reg 1947, eff 9-13-19]

#### **590:25-9-10. Method of payment**

The payment of benefits shall begin no earlier than thirty (30) days after the occurrence of the event that gives rise to the beginning of the payment of benefits. The Board may direct that the method of payment be directly from the company that issues the contracts in which investments have been made, directly to the Participant or a designated beneficiary under the payment option elected by the Participant.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 28 Ok Reg 677, eff 5-12-11]

#### **590:25-9-11. Payment and distribution options**

The payment, method of payment and any distribution options shall be available in accordance with the benefit payment elections as set forth on the appropriate distribution request form. If the Participant elects to receive a deferred payout, the date selected for payouts to begin may be changed upon written notice to the Plan Administrator prior to the previously selected payout date subject to any applicable minimum distribution requirements. The method of payment may be changed upon written notice to the Plan Administrator. A Participant electing to commence distribution shall have the opportunity to designate the extent to which the distribution should be taken in whole or in part from Pre-Tax Elective Deferrals or the Participant's other subaccounts, as applicable. In the absence of such designation, the distribution shall be taken pro rata from the subaccounts within the Participant's Account.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 28 Ok Reg 677, eff 5-12-11 ; Amended at 40 Ok Reg 2343, eff 9-11-23]

#### **590:25-9-12. Emergency withdrawals**

Notwithstanding any other provisions of this Chapter, in the event of an unforeseeable emergency or financial hardship, such event being beyond the control of the Participant, a Participant may request the Plan Administrator to pay benefits to him or her immediately. If the application and justification for payment is approved by the Plan Administrator, payment will generally be processed by the Recordkeeper within ten (10) business days upon authorization from the Plan. Benefits to be paid shall be limited strictly to that amount needed to meet the emergency situation constituting financial hardship. Any remaining benefits shall be

paid in accordance with this Chapter. Effective February 1, 2002, two (2) or more emergency withdrawals paid will result in cancellation of that Participant's deferrals into the Plan for a period of not less than six (6) months following payment of the emergency withdrawal. For purposes of this rule any emergency withdrawals since the Participant's initial enrollment into the Plan will be considered when applying this rule except that no cancellation will occur until the Participant has had a subsequent emergency withdrawal after February 1, 2002. The Participant will be responsible for re-establishing his deferral amount upon completion of the six-month cancellation period.

[Source: Amended at 13 Ok Reg 3333, eff 7-25-96 ; Amended at 18 Ok Reg 552, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3266, eff 7-26-01 ; Amended at 19 Ok Reg 801, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 21 Ok Reg 1766, eff 6-11-04]

### **590:25-9-13. Plan-to-plan transfers**

This Plan will accept Deferred Compensation of an individual under another eligible state or municipal §457 plan, unless the transferring §457 account includes funds previously transferred or rolled-over which require tax accounting or distribution rules that are different from those contained in this Plan. It will also permit transfers to another §457 plan if the Employers receiving such amounts provide for the acceptance of these monies.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 20 Ok Reg 1753, eff 6-12-03]

### **590:25-9-14. Employee transfers**

If the Participant separates from service with a State agency in order to accept employment with another such State agency within the State, payout will not begin upon separation from service, regardless of any provision of the Plan.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-9-15. Taxation**

Benefits paid from the Deferred Compensation Plan are subject to the applicable Federal and State withholding rules and apply to all payments except those authorized for transfer to another §457 plan or rollover to an eligible retirement plan. A distribution from a Participant's Roth Elective Deferral Subaccount or Roth In-Plan Rollover Subaccount that is not a Qualified Distribution may be subject to additional taxation and/or penalties. Pursuant to Section 2 of Subchapter 15 of Chapter 25, the Board may withhold amounts necessary to cover federal and state taxes from such payments. Effective January 1, 2002, all payments will be reported on Form 1099-R.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 40 Ok Reg 2343, eff 9-11-23]

**590:25-9-16. Rollover contributions to the plan**

(a) Eligible Rollover Contributions. A Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan as eligible rollover contributions unless the distributing eligible retirement plan includes funds previously transferred or rolled-over which require tax accounting or distribution rules that are different from those contained in this Plan.

(b) Notwithstanding any other provisions in the Plan to the contrary, effective June 1, 2023, the Plan shall accept Roth Rollover Contributions from a Roth account under an applicable retirement plan in accordance with Code Section 402A(e)(1) only if it is a direct rollover and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(c) Separate Accounts. The Plan shall establish and maintain for the Participant separate accounts for any:

- (1) Eligible rollover contributions or Roth Rollover Contributions paid to the Plan;
- (2) Eligible Roth rollover contributions paid to the Plan from any eligible retirement plan including an eligible governmental plan under Code Section 457(b); and
- (3) Eligible rollover contributions paid to the Plan from an eligible governmental plan under Code Section 457(b).

[Source: Added at 19 Ok Reg 746, eff 12-20-01 (emergency); Added at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 20 Ok Reg 1753, eff 6-12-03 ; Amended at 40 Ok Reg 2343, eff 9-11-23]

**590:25-9-17. Rollovers to other plans**

(a) Effective January 1, 2002, notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) As used in this section:

- (1) "Eligible retirement plan", for purposes of a direct rollover, shall mean a qualified trust described in Section 401(a) of the Code, an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, or a Roth individual annuity (if the individual is eligible for a Roth rollover) described in Section 408(A)(e) for distributions made after December 31, 2007, that accepts the distributee's eligible rollover distribution. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 18, 2015, an eligible retirement plan includes a SIMPLE IRA as described in

Code § 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee's employer under Code § 408(p)(2), as described in Code § 72(t)(6). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

(2) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the designated beneficiary of the distributee, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); or (iv) any amount that is distributed on account of hardship.

(3) "Distributee" includes a Participant or a Participant's surviving spouse, or for the limited purposes set forth in paragraph (c) of this section, a non-spouse beneficiary.

(c) Effective January 1, 2007, a non-spouse beneficiary pursuant to Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in Section 408(a) of the Code, or an individual retirement annuity described in Section 408(b) of the Code, established for the purpose of receiving the distribution. A rollover pursuant to this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of Section 402(c) of the Code.

(d) Except as otherwise provided, this section shall apply to distributions made after December 31, 2001.

[Source: Added at 19 Ok Reg 746, eff 12-20-01 (emergency); Added at 19 Ok Reg 1481, eff 5-28-02 ; Amended at 24 Ok Reg 1140, eff 5-11-07 ; Amended at 27 Ok Reg 1047, eff 5-13-10 ; Amended at 29 Ok Reg 505, eff 5-11-12 ; Amended at 39 Ok Reg 2080, eff 9-11-22]

#### **590:25-9-18. Direct transfers**

A Participant may request a direct trustee to trustee transfer to a defined benefit governmental plan to purchase permissive service credit.

[Source: Added at 19 Ok Reg 746, eff 12-20-01 (emergency); Added at 19 Ok Reg 1481, eff 5-28-02]

#### **590:25-9-19. Transfers and rollover completion**

Any elections for plan-to-plan transfers or rollovers are contingent upon completion and acceptance of all necessary forms and documents. The forms for this purpose shall be provided by the Board and will have

no effect until it is signed, filed with the Board by the Participant or the beneficiary, and accepted by the Board. The Participant and the Beneficiary accepts and acknowledges that he has the burden for executing and filing, with the Board, the proper beneficiary designation form.

[Source: Added at 20 Ok Reg 1753, eff 6-12-03]

**590:25-9-20. Federal qualified military service**

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), and Section 414(u) of the Code.

(b) A Qualified Participant whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) may elect to make additional deferrals to the Plan upon resumption of employment with the Employer equal to the maximum annual deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the annual deferrals, if any, actually made for the Participant during the period of the interruption or leave. This right applies to five (5) years following the resumption of employment, if sooner, for a period equal to three times the period of the interruption or leave. The Employer, in accordance with 74 O.S. §1701, will make the Employer Contribution for such Qualified Participant for the equivalent period.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonable equivalent manner.

(d) Effective January 1, 2007, death benefits payable under this Plan shall be paid in accordance with Section 401(a)(37) of the Code, which provides that in the case of a Participant who dies while performing qualified military service (as defined in Section 414(u) of the Code), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that the Plan would otherwise provide had had the Participant resumed and then terminated employment with the Employer on account of death.

[Source: Added at 27 Ok Reg 1047, eff 5-13-10 ; Amended at 29 Ok Reg 505, eff 5-11-12]

**590:25-9-21. Discontinuance of 2009 required minimum distributions**

(a) Notwithstanding the provisions of 590:25-9-1 through 25-9-5 of these rules, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Internal Revenue Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding 590:25-9-17 of these rules, and solely for the purposes of applying the direct rollover provisions of the plan, certain additional distributions in 2009 will be treated as eligible rollover distributions.

(b) For purposes of the direct rollover provisions of the plan, both 2009 RMDs and Extended RMDs will be eligible rollover distributions without regard to IRS Section 401(a)(9)(H).

[Source: Added at 30 Ok Reg 554, eff 5-11-13]

### **590:25-9-22. Coronavirus-related distributions [EXPIRED]**

[Source: Added at 37 Ok Reg 873, eff 7-1-20 through 9-14-21 (emergency)<sup>1</sup>]

**Editor's Note:** <sup>1</sup>*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 9-15-21 (after the 9-14-21 expiration of this emergency action), Section 590:25-9-22 was no longer effective. For the official text of the emergency rule that was in effect from 7-1-20 through 9-14-21, see 37 Ok Reg 873.*

### **590:25-9-23. Death after December 31, 2021**

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of his or her entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 ½) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70 ½) after December 31, 2019). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either:

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under subsection (4), paragraph (B) shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A).

(2) If the Participant dies before distributions of his or her Account begins and the Participant has no designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his or her Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this section 590:25-9-22.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

(A) the surviving spouse of the Participant;  
(B) a child of the Participant who has not reached the age of majority;  
(C) disabled within the meaning of Code Section 72(m)(7);  
(D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or  
(E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B) above shall cease to be an eligible designated Beneficiary as of the date he or she reaches the age of majority.

[Source: Added at 39 Ok Reg 2080, eff 9-11-22]

#### **590:25-9-24. Discontinuance of 2020 required minimum distributions**

(a) Notwithstanding any other provisions of this Chapter, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 2, 2021) but for the enactment of Code § 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either 1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs") will receive those distributions for 2020 unless the Participant or Beneficiary chooses to not receive such distributions.

(b) For purposes of the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs also will be treated as eligible rollover distributions in 2020.

[Source: Added at 39 Ok Reg 2080, eff 9-11-22]

## **SUBCHAPTER 11. ADMINISTRATION OF PLAN**

#### **590:25-11-1. General**

The Board shall administer the Deferred Compensation Plan and shall be responsible for the policies and rules for the general administration of the Plan in accordance with Title 74 O.S. 1981, Sec. 1701, as amended.

**590:25-11-2. Applicable law**

Oklahoma law shall apply in determining the construction and validity of this Plan.

**590:25-11-3. Accountability of options [REVOKED]**

[Source: Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

**590:25-11-4. Tax consequences**

The Employer and the Board do not and cannot represent or guarantee that any particular Federal or State income, payroll, personal property or other tax consequence will occur because of the Participant's participation in the Plan. The Participant should consult with his own representative regarding all questions on Federal or State income, payroll, personal property or other tax consequences arising from participation in the Plan.

**590:25-11-5. Protected rights**

The rights of the Participant under this Plan shall not be subject to the rights of creditors of the Participant or any beneficiary, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for creditors or other third persons.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 17 Ok Reg 3185, eff 7-27-00]

**590:25-11-6. Amendment of Plan and/or Trust**

The Board may at any time amend or modify this Plan and/or Trust with or without the consent of the Participant [or any beneficiary thereof] provided that:

- (1) All amendments shall be accomplished in accordance with the Administrative Procedures Act. No amendments shall deprive the Participant of any of the benefits to which he is entitled under this Plan and/or Trust with respect to deferred amounts credited to his account prior to the effective date of the amendment;
- (2) This Plan and/or Trust alone, and any properly adopted amendment thereof, shall constitute the total Plan and/or Trust or contract between the Employer and the Participant regarding the Plan and/or Trust; no oral statement regarding the Plan and/or Trust may be relied upon by the Participant;
- (3) This Plan and/or Trust and any properly adopted amendment, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors and assigns and on all designated beneficiaries of the Participant, and
- (4) No amendment shall authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-11-7. Termination**

It is the present intention of the Employer to maintain this Plan and/or Trust. Nevertheless, the Employer reserves the right, at any time, to discontinue or terminate this Plan and/or Trust.

(1) If the Plan and/or Trust is curtailed or terminated, the Board shall nonetheless be responsible for the supervision and the payment of the benefits resulting from amounts contributed prior to the amendment, modification or termination in accordance with this Chapter.

(2) The Plan and Trust may be terminated at any time by the Employer, by giving notice in writing to the Board, which notice shall recite the date upon which the termination would be effective. After receipt of such notice, the Board shall continue to hold, invest and administer the Plan and Trust until the assets are liquidated and distributed to Participants and Beneficiaries. The distribution of assets shall occur as soon as administratively practicable after the termination of the Plan. The Trust shall terminate only when no assets of the Trust remain in the possession of the Board.

(3) The Trust is hereby designated as constituting a part of the Plan intended to be tax exempt under Code Sections 457 and 501(a). Until advised otherwise, the Board may conclusively assume that this Trust is tax exempt under Code Section 501(a) and that this Trust is exempt to that extent from federal income taxes.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

## **SUBCHAPTER 13. ADMINISTRATION FUNCTIONS OF THE PLAN**

### **590:25-13-1. Administrative staff**

The Executive Director of the Oklahoma Public Employees Retirement System shall be responsible for selection and retention of the Plan Administrator and shall provide oversight and assistance in the general administration of the Oklahoma State Employees Deferred Compensation Plan. The Executive Director, the Plan Administrator, the Deputy Director, and such other persons designated by the Executive Director, are authorized to sign all vouchers or warrants issued for the Deferred Compensation Plan.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 13 Ok Reg 3333, eff 7-25-96 ; Amended at 20 Ok Reg 1753, eff 6-12-03]

### **590:25-13-2. Deferred Compensation Coordinator**

(a) The appointing authority of each State agency shall designate a Coordinator to conduct all business transactions between the agency and the Oklahoma State Deferred Compensation Plan and shall notify the

Board of Trustees for the Oklahoma Public Employees Retirement System of the designee in writing. All Deferred Compensation Coordinators shall be furnished an informational booklet on the Oklahoma State Deferred Compensation Plan. Employees should send all correspondence to the Deferred Compensation Coordinator who will forward it to the Board of Trustees. All forms and correspondence should identify the Participant by name, Social Security Number and agency.

(b) The Coordinator is employed by and under the authority of each State agency and is not an employee of the Plan. The Plan will make available information and training opportunities, however, it is the responsibility of the Coordinator to become familiar with the Plan provisions and keep abreast of all changes and amendments. Neither the Plan nor the Board will be liable for or bound by any mistakes, errors or misrepresentations of the Coordinators.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95 ; Amended at 20 Ok Reg 1753, eff 6-12-03]

### **590:25-13-3. Completing forms**

Applicants for enrollment in the Deferred Compensation Plan will obtain Enrollment/Change forms from the Deferred Compensation Coordinator, the office of the Plan Administrator or, if available, from the Plan website or the Recordkeeper. The Coordinator will assist Participants in the preparation and submission of the enrollment agreement, changes in beneficiary, deferrals, and requests for payment of contributions for reason of termination of employment or unforeseeable emergency.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 20 Ok Reg 1753, eff 6-12-03]

### **590:25-13-4. Prospectus [REVOKED]**

[Source: Revoked at 12 Ok Reg 3249, eff 7-27-95]

### **590:25-13-5. Deferred Compensation Coordinator as liaison**

The Deferred Compensation Coordinator shall serve as a liaison representative between the Board of Trustees for the Deferred Compensation Plan and the Participant. The Coordinator shall be responsible for the proper preparation and submission of the Enrollment Application to the Board for final processing.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95]

### **590:25-13-6. General responsibilities of Deferred Compensation Coordinator**

The Deferred Compensation Coordinator shall inform Applicants and Participants concerning the Plan benefits and the Rules and Regulations applicable to enrollment, participation and termination. The Coordinator shall assist the Participant if any explanations of payment are needed to satisfy the Employee, or contact the Board, as necessary,

for assistance to the Participant.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95]

## **SUBCHAPTER 15. TRUST**

### **590:25-15-1. Establishment and acceptance of Trust**

The Board of Trustees acts as trustee of the Trust. The Board takes, holds, invests, administers and distributes in accordance with this Plan and Trust, all Deferred Compensation and assets paid or delivered to the Board pursuant to the Plan for the uses and purposes herein expressed. The Board shall be accountable for all Deferred Compensation received, but shall have no duty to require any compensation to be deferred or to determine that the amounts received comply with the Plan, or to determine that the Trust Fund is adequate to provide the benefits payable pursuant to the Plan.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-15-2. Payments from Trust Fund**

(a) The Recordkeeper shall make payments from the Trust Fund to such persons in such manner, at such times and in such amounts as the Board, acting through the Plan Administrator, shall direct. The Recordkeeper shall be fully protected in making, discontinuing, or stopping payments from the Trust Fund in accordance with the directions of the Board and/or the Plan Administrator. The Recordkeeper shall have no responsibility to see to the application of payments so made or to ascertain whether the directions of the Board and/or Plan Administrator comply with the Plan. When the Board and/or the Plan Administrator directs that any payment is to be made only during or until the time a certain condition exists regarding the payee, any payment made by the Recordkeeper in good faith, without actual notice or knowledge of the changed status or condition of the payee, shall be considered to have been properly made by the Recordkeeper and made in accordance with the direction of the Board and/or Plan Administrator.

(b) To the extent permitted by law, the Board shall be reimbursed for its expenses, if any, that are reasonable and necessary for the administration of the Plan and the Trust. The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Plan and the Trust, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the 401(a) plan and the 457(b) plan of the Defined Contribution System, the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following

factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the 401(a) plan and the 457 (b) plan of the Defined Contribution System, URSJJ, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

(c) The Board, acting through the Plan Administrator and/or Recordkeeper is authorized, to the extent required under applicable law, to withhold from distributions to any payee such sum as the Board determines is necessary to cover federal and state taxes for which the Board may be liable, which are, or may be, assessed with regard to the amount distributable to such payee, in accordance with Section 15 of Subchapter 9 of Chapter 25. Upon discharge or settlement of such tax liability the Board shall pay the balance of such sum, if any, to such payee or to his estate. Prior to making any payment or distribution hereunder, the Board may require such releases or other documents from any lawful taxing authority and may require such indemnity from any payee or distributee as the Board shall reasonably deem necessary for its protection.

(d) No amounts shall be payable to the Employer hereunder, from the Trust Fund, except as provided in the Plan.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98 ; Amended at 29 Ok Reg 505, eff 5-11-12 ; Amended at 34 Ok Reg 1897, eff 9-11-17]

### **590:25-15-3. Investment of Trust Fund**

(a) The corpus or income of the Trust Fund may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.

(b) The Board shall perform all acts within its authority under this agreement for the exclusive purpose of providing benefits to Plan Participants and their beneficiaries and defraying reasonable expenses of administering the Plan and Trust, and shall perform such acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Subject to the terms of the preceding sentence, the Board shall diversify the investments of the Trust Fund so as to minimize the risk of large losses by offering diverse investment options to Participants, unless under the circumstances it is clearly prudent not to do so. To the extent applicable for this Plan and Trust, provisions of the Oklahoma Statutes which reference the powers and duties of the Board are incorporated.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-15-4. Trust Accounts**

No less frequently than quarterly, the Recordkeeper shall provide a written account to the Board setting forth all transactions effected by it subsequent to the end of the period covered by its last previous account,

and listing the assets of the Trust Fund at the close of the period covered by such account. Each year, the Board shall publish an annual report presented in simple and easily understood language. The annual report shall cover the operation of the Plan and Trust, during the past year, including income, disbursements, and the financial condition of the Plan and Trust and any other information deemed relevant by the Board. The annual report shall be written in such a manner as to permit a readily under-standable means for analyzing the financial condition and performance of the Plan and Trust.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

#### **590:25-15-5. Miscellaneous**

(a) The creation of this Trust shall not be construed as giving any person entitled to benefits hereunder or other employees of the Employer, who are not Participants of the Plan, any equity or other interest in the assets, business, or affairs of the Employer.

(b) No additional bond, surety or security shall be required of the Board except as may be required by law or by the Employer.

(c) The Board may procure insurance indemnifying the members of the Board from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board.

(d) If any provision or provisions of this Plan and/or Trust shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Plan and/or Trust, but shall be fully severable and the Plan and/or Trust shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

(e) The Employer shall have the authority, but shall be under no duty, to enforce this Trust on behalf of any and all persons having or claiming any interest in the Trust Fund. In any action or proceeding affecting the Trust Fund or the administration thereof, or for instructions to the Board, the Employer and the Board shall be the only necessary parties, and no employees of the Employer or their beneficiaries, or any other person having or claiming to have an interest in the Trust Fund shall be entitled to any notice of process, and any judgment that may be entered in such action or proceeding shall, be binding on all persons having or claiming to have any interest in the Trust Fund.

(f) Entering into this Plan and Trust by the Employer and the Participant shall not be construed to give a contract of employment to the Participant or to alter or amend an existing employment contract of the Participant, if in fact one exists, nor shall the entering into this Plan and Trust be construed as affording the Participant any representation or guarantee regarding his continued employment.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

## CHAPTER 30. QUALIFIED DOMESTIC RELATIONS ORDERS

[**Authority:** 20 O.S., § 1111; 74 O.S., § 923]  
[**Source:** Codified 7-27-95]

### **590:30-1-1. Purpose**

The rules of this Chapter have been adopted to establish policies and procedures for the process of approving qualified domestic relations orders, setting standards for said orders and administering the payment of benefits to alternate payees.

[**Source:** Added at 12 Ok Reg 3255, eff 7-27-95]

### **590:30-1-2. Definitions**

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Qualified Domestic Relations Order"** means an order issued by a district court of the State of Oklahoma pursuant to the domestic relations laws of this state which relates to the provision of marital property rights to a spouse or former spouse of a member or provision of support for a minor child or children and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive a portion of the benefits payable with respect to a member of Oklahoma Public Employees Retirements System, or The Uniform Retirement System for Justices and Judges.

[**Source:** Added at 12 Ok Reg 3255, eff 7-27-95 ; Amended at 16 Ok Reg 616, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2017, eff 6-11-99]

### **590:30-1-3. Filing a qualified domestic relations order**

A member, his legal representative, a member's former spouse, or his legal representative may file a qualified domestic relations order with the System. In not more than ninety (90) days of such filing, the System will acknowledge receipt and notify all parties listed in the order that the order has been accepted or that clarification of the order must be provided. All qualified domestic orders filed with the System must be in accordance with Oklahoma Statutes and accepted by the System before they are enforceable. No rights or benefits are enforceable until the order is accepted.

[**Source:** Added at 12 Ok Reg 3255, eff 7-27-95 ; Amended at 16 Ok Reg 616, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2017, eff 6-11-99]

### **590:30-1-4. Contents of qualified domestic relations order**

For a qualified domestic relations order (QDRO) to be accepted and binding on the System the order must meet the following requirements:

- (1) The order must clearly specify the following:
  - (A) the name and last-known mailing address (if any) of the member and the name and mailing address of the alternate payee covered by the order and Social Security

- number of each,
- (B) the dollar amount or exact percentage of the member's benefits to be paid to the alternate payee,
- (C) the number of payments or period to which such order applies,
- (D) the characterization of the benefit as to marital property rights or child support, and whether the benefit ceases upon the death or remarriage of the alternate payee,
- (E) each plan to which such order applies,
- (F) the date of marriage and the date of commencement of divorce proceedings giving rise to the QDRO for division of marital property,
- (G) if the order is for child support, the name of each child covered by the order, each child's date of birth and the Social Security Number of each,
- (H) if the order is for child support, the exact amount (if any) awarded in continuing child support for each child and the exact amount (if any) awarded for arrearages, and
- (I) any conditions that will cause the QDRO to terminate.

(2) The order meets the requirements of this section only if such order:

- (A) does not require the System to provide any type or form of benefit, or any option not otherwise provided under the state law as related to the Retirement System,
- (B) does not require the System to provide increased benefits,
- (C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic relations order by the System, and
- (D) does not require payment of benefits to an alternate payee prior to the actual retirement date of the related member or prior to the date the member elects to receive a lump sum distribution of his or her retirement account upon withdrawal from the System or Plan.

(3) The order must provide an exact dollar amount or percentage of total benefit. The order may not provide for a percentage of the benefit accrued on a given date, unless the exact dollar amount is also provided. The order may not provide a formula which requires the System to calculate the amount payable to an alternate payee.

(4) If the Order awards a dollar amount, subsequent benefit adjustment will not change the amount of payment to an alternate payee unless the order specifically provides for the apportionment of future cost of living increases. If the order awards a percentage of the total benefit, the payment to the alternate payee may increase or decrease due to subsequent benefit adjustments, unless the order directs otherwise.

(5) Upon the effective date of the Medicare Gap Benefit option as provided in Chapter 10, Subchapter 19, of these rules, the order must contain a provision requiring that the award will only be made if the Pre-Medicare and/or Post Medicare Benefit amounts of the member are sufficient to make the required payment to the alternate payee and result in a payment amount to the member of at least One Hundred Dollars (\$100.00) per month.

[Source: Added at 12 Ok Reg 3255, eff 7-27-95 ; Amended at 16 Ok Reg 616, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2017, eff 6-11-99 ; Amended at 20 Ok Reg 1758, eff 6-12-03 ; Amended at 23 Ok Reg 1487, eff 5-25-06]

**590:30-1-5. Payment to alternate payee**

(a) Payments to an alternate payee from the Retirement Systems will be made in a like manner and at the same time payment is made to the member. Payment will be either a lump sum distribution of the contributions due the member upon termination of service, or monthly benefit payments under the retirement options available to the member at the time he or she applies for retirement benefits. The alternate Payee shall not be allowed to choose a method of payment that is different from the method chosen by the member. The alternate payee may not receive payment of any kind prior to the member making application and becoming eligible for payment of benefits.

(b) Federal and Oklahoma state income taxes will be withheld from the payment to an alternate payee in accordance with applicable federal and state statutes.

(c) It is the responsibility of the alternate payee to notify the System of any change in the alternate payee's address.

[Source: Added at 12 Ok Reg 3255, eff 7-27-95 ; Amended at 16 Ok Reg 616, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2017, eff 6-11-99 ; Amended at 20 Ok Reg 1758, eff 6-12-03]

**590:30-1-6. Termination of a qualified domestic relations order**

(a) A qualified domestic relations order, whether for provision of marital property or child support, will terminate when the System has fully met the provisions of the order. The obligation of the System to pay an alternate payee pursuant to any qualified domestic relations order shall cease upon the death of the member.

(b) In the event a qualified domestic relations order requires the benefits payable to an alternate payee to terminate upon the remarriage of the alternate payee, the System shall terminate said benefit only upon the receipt of a certified copy of a marriage license, or a copy of a certified order issued by the court that originally issued said qualified domestic relations order declaring the remarriage of said alternate payee.

(c) If the qualified domestic relations order is for continuing child support obligations, the order shall cease upon the death of a minor child. If the qualified domestic relations order is for arrearages owed for child support, the order shall not cease upon the death of a minor child.

[Source: Added at 12 Ok Reg 3255, eff 7-27-95 ; Amended at 20 Ok Reg 1758, eff 6-12-03]

**590:30-1-7. System not subject to ERISA**

For purposes of this Chapter the Oklahoma Public Employees Retirement System, and the Uniform Retirement System for Justices and Judges are not subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. Section 1001, et seq., as amended from time to time, or rules and regulations promulgated thereunder, and court cases interpreting said act. The order should not reference ERISA.

[Source: Added at 12 Ok Reg 3255, eff 7-27-95 ; Amended at 16 Ok Reg 616, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2017, eff 6-11-99]

## CHAPTER 35. DEFERRED SAVINGS INCENTIVE PLAN

[Authority: 74 O.S., §§ 1701 et seq.]

[Source: Codified 7-13-98]

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 590:35-1-1. Purpose

(a) The Rules in this Chapter are adopted to insure the efficient and orderly administration of the Oklahoma State Employees Deferred Savings Incentive Plan, to establish policies and procedures for implementing and administering the Plan, and to provide guidelines for the investment of funds which have been contributed for the benefit of State Employees.

(b) The Plan has been established as a money purchase pension plan pursuant to Internal Revenue Code Section 401(a). This Plan is intended to qualify as a "governmental plan" within the meaning of Internal Revenue Code Section 414(d) and is not subject to the Employee Retirement Income Security Act of 1974 ("ERISA"). The Plan and Trust are intended to meet the requirements of Internal Revenue Code Sections 401(a) and 501(a).

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### 590:35-1-2. Statutory citations

The Rules contained in this Chapter are the adopted Oklahoma State Employees Deferred Savings Incentive Plan, as authorized by Internal Revenue Code Section 401(a) and in accordance with the provisions of Section 1707 of Title 74 of the Oklahoma Statutes. The Plan consists of the following provisions and is applicable to each Qualified Participant in the Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### 590:35-1-3. Definitions

The following words, terms, or phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Account"** means any of the accounts established for a Participant under the Plan, as described in Section 590:35-5-1.

**"Allocation Date"** means each business day of the calendar year.

**"Beneficiary"** means beneficiary or beneficiaries designated in writing by the Participant. If more than one designated beneficiary survives the Participant, payments shall be made equally to the surviving beneficiaries unless otherwise provided in the form provided by the Plan Administrator. Nothing herein shall prevent the Participant from designating primary and contingent beneficiaries.

**"Board of Trustees"** means the Oklahoma Public Employees Retirement System Board of Trustees, acting by and through the Plan

Administrator.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Compensation"** with respect to a Participant means taxable gross income from the Employer. Notwithstanding the prior sentence, Compensation shall include amounts deferred pursuant to Code Sections 125, 402(h), 402(a)(8), 457, 414(h), and 403(b). For purposes of the Plan, only compensation from the Employer that is attributable to services performed for the Employer may be includable in gross income. The Compensation taken into account under the Plan shall not exceed the "OBRA '93 annual compensation limit." The "OBRA '93 annual compensation limit" is \$150,000, as adjusted by the Commissioner of Internal Revenue for increases in the cost of living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined ("Determination Period") beginning in such calendar year. If a Determination Period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the Determination Period, and the denominator of which is 12. Compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed Two Hundred Thousand Dollars (\$200,000), as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Compensation means Compensation during the Plan Year or other consecutive twelve (12) month period over which Compensation is otherwise determined under the Plan (the Determination Period). The cost-of-living adjustment in effect for a calendar year applies to Compensation for the Determination Period that begins with or within such calendar year.

**"Deferred Compensation Plan"** means the Oklahoma State Employees Deferred Compensation Plan and as it may be amended from time to time, which is governed by Code Section 457.

**"Disability"** means an actual and continuous physical or mental incapacity which causes the Participant to be retired with a retirement under the Participant's State retirement plan.

**"Early Retirement"** means the first date upon which each of the following shall have occurred: separation from service and attainment of Early Retirement Age.

**"Early Retirement Age"** means age 55.

**"Effective Date"** means January 1, 1998.

**"Employer"** means The State of Oklahoma, its agencies and any duly constituted authority or instrumentality of the State of Oklahoma.

**"Employer Contribution"** means the amount contributed to the Plan by the Employer on behalf of Participants under Section 590:35-7-1.

**"Fiscal Year"** means the fiscal year of the State of Oklahoma, which is July 1 to June 30.

**"Limited Participant"** means a Participant who is not a State Employee or who is not otherwise a Qualified Participant and who has amounts in the Plan as a result of the transfer of excess contributions from the Oklahoma Public Employees Retirement System pursuant to Section 910.5 of Title 74 of the Oklahoma Statutes.

**"Normal Retirement"** means the first date upon which each of the following shall have occurred: separation from service and attainment of Normal Retirement Age.

**"Normal Retirement Age"** means age 62.

**"Participant"** means a State Employee who is participating in the Plan or who has funds invested in accordance with its provisions or any former State Employee who is retired or who has had a Termination of Service, but who has not received a distribution of his entire interest under the Plan or a person who has funds invested in the Plan as a result of the transfer of excess contributions from the Oklahoma Public Employees Retirement System.

**"Plan"** means the Oklahoma State Employees Deferred Savings Incentive Plan and as it may be amended from time to time.

**"Plan Administrator"** means the person designated by the Board of Trustees to administer the Plan.

**"Plan Year"** means the twelve month period ending on June 30.

**"Qualified Participant"** means a State Employee who is an active participant in the Oklahoma State Employees Deferred Compensation Plan making deferrals of at least twenty-five dollars (\$25.00) per month.

**"Recordkeeper"** means the company designated by the Board of Trustees to perform recordkeeping, administrative, and/or investment services to the Plan.

**"State Employee"** means any officer or employee of the executive, legislative or judicial branches of the government of the State of Oklahoma who is an active member of a public retirement system of the State of Oklahoma, but does not include:

- (A) Employees of the public elementary, secondary, or area vocational school districts;
- (B) Employees of The Oklahoma State System of Higher Education except employees of the Oklahoma State Regents of Higher Education and employees of the governing boards;
- (C) Persons on temporary, student, internship, or other limited-term appointments except for Executive Fellows in the Carl Albert Public Internship Program created in Section 840-3.4 of Title 74 of Oklahoma Statutes;
- (D) Persons employed pursuant to Section 1.6a of Title 53 of the Oklahoma Statutes or Section 1806.1 of Title 74 of the Oklahoma Statutes; or

**"Termination of Service"** means the severance of the Participant's employment relationship with the Employer prior to his Early Retirement, Normal Retirement, death or Disability, including Limited Participants severing the employment relations with an OPERS participating employer.

**"Trust"** means the provisions of this document that comprise the trust established hereunder.

**"Trust Fund"** means the fund established under the Trust, with the Board of Trustees as trustee, and held by said trustee in accordance with this Plan and Trust, to which deposits and contributions under this Plan and Trust will be made and out of which benefits under this Plan and Trust will be provided.

**"Trustee"** means the individuals appointed to the Board of Trustees to administer the Trust Fund in accordance with this Plan and Trust.

**"Valuation Date"** means each business day of the calendar year. On each Valuation Date, the Recordkeeper shall determine the value of the Trust Fund.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99 ; Amended at 19 Ok Reg 749, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1486, eff 5-28-02]

#### **590:35-1-4. Gender and number**

Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine, and the definition of any terms herein in the singular may also include the plural.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **SUBCHAPTER 3. ELIGIBILITY AND PARTICIPATION**

#### **590:35-3-1. Eligibility**

All Qualified Participants are eligible to participate in this plan. A Qualified Participant shall be eligible for an allocation of contributions for the month provided a salary deferral of at least twenty-five dollars (\$25.00) for said month was made to the Deferred Compensation Plan even if the Participant terminates participation during said month.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-3-2. Application for participation**

Participation in the Plan for a Qualified Participant is automatic following one month of participation in the Deferred Compensation Plan and completion of the enrollment documents required by the Plan. Participation in this Plan is not voluntary and an otherwise eligible Qualified Participant may not opt out of this Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-3-3. Termination of Participation**

A Participant shall cease to be eligible for allocations of contributions under the Plan upon the Participant's cessation of contributions to the Deferred Compensation Plan, Termination of Service, Early Retirement, Normal Retirement, death or Disability. A Participant's participation in the Plan shall cease upon the complete distribution of a Participant's Account balance.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

## **SUBCHAPTER 5. ACCOUNTS**

### **590:35-5-1. Establishment of Accounts**

The Plan Administrator shall cause Accounts to be established for each Participant, to reflect such Participant's Employer Contributions. Each Account shall be subdivided further and separate records shall be maintained showing the manner in which each such Account is invested. Separate records also shall be maintained with respect to each such Account showing the amount of contributions thereto, distributions therefrom, and the amount of income, expenses, gains and losses attributable thereto. All such subaccounts are referred to herein as a Participant's "Account." In general, the interest of each Participant hereunder at any time shall consist of the amount in his Account, as determined under Section 590:35-5-3, plus credits (representing the Participant's allocable share of contributions, profits, income, and other increments attributable to such contributions) and minus debits (representing the Participant's proportionate share of losses and other decrements or expenses under the Plan and any and all distributions under the Plan made to or in respect of that Participant). These records shall be maintained by the Plan on a calendar quarter-end basis only and available for a period of three (3) years.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 20 Ok Reg 1759, eff 6-12-03]

### **590:35-5-2. Statement of a Participant's Account**

The Recordkeeper, as soon as practicable after the end of each calendar quarter of the year, or more frequently, as the Plan Administrator may determine, shall mail or distribute to each Participant (including those who have incurred a Termination of Service) a statement setting forth the Account of such Participant as of the end of such period. Such statement shall be deemed to have been accepted as correct unless written notice to the contrary is received by the Plan Administrator and/or Recordkeeper within sixty (60) days after the mailing or distribution of such statement to the Participant.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-5-3. Valuation of Accounts**

The Recordkeeper shall value the investments each business day. On each Valuation Date, there shall be allocated to the Accounts of each Participant the proportionate share of the increase or decrease in the fair market value of the Participant's Accounts in each of the investments, based on the beginning balance of such Accounts for such day. The Recordkeeper for the Plan may determine the increase or decrease in the fair market value of the Participant's Account in each of the investments on a cash, share or unit accounting basis. Whenever an event requires a determination of the value of the Participant's Accounts, the value shall

be computed as of a Valuation Date coincident with or following the date of the event. These daily valuation records shall be maintained by the Recordkeeper for a period of one (1) year. Thereafter, Account information will be available on a quarter-end basis as provided in 590:35-5-1 of these rules.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 20 Ok Reg 1759, eff 6-12-03]

## **SUBCHAPTER 7. CONTRIBUTIONS**

### **590:35-7-1. Employer contributions**

(a) The Employer shall contribute to the Trust Fund an amount referred to as an Employer Contribution. Such contribution shall be calculated as follows: in accordance with 74 O.S. §1707, a contribution in the amount of or equivalent to Twenty-Five Dollars (\$25.00) per month shall be made to the Plan on behalf of each Qualified Participant, as soon as practicable after receipt.

(b) Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), and Section 414(u) of the Internal Revenue Code.

(1) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(2) Effective January 1, 2007, death benefits payable under this Plan shall be paid in accordance with Section 401(a)(37) of the Internal Revenue Code, which provides that in the case of a Participant who dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that the Plan would otherwise provide had the Participant resumed and then terminated employment with the Employer on account of death.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99 ; Amended at 27 Ok Reg 1049, eff 5-13-10 ; Amended at 29 Ok Reg 507, eff 5-11-12 ; Amended at 31 Ok Reg 2319, eff 9-12-14]

### **590:35-7-2. Employee contributions**

Employees are not required or permitted to make contributions under this Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-7-3. Rollover contributions**

(a) Qualified Participants may make rollover contributions to this Plan, provided such rollover contributions meet the requirements under Code Sections 402(c)(4), 403(a)(4), or 408(d)(3), or any other applicable section of the Code or regulations.

(b) Effective January 1, 2002, the Plan shall accept direct rollovers of eligible pre-tax rollover distributions excluding after-tax employee contributions, made after December 31, 2001, from the following types of plans:

- (1) a qualified plan described in Code Section 401(a) or 403(a);
- (2) an annuity contract described in Code Section 403(b); and
- (3) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(c) Effective January 1, 2002, the Plan shall accept a Participant contribution of an eligible pre-tax rollover distribution excluding after-tax employee contributions, from the following types of plans:

- (1) a qualified plan described in Code Section 401(a) or 403(a);
- (2) an annuity contract described in Code Section 403(b); and
- (3) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(d) The Plan shall accept a Participant rollover contribution of the portion of a pre-tax distribution from an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includable in gross income.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99 ; Amended at 19 Ok Reg 749, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1486, eff 5-28-02 ; Amended at 20 Ok Reg 1759, eff 6-12-03]

### **590:35-7-4. Time and method of payment of contributions**

The Employer shall make all contributions to the Trust Fund in the form of cash. Employer Contributions for any Plan Year shall be paid to the Trust Fund monthly, but in any event, no later than the 15th day of the sixth calendar month following the Fiscal Year of the Employer with or within which the particular limitation year ends.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-7-5. Funding vehicle**

There is hereby created in the State Treasury a State fund to be entitled the "Oklahoma State Employees Deferred Savings Incentive Plan

Fund." The purpose of said fund is to receive periodic State appropriated or transferred funds from the State Treasury, as provided in Section 1707 of Title 74 of the Oklahoma Statutes, and make the contributions to the Plan and Trust Fund on behalf of Qualified Participants.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-7-6. Mistaken Employer Contribution**

(a) If, due to a mistake of fact, an Employer Contribution has been allocated to an Account in error, the Recordkeeper shall reallocate from such Account to a suspense account as soon as administratively possible but not later than the Plan Year immediately following the Plan Year in which the mistaken Employer Contribution was made:

- (1) If the Employer Contribution has experienced a gain, the amount of the Employer Contribution, plus any gain attributable to that contribution, or
- (2) If the Employer Contribution has experienced a loss, the remaining amount of the Employer Contribution; or
- (3) If the Employer Contribution has experienced no gain or no loss, the amount of the Employer Contribution.

(b) Amounts so reallocated to a suspense account shall be used to reduce the Employer Contribution.

[Source: Added at 15 Ok Reg 1240, eff 1-26-98 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

## **SUBCHAPTER 9. ALLOCATIONS AND VESTING**

#### **590:35-9-1. Allocation of Employer Contributions**

As of the Allocation Date, the Recordkeeper shall allocate the Employer Contribution to the Account of each Qualified Participant (or, where applicable, to a Beneficiary in respect of a Qualified Participant) on whose behalf such contribution was made.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-9-2. Vesting**

A Participant shall at all times be 100% vested in his Account, provided that a Participant's Account may be forfeited pursuant to Section 24.1 of Title 51 of the Oklahoma Statutes. To the extent any forfeitures occur, such forfeitures shall be retained and used by the Plan pursuant to Section 590:35-19-7.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99]

## **SUBCHAPTER 11. INVESTMENTS**

### **590:35-11-1. Investment authority**

The investment options shall be selected in accordance with Section 1701 of Title 74 of the Oklahoma Statutes and Section 590:20-1-4 of these Rules, provided such investment options satisfy the requirements of the Code for qualified plan investments. All Plan assets which have not been directed by the Participant shall be invested by the Trustee in accordance with the investment options selected by the Participant for his or her 457 Deferred Compensation Plan assets.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-11-2. Participant directed investments**

(a) A Participant's Account shall be invested in accordance with the investment election of the Participant in accordance with the limitations established by the Board of Trustees pursuant to these rules, the investment policy or any pertinent contractual or investment fund provisions. The Employer, Board, Plan Administrator, Coordinator, and Recordkeeper shall be under no duty to question any investment direction of a Participant, or to review any directed investments, or to make suggestions to the Participant, nor shall they be held responsible in any manner for investment loss or depreciation in asset value of any directed investment.

(b) In the event of termination or elimination of any investment option from continued offering under the Plan, the Board may select default investment options for placement of affected funds. The Board may also designate periods where participants may have no access to select investment options.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 18 Ok Reg 554, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3268, eff 7-26-01]

## **SUBCHAPTER 13. BENEFITS AND DISTRIBUTIONS**

### **590:35-13-1. Commencement**

(a) In the event of a Participant's separation from service as a result of Early Retirement, Normal Retirement, death, Disability or Termination of Service, the Participant shall be entitled to receive a distribution of his or her Account under the Trust Fund. In the event that a Participant dies before the entire balance of his or her Account is distributed, Section 590:35-13-5 shall apply.

(b) The Participant may elect, on forms prescribed by OPERS, the time at which distributions under the Plan are to commence by designating the month and year during which the first distribution is to be made; however, in no event shall payment begin later than the required beginning date provided by Code Section 401(a)(9). The payment of benefits shall begin no earlier than thirty (30) days after the occurrence of the event that gives rise to the beginning of the payment of benefits.

(c) Rollover contributions as described in 590:35-7-3 are not subject to the requirements for separation of service and shall be available for distribution within 45 days of acceptance of a properly completed distribution form as prescribed by OPERS.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 20 Ok Reg 1759, eff 6-12-03 ; Amended at 28 Ok Reg 678, eff 5-12-11 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

#### **590:35-13-2. Benefit totals**

The Participant shall be entitled to have paid to him the benefits created by his participating in this Plan, in accordance with the provisions of this Chapter. Generally, the benefits payable to the Participant will be the equivalent of the total benefits created by the investment selection made by the Participant, taking into consideration market losses and gains where applicable.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99]

#### **590:35-13-3. Late retirement**

If the Participant continues his employment after attaining 72 years of age or such other date as may be permitted by the federal Internal Revenue Code, all benefits payable under the Plan may be deferred until the Participant retires, terminates his employment or dies. If the Participant is not an active State Employee, the payment of benefits must begin no later than April 1 of the calendar year following the calendar year in which the Participant attained age 72 or such other date as may be permitted by the federal Internal Revenue Code.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 38 Ok Reg 2463, eff 9-11-21]

#### **590:35-13-4. Disability retirement**

If a Participant becomes permanently disabled and begins to receive retirement benefits in accordance with any State retirement system's disability provision, the Participant shall be deemed to be retired and will be paid the benefits appropriate to such retirement.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99]

#### **590:35-13-5. Death prior to January 1, 2022**

(a) This Section shall be effective for Participant deaths prior to January 1, 2022.

(b) If the Participant dies prior to receiving Plan benefits, or the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated Beneficiary of the Participant in accordance with the distribution option selected by the Participant or the Beneficiary.

(c) Distributions must be made primarily for the benefit of the Participant (or former Participant). Therefore, distribution which begins prior to the death of a Participant must be in a form such that the total benefit amount will be paid over a period not to exceed the life expectancy of the Participant and a designated Beneficiary. Any amount not distributed to the Participant during his or her lifetime shall be distributed after the death of the Participant at least as rapidly as under the method of distribution used as of the date of his or her death. In addition, if the Participant dies prior to the commencement of distributions, the Participant's Account shall be distributed to the Beneficiary, commencing within one year of the employee's death, over the life of such Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary) but not to exceed 15 years; provided however if such Beneficiary is the surviving spouse of the Participant, then

- (1) such distributions shall, in all events, commence no later than December 31 of the calendar year in which the Participant would have attained age 70 1/2 (or such other date as may be permitted under applicable Treasury Regulations), and
- (2) benefits payable to such spouse shall be completed during a period not in excess of such spouse's life expectancy. Life expectancies will not be recalculated annually.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 28 Ok Reg 678, eff 5-12-11 ; Amended at 38 Ok Reg 2463, eff 9-11-21 ; Amended at 39 Ok Reg 2083, eff 9-11-22]

#### **590:35-13-6. Designated beneficiary**

The Participant shall have the right to file with the Plan Administrator a beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the Participant's death. The Beneficiary shall have the right to apply to the Plan Administrator to amend the payment option as previously elected by the Participant.

- (1) The form for this purpose shall be provided by the Plan Administrator and will have no effect until it is signed, filed with the Plan Administrator by the Participant or Beneficiary, and accepted by the Plan Administrator.
- (2) If the Participant dies without having a Beneficiary form on file or is not survived by the designated Beneficiary, the payments shall be made to the beneficiary designated by the Participant pursuant to Section 590:25-9-9.
- (3) If the Participant dies without having a Beneficiary form on file or is not survived by the designated Beneficiary under this Plan or the Deferred Compensation Plan, the payments shall be made to the properly appointed fiduciary of the Participant's probate estate. Provided that if a fiduciary has not been appointed and qualified within one hundred twenty (120) days after the death, the payment may be made first, to a surviving spouse, second, to a surviving child or children, third, to a surviving parent or parents.

(4) The Participant accepts and acknowledges that he has the burden for executing and filing, with the Plan Administrator, a proper beneficiary designation form.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 36 Ok Reg 1948, eff 9-13-19]

#### **590:35-13-7. Payment and distribution options**

Subject to the provisions of Section 590:35-13-1 herein, a Participant (or Beneficiary, where applicable) may elect within the period and on the forms prescribed by the Plan Administrator, to receive the balance of his or her Account in the form of:

- (1) Lump sum, payable in cash;
- (2) Substantially level periodic installments;
- (3) Any other form approved by the Plan Administrator or the Trustees.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 28 Ok Reg 678, eff 5-12-11]

#### **590:35-13-8. Plan-to-plan transfers**

This Plan may make or receive plan-to-plan transfers to or from other qualified plans, provided the requirements of federal law are met.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99 ; Amended at 39 Ok Reg 2083, eff 9-11-22]

#### **590:35-13-9. Rollovers to eligible retirement plan**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) As used in this section:

- (1) "**Eligible rollover distribution**" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income, except to the extent provided by paragraph (c) of this section; and effective for distributions made after December 31, 2001, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a

distribution paid directly to an eligible retirement plan.

(2) "**Eligible retirement plan**" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or a qualified trust described in Code Section 401(a), or Roth individual annuity (if the individual is eligible for a Roth rollover) described in Code Section 408(A)(e) for distributions made after December 31, 2007, that accepts the distributee's eligible rollover distribution. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 18, 2015, an eligible retirement plan includes a SIMPLE IRA as described in Code § 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee's employer under Code § 408(p)(2), as described in Code § 72(t)(6). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(3) "**Distributee**" means a Participant. In addition, the Participant or the Participant's surviving spouse are distributees with regard to the interest of the spouse. For the limited purposes set forth in paragraph (d) of this section, distributee means a non-spouse beneficiary.

(4) "**Direct rollover**" means a payment by the Plan to the eligible retirement plan specified by the distributee.

(c) A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such a portion may be transferred only to an individual retirement account or an individual retirement annuity described in section Code Section 408(a) or (b) of the Code, a qualified plan described in section Code Sections 401(a) or 403(a) of the Code, or to an annuity contract described in section Code Section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(d) Effective January 1, 2007, a non-spouse beneficiary pursuant to section Code Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in section Code Section 408(a) of the Code, or an individual retirement annuity described in section Code Section 408(b) of the Code, established for the purpose of receiving the distribution. A rollover pursuant to this paragraph shall be treated as a

rollover of an eligible rollover distribution only for purposes of section Code Section 402(c) of the Code.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 19 Ok Reg 749, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1486, eff 5-28-02 ; Amended at 21 Ok Reg 1767, eff 6-11-04 ; Amended at 24 Ok Reg 1141, eff 5-11-07 ; Amended at 27 Ok Reg 1049, eff 5-13-10 ; Amended at 29 Ok Reg 507, eff 5-11-12 ; Amended at 39 Ok Reg 2083, eff 9-11-22]

### **590:35-13-10. Minimum distribution requirements**

(a) Notwithstanding anything herein to the contrary, the following minimum distribution requirements will apply.

(b) All distributions required under this Section shall be determined and made in accordance with Code Section 401(a)(9) and the proposed Treasury Regulations thereunder, including the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G) and Section 1.401(a)(9)-2 of the proposed Treasury Regulations, or any successor rules or regulations.

(c) The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

(d) **Limits on Distribution Periods.** As of the first Distribution Calendar Year, distributions, if not made in a single lump sum, may be made over one of the following periods (or a combination thereof):

- (1) the life of the Participant,
- (2) the life of the Participant and a designated Beneficiary
- (3) a period certain not extending beyond the Life Expectancy of the Participant, or
- (4) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.

(e) If the Participant's interest is to be distributed in other than a single lump sum, the following minimum distribution rules shall apply on or after the Required Beginning Date:

(1) If a Participant's benefit is to be distributed over (i) a period not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's designated Beneficiary or (ii) a period not extending beyond the life expectancy of the designated Beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first Distribution Calendar Year must at least equal the quotient obtained by dividing the Participant's benefit by the Applicable Life Expectancy.

(2) The amount to be distributed each year, beginning with distributions for the first Distribution Calendar Year shall not be less than the quotient obtained by dividing the Participant's benefit by lesser of

- (A) the Applicable Life Expectancy or
- (B) if the Participant's Spouse is not the designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of Section 1.401(a)(9)-2 of the proposed Treasury Regulations. Distributions made after the death of the Participant shall be distributed using the

Applicable Life Expectancy in (1) above as the relevant divisor without regard to proposed Treasury Regulations Section 1.401(a)(9)-2.

(3) The minimum distribution required for the Participant's first Distribution Calendar Year must be made on or before the Participant's Required Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, must be made on or before December 31 of that Distribution Calendar Year.

(f) If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code Section 401(a)(9) and the proposed Treasury Regulations thereunder.

(g) For purposes of this Section, the following terms shall have the meanings as set forth below:

(1) "**Applicable Life Expectancy**" means the life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or designated Beneficiary) as of the Participant's (or designated Beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. Life expectancies will not be recalculated annually. If annuity payments commence before the Required Beginning Date, the applicable calendar year is the year payments commence. If distribution is in the form of an immediate annuity purchased after the Participant's death with the Participant's remaining interest, the applicable calendar year is the year of purchase.

(2) "**Distribution Calendar Year**" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to this Section.

(3) "**Participant's Benefit**" means the Participant's Account as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year ("Valuation Calendar Year") increased by the amount of any contributions allocated to the Account as of dates in the Valuation Calendar Year after the Valuation Date and decreased by distributions made in the Valuation Calendar Year after the Valuation Date. If any portion of the minimum distribution for the first Distribution Calendar Year is made in the second Distribution Calendar Year on or before the Required Beginning Date, the amount of the minimum distribution made in the second Distribution Calendar Year shall be treated as if it has been made in the immediately preceding Distribution Calendar Year.

(4) "**Required Beginning Date**" means the later of the first day of April of the calendar year following the calendar year in which

the Participant

- (A) attains age 72 or such other date as may be permitted by the federal Internal Revenue Code or
- (B) retires.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99 ; Amended at 38 Ok Reg 2463, eff 9-11-21]

#### **590:35-13-11. Administrative distributions**

- (a) This rule applies only to a Limited Participant who is not a state employee and who is not eligible for additional contributions to the Plan after the transfer of Excess Contributions pursuant to Subchapter 13 of Chapter 10 of these rules.
- (b) If such Limited Participant has an account balance in the Plan of less than two hundred dollars (\$200), the Plan Administrator shall distribute to the Limited Participant his or her account balance in a lump-sum as soon as administratively feasible without a written application for distributions by the Limited Participant. The Plan Administrator shall not make this distribution in a calendar year to a Limited Participant who has taken a distribution from the Plan in that same calendar year if that distribution, when aggregated with the administrative distributions provided in this rule, would equal or exceed two hundred dollars (\$200).

[Source: Added at 17 Ok Reg 3187, eff 7-27-00]

#### **590:35-13-12. Discontinuance of 2009 required minimum distributions**

- (a) Notwithstanding the provisions of 590:35-13-10 of the plan, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Internal Revenue Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding 590:35-13-9 of the plan, and solely for the purposes of applying the direct rollover provisions of the plan, certain additional distributions in 2009 will be treated as eligible rollover distributions.
- (b) For purposes of the direct rollover provisions of the plan, both 2009 RMDs and Extended RMDs will be eligible rollover distributions without regard to IRS Section 401(a)(9)(H).

[Source: Added at 30 Ok Reg 554, eff 5-11-13]

**590:35-13-13. Death after December 31, 2021**

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of his or her entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 ½) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70 ½) after December 31, 2019). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either:

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under subsection (4), paragraph (B) shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A).

(2) If the Participant dies before distributions of his or her Account begins and the Participant has no designated Beneficiary,

the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his or her Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this section 590:35-13-13.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

- (A) the surviving spouse of the Participant;
- (B) a child of the Participant who has not reached the age of majority;
- (C) disabled within the meaning of Code Section 72(m)(7);
- (D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or
- (E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B) above shall cease to be an eligible designated Beneficiary as of the date he or she reaches the age of majority.

[Source: Added at 39 Ok Reg 2083, eff 9-11-22]

#### **590:35-13-14. Discontinuance of 2020 required minimum distributions**

(a) Notwithstanding any other provisions of this Chapter, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 2, 2021) but for the enactment of Code § 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either 1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs") will receive those distributions for 2020 unless the Participant or Beneficiary chooses to not receive such distributions.

(b) For purposes of the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs also will be treated as eligible rollover distributions in 2020.

[Source: Added at 39 Ok Reg 2083, eff 9-11-22]

## **SUBCHAPTER 15. LIMITATIONS ON ANNUAL ADDITIONS**

### **590:35-15-1. General**

(a) In no event shall the Annual Addition for any Plan Year (which shall be the "Limitation year" within the meaning of Treasury Regulations Section 1.415-2(b)) to the Accounts of any Qualified Participant exceed the lesser of (i) \$30,000, or (ii) twenty-five percent (25%) of the Compensation, as defined below, actually paid or made available to the Qualified Participant by the Employer during the Limitation Year ("Maximum Permissible Amount"). The Compensation limitation referred to in (2) below shall not apply to any contribution for medical benefits (within the meaning of Code Sections 401(h) or 419A(f)(2)) which is otherwise treated as an Annual Addition under Code Sections 415(1)(1) or 419A(d)(2).

(b) This Section shall be effective for Plan Years beginning after December 31, 2001. Except to the extent permitted under Code Section 414(v), if applicable, the Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the Maximum Permissible Amount, the lesser of:

- (1) Forty Thousand Dollars (\$40,000), as adjusted for increases in the cost-of-living under Code Section 415(d), or
- (2) One hundred percent (100%) of the Participant's Compensation, within the meaning of Code Section 415(c)(3), for the Limitation Year.

(c) The amount of Annual Addition which may be allocated under this Plan on a Qualified Participant's behalf for a Limitation Year shall not exceed the Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Qualified Participant's Account for the same Limitation Year under any other qualified defined contribution plan, under any welfare benefit fund, as defined in Code Section 419(e), or under any individual medical benefit account, as defined in Code Section 415(l)(2); as maintained by the Employer and which provide an Annual Addition during any Limitation Year.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 19 Ok Reg 749, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1486, eff 5-28-02]

### **590:35-15-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**"Annual addition"** means the sum for any Plan year of the following amounts allocated on behalf of a Qualified Participant for a Limitation Year:

(A) All Employer contributions;

(B) All Qualified Participant contributions determined without regard to any rollover contributions (as defined in Code Sections 402(c), 403(a)(4), 403(b)(8), and 408(d)(3)) without regard to Qualified Participant contributions to a simplified employee pension which are excludable from gross income under Code Section 408(k)(6);

(C) All forfeitures;

(D) Amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer; and

(E) Amounts derived from contributions which are attributable to post-retirement benefits allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer. Subparagraph (ii) of Section 590:35-15-1 shall not apply to any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is treated as an Annual addition. For purposes of this Subchapter, excess amounts reapplied to reduce Employer contributions under Section 590:-15-3 in the Limitation Year shall also be included as an Annual Addition for such Limitation Year.

**"Compensation"** means:

(A) For purposes of applying the limitation of Code Section 415, a Qualified Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining this Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulation Section 1.62-2(c)), and excluding the following:

- (i) Distributions from a plan of deferred compensation, regardless of whether such amounts are includable in the gross income of the Qualified Participant when distributed; and
- (ii) other amounts which receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includable in the gross income of the Qualified Participant). Compensation shall also include contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Qualified Participant under

Code Sections 125, 132(f)(4), 401(k), 408(k), 403(b) or 457. For purposes of applying the limitation of this Subchapter, Compensation for a Limitation Year is the Compensation actually paid or made available to the Qualified Participant within the Limitation Year. Notwithstanding the preceding sentence, Compensation for a Qualified Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the Compensation such Qualified Participant would have received for the Limitation Year if such Qualified Participant had been paid at the rate of Compensation paid immediately before becoming permanently and totally disabled. If the Plan provides for the continuation of such contributions on behalf of all Qualified Participants who are permanently and totally disabled for a fixed or determinable period, then imputed Compensation may be taken into account for a disabled Qualified Participant. Such contributions on behalf of a permanently and totally disabled Qualified Participant must be nonforfeitable when made.

(B) Payments made by the later of 2 1/2 months after severance from employment or the end of the limitation year that includes the date of the Qualified Participant's severance from employment shall be included in compensation if they are payments that, absent a severance from employment, would have been paid to the Qualified Participant while the Qualified Participant continued in employment with the Employer and are:

- (i) Regular compensation for services during the Qualified Participant's regular working hours, or compensation for services outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and the compensation would have been paid to the Participant prior to a severance from employment if the Participant had continued employment with the Employer; or
- (ii) payments for unused accrued bona fide sick, vacation or other leave, but only if the Qualified Participant would have been able to use the leave if employment had continued; or
- (iii) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Qualified Participant at the same time if the Participant had continued employment with the Employer and only to the extent that the payment is includible in the Qualified Participant's gross income.

(C) Any payments not described in paragraph (B) of this definition are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment.

However, payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(D) An employee who is in qualified military service (within the meaning of Code Section 414(u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

- (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or
- (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(E) For purposes of Code Section 415(c) and this subchapter, compensation of each Participant taken into account in determining allocations for any Plan Year shall not exceed the applicable limit established by Code Section 401(a)(17) as of the first day of the Plan Year, as increased for the cost-of-living adjustment (Two Hundred Thirty Thousand Dollars (\$230,000 for 2008)). The cost-of-living adjustment in effect for a calendar year applies to compensation for the Plan Year that begins with or within such calendar year.

**"Employer"** means, for purposes of this Subchapter, the Employer and all members of a controlled group of corporations (as defined in Code Section 414(b) and as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c) and as modified by Code Section 415(h)), or an affiliated service group (as defined in Code Section 414(m)), of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to Treasury Regulations under Code Section 414(o).

**"Limitation year"** means the Plan Year ending on December 31.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 27 Ok Reg 1049, eff 5-13-10]

### **590:35-15-3. Adjustments for excess amount**

If there is an Annual Addition in excess of the limitation set forth in this Subchapter or any other excess amount subject to correction under the Employee Plan Compliance Resolutions System (or other similar Internal Revenue Service correction program), such amount will be corrected as permitted under the Employee Plan Compliance Resolutions System (or other similar Internal Revenue Service correction program).

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 29 Ok Reg 507, eff 5-11-12]

### **590:35-15-4. Combination of defined contribution plan and defined benefit plan**

(a) For Limitation Years commencing before January 1, 2000, if a Qualified Participant also is, or was, covered under a defined benefit plan maintained, or contributed to, by the Employer, the sum of the amounts determined under (1) and (2) below may not exceed 1.0 in any Limitation Year.

(1) The Qualified Participant's "defined benefit fraction" - A fraction, the numerator of which is the sum of the Qualified Participant's projected annual benefits under all defined benefit plans (whether or not terminated) maintained, or contributed to, by the Employer, and the denominator of which is the lesser of (A) 1.25 times the dollar limitation of Code Section 415(b) and (d) for the Limitation Year, or (B) 1.4 times the Qualified Participant's average compensation for the 3 consecutive years that produces the highest average; and

(2) The Qualified Participant's "defined contribution fraction" - A fraction, the numerator of which is the sum of the Annual Additions (within the meaning of Code Section 415(c)(2)) to the Qualified Participant's Account under all defined contribution plans (whether or not terminated) maintained, or contributed to, by the Employer for the current and all prior Limitation Years (minus the amount, if any, determined under Treasury Regulations issued pursuant to Section 235(g) of the Tax Equity and Fiscal Responsibility Act of 1982), and the denominator of which is the lesser of the following amounts determined for such year and for each prior year of service with the Employer:

(A) 1.25 times the dollar limitation in effect under Code Section 415(c)(1)(A) for such year, or

(B) 1.4 times the amount which may be taken into account under Code Section 415(c)(1)(B).

(b) For purposes of (a) above, effective for Limitation Years commencing before January 1, 2000, "projected annual benefits" means the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the Participant

would be entitled under the terms of the defined benefit plan, if the Participant continued employment until Normal Retirement Age (or current age, if later) and the Participant's Compensation for the Limitation Year and all other relevant factors used to determine such benefit remained constant until Normal Retirement Age (or current age, if later). If, in any Limitation Year, the sum of the defined benefit plan fraction and the defined contribution plan fraction will exceed 1.0, the rate of benefit accruals under the defined benefit plan will be reduced so that the sum of the fraction equals 1.0.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

## **SUBCHAPTER 17. TRUST**

### **590:35-17-1. Establishment and acceptance of Trust**

(a) The Board of Trustees acts as trustee of the Trust. The Board of Trustees takes, holds, invests, administers and distributes in accordance with this Plan and Trust, all contributions and assets paid or delivered to the Board of Trustees pursuant to the Plan for the uses and purposes herein expressed.

(b) The Board of Trustees shall be accountable for all contributions received, but shall have no duty to require any contributions to be made or to determine that the amounts received comply with the Plan, or to determine that the Trust Fund is adequate to provide the benefits payable pursuant to the Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-17-2. Payments from Trust Fund**

(a) The Recordkeeper shall make payments from the Trust Fund to such persons in such manner, at such times and in such amounts as the Board of Trustees, acting through the Plan Administrator, shall direct. The Recordkeeper shall be fully protected in making, discontinuing, or stopping payments from the Trust Fund in accordance with the directions of the Board of Trustees and/or the Plan Administrator. The Recordkeeper shall have no responsibility to see to the application of payments so made or to ascertain whether the directions of the Board of Trustees and/or Plan Administrator comply with the Plan. When the Board of Trustees and/or the Plan Administrator directs that any payment is to be made only during or until the time a certain condition exists regarding the payee, any payment made by the Recordkeeper in good faith, without actual notice or knowledge of the changed status or condition of the payee, shall be considered to have been properly made by the Recordkeeper and made in accordance with the direction of the Board of Trustees and/or Plan Administrator.

(b) To the extent permitted by law, the Board of Trustees shall be reimbursed for its expenses, if any, that are reasonable and necessary for the administration of the Plan and the Trust pursuant to Section 590:35-19-7.

(c) The Board of Trustees, acting through the Plan Administrator and/or Recordkeeper is authorized, to the extent required under applicable law, to withhold from distributions to any payee such sum as the Board of Trustees determines is necessary to cover federal and state taxes for which the Board of Trustees may be liable, which are, or may be, assessed with regard to the amount distributable to such payee. Upon discharge or settlement of such tax liability the Board of Trustees shall pay the balance of such sum, if any, to such payee or to his estate. Prior to making any payment or distribution hereunder, the Board of Trustees may require such releases or other documents from any lawful taxing authority and may require such indemnity from any payee or distributee as the Board of Trustees shall reasonably deem necessary for its protection.

(d) No amounts shall be payable to the Employer hereunder, from the Trust Fund, except as provided in the Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-17-3. Investment of Trust Fund**

(a) The corpus or income of the Trust Fund may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.

(b) The Board of Trustees shall perform all acts within its authority under this agreement for the exclusive purpose of providing benefits to Plan Participants and their beneficiaries and defraying reasonable expenses of administering the Plan and Trust, and shall perform such acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Subject to the terms of the preceding sentence, the Board of Trustees shall diversify the investments of the Trust Fund so as to minimize the risk of large losses by offering diverse investment options to Participants, unless under the circumstances it is clearly prudent not to do so.

(c) To the extent applicable for this Plan and Trust, provisions of the Oklahoma Statutes which reference the powers and duties of the Board of Trustees are incorporated.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-17-4. Trust accounts**

No less frequently than quarterly, the Recordkeeper shall provide a written account to the Board of Trustees setting forth all transactions effected by it subsequent to the end of the period covered by its last previous account, and listing the assets of the Trust Fund at the close of the period covered by such account. Each year, the Board of Trustees shall publish an annual report presented in simple and easily understood language. The annual report shall cover the operation of the Plan and Trust, during the past year, including income, disbursements, and the financial condition of the Plan and Trust and any other information

deemed relevant by the Board of Trustees. The annual report shall be written in such a manner as to permit a readily understandable means for analyzing the financial condition and performance of the Plan and Trust.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**590:35-17-5. Miscellaneous**

(a) The creation of this Trust shall not be construed as giving any person entitled to benefits hereunder or other employees of the Employer, who are not Participants of the Plan, any equity or other interest in the assets, business, or affairs of the Employer.

(b) No additional bond, surety or security shall be required of the Board of Trustees except as may be required by law or by the Employer.

(c) The Board of Trustees may procure insurance indemnifying the members of the Board of Trustees from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board of Trustees.

(d) If any provision or provisions of this Plan and/or Trust shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Plan and/or Trust, but shall be fully severable and the Plan and/or Trust shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

(e) The Employer shall have the authority, but shall be under no duty, to enforce this Trust on behalf of any and all persons having or claiming any interest in the Trust Fund. In any action or proceeding affecting the Trust Fund or the administration thereof, or for instructions to the Board of Trustees, the Employer and the Board of Trustees shall be the only necessary parties, and no employees of the Employer or their beneficiaries, or any other person having or claiming to have an interest in the Trust Fund shall be entitled to any notice of process, and any judgment that may be entered in such action or proceeding shall, be binding on all persons having or claiming to have any interest in the Trust Fund.

(f) Entering into this Plan and Trust by the Employer and the Participant shall not be construed to give a contract of employment to the Participant or to alter or amend an existing employment contract of the Participant, if in fact one exists, nor shall the entering into this Plan and Trust be construed as affording the Participant any representation or guarantee regarding his continued employment.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**SUBCHAPTER 19. ADMINISTRATION OF PLAN**

**590:35-19-1. General**

The Board of Trustees, shall administer the Plan and shall be responsible for the policies and rules for the general administration of the Plan in accordance with Title 74 O.S. 1997 Supp., Sec. 1707.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**590:35-19-2. Applicable law**

Oklahoma law shall apply in determining the construction and validity of this Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**590:35-19-3. Tax consequences**

The Employer and the Board of Trustees do not and cannot represent or guarantee that any particular Federal or state income, payroll, personal property or other tax consequence will occur because of the Participant's participation in the Plan. The Participant should consult with his own representative regarding all questions on Federal or State income, payroll, personal property or other tax consequences arising from participation in the Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**590:35-19-4. Protected rights**

The rights of the Participant under this Plan shall not be subject to the rights of creditors of the Participant or any Beneficiary, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for creditors or other third persons, except as to federal tax levies and judgments resulting from unpaid tax assessment, and to payments actually paid to the Participant or his Beneficiary and as provided in Chapter 30 of these Rules. It is agreed that neither the Participant nor his Beneficiary nor any other designee shall have any right to commute, sell, assign, pledge, encumber, transfer, or otherwise convey the right to receive any payments hereunder which payments and right hereto are expressly declared to be nonassignable and nontransferable, except as provided in Chapter 30 of these Rules.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**590:35-19-5. Amendment**

The Board of Trustees may at any time amend or modify this Plan and/or Trust with or without the consent of the Participant or any Beneficiary thereof provided that:

- (1) All amendments shall be accomplished in accordance with the Administrative Procedures Act. No amendments shall deprive the Participant of any of the benefits to which he is entitled under this Plan and/or Trust with respect to contributions credited to his Account prior to the effective date of the amendment;

(2) This Plan and Trust alone, and any properly adopted amendment thereof, shall constitute the total Plan and Trust or contract between the Employer and the Participant regarding the Plan and Trust; no oral statement regarding the Plan and Trust may be relied upon by the Participant;

(3) This Plan and Trust and any properly adopted amendment, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors and assigns and on all designated beneficiaries of the Participant; and

(4) No amendment shall authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**590:35-19-6. Discontinuance of Contributions/Termination**

(a) It is the present intention of the Employer to maintain this Plan. Nevertheless, the Employer reserves the right, at any time, to discontinue or terminate the Plan, to terminate the Employer's liability to make further contributions to this Plan, and/or to suspend contributions for a fixed or indeterminate period of time.

(b) If the Plan is curtailed, terminated, or the contributions suspended permanently, the Board of Trustees shall nonetheless be responsible for the supervision and the payment of the benefits resulting from amounts contributed prior to the amendment, modification or termination in accordance with this Chapter. Upon complete discontinuance of the Employer's Contributions or full or partial termination of the Trust, all affected Participant's rights to benefits shall remain fully vested.

(c) The Plan and Trust may be terminated at any time by the Employer, by giving notice in writing to the Board of Trustees, which notice shall recite the date upon which the termination shall be effective. After receipt of such notice, the Board of Trustees shall continue to hold, invest and administer the Plan and Trust until the assets are liquidated and distributed to the Participants and Beneficiaries. The distribution of assets shall occur as soon as administratively practicable after the termination of the Plan. The Trust shall terminate only when no assets of the Trust remain in the possession of the Board of Trustees.

(d) The Trust is hereby designated as constituting a part of the Plan intended to continue to qualify and to be tax exempt under Code Sections 401(a) and 501(a). Until advised otherwise, the Board of Trustees may conclusively assume that this Trust is qualified under Code Section 501(a) and that this Trust is exempt to that extent from federal income taxes. Anything herein to the contrary notwithstanding, if a determination letter is issued by the Internal Revenue Service to the effect that the Plan and Trust do not meet the requirements of Code Sections 401 (a) and 501(a), as initially submitted, the Employer shall be entitled, at its option, to withdraw all contributions made, in which event the Plan and the Trust shall then terminate and all rights of the Participants shall terminate effective as of the date of the adverse determination letter.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**590:35-19-7. Payment of expenses**

(a) Forfeitures pursuant to Section 590:35-9-2, if any, shall be used to pay Plan and/or Trust expenses. To the extent not paid by the Employer, all costs and expenses incurred in administering this Plan and Trust shall be paid by the Plan and Trust, through the reduction of each Participant's Account.

(b) The fees payable for actuarial, consulting, legal, accounting or other reasonable and necessary services relating to the administration of the Plan and Trust, as provided for therein, including expenses for the Board of Trustees, shall be payable by the Board of Trustees out of the Trust Fund, and until so paid shall constitute a first and prior charge and lien against the Trust Fund, to the extent not paid by the Employer.

(c) The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Plan, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the 401(a) plan and the 457(b) plan of the Defined Contribution System, the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the 401(a) Plan and the 457 (b) Plan of the Defined Contribution System, URSJJ, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 29 Ok Reg 507, eff 5-11-12 ; Amended at 34 Ok Reg 1899, eff 9-11-17]

#### **590:35-19-8. Records**

Subject to the provisions of 590:10-1-18 of these rules, all information, documents and copies thereof contained in a Participant's Plan file shall be given confidential treatment and shall not be made public by the Plan without prior written consent of the Participant to which it pertains, but shall be subject to subpoena or court order.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

## **SUBCHAPTER 21. ADMINISTRATION FUNCTIONS OF THE PLAN**

#### **590:35-21-1. Administrative staff**

The Executive Director of the Oklahoma Public Employees Retirement System shall be responsible for selection and retention of the Plan Administrator and shall provide oversight and assistance in the general administration of the Oklahoma State Employees Deferred Savings Incentive Plan. The Executive Director, the Plan Administrator, the Deputy Director, and such other persons designated by the Executive Director are authorized to sign all vouchers or warrants issued for the Deferred Savings Incentive Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 20 Ok Reg 1759, eff 6-12-03]

#### **590:35-21-2. Duties of Plan Administrator**

Subject to the provisions of Section 1707 of Title 74 of the Oklahoma Statutes, the following provisions shall be applicable to the Plan Administrator:

(1) The Plan Administrator will operate and administer the Plan and shall have all powers necessary to accomplish that purpose, and will determine all questions arising under or in connection with the Plan. Whenever directions, designations, applications, requests, or other notices are to be given by a Participant under the Plan, they shall be on forms prescribed by the Plan Administrator and shall be filed when and in such manner as shall be specified by the Plan Administrator. Determinations on all questions arising out of or in conjunction with the provisions of the Plan, not herein required to be determined by the Board of Trustees shall be made by the Plan Administrator, and any such determination shall be conclusive and binding upon all persons having an interest in or under this Plan, subject to the administrative hearing procedures set forth in 590:1-1-6.

(2) Without limiting the powers set forth in paragraph (1) of this Section, the Plan Administrator shall have the power (i) to meet special circumstances not anticipated or covered in the Plan; (ii) to employ such agents and assistants, administrative service providers, such counsel and such clerical, actuarial and other services as the Plan Administrator may require in carrying out the provisions of the Plan; and (iii) to authorize one or more of their number or any agent to execute or deliver any instrument on behalf of the Plan Administrator.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-21-3. Oklahoma State Employee Deferred Savings Incentive Plan Coordinator ("Coordinator")**

(a) The Coordinator for the Deferred Compensation Plan, as designated under Section 590:25-13-2, shall be the Coordinator for this Plan. The Coordinator shall be furnished appropriate information on the Oklahoma State Employees Deferred Savings Incentive Plan. State Employees should send all correspondence to his or her Coordinator who will forward it to the Plan Administrator. All forms and correspondence should identify the Participant by name, Social Security Number and agency.

(b) The Coordinator is employed by and under the authority of each State agency and is not an employee of the Plan. The Plan will make available information and training opportunities, however, it is the responsibility of the Coordinator to become familiar with the Plan provisions and keep abreast of all changes and amendments. Neither the Plan nor the Board will be liable for or bound by any mistakes, errors or misrepresentations of the Coordinators.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 20 Ok Reg 1759, eff 6-12-03]

### **590:35-21-4. Completing forms**

Participants in the Plan will obtain Enrollment/Change forms from the Coordinator, the office of the Plan Administrator or, if available, from the Plan website or the Recordkeeper. Pursuant to Section 1707 of Title 74 of the Oklahoma Statutes, the Administrator of the Office of Personnel Management and the Director of State Finance shall be responsible for the provision of such information and assistance as may be necessary to determine which State Employees are Qualified Participants. The Coordinator will assist Participants in the preparation and submission of the Enrollment/Change form and requests for payment of benefits for reason of termination of employment.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98 ; Amended at 20 Ok Reg 1759, eff 6-12-03]

**590:35-21-5. Coordinator as liaison**

The Coordinator shall serve as a liaison representative between the Board of Trustees, the Plan Administrator, and the Participant.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**590:35-21-6. General responsibilities of the Coordinator**

The Coordinator shall inform applicants and Participants concerning the Plan benefits and the Rules and Regulations applicable to enrollment, participation and termination. The Coordinator shall assist the Participant if any explanations of payment are needed, or contact the Plan Administrator, as necessary, for assistance to the Participant.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

## CHAPTER 40. DEFINED CONTRIBUTION SYSTEM

[Authority: 74 O.S., § 909 and 74 O.S., §§ 935.1 et seq.]  
[Source: Codified 9-11-15]

### SUBCHAPTER 1. GENERAL PROVISIONS - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN

#### 590:40-1-1. Purpose

(a) **Policies, procedures and guidelines.** The rules in this Chapter are adopted to ensure the efficient and orderly administration of the Defined Contribution System, to establish policies and procedures for implementing and administering the DC System, and to provide guidelines for the investment of funds which have been contributed for the benefit of Employees.

(b) **Establishment of Defined Contribution System.** The Defined Contribution System has been established by statute to be composed of defined contribution plans pursuant to the Code Sections 401(a) and 457(b). The Board of Trustees is authorized to create a plan under Section 401(a) of the Code, which is intended to qualify as a tax-qualified money purchase governmental plan within the meaning of Code Section 414(d). The Board is authorized to take the necessary action to obtain a determination letter for the 401(a) plan. The Board is also authorized to establish a plan under Section 457(b) of the Code, which is intended to meet the requirements for an eligible governmental plan and to take the necessary action to obtain confirmation from the Internal Revenue Service that the 457(b) plan is consistent with the requirements of Code Section 457(b). The Plans are not subject to the Employee Retirement Income Security Act of 1974 ("ERISA"). The Plans and related Trust or Trusts are intended to meet the requirements of Code Sections 401(a), 457(b), and 501(a) respectively.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### 590:40-1-2. Statutory citations

The rules contained in this Chapter are adopted in accordance with 74 O.S. Supp. 2014, §§ 935.1 through 935.11, and as authorized by Code Sections 401(a) and 457(b). The plan documents for the Plans consist of 74 O.S. Supp. 2014, §§ 935.1 through 935.11 and this Chapter, and are applicable to each Employee who enrolls in the Plans.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### 590:40-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"401(a) plan"** means the defined contribution money purchase plan that is qualified under Section 401(a) of the Code as a governmental

plan.

**"457(b) plan"** means the defined contribution plan that is an eligible governmental plan under Section 457(b) of the Code.

**"Account"** or **"Accounts"** means any of the accounts established for a Participant under the Plans, as described in 74 O.S. Supp. 2014, §935.6, 590:40-7-1 and 590:40-9-10. The following Accounts may be established for a Participant within the 457(b) Plan:

(A) A Pre-Tax Elective Deferral Subaccount to reflect the Participant's interest in the 457(b) Plan attributable to their Pre-Tax Elective Deferrals;

(B) A Roth Elective Deferral Subaccount to reflect the Participant's interest in the 457(b) Plan attributable to their Roth Elective Deferrals;

(C) A Rollover Contribution Account to reflect the Participant's interest in the 457(b) Plan attributable to their rollover contributions, made pursuant to Section 590:40-9-38. To the extent that Roth Rollover Contributions are made to the Plan, a separate subaccount under the Rollover Account shall be established to hold the Roth Rollover Contributions; and

(D) A Transfer Contribution Account to reflect the Participant's interest in the 457(b) Plan attributable to amounts transferred to the Plan pursuant to 590:40-9-35. To the extent that such transferred amounts constitute amounts from a designated Roth Account, a separate subaccount under the Transfer Contribution Account shall be established to hold such amounts from a designated Roth Account.

**"Beneficiary"** means the persons or entities designated by the Participant on forms prescribed by OPERS.

**"Board"** or **"Board of Trustees"** means the Oklahoma Public Employees Retirement System Board of Trustees.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Compensation"** means:

(A) Taxable gross income from the Employer and shall include amounts deferred pursuant to Code Sections 125, 402(h), 402(a)(8), 457(b), 414(h), and 403(b). For purposes of the Plans, only compensation from the Employer that is attributable to services performed for the Employer may be includable in gross income.

(B) Compensation also means all salary and wages, including amounts deferred under the Plans, payable to a Participant for personal services performed for a participating employer.

(C) Despite any provision to the contrary, the compensation taken into account for any Employee in determining the contribution or benefit accruals for any plan year shall be limited to the annual compensation limit under Section 401(a)(17) of the Code.

(D) Compensation, as determined by the Board of Trustees, shall be limited to salary and wages as follows:

- (i) "Salary" means a predetermined or fixed amount of cash remuneration that is made payable by the participating employer to the employee in exchange for services rendered personally by the Employee for the Employer but excluding any type of overtime payments paid to an Employee for service rendered in excess of full-time;
- (ii) "Wages" means cash remuneration, dependent upon the hours of work, that is made payable by the Employer to the Employee in exchange for services rendered personally by the employee for the Employer excluding any type of overtime payments paid to an employee for service rendered in excess of full-time.

(E) Subject to the limitations contained elsewhere in the Chapter, salary and wages include, by way of example and not by limitation, the following:

- (i) any longevity payments made to Employees based upon a standardized plan which recognizes length of service to the Employer,
- (ii) pay differential which is paid to Employees in return for special or hazardous shifts or in return for additional training or duties,
- (iii) amounts deducted from the Employee's paycheck for retirement and deferred compensation contributions,
- (iv) pre-tax cafeteria purchases which are not funded by the Employer or the employee's benefit allowance,
- (v) performance, skill, or mission critical based pay adjustments.

(F) Any payments made by an Employer to an Employee which do not meet the definition of salary or wages as set forth in this section are not to be considered compensation for purposes of the Plan, including but not limited to the following:

- (i) payments which are for reimbursement for expenses incurred by the Employee,
- (ii) payments for maintenance or allowances, including, but not limited to, uniform allowances, clothing allowances, or housing allowances,
- (iii) any payments or amounts made available to an Employee for insurance benefits or benefits allowances, including any amounts paid directly to the Employee,
- (iv) illegal payments made to an Employee by an Employer,
- (v) payments made in error to an Employee,
- (vi) payments made by the Employer for services rendered by the Employee, which services are not part of the Employee's job duties and

responsibilities of his or her job position with the Employer,  
(vii) payments in the form of tips or commissions paid to an Employee in the course of his or her employment,  
(viii) payments made to other than the Employee by the Employer which are not deducted from the Employee's paycheck,  
(ix) workers compensation benefit payments,  
(x) any payments made by an Employer to a non-Employee, such as compensation to board or commission members,  
(xi) payments made in anticipation of employment, such as signing bonuses,  
(xii) any payments which are excluded from retirement compensation by law.

(G) It shall be the responsibility of the Employer to ensure that the appropriate contributions are deducted or paid correctly and in accordance with this definition.

**"Contribution"** means a contribution by the Employer or by a Participant to the 401(a) plan.

**"Deferral"** or **"Deferred compensation"** means that portion of the Participant's Compensation which is withheld and invested in the 457(b) plan.

**"Defined Contribution System"** or **"DC System"** means the program established under 74 O.S. Supp. 2014, §§ 935.1 through 935.11 and this Chapter that consists of the 401(a) plan and the 457(b) plan.

**"Disability"** or **"Disabled"** means a Participant who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration, or as defined by Code Section 72(m)(7). A Participant shall not be considered to be disabled unless proof of the existence of the disability is provided in such manner as OPERS may require.

**"Emergency withdrawals"** means withdrawals of funds because of an unforeseeable emergency and are only permitted under the 457(b) plan to the extent reasonably needed to satisfy the emergency need.

**"Employee"** means:

(A) Any person who first becomes employed by any participating employer in OPERS, as defined by paragraph (25) of Section 902 of Title 74 of the Oklahoma Statutes, on or after November 1, 2015. Employee shall also include any statewide elected official or legislator whose first service as an elected official occurs on or after November 1, 2015. Employee shall not include:

- (i) Employees who are initially employed in the positions described in divisions (i), (ii), and (iii) of subparagraph (d) of paragraph (24) of Section 902 of Title 74 of the Oklahoma Statutes;
- (ii) County elected officials, or any employee of a county, county hospital, city or town, conservation

district, circuit engineering district, and any public or private trust in which a county, city or town participates and is the primary beneficiary; and  
(iii) District attorneys, assistant district attorneys, or other employees of the district attorney's office.

(B) Any person first licensed by the Department of Rehabilitative Services as a vending stand operator or managing operator on or after November 1, 2015, as defined by Section 929 of Title 74 of the Oklahoma Statutes, and who elects to participate in the Defined Contribution System shall be considered an Employee for purposes of this Chapter.

(C) Any person employed on or after November 1, 2015, by the Legislative Service Bureau, State Senate or House of Representatives for the full duration of a regular legislative session and who elects to participate in the Defined Contribution System shall be considered an Employee for purposes of this Chapter.

**"Employer"** means the State of Oklahoma, its agencies, any duly constituted authority or instrumentality of the State of Oklahoma, and any participating employer in OPERS as defined by paragraph (25) of Section 902 of Title 74 of the Oklahoma Statutes.

**"Employer contribution"** means the amount contributed to the 401(a) plan by the Employer on behalf of each Participant.

**"Fiscal Year"** means the fiscal year of the State of Oklahoma, which is July 1 to June 30.

**"Normal Retirement"** means the first date upon which each of the following shall have occurred: separation from service and attainment of Normal Retirement Age under the applicable Plan.

**"OPERS"** means the Oklahoma Public Employees Retirement System.

**"Participant"** means an Employee who is eligible and participating in a Plan or who has funds invested in accordance with its provisions or any former Employee who has not received a distribution of his or her entire interest under the Plan. Participant also includes the Employee's surviving beneficiary and an alternate payee who has been awarded a separate account in accordance with Subchapter 11 of this Chapter.

**"Plan Year"** means the twelve month period ending on June 30.

**"Plans"** refers collectively to the 401(a) plan and the 457(b) plan.

**"Pre-Tax Elective Deferrals"** means pre-tax voluntary deferrals made to the Plan pursuant to a Participant's election.

**"Qualified Distribution"** means a distribution from a Roth Elective Deferral Subaccount after the Participant has satisfied a five-year holding period and has attained age 59 ½, died, or become disabled within the meaning of Code Section 72(m)(7), in accordance with Code Section 402A(d). Within the meaning of this definition, the five-year holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Elective Deferral under the Plan or to another retirement plan which amount was directly rolled over to the Plan and ends when five consecutive taxable years have been completed.

**"Recordkeeper"** means the company designated by the Board of Trustees to perform recordkeeping, administrative, and investment services to the DC System.

**"Roth Elective Deferrals"** means after-tax voluntary deferrals designated by the Participant as Roth Elective Deferrals that are being made in lieu of all or a portion of the Pre-Tax Elective Deferrals the Participant is otherwise eligible to make under the Plan.

**"Roth Rollover Contribution"** means an eligible rollover distribution from another applicable retirement plan in accordance with Code Section 402A(e)(1) only if it is a direct rollover, and only to the extent the rollover is permitted under the rules of Code Sections 402(c) and 402A(c).

**"Termination of Service"** means the bona fide separation, severance, or termination of the Participant's employment or service in which the Employer and Employee relationship is completely severed prior to Normal Retirement, Disability, or death.

**"Trust"** means the trusts established under Subchapters 7 and 9 of this Chapter.

**"Trust Fund(s)"** means the funds established under the Trusts created in Subchapters 7 and 9 of this Chapter, with the Board of Trustees as trustee, and held by the Board in accordance with these Plans and Trusts, to which deposits and contributions under these Plans and Trusts will be made and out of which benefits under these Plans and Trusts will be provided.

**"Trustee"** means the individuals appointed to the Board of Trustees to administer the Trust Funds in accordance with this Plan and includes persons selected by the Board of Trustees to act as a trustee of the Trust Fund(s).

**"Valuation Date"** means each business day of the calendar year, and on each such day, the Recordkeeper shall determine the value of the Trust Funds.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16 ; Amended at 40 Ok Reg 2347, eff 9-11-23]

### **SUBCHAPTER 3. ADMINISTRATION OF DEFINED CONTRIBUTION SYSTEM - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN**

#### **590:40-3-1. General**

(a) **Administration by Board.** The Board of Trustees shall be responsible for the policies, rules, and overall general administration of the Defined Contribution System in accordance with 74 O.S. Supp. 2014, §§ 935.1 through 935.11.

(b) **Responsibilities of OPERS.** OPERS, subject to (a) of this Section, shall operate and administer the Defined Contribution System and shall have all powers necessary to accomplish that purpose and will determine all questions arising under or in connection with the Defined Contribution System. Whenever directions, designations, applications,

requests, or other notices are to be given by a Participant under the Plans, they shall be on forms prescribed by OPERS and shall be filed when and in such manner as shall be specified by OPERS.

Determinations on all questions arising out of or in conjunction with the provisions of the Plans, not herein required to be determined by the Board of Trustees, shall be made by OPERS. Any such determination shall be conclusive and binding upon all persons having an interest in or under the Plans, subject to the administrative hearing procedures set forth in Subchapter 3 of Chapter 1 of this Title.

(c) **Powers of OPERS.** Without limiting the powers set forth in (a) of this Section, OPERS shall have the power to:

(1) meet special circumstances not anticipated or covered in this Chapter or 74 O.S. Supp. 2014, §§ 935.1 through 935.11;

(2) employ such agents, assistants, administrative service providers, legal counsel, clerical, actuarial, and other services as OPERS may require in carrying out the provisions of the Plans; and

(3) authorize one or more of its employees, or any agent, to execute or deliver any instrument on behalf of OPERS.

(d) **Executive Director.** The Executive Director of OPERS shall provide oversight and assistance in the general administration of the Plans. The Executive Director, and such other persons designated by the Executive Director, shall be authorized to sign all vouchers or warrants issued for the Plans.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-3-2. Defined contribution system coordinator**

(a) **Appointment.** Coordinators shall be appointed by each Employer to serve as a liaison among the Participant, OPERS, and the Employer.

(b) **Responsibilities.** Coordinators shall be responsible for the enrollment, assistance in completion of forms, and instructions to the Participants on behalf of the Employer relating to the Defined Contribution System and the Plans.

(c) **Notice to Participants; Plan information.** The coordinator shall be responsible for ensuring each Participant is provided basic information about the Plans, including publications and official notices from OPERS or the Recordkeeper. The coordinator shall also direct the Participant to the website of OPERS or the Recordkeeper for more specific information about the Plans. Each coordinator shall establish and maintain sufficient documentation to verify compliance with this section, and shall furnish the verification upon request by OPERS.

(d) **Employment; training; liability.** The coordinator shall be employed by and under the authority of each Employer and shall not be an employee of OPERS. OPERS will make available information and training opportunities. However, it shall be the responsibility of the coordinator to become familiar with the Plans' provisions and keep abreast of all changes and amendments. Neither OPERS nor the Board shall be liable for or bound by any mistakes, errors, or misrepresentations of the coordinators.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-3-3. Plan forms**

All forms for participating in the Plans shall be available to the Participant from the coordinator, OPERS, the Defined Contribution System website, or the Recordkeeper. The coordinator will assist Participants in the preparation and submission of the necessary forms. The coordinator shall inform Employees and Participants concerning the Plans' benefits and the rules applicable to enrollment, participation, and termination. The coordinator shall assist the Participant if any explanations of payment are needed. The coordinator may contact OPERS as needed for assistance.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-3-4. Applicable law**

Oklahoma law shall apply in determining the construction and validity of the Plans.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-3-5. Tax consequences**

The Employer and the Board of Trustees shall not represent or guarantee that any particular federal or state income, payroll, personal property, or other tax consequence will occur because of the Participant's

participation in the Plans. The Participant must consult with his or her own representative regarding all questions on federal or state income, payroll, personal property, or other tax consequences arising from participation in the Plans.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-3-6. Protected rights**

The rights of the Participant under the Plans shall not be subject to the rights of creditors of the Participant or any Beneficiary, and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for creditors or other third persons. However, these rights do not include protection from federal levies and judgments resulting from unpaid federal tax assessment or other federally required payment, payments actually paid by the Plans to the Participant or his or her Beneficiary, and as set forth in Subchapter 11 of this Chapter. The Participant, the Participant's Beneficiary, or any other designee shall not have any right to commute, sell, assign, pledge, encumber, transfer, or otherwise convey the right to receive any payments under these Plans, which payments and right to such payments are expressly declared to be nonassignable and nontransferable, except as provided in Subchapter 11 of this Chapter.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-3-7. Amendment**

The Board of Trustees may amend or modify these Plans and Trusts with or without the consent of the Participant or any Beneficiary thereof provided that:

- (1) All amendments shall be accomplished under the Administrative Procedures Act. No amendments shall deprive the Participant of any of the benefits to which he or she is entitled under the Plans and Trusts regarding contributions credited to his or her Account prior to the effective date of the amendment;
- (2) Each Plan and Trust alone, and any properly adopted amendment thereof, shall constitute the total Plan and Trust or contract between the Employer and the Participant regarding the Plan and Trust; no oral statement regarding the Plan and Trust may be relied upon by the Participant;
- (3) Each Plan and Trust and any properly adopted amendment shall be binding on the parties subject to the Plan and Trust and their respective heirs, administrators, trustees, successors, and assigns, and on all designated Beneficiaries of the Participant; and
- (4) No amendment shall authorize or permit any part of the Trust Funds for the Plans to be used for or diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**590:40-3-8. Discontinuance of contributions; termination; tax qualification**

(a) **Discontinuance of Plans.** It is the present intention of the State of Oklahoma to maintain these Plans. Nevertheless, the State reserves the right, at any time, to discontinue or terminate either one or both of the Plans, to terminate the Employer's liability to make further contributions to this Plan, and to suspend contributions for a fixed or indeterminate period of time.

(b) **Duties of Board.** If either of the Plans is curtailed, terminated, or the contributions suspended permanently, the Board of Trustees shall nonetheless be responsible for the supervision and the payment of the benefits resulting from amounts contributed and received by OPERS prior to the amendment, modification or termination in accordance with this Subchapter.

(c) **Notice of termination.** Either one or both of the Plans and related Trust or Trusts may be terminated at any time by the State, by giving notice in writing to the Board of Trustees, which notice shall recite the date upon which the termination shall be effective. After receipt of such notice, the Board of Trustees shall continue to hold, invest and administer the Plan or Plans and related Trusts until the assets are liquidated and distributed to the Participants and Beneficiaries. The distribution of assets shall occur as soon as administratively practicable after the termination of the Plan or Plans. The Trust shall terminate only when no assets of the Trust remain in the possession of the Board of Trustees.

(d) **Tax qualification of 401(a) plan.** The Trust created under Subchapter 7 of this Chapter is designated as constituting a part of the Plan intended to continue to qualify and to be tax exempt under Code Sections 401(a) and 501(a). Until advised otherwise, the Board of Trustees may conclusively assume this Trust is qualified under Code Section 501(a) and this Trust is exempt to that extent from federal income taxes. Anything herein to the contrary notwithstanding, if a determination letter is issued by the Internal Revenue Service to the effect that the Plan and Trust do not meet the requirements of Code Sections 401(a) and 501(a), the Employer shall be entitled, at its option, to withdraw all contributions made, in which event the Plan and the Trust shall then terminate and all rights of the Participants shall terminate effective as of the date of the adverse determination letter.

(e) **Tax status of the 457(b) plan.** The Trust created under Subchapter 9 of this Chapter is designated as constituting a part of the Plan intended to be tax exempt under Code Sections 457 and 501(a). Until advised otherwise, the Board may conclusively assume this Trust is tax exempt under Code Section 501(a) and is exempt from federal income taxes. Anything herein to the contrary notwithstanding, if a ruling is issued by the Internal Revenue Service to the effect that the Plan and Trust do not meet the requirements of Code Section 457(b), the Employer shall be entitled, at its option, to withdraw all contributions made, in which event the Plan and Trust shall then terminate and all rights of the Participants shall terminate as of the date of the ruling.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-3-9. Payment of expenses**

(a) **Forfeitures to pay expenses - 401(a) plan.** Forfeitures under 590:40-7-21 and 590:40-7-22 shall be used to pay 401(a) plan and/or Trust expenses. To the extent not paid by the Employer, all costs and expenses incurred in administering the 401(a) plan and the Trust shall be paid by the Plan and Trust through the reduction of each Participant's Account.

(b) **Fees payable from Trust Fund.** The fees payable for consulting, legal, accounting, or other reasonable and necessary services relating to the administration of each of the Plans and Trusts, as provided for, including expenses for the Board of Trustees, shall be payable by the Board of Trustees out of the Trust Funds, and until so paid shall constitute a first and prior charge and lien against the Trust Funds, to the extent not paid by the Employer.

(c) **Allocation of expenses.** The administrative expenses paid by OPERS on behalf of the each of the Plans, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the OPERS defined benefit plan, the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP"), the 401(a) plan and the 457(b) plan of the Defined Contribution System using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by each of the Plans, URSJJ, DCP, and SIP to OPERS defined benefit plan for the payments made on their behalf effective for the succeeding year beginning July 1.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 34 Ok Reg 1900, eff 9-11-17]

### **590:40-3-10. Records**

Subject to the provisions of 590:10-1-18, all information, documents and copies thereof contained in a Participant's Plan file shall be given confidential treatment and shall not be made public by OPERS without prior written consent of the Participant to which it pertains, but shall be subject to subpoena or court order.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

## **SUBCHAPTER 5. ELIGIBILITY AND PARTICIPATION - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN**

**PART 1. ELIGIBILITY AND PARTICIPATION -  
APPLICABLE TO THE 401(A) PLAN AND THE 457(B)  
PLAN**

**590:40-5-1. Participation in 401(a) plan and 457(b) plan**

(a) **Eligibility.** Each Employee shall become a Participant on the first day of the month following the date of employment with an Employer for the mandatory contributions as set forth in 74 O.S. §935.5 and 590:40-5-5.

Participants may participate in voluntary deferrals to the 457(b) plan set forth in 74 O.S. §935.5 and 590:40-5-6 beginning the first day of the month following the entry date of employment. An Employee shall participate in the DC System if the Employee is employed in a full-time-equivalent position or any position which is less than full-time but more than a half-time position and includes employee benefits such as health insurance and leave time. The determination of whether an Employee is in an employment position which is more than a half-time position shall be made by the Employer and such determination shall be exclusively relied upon by OPERS. Members who have been declared eligible to participate in the DC System, but subsequently fall below the level of eligibility for a new member, shall continue to participate in the System.

(b) **Participation upon reemployment.** A former Participant or former Employee who satisfies the eligibility requirements in this section shall become a Participant in the DC System on the first day of the month following the date of reemployment.

(c) **Change in employment status.** In the event a Participant is no longer a member of an eligible class of Employees and becomes ineligible to participate in the DC System, the individual will participate immediately upon returning to an eligible class of Employees.

(d) **Previous participation in defined benefit plan.** Any employee first employed by an Employer prior to November 1, 2015, and was a participating member in OPERS defined benefit plan set forth in 74 O.S. §§ 901 et seq. shall not be a Participant in the DC System. Such employees shall participate in OPERS defined benefit plan set forth in 74 O.S. §§ 901 et seq. regardless of whether the individual maintained membership in the OPERS defined benefit plan. If an employee is first employed by an Employer on or after November 1, 2015, in a position in which the employee is eligible to participate in OPERS defined benefit plan, and such employee subsequently terminates service with such Employer and becomes employed in a position which is eligible under the DC System, the employee shall no longer participate in OPERS defined benefit plan but shall participate in the DC System.

(e) **Department of Public Safety Chief of Administration.** A person appointed to the position of Chief of Administration of the Department of Public Safety, pursuant to 47 O.S. Supp. 2018, Section 2-104, shall be eligible to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Law Enforcement Retirement System or the OPERS-

administered systems shall be made in writing within thirty (30) days from such appointment and is irrevocable.

**(f) Retired Members-State Department of Education.** A retired member of the Oklahoma Teachers Retirement System who becomes employed by the State Department of Education for the first time on or after November 1, 2019, shall have the option to remain a member of the Oklahoma Teachers Retirement System subject to any applicable post retirement limitations placed on retired members returning to work, or to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Teachers Retirement System or the OPERS-administered systems shall be made in writing within thirty (30) days from the initial date of hire with the State Department of Education and is irrevocable.

**(g) Transferred employees-board of trustees for the Quartz Mountain Arts and Conference Center.** An employee of the board of trustees for the Quartz Mountain Arts and Conference Center who is transferred to the Oklahoma Tourism and Recreation Department pursuant to 74 O.S. Section 2229.1B who is a member of the Oklahoma Teachers Retirement System or the Oklahoma Law Enforcement Retirement system may elect to remain a member of the applicable system or may elect to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Teachers Retirement System, the Oklahoma Law Enforcement Retirement System or the OPERS-administered systems shall be made with the applicable system not later than November 1, 2020. If no election is made, the employee shall become a member of the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16 ; Amended at 37 Ok Reg 141, eff 10-2-19 (emergency); Amended at 38 Ok Reg 61, eff 9-2-20 (emergency); Amended at 37 Ok Reg 2052, eff 9-11-20 ; Amended at 38 Ok Reg 2465, eff 9-11-21]

#### **590:40-5-2. Termination of Participation**

A Participant shall cease to be eligible under the Plans upon the Participant's Termination of Service, Normal Retirement, Disability, or death. A Participant's participation in the Plans shall cease upon the complete distribution of a Participant's Account balance.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **PART 3. CONTRIBUTIONS - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN**

#### **590:40-5-5. Employee mandatory contributions to the 401(a) plan**

Each Participant shall participate in the 401(a) Plan at a minimum contribution rate of 4.5% of the Employee's Compensation. These funds,

designated as Employee contributions, shall be paid by the Employer for all Participants and picked up in order to be treated as Employer Contributions under the provisions of Code Section 414(h)(2) and 74 O.S. §935.8. The Employer shall remit the contributions to OPERS for deposit into an Account or Accounts maintained on behalf of the Participant. The mandatory 4.5% Employee contribution shall be placed by OPERS in the Code Section 401(a) plan as set forth by the Board of Trustees and in accordance with this Chapter.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

**590:40-5-6. Employee additional contributions to the 457(b) plan**

(a) **Additional contributions; deposit of funds.** Participants may contribute additional Pre-Tax Elective Deferrals and Roth Elective Deferrals, above the 4.5% required contribution rate. All deferrals above the mandatory 4.5% contribution rate shall be considered voluntary deferrals. Participants may contribute 7% of compensation and it shall be matched by the Employer. Participants may contribute more than 7% of compensation, but any such amount over 7% shall not be eligible for Employer matching amounts. All voluntary deferrals shall be subject to the maximum deferral limits allowed under the Code and as set forth in Subchapter 9 of this Chapter. Voluntary deferrals shall be paid and remitted in the same manner as the mandatory contributions. All voluntary deferrals are intended to meet the requirements of Code Sections 457(b). All voluntary deferrals over the 4.5% mandatory contribution shall be placed by OPERS in the 457(b) plan as set forth by the Board of Trustees and in accordance with Subchapter 9 of this Chapter.

(b) **Change in deferral rate.**

(1) A Participant may change the voluntary deferral rate once per month by giving notice to OPERS of such change. Any request for a change in the amount of the voluntary deferral rate and any change in the corresponding Employer matching amount shall become effective the month after the notice is received and the change is approved by OPERS.

(2) A Participant may change the deferral amount designated as Pre-Tax Elective Deferrals or Roth Elective Deferrals once per month by giving notice to OPERS of such change. Any request for a change in the amount designated as Pre-Tax Elective Deferrals or Roth Elective Deferrals shall become effective the month after the notice is received and the change is approved by OPERS.

(c) **Notice.** Any notice required under this Section means communication on forms approved by OPERS or the Recordkeeper, through the website of OPERS or the Recordkeeper, or through a dedicated telephone service of OPERS or the Recordkeeper.

(d) **Default treatment of deferrals.** Unless otherwise designated by the Participant, any voluntary deferrals under the Plan shall be treated as Pre-Tax Elective Deferrals.

(e) **Roth Elective Deferrals.** Roth Elective Deferrals will be credited and debited to the Roth Elective Deferral Subaccount maintained for

each Participant. OPERS will maintain a separate record of the amount of Roth Elective Deferrals in each Roth Elective Deferral Subaccount. No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to the Roth Elective Deferral Subaccount.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16 ; Amended at 34 Ok Reg 1900, eff 9-11-17 ; Amended at 40 Ok Reg 2347, eff 9-11-23]

**590:40-5-7. Employer matching contributions to the 401(a) plan**

(a) **Employer contributions.** The Employer shall contribute to the Trust Fund the amount referred to as Employer contributions. The Employer contributions shall consist of the funds the Employer uses to match the contributions paid by the Participant. Employer contributions shall not be less than 6% of compensation, but shall be 7% of compensation if the Participant elects to contribute 7% of compensation. Payment of matching contributions shall be made by the Employer to OPERS within five (5) business days of the payroll date for the Participant.

(b) **Placement in accounts.** All Employer matching contributions shall be placed by OPERS in Accounts established for the Participant under the 401(a) plan as set forth in Subchapter 7 of this Chapter. In no event shall any Employer matching contributions be placed in the 457(b) plan.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

**590:40-5-8. Employer remittance of contributions for the 401(a) plan and the 457(b) plan**

(a) **State agencies.** The State shall remit both Employee and Employer contributions within five (5) business days of the Employee's payroll pay date.

(b) **Other Employers.** Employers whose deferrals and Employer contributions are not remitted to OPERS through the Office of Management and Enterprise Services shall either send the remittances by electronic funds transfer or place such remittances in a bank account from which OPERS can debit the amount due. In both cases, the remittance must occur within five (5) business days of the payroll pay date of the Participant.

(c) **Deposit by System.** OPERS shall deposit the contributions as soon as possible in the proper Account or Accounts maintained on behalf of the Participant in accordance with Subchapters 7 and 9 of this Chapter.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**PART 5. VESTING - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN**

**590:40-5-15. Vesting**

(a) **Employee deferrals and contributions.** Each Participant shall acquire a vested interest in his or her accounts in the 401(a) plan and the 457(b) plan of one hundred percent (100%) of the Participant's contributions or deferrals, including any gains or losses on such contributions or deferrals, at all times.

(b) **Employer matching amounts.** Each Participant shall acquire a vested interest in his or her Employer contributions, including any gains or losses on such contributions, in the 401(a) plan in accordance with the following vesting schedule:

(1) At the end of the first full year of participation, the Participant shall be vested in 20% of the Employer's matching contributions;

(2) At the end of the second full year of participation, the Participant shall be vested in 40% of the Employer's matching contributions;

(3) At the end of the third full year of participation, the Participant shall be vested in 60% of the Employer's matching contributions;

(4) At the end of the fourth full year of participation, the Participant shall be vested in 80% of the Employer's matching contributions; and

(5) At the end of the fifth full year of participation and thereafter, the Participant shall be vested in 100% of the Employer's matching contributions.

(6) For purposes of this subsection, the Participant's first day of employment shall be used to determine the first day of participation.

(c) **Full or partial termination.** In the event of a full or partial termination of a Plan, or a complete discontinuance of Employer contributions to the Plan, the accounts of affected Participants under the Plan shall be 100% vested and nonforfeitable to the extent required by federal law.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

#### **590:40-5-16. Years of service for vesting; forfeiture - 401(a) plan**

(a) **Full years.** Only full years of participation by the Participant with an Employer shall be counted toward vesting. A full year of participation shall mean a period of 365 days beginning on the participant's date of employment and each 365 days thereof. Participants must complete a full year of participation to be vested according to the schedule set forth in 590:40-5-15. Partial years shall not round up but shall round down to the nearest full year of participation. For example, a Participant with 3 years and 300 days of participation shall be vested in 100% of his or her Employee contributions, and 60% of the Employer contributions, and any investment gains or losses on such amounts.

(b) **Breaks in service.** For purposes of determining the vested interest of a Participant, all full years of participation, including breaks in service, shall be credited toward vesting unless there is a Termination of Service. The determination of whether a Participant has completed a full year of participation for vesting purposes shall be made by OPERS.

(c) **Forfeiture of contributions from Plan.** If a Participant terminates service with an Employer or otherwise becomes ineligible to participate in the 401(a) plan, the portion of Employer contributions which are not vested shall be forfeited to the 401(a) plan ninety (90) days after the Termination of Service. Upon reemployment with an Employer and satisfying the eligibility requirements to become a Participant, the reemployed Participant shall receive credit for the previously vested years and days of service and be vested at the same percentage the Participant was vested when service was previously terminated. However, under no circumstances shall the Participant be entitled to any previously forfeited Employer contributions, including any gains or losses on such contributions. A person employed by the Legislative Service Bureau, State Senate or House of Representatives for the full duration of a regular legislation session shall not have the non-vested portion of his or her Employer contributions forfeited if he or she is rehired by the Legislative Service Bureau, State Senate or House of Representatives by February 1<sup>st</sup> of the following legislative session.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

**590:40-5-17. Normal retirement age - applicable to the 401(a) plan and the 457(b) plan**

(a) **Normal retirement age for the 401(a) plan.** The normal retirement age for participants under the 401(a) plan is age 65. Upon attaining age 65, the Participant is vested in the Employer contributions as set forth in 590:40-5-15 and no change can be made in that vesting schedule for the Participant.

(b) **Normal retirement age for the 457(b) plan.** A Participant in the 457(b) plan is allowed to designate a normal retirement age under the 457(b) plan for purposes of the special section 457 catch-up under Code Section 457(b)(3) that is no earlier than age 65 and no later than age 70 ½.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**PART 7. BENEFICIARIES - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN**

**590:40-5-20. Beneficiaries**

(a) **Designating a beneficiary.** A Participant may file with OPERS a beneficiary or change of beneficiary form designating the person or persons to receive any amounts which may be distributed in the event of death of the Participant prior to complete distribution of benefits. The Participant shall have the option to designate the same or different beneficiaries for amounts in the 401(a) plan and the 457(b) plan. If a Participant dies without having a beneficiary form on file in both the 401(a) plan or 457(b) plan, or is not survived by a designated beneficiary, payments shall be made to the beneficiary designated by the Participant

in either the 401(a) plan or 457(b) plan, whichever is applicable.

(b) **Beneficiary designation; rights to payment.** Following the death of the Participant, the Beneficiary may file with OPERS a beneficiary or change of beneficiary form designating the person or persons to receive any amounts which may be distributed in the event of death of the Beneficiary prior to complete distribution of benefits. The Beneficiary shall have the right to apply to OPERS to amend the payment option as previously elected by the Participant.

(c) **Multiple beneficiaries.** If more than one designated beneficiary survives the Participant, or the Beneficiary in the event of death of the Participant, distributions shall be made equally to the surviving beneficiaries unless otherwise set forth in the beneficiary form. A Participant, or the Beneficiary in the event of death of the Participant, may designate primary and contingent beneficiaries.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-5-21. Death without beneficiary**

(a) **Participant.** If a Participant dies without filing a beneficiary form with OPERS or is not survived by a designated Beneficiary under either the 401(a) plan or the 457(b) plan, the distribution of remaining benefits shall be made to the properly appointed administrator, executor, personal representative, or other fiduciary of the estate of the Participant. If there is no estate, or if no administrator, executor, personal representative, or other fiduciary of estate of the Participant has been appointed and qualified within one hundred twenty (120) days after death, the distribution of benefits may be made to first of the following:

- (1) surviving spouse;
- (2) surviving children in equal shares;
- (3) surviving parents in equal shares; or
- (4) surviving siblings in equal shares.

(b) **Surviving Beneficiary.** If, after the death of the Participant, a Beneficiary dies without having a beneficiary form on file or is not survived by a designated Beneficiary, the distribution of remaining benefits shall be made to the properly appointed administrator, executor, personal representative, or other fiduciary of the estate of the Beneficiary. If there is no estate of the Beneficiary, the distribution of the Beneficiary's benefits shall be in the same manner as the distribution of the Participant's benefits as set forth in (a) of this Section.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-5-22. Beneficiary forms**

(a) **Requirements for acceptance.** The beneficiary form shall be provided by OPERS and shall have no effect until it is signed by the Participant, or in the event of death of the Participant, signed by the Beneficiary. Additionally, the beneficiary form must be filed and accepted by OPERS before it shall be considered effective.

(b) **Burden to file form.** The Participant, or the Beneficiary in the event of death of the Participant, accepts and acknowledges that he or she has

the burden for executing and filing with OPERS a proper beneficiary designation form.

(c) **Failure to file or accept.** If OPERS does not accept a beneficiary form for any reason, the previous beneficiary form which was properly filed and accepted by OPERS shall control the distribution of benefits.

(d) **Options for each plan.** OPERS shall provide a beneficiary form which distinguishes the 401(a) plan and 457(b) plan, and the Participant, or the Beneficiary in the event of death of the Participant, shall have the option to designate the same or different beneficiaries for the amounts in the 401(a) plan and the 457(b) plan.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

## **SUBCHAPTER 7. DEFINED CONTRIBUTION 401(A) PLAN**

### **PART 1. ACCOUNTS**

#### **590:40-7-1. Establishment of Accounts**

OPERS shall establish Accounts for each Participant to reflect the Participant's mandatory (4.5%) contribution and the matching Employer Contribution. Each Account shall be subdivided further and separate records shall be maintained showing the manner in which each Account is invested. Separate records also shall be maintained with respect to each Account showing the amount of contributions, distributions, vested balance, and the amount of income, expenses, gains, and losses attributable thereto. All subaccounts shall be referred to as a Participant's Account. The interest of each Participant shall comprise the amount in the Account, as determined under 590:40-7-3, plus credits, representing the Participant's allocable share of contributions, profits, income, and other increments attributable to such contributions, and minus debits, representing the Participant's proportionate share of losses and other decrements or expenses under the Plan and all distributions under the Plan made to or regarding that Participant. These records shall be maintained by the Plan on a calendar quarter-end basis only and available for seven (7) years.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

#### **590:40-7-2. Statement of a Participant's Account**

The Recordkeeper, as soon as practicable after the end of each calendar quarter of the year, or more frequently, as OPERS may determine, shall mail or distribute to each Participant (including those who have incurred a Termination of Service) a statement setting forth the Account of such Participant as of the end of such period. Such statement shall be deemed to have been accepted as correct unless written notice to the contrary is received by OPERS and/or Recordkeeper within sixty (60) days after the mailing or distribution of such statement to the

Participant.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-7-3. Valuation of Accounts**

The Recordkeeper shall value the investments each business day. On each Valuation Date, there shall be allocated to the Accounts of each Participant the proportionate share of the increase or decrease in the fair market value of the Participant's Accounts in each of the investments, based on the beginning balance of such Accounts for such day. The Recordkeeper for the Plan may determine the increase or decrease in the fair market value of the Participant's Account in each of the investments on a cash, share or unit accounting basis. Whenever an event requires a determination of the value of the Participant's Accounts, the value shall be computed as of a Valuation Date coincident with or following the date of the event. The Recordkeeper shall be the final authority on the value of a Participant's Account. These daily valuation records shall be maintained by the Recordkeeper for a period of one (1) year. Thereafter, Account information will be available on a quarter-end basis as provided in 590:40-7-1.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

## **PART 3. CONTRIBUTIONS**

### **590:40-7-10. Rollover contributions**

(a) **Rollovers into Plan.** Participants who maintain an Account in the Plan may make rollover contributions to this Plan, provided such rollover contributions meet the requirements under Code Sections 402(c)(4), 403(a)(4), or 408(d)(3), or any other applicable section of the Code or regulations.

(b) **Acceptance of rollovers from eligible employer plans.** The Plan shall accept direct rollovers of eligible pre-tax rollover distributions excluding after-tax employee contributions from the following types of plans:

- (1) a qualified plan described in Code Section 401(a) or 403(a);
- (2) an annuity contract described in Code Section 403(b); and
- (3) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(c) **Acceptance of pre-tax rollover distribution.** The Plan shall accept a Participant contribution of an eligible pre-tax rollover distribution excluding after-tax employee contributions, from the following types of plans:

- (1) a qualified plan described in Code Section 401(a) or 403(a);
- (2) an annuity contract described in Code Section 403(b); and
- (3) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any

agency or instrumentality of a state or political subdivision of a state.

(d) **Acceptance of pre-tax distribution from IRA or annuity.** The Plan shall accept a Participant rollover contribution of the portion of a pre-tax distribution from an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includable in gross income.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**590:40-7-11. Mistaken Employer contribution**

(a) **Allocation error.** If an Employer contribution has been allocated to an Account in error, the Recordkeeper shall reallocate the contributions, plus any gain or less any loss, from such Account to a suspense account as soon as administratively possible but not later than the Plan Year immediately following the Plan Year in which the mistaken Employer Contribution was made.

(b) **Suspense account.** Amounts so reallocated to a suspense account shall be used to reduce the Employer Contribution.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**PART 5. ALLOCATIONS AND VESTING**

**590:40-7-20. Allocation of Employer contributions**

Each business day the Recordkeeper receives Employer contributions before the close of the market, the Recordkeeper shall allocate the contribution to the Account of each Participant on whose behalf such contribution was made.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**590:40-7-21. Vesting**

A Participant shall at all times be vested at one hundred percent (100%) in his or her account containing solely the Participant's contributions, and the investment gains and losses on those contributions. A Participant shall be vested in the Employer's matching contributions, and the gains and losses on those contributions, in accordance with the vesting schedule set forth in 590:40-5-15. All matching Employer contributions, and the investment gains and losses on those contributions, in the Participant's Account that are not vested at the time the Participant terminates participation in the Plan shall be subject to forfeiture in accordance with 590:40-5-16(c).

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

**590:40-7-22. Forfeitures**

Matching contributions, and the investment gains and losses on those contributions, in the Account of a Participant may be forfeited pursuant to Section 24.1 of Title 51 of the Oklahoma Statutes. To the extent any forfeiture occurs, such forfeiture shall be retained and used by the Plan under 590:40-3-9.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

## **PART 7. INVESTMENTS**

### **590:40-7-25. Investment contracts**

Employer and Participant contributions shall be delivered by the Employer to OPERS to be invested in one or more of the following types of contracts or accounts issued or made available by a company or companies approved by the Board:

- (1) savings account in an institution or institutions as determined by the Board;
- (2) deferred fixed interest contract or other type of investment;
- (3) deferred variable interest contract or other types of investment;
- (4) mutual fund, common/collective trust fund, or separate account;
- (5) any combination of the investment options in paragraphs (1) through (4) of this Section.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16 ; Amended at 39 Ok Reg 2085, eff 9-11-22]

### **590:40-7-26. Investment authority**

The investment options shall be selected by the Board in accordance with 74 O.S. Supp. 2014, § 935.9 and 590:20-1-4, provided such investment options satisfy the requirements of the Code for qualified plan investments. All Plan assets which have not been directed by the Participant shall be invested by the Board in accordance with the default investment option selected by the Board as set forth in 590:40-7-28.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-7-27. Participant directed investments**

A Participant's Account shall be invested in accordance with the investment direction of the Participant under the limitations established by the Board of Trustees under this Chapter, the investment policy or any pertinent contractual or investment fund provisions. The Employer, Board, OPERS, coordinator, and Recordkeeper shall be under no duty to question any investment direction of a Participant, to review any directed investments, or to make suggestions to the Participant, nor shall they be held responsible in any manner for investment loss or depreciation in

asset value of any directed investment.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**590:40-7-28. Default options**

(a) **Failure to select.** In the event a Participant fails to select any investment option upon enrollment in the Plan, the Board shall, by resolution, establish a default investment option for contributions received from the Participant and a default option for matching Employer contributions. Contributions invested in the default option shall remain in such option until the Participant directs the contributions to be invested in another investment option offered by the Plan.

(b) **Termination or elimination of options.** In the event of termination or elimination of any investment option from continued offering under the Plan, the Board may select default investment options for placement of affected funds. The Board may also designate periods where Participants may have no access to select investment options.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**PART 9. BENEFITS AND DISTRIBUTIONS**

### **590:40-7-30. Commencement**

(a) **Events initiating benefits.** In the event of a Participant's separation from service as a result of Termination of Service, Normal Retirement, Disability, or death, the Participant shall be entitled to receive a distribution of the vested funds in his or her Account under the Trust Fund. In the event that a Participant dies before the entire balance of the Account is distributed, 590:40-7-34 shall apply.

(b) **Electing time for commencing of benefits.** The Participant may elect, on forms prescribed by OPERS, the time at which distributions under the Plan are to commence by designating the month and year during which the first distribution is to be made; however, in no event shall payment begin later than the required beginning date, which is the later of the April 1 following the calendar year in which the Participant attains the age of 72 or such other date as may be permitted by the federal Internal Revenue Code, except as provided in 590:40-7-32, or the April 1 of the year following the calendar year in which the Participant terminates. The payment of benefits shall begin no earlier than forty-five (45) days after the occurrence of the event that gives rise to the beginning of the payment of benefits. If the Participant fails to apply for benefits after the required beginning date, the Board shall begin distribution of the Participant's entire interest as required by these rules in the form provided in 590:40-7-35.

(c) **Distribution of rollover contributions.** Rollover contributions as described in 590:40-7-10 are not subject to the requirements for separation of service as described in section (a) and shall be available for distribution within 30 days of acceptance of a properly completed distribution form as prescribed by OPERS.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16 ; Amended at 38 Ok Reg 2465, eff 9-11-21]

### **590:40-7-31. Benefit totals**

The Participant shall be entitled to the vested benefits created by participation in this Plan in accordance with the provisions of this Chapter. Generally, the vested benefits payable to the Participant will be the equivalent of the market value of the total vested benefits created by the investment selection made by the Participant, taking into consideration market losses and gains.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**590:40-7-32. Late retirement**

If the Participant continues employment after attaining 72 years of age, or such other date as may be permitted by the federal Internal Revenue Code, all benefits payable under the Plan may be deferred until the Participant retires, terminates employment, or dies. If the Participant is not an active Employee, the payment of benefits must begin no later than April 1 of the calendar year following the calendar year in which the Participant attained age 72 or such other date as may be permitted by the federal Internal Revenue Code.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 38 Ok Reg 2465, eff 9-11-21]

**590:40-7-33. Disability retirement**

If a Participant becomes Disabled and provides proof to OPERS of such disability, the Participant shall be deemed to be retired and will be paid the benefits as set forth in this Subchapter.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**590:40-7-34. Death prior to January 1, 2022**

(a) This Section shall be effective for Participant deaths prior to January 1, 2022.

(b) **Payment to beneficiary.** If the Participant dies prior to receiving Plan benefits, or the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated Beneficiary of the Participant in accordance with the distribution option selected by the Participant or the Beneficiary.

(c) **Distribution method.** Distributions must be made primarily for the benefit of the Participant (or former Participant). Therefore, distribution which begins prior to the death of a Participant must be in a form such that the total benefit amount will be paid over a period not to exceed the life expectancy of the Participant and a designated Beneficiary. Any amount not distributed to the Participant during his or her lifetime shall be distributed after the death of the Participant at least as rapidly as under the method of distribution used as of the date of his or her death. In addition, if the Participant dies prior to the commencement of distributions, the Participant's Account shall be distributed to the Beneficiary, commencing within one year of the employee's death, over the life of such Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary) but not to exceed 15 years; provided however if such Beneficiary is the surviving spouse of the Participant, then

- (1) such distributions shall, in all events, commence no later than December 31 of the calendar year in which the Participant would have attained age 70 ½ (or such other date as may be permitted under applicable Treasury Regulations), and
- (2) benefits payable to such spouse shall be completed during a period not in excess of such spouse's life expectancy. Life expectancies will not be recalculated annually.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 38 Ok Reg 2465, eff 9-11-21 ; Amended at 39 Ok Reg 2085, eff 9-11-22]

**590:40-7-35. Payment and distribution options**

Subject to the provisions of 590:40-7-30, a Participant, or Beneficiary where applicable, may elect within the period and on the forms prescribed by OPERS, to receive the balance of his or her Account in the form of:

- (1) a lump sum, payable in cash;
- (2) substantially level periodic installments;
- (3) any other form approved by OPERS or the Trustees.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**590:40-7-36. Rollovers to eligible retirement plan**

(a) **Election to rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner

prescribed by OPERS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) **Definitions.** As used in this section:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income, except to the extent provided by paragraph (c) of this section; and any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(2) "Eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or a qualified trust described in Code Section 401(a), or Roth individual annuity (if the individual is eligible for a Roth rollover) described in Code Section 408(A)(e), that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 18, 2015, an eligible retirement plan includes a SIMPLE IRA as described in Code § 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee's employer under Code § 408(p)(2), as described in Code § 72(t)(6). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(3) "Distributee" means a Participant. In addition, the Participant or the Participant's surviving spouse are distributees with regard to the interest of the spouse. For the limited purposes set forth in paragraph (d) of this section, distributee means a non-spouse beneficiary.

(4) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.

(c) **After-tax contributions.** A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such a portion may be transferred only to an individual retirement account or an individual retirement annuity described in section Code Section 408(a) or (b) of the Code, a qualified plan described in section Code Sections 401(a) or 403(a) of the Code, or to an annuity contract described in section Code Section 403(b) of the Code, that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(d) **Non-spouse beneficiary.** A non-spouse beneficiary pursuant to section Code Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in section Code Section 408(a) of the Code, or an individual retirement annuity described in section Code Section 408(b) of the Code, established for the purpose of receiving the distribution. Such account or annuity shall be treated as an "inherited" individual retirement account or annuity. A rollover pursuant to this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of Code Section 402(c).

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 39 Ok Reg 2085, eff 9-11-22]

#### **590:40-7-37. Minimum distribution requirements**

(a) **Application.** Notwithstanding anything herein to the contrary, the following minimum distribution requirements will apply.

(b) **Compliance with Code.** The Plan will make all distributions in accordance with a good faith interpretation of the requirements of Code Section 401(a)(9) and the Treasury Regulations thereunder, as applicable to governmental plans within the meaning of Code Section 414(d), including the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G) and Section 1.401(a)(9)-2 of the proposed Treasury Regulations, or any successor rules or regulations.

(c) **Time of distribution.** The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

(d) **Limits on distribution periods.** As of the first Distribution Calendar Year, distributions, if not made in a single lump sum, may be made over one of the following periods (or a combination thereof):

- (1) the life of the Participant,
- (2) the life of the Participant and a designated Beneficiary
- (3) a period certain not extending beyond the Life Expectancy of the Participant, or
- (4) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.

(e) **Distributions other than lump sum.** If the Participant's interest is to be distributed in other than a single lump sum, the following minimum

distribution rules shall apply on or after the Required Beginning Date:

(1) If a Participant's benefit is to be distributed over (i) a period not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's designated Beneficiary or (ii) a period not extending beyond the life expectancy of the designated Beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first Distribution Calendar Year must at least equal the quotient obtained by dividing the Participant's benefit by the Applicable Life Expectancy.

(2) The amount to be distributed each year, beginning with distributions for the first Distribution Calendar Year shall not be less than the quotient obtained by dividing the Participant's benefit by lesser of (i) the Applicable Life Expectancy or (ii) if the Participant's Spouse is not the designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of Section 1.401(a)(9)-2 of the Treasury Regulations. Distributions made after the death of the Participant shall be distributed using the Applicable Life Expectancy in (1) above as the relevant divisor without regard to Treasury Regulations Section 1.401(a)(9)-2.

(3) The minimum distribution required for the Participant's first Distribution Calendar Year must be made on or before the Participant's Required Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, must be made on or before December 31 of that Distribution Calendar Year.

(f) **Insurance company annuity.** If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations thereunder. OPERS or the Board shall assume no liability after distribution if Participant's benefit is distributed in the form of an annuity purchased from an insurance company or converted into an annuity by an insurance company.

(g) **Definitions.** For purposes of this Section, the following terms shall have the meanings as set forth below:

(1) **"Applicable Life Expectancy"** means the life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or designated Beneficiary) as of the Participant's (or designated Beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. Life expectancies will not be recalculated annually. If annuity payments commence before the Required Beginning Date, the applicable calendar year is the year payments commence. If distribution is in the form of an immediate annuity purchased after the Participant's death with the Participant's remaining interest, the applicable calendar year is the year of purchase.

(2) **"Distribution Calendar Year"** means a calendar year for which a minimum distribution is required. For distributions

beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to this Section.

(3) **"Participant's Benefit"** means the Participant's Account as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year ("Valuation Calendar Year") increased by the amount of any contributions allocated to the Account as of dates in the Valuation Calendar Year after the Valuation Date and decreased by distributions made in the Valuation Calendar Year after the Valuation Date. If any portion of the minimum distribution for the first Distribution Calendar Year is made in the second Distribution Calendar Year on or before the Required Beginning Date, the amount of the minimum distribution made in the second Distribution Calendar Year shall be treated as if it has been made in the immediately preceding Distribution Calendar Year.

(4) **"Required Beginning Date"** means the later of the first day of April of the calendar year following the calendar year in which the Participant

- (1) attains age 72 or such other date as may be permitted by the federal Internal Revenue Code or
- (2) retires.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 38 Ok Reg 2465, eff 9-11-21]

#### **590:40-7-38. Military service.**

Notwithstanding any provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), and Section 414(u) of the Code.

(1) To the extent required by section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under section 3401(h)(2) of the Code) from an employer shall be treated as employed by that Employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(2) While a Participant is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Section 401(a)(37) of the Code, survivors of the Participant, are entitled to any additional benefits that the Plan would provide if the Participant had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Participant's death while employed. In

any event, a deceased Participant's period of qualified military service must be counted for vesting purposes.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

**590:40-7-39. Death after December 31, 2021**

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of his or her entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 ½) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70 ½) after December 31, 2019). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child

under subsection (4), paragraph (B) shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A).

(2) If the Participant dies before distributions of his or her Account begins and the Participant has no designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his or her Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this section 590:35-13-13.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

- (A) the surviving spouse of the Participant;
- (B) a child of the Participant who has not reached the age of majority;
- (C) disabled within the meaning of Code Section 72(m)(7);
- (D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or
- (E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B) above shall cease to be an eligible designated Beneficiary as of the date he or she reaches the age of majority.

[Source: Added at 39 Ok Reg 2085, eff 9-11-22]

#### **590:40-7-40. Discontinuance of 2020 required minimum distributions**

(a) Notwithstanding any other provisions of this Chapter, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 2, 2021) but for the enactment of Code § 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either 1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and

the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs") will receive those distributions for 2020 unless the Participant or Beneficiary chooses to not receive such distributions.

(b) For purposes of the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs also will be treated as eligible rollover distributions in 2020.

[Source: Added at 39 Ok Reg 2085, eff 9-11-22]

#### **590:40-7-41. Plan-to-plan transfers**

This Plan may make or receive plan-to-plan transfers to or from other qualified plans, provided the requirements of federal law are met.

[Source: Added at 39 Ok Reg 2085, eff 9-11-22]

## **PART 11. LIMITATIONS ON ANNUAL ADDITIONS**

#### **590:40-7-45. General**

(a) **Account limitations.** In no event shall the Annual Addition for any Limitation Year to the Accounts of any Participant exceed the lesser of (1) \$40,000 (as adjusted pursuant to Code Section 415(d) or (2) one hundred percent (100%) of the Compensation, as defined below. For purposes of applying Code Section 415(c) and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made available to the Participant by the Employer during the Limitation Year ("Maximum Permissible Amount"), except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that Participant contributions picked up under Code Section 414(h) shall not be treated as Compensation. The Compensation limitation referred to in (2) below shall not apply to any contribution for medical benefits (within the meaning of Code Sections 401(h) or 419A(f)(2)) which is otherwise treated as an Annual Addition under Code Sections 415(1)(1) or 419A(d)(2). Participant contributions are determined without regard to rollover contributions. The 415(c) limit with respect to any Participant who at any time has been a Participant in any other defined contribution plan as defined in Code Section 414(i) maintained by the Participant's Employer in this Plan shall apply as if the total annual additions under all such defined contribution plans in which the Participant has been a Participant were payable from one (1) plan.

(b) **Contribution or allocation limits.** Except to the extent permitted under Code Section 414(v), if applicable, the Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the Maximum Permissible Amount, the lesser of:

- (1) Forty Thousand Dollars (\$40,000), as adjusted for increases in the cost-of-living under Code Section 415(d), or
- (2) One hundred percent (100%) of the Participant's Compensation, within the meaning of Code Section 415(c), for the Limitation Year.

(c) **Annual Addition limits.** The amount of Annual Addition which may be allocated under this Plan on a Participant's behalf for a Limitation Year shall not exceed the Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's Account for the same Limitation Year under any other qualified defined contribution plan, under any welfare benefit fund, as defined in Code Section 419(e), or under any individual medical benefit account, as defined in Code Section 415(l)(2); as maintained by the Employer and which provide an Annual Addition during any Limitation Year.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 38 Ok Reg 2465, eff 9-11-21]

### **590:40-7-46. Definitions**

The following words or terms, when used in this Part 11 of this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**"Annual addition"** means the sum for any Plan year of the following amounts allocated on behalf of a Qualified Participant for a Limitation Year:

- (A) All Employer contributions;
- (B) All Participant contributions determined without regard to any rollover contributions (as defined in Code Sections 402(c), 403(a)(4), 403(b)(8), and 408(d)(3)) without regard to Participant contributions to a simplified employee pension which are excludable from gross income under Code Section 408(k)(6);
- (C) All forfeitures;
- (D) Amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer; and
- (E) Amounts derived from contributions which are attributable to post-retirement benefits allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer. The compensation limit in (ii) of Section 590:40-7-45(a) shall not apply to any contribution for medical benefits (within the meaning of Code Section 401(h) or 419A(f)(2)) after separation from service which is treated as an Annual addition. For purposes of this Subchapter, excess amounts reapplied to reduce Employer contributions under Section 590:40-7-47 in the Limitation Year shall also be included as an Annual Addition for such Limitation Year.

**"Compensation"** means:

(A) For purposes of applying the limitation of Code Section 415, a Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining this Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulation Section 1.62-2(c)), and excluding the following:

(i) Distributions from a plan of deferred compensation, regardless of whether such amounts are includable in the gross income of the Participant when distributed; and

(ii) other amounts which receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includable in the gross income of the Participant). Compensation shall also include contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Participant under Code Sections 125, 132(f)(4), 401(k), 408(k), 403(b) or 457. For purposes of applying the limitation of this Subchapter, Compensation for a Limitation Year is the Compensation actually paid or made available to the Participant within the Limitation Year. Notwithstanding the preceding sentence, Compensation for a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the Compensation such Participant would have received for the Limitation Year if such Participant had been paid at the rate of Compensation paid immediately before becoming permanently and totally disabled. If the Plan provides for the continuation of such contributions on behalf of all Participants who are permanently and totally disabled for a fixed or determinable period, then imputed Compensation may be taken into account for a disabled Participant. Such contributions on behalf of a permanently and totally disabled Participant must be nonforfeitable when made.

(B) Payments made by the later of 2 ½ months after severance from employment or the end of the Limitation Year that includes the date of the Participant's severance from employment shall be included in compensation if they are payments that, absent a severance from employment,

would have been paid to the Participant while the Participant continued in employment with the Employer and are:

- (i) Regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and the compensation would have been paid to the Participant prior to a severance from employment if the Participant had continued employment with the Employer; or
- (ii) payments for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued; or
- (iii) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Participant at the same time if the Participant had continued employment with the Employer and only to the extent that the payment is includible in the Qualified Participant's gross income.

(C) Any payments not described in paragraph (B) of this definition are not considered compensation if paid after severance from employment, even if they are paid within 2 ½ months following severance from employment.

However, payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(D) An Employee who is in qualified military service (within the meaning of Code Section 414(u)(1)) shall be treated as receiving compensation from the Employer during such period of qualified military service equal to

- (i) the compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or
- (ii) if the compensation the Employee would have received during such period was not reasonably certain, the Employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military

service).

(E) For purposes of Code Section 415(c) and this subchapter, compensation of each Participant taken into account in determining allocations for any Plan Year shall not exceed the applicable limit established by Code Section 401(a)(17) as of the first day of the calendar year, as increased for the cost-of-living adjustment.

**"Limitation Year"** means the calendar year.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-7-47. Adjustments for excess amount**

If there is an Annual Addition in excess of the limitation under Code Section 415(c) as set forth in this Part 11 or any other excess amount subject to correction under the Employee Plan Compliance Resolutions System (or other similar Internal Revenue Service correction program), such amount will be corrected as permitted under the Employee Plan Compliance Resolutions System (or other similar Internal Revenue Service correction program).

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

## **PART 13. TRUST**

#### **590:40-7-50. Establishment and acceptance of Trust**

There shall be created a Trust under this Subchapter 7 for all contributions paid into the 401(a) plan. The Board of Trustees shall act as trustee of the Trust. The Board shall take, hold, invest, administer, and distribute in accordance with this Plan and Trust, all contributions and assets paid or delivered to the Board pursuant to the Plan for the uses and purposes herein expressed. The Board shall be accountable for all contributions received, but shall have no duty to require any contributions to be made or to determine that the amounts received comply with the Plan, or to determine that the Trust Fund is adequate to provide the benefits payable under the Plan.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-7-51. Payments from Trust Fund**

(a) **Duties of Recordkeeper.** The Recordkeeper shall make payments from the Trust Fund to such persons in such manner, at such times and in such amounts as the Board of Trustees, acting through OPERS, shall direct. The Recordkeeper shall be fully protected in making, discontinuing, or stopping payments from the Trust Fund in accordance with the directions of the Board of Trustees or OPERS. The Recordkeeper shall have no responsibility to see to the application of payments so made or to ascertain whether the directions of the Board of Trustees or OPERS comply with the Plan. When the Board of Trustees or OPERS directs that any payment is to be made only during or until the time a certain

condition exists regarding the payee, any payment made by the Recordkeeper in good faith, without actual notice or knowledge of the changed status or condition of the payee, shall be considered to have been properly made by the Recordkeeper and made in accordance with the direction of the Board of Trustees or OPERS.

(b) **Administrative expenses.** To the extent permitted by law, the Board of Trustees shall be reimbursed for its expenses, if any, that are reasonable and necessary for the administration of the Plan and the Trust pursuant to 74 O.S. § 935.6 and 590:40-3-9.

(c) **Taxes.** The Board of Trustees, acting through OPERS or Recordkeeper is authorized, to the extent required under applicable law, to withhold from distributions to any payee such sum as the Board of Trustees determines is necessary to cover federal and state taxes for which the Board of Trustees may be liable, which are, or may be, assessed with regard to the amount distributable to such payee. Upon discharge or settlement of such tax liability, the Board of Trustees shall pay the balance of such sum, if any, to such payee or to his or her estate. Prior to making any payment or distribution, the Board of Trustees may require such releases or other documents from any lawful taxing authority and may require such indemnity from any payee or distributee as the Board of Trustees shall reasonably deem necessary for its protection.

(d) **Limits on Trust Fund payments.** No amounts shall be payable to the Employer from the Trust Fund except as provided in the Plan.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-7-52. Investment of Trust Fund; standard of care**

(a) **Limitations on corpus or income.** The corpus or income of the Trust Fund may not be diverted to or used for other purpose than the exclusive benefit of the Participants or their Beneficiaries.

(b) **Standard of care.** The Board of Trustees shall perform all acts within its authority under this Plan and the assets shall never inure to the benefit of an Employer and shall be for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan and Trust, and shall perform such acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Subject to the preceding sentence, the Board of Trustees shall diversify the investments of the Trust Fund to minimize the risk of large losses by offering diverse investment options to Participants, unless under the circumstances it is prudent not to do so.

(c) **Powers and duties.** To the extent applicable for this Plan and Trust, provisions of the Oklahoma Statutes which reference the powers and duties of the Board of Trustees are incorporated.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-7-53. Trust accounts**

At least each quarter, the Recordkeeper shall provide a written account to the Board of Trustees setting forth all transactions affected by it subsequent to the end of the period covered by its last previous account, and listing the assets of the Trust Fund at the close of the period covered by such account. Each year, the Board of Trustees shall publish an annual report presented in simple and easily understood language. The annual report shall cover the operation of the Plan and Trust, during the past year, including income, disbursements, and the financial condition of the Plan and Trust and any other information deemed relevant by the Board of Trustees. The annual report shall be written in such a manner as to permit a readily understandable means for analyzing the financial condition and performance of the Plan and Trust.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

### **590:40-7-54. Miscellaneous**

- (a) **Limitation in interest.** The creation of this Trust shall not be construed as giving any person entitled to benefits or other employees of the Employer, who are not Participants of the Plan, any equity or other interest in the assets, business, or affairs of the Employer.
- (b) **Bond or surety.** No additional bond, surety or security shall be required of the Board of Trustees except as required by law or by the Employer.
- (c) **Insurance.** The Board of Trustees may procure insurance indemnifying the members of the Board of Trustees from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board of Trustees.
- (d) **Severability.** If any provision or provisions of this Plan and/or Trust shall be held illegal or invalid, the illegality or invalidity shall not affect the remaining provisions of this Plan and/or Trust, but shall be fully severable and the Plan and/or Trust shall be construed and enforced as if the illegal or invalid provisions had never been inserted.
- (e) **Enforcement of Trust.** The Employer and the Board shall have the authority, but shall be under no duty, to enforce this Trust on behalf of all persons having or claiming any interest in the Trust Fund. In any action or proceeding affecting the Trust Fund or the administration thereof, or for instructions to the Board of Trustees, the Employer and the Board of Trustees shall be the only necessary parties, and no employees of the Employer or their beneficiaries, or any other person having or claiming to have an interest in the Trust Fund shall be entitled to any notice of process. Any judgment that may be entered in such action or proceeding shall be binding on all persons having or claiming to have any interest in the Trust Fund.
- (f) **No employment contract.** Entering into this Plan and Trust by the Employer and the Participant shall not be construed to give a contract of employment to the Participant or to alter or amend an existing employment contract of the Participant, if one exists, nor shall the

entering into this Plan and Trust be construed as affording the Participant any representation or guarantee regarding his or her continued employment.

(g) **Prohibited transaction.** The Board may not engage in a transaction prohibited by Code Section 503(b).

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

## **SUBCHAPTER 9. DEFINED CONTRIBUTION 457(B) PLAN**

### **PART 1. ELECTION TO DEFER**

#### **590:40-9-1. Maximum deferrals**

The maximum amount of the Deferral under the Plan for any calendar year shall not exceed the lesser of (i) the "Applicable Dollar Amount" or (ii) the Participant's "Includible Compensation" for the calendar year. For purposes of this Section, the Applicable Dollar Amount is the amount established under Section 457(e)(15) of the Code; and the Participant's Includible Compensation has the same definition as "Compensation" in 590:40-7-46. The Participant is responsible for monitoring his or her contributions to ensure that he or she does not exceed the applicable limits. Employer matching contributions will be suspended for the remainder of the calendar year once the applicable limits are reached.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

#### **590:40-9-2. Catch-up election**

(a) **Limited catch-up election.** The Plan shall provide for a limited catch-up election which will permit a Participant to defer the lesser of two times the applicable IRS limit for the year or the alternate catch-up limit.

(b) **Availability.** This election is only available once. A Participant may use the catch-up limitation only if not previously used under this or any other plan. The election may be made no sooner than the last three taxable years immediately preceding the taxable year in which the Participant reaches normal retirement age as defined in 590:40-5-17. The election can be made with respect to all three (3) years.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-3. Over Age 50 Catch-up Limits**

In addition to the maximum limits under 590:40-9-1, the Plan provides for a special catch-up for all employees who have attained age 50 before the close of the plan year. Such additional contributions shall be in accordance with, and subject to the limitations of Section 414(v) of

the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of Section 457 of the Code. This catch-up may not be used in the same years the employee is using the election under 590:40-9-2.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

## **PART 3. ACCOUNTS**

### **590:40-9-10. Establishment of Accounts**

OPERS shall establish Accounts for each Participant to reflect such Participant's Deferred Compensation. Each Account shall be subdivided further and separate records shall be maintained showing the manner in which each Account is invested. Separate records also shall be maintained regarding each Account showing the Deferred Compensation, distributions, and the income, expenses, gains, and losses. All subaccounts are referred to as a Participant's Account. The interest of each Participant shall be the amount in the Account, as determined under 590:40-9-12, plus credits, representing the Participant's Deferred Compensation, profits, income, and other increments attributable to such Deferred Compensation, and minus debits representing the Participant's proportionate share of losses and other decrements or expenses under the Plan and all distributions under the Plan made to or regarding that Participant. These records shall be maintained by the Plan on a calendar quarter-end basis only and available for seven (7) years.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-9-11. Statement of a Participant's Account**

The Recordkeeper, as soon as practicable after the end of each calendar quarter of the year, or more frequently as OPERS may determine, shall mail or distribute to each Participant (including those who have incurred a Termination of Service) a statement setting forth the Account of such Participant as of the end of such period. Such statement shall be deemed to have been accepted as correct unless written notice to the contrary is received by OPERS or the Recordkeeper within sixty (60) days after the mailing or distribution of such statement to the Participant.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-9-12. Valuation of Accounts**

The Recordkeeper shall value the investments each business day. On each Valuation Date, there shall be allocated to the Accounts of each Participant the proportionate share of the increase or decrease in the fair market value of the Participant's Accounts in each of the investments, based on the beginning balance of such Accounts for such day. The Recordkeeper for the Plan may determine the increase or decrease in the fair market value of the Participant's Account in each of the investments

on a cash, share or unit accounting basis. Whenever an event requires a determination of the value of the Participant's Accounts, the value shall be computed as of a Valuation Date coincident with or following the date of the event. The Recordkeeper shall be the final authority on the value of a Participant's Account. These daily valuation records shall be maintained by the Recordkeeper for a period of one (1) year. Thereafter, Account information will be available on a quarter-end basis as provided in 590:40-9-10.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-9-13. Deemed deferrals**

If an Employee has been properly enrolled in the Plan on a timely basis but the deferral is not made at the first available payroll period through no fault of the Employee, the deferral amount may be increased, upon approval of OPERS, in the first possible payroll following discovery of the error in order to establish participation as originally intended. Solely for purposes of determining eligibility for any Employer contribution, the Employee's participation in the Plan is deemed to have begun on the payroll for which that deferral should have originally occurred. The deemed deferral provision of this section shall not alter any tax ramifications that otherwise apply.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

## **PART 5. INVESTMENTS**

### **590:40-9-20. Investment contracts**

The deferred amount shall be delivered by the Employer to OPERS to be invested in one or more of the following types of contracts or accounts issued or made available by a company or companies approved by the Board:

- (1) savings account in an institution or institutions as determined by the Board;
- (2) deferred fixed interest contract or other type of investment;
- (3) deferred variable interest contract or other type of investment;
- (4) mutual fund, common/collective trust fund, or separate account;
- (5) any combination of the investment options in paragraphs (1) through (4) of this Section.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16 ; Amended at 39 Ok Reg 2085, eff 9-11-22]

### **590:40-9-21. Investment authority**

The investment options shall be selected by the Board in accordance with Section 74 O.S. §935.9 and 590:20-1-4. All Plan assets which have not been directed by the Participant shall be invested by the

Board in accordance with the default investment option selected by the Board as set forth in 590:40-9-23.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-22. Participant directed investments**

A Participant's Account shall be invested under the investment direction of the Participant pursuant to the limitations established by the Board of Trustees under this Chapter, the investment policy, or any pertinent contractual or investment fund provisions. The Employer, Board, OPERS, coordinator, and Recordkeeper shall be under no duty to question any investment direction of a Participant, to review any directed investments, or to make suggestions to the Participant, nor shall they be held responsible in any manner for investment loss or depreciation in asset value of any directed investment.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-23. Default options**

(a) **Failure to select.** In the event a Participant fails to select any investment option upon enrollment in the Plan, the Board shall, by resolution, establish a default investment option for contributions received from the Participant. Contributions invested in the default option shall remain in such option until the Participant directs the contributions to be invested in another investment option offered by the Plan.

(b) **Termination or elimination of options.** In the event of termination or elimination of any investment option from continued offering under the Plan, the Board may select default investment options for placement of affected funds. The Board may also designate periods where Participants may have no access to select investment options.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

## **PART 7. BENEFITS**

#### **590:40-9-25. Commencement of benefits**

The payment of amounts deferred under the Plan shall become payable:

- (1) No earlier than forty-five (45) days after the Participant separates from service with the Employer, through termination or retirement; or
- (2) Distribution of a Participant's account must begin no later than the required beginning date, which is the later of the April 1 following the calendar year in which the Participant attains the applicable age as required by the federal Internal Revenue Code or such other date as may be permitted by the federal Internal Revenue Code, except as provided in 590:40-9-28, or the April 1

of the year following the calendar year in which the Participant terminates. If a Participant fails to apply for distribution by the later of either of those dates, the Board shall begin distribution of the Participant's entire interest as required by this Section in the form provided in 590:40-7-35. Roth Elective Deferral Subaccounts and Roth Rollover Contributions Accounts are not subject to the requirements of Section 401(a)(9)(A) of the federal Internal Revenue Code.

(3) The Participant's entire interest must be distributed over the Participant's life or the lives of the Participant and a designated beneficiary, or over a period not extending beyond the life expectancy of the Participant or of the Participant and the designated beneficiary.

(4) Plan-to plan transfers as described in 590:40-9-35 are not subject to the requirements for separation of service and shall be available for distribution within 45 days of acceptance of the properly completed distribution form as prescribed by OPERS.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16 ; Amended at 37 Ok Reg 2052, eff 9-11-20 ; Amended at 38 Ok Reg 2465, eff 9-11-21 ; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

#### **590:40-9-26. Distribution schedule**

Distributions shall be made primarily for the benefit of the Participant. A distribution which begins prior to the death of a Participant shall be in a form so the total benefit amount will be paid over a period not to exceed the life expectancy of the Participant and a designated beneficiary.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-27. Benefit totals**

The Participant shall be entitled to the benefits created by participating in the Plan in accordance with the provisions of this Subchapter. The benefits payable to the Participant shall be the equivalent of the total benefits created by the investment selection made by the Participant considering market losses and gains where applicable.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-28. Late retirement**

If the Participant continues employment after attaining such applicable age as set forth under the federal Internal Revenue Code Section 401(a)(9)(C)(v), all benefits payable under the Plan may be deferred until the Participant retires, terminates employment, dies, or when the Participant is faced with an unforeseeable emergency. If the Participant is not an active Employee, the payment of benefits must begin no later than April 1 of the calendar year following the calendar year in which the Participant attained such age as set forth under the federal Internal Revenue Code Section 401(a)(9)(C)(v). No additional deferrals under this Plan may be made by the Participant after termination of

employment. Roth Elective Deferral Subaccounts and Roth Rollover Contribution Accounts are not subject to the requirements of Section 401(a)(9)(A) of the federal Internal Revenue Code.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 38 Ok Reg 2465, eff 9-11-21 ; Amended at 39 Ok Reg 2085, eff 9-11-22 ; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

#### **590:40-9-29. Disability retirement**

If a Participant becomes Disabled and provides proof to OPERS of such disability, the Participant shall be deemed to be retired and will be paid the benefits as set forth in this Subchapter.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-30. Termination of employment**

If a Participant terminates employment with an Employer before reaching Normal Retirement Age, the total accumulated benefits under the Plan will be payable in accordance with the election by the Participant under 590:40-9-33.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-31. Death prior to January 1, 2022**

This Section shall be effective for Participant deaths prior to January 1, 2022. If the Participant dies prior to receiving Plan benefits, the benefits payable under this Plan shall be paid to his or her designated beneficiary under the distribution option selected by the designated beneficiary. If the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated Beneficiary under the distribution option selected by the Participant unless the Beneficiary selects a different distribution option under Plan provisions.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 39 Ok Reg 2085, eff 9-11-22]

#### **590:40-9-32. Method of payment**

The payment of benefits shall begin no earlier than forty-five (45) days after the event that gives rise to the beginning of the payment of benefits. The Board may direct that the method of payment be directly from the company that issues the contracts in which investments have been made, directly to the Participant or a designated Beneficiary under the payment option elected by the Participant.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16]

#### **590:40-9-33. Payment and distribution options**

(a) The payment, method of payment, and any distribution options shall be available under the benefit payment elections on the appropriate

distribution request form. If the Participant elects to receive a deferred payout, the date selected for payouts to begin may be changed upon written notice to OPERS prior to the previously selected payout date subject to any minimum distribution requirements. The method of payment may be changed upon written notice to OPERS.

(b) A Participant electing to commence distribution shall have the opportunity to designate the extent to which the distribution should be taken in whole or in part from Pre-Tax Elective Deferrals or the Participant's other subaccounts, as applicable. In the absence of such designation, the distribution shall be taken pro rata from the subaccounts within the Participant's Account.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 40 Ok Reg 2347, eff 9-11-23]

### **590:40-9-34. Emergency withdrawals**

(a) For purposes of this Section, "unforeseeable emergency" means severe financial hardship to the Participant, resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

(1) Through reimbursement or compensation by insurance or otherwise.

(2) By liquidation of the Participant's assets, to the extent the liquidation of these assets would not itself cause severe financial hardship, or

(3) By cessation of deferrals under the Plan. Foreseeable personal expenditures which may normally be subject to a budget, such as a down payment for a home, mortgage payments, rent, credit card debt, the purchase of an automobile, college or other schooling expense, etc., shall not constitute an unforeseeable emergency.

(b) Notwithstanding any other provisions of this Subchapter, if an unforeseeable emergency or financial hardship occurs and is beyond the control of the Participant, a Participant may request OPERS to pay benefits to him or her immediately. If the application and justification for payment is approved by OPERS, payment will be processed by the Recordkeeper within ten (10) business days upon authorization from the Plan. Benefits to be paid shall be limited strictly to that amount needed to meet the emergency situation constituting financial hardship. Any remaining benefits shall be paid in accordance with this Subchapter. Two (2) or more emergency withdrawals paid from Participant's Account under this Subchapter will result in cancellation of that Participant's voluntary deferrals into the Plan for a period of not less than six (6) months following payment of the second emergency withdrawal. For purposes of this Section, any emergency withdrawals since the Participant's initial enrollment into the Plan will be considered when

applying this Section except that no cancellation will occur until the Participant has had a subsequent emergency withdrawal. The Participant will be responsible for re-establishing a voluntary deferral amount upon completion of the six-month cancellation period.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-35. Plan-to-plan transfers**

The Plan will accept Deferred Compensation of an individual under another eligible state or municipal Code Section 457 plan, unless the transferring Code Section 457 account includes funds previously transferred or rolled-over which require tax accounting or distribution rules different from those contained in this Plan. The Plan will also permit transfers to another Code Section 457 plan if the employers receiving such amounts permit the acceptance of these monies.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-36. Employee transfers**

If the Participant separates from service with an Employer in order to accept employment with another Employer and such separation from service is for thirty (30) days or less, payout will not begin upon separation from service regardless of any provision of the Plan to the contrary.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-37. Taxation**

Benefits paid from the Plan are subject to the applicable federal and state withholding tax rules and apply to all payments except those authorized for transfer to another Code Section 457 plan or rollover to an eligible retirement plan. A distribution from a Participant's Roth Elective Deferral Subaccount that is not a Qualified Distribution may be subject to additional taxation and/or penalties. Pursuant to 590:40-9-51, the Board may withhold amounts necessary to cover federal and state taxes from such payments. All payments will be reported on Internal Revenue Service Form 1099-R.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 40 Ok Reg 2347, eff 9-11-23]

#### **590:40-9-38. Rollover contributions to the plan**

(a) **Eligible Rollover Contributions.** A Participant or Employee who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan as eligible rollover contributions, unless the distributing eligible retirement plan account includes funds previously transferred or rolled-over which require tax accounting or distribution rules that are different from those contained in this Plan.

(b) **Roth Rollover Contribution.** Notwithstanding any other provisions in the Plan to the contrary, effective June 1, 2023, the Plan shall accept

Roth Rollover Contributions from a Roth account under an applicable retirement plan in accordance with Code Section 402A(e)(1) only if it is a direct rollover and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(c) **Separate Accounts.** The Plan shall establish and maintain for the Participant separate accounts for any:

- (1) Eligible rollover contributions or Roth Rollover Contributions paid to the Plan;
- (2) Eligible Roth rollover contributions paid to the Plan from any eligible retirement plan including an eligible governmental plan under Code Section 457(b); and
- (3) Eligible rollover contributions paid to the Plan from an eligible governmental plan under Code Section 457(b).

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 33 Ok Reg 78, eff 9-14-15 ; Amended at 33 Ok Reg 1816, eff 9-11-16 ; Amended at 40 Ok Reg 2347, eff 9-11-23]

### **590:40-9-39. Rollovers to other plans**

(a) **Election to rollover.** Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and the manner prescribed by OPERS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) **Definitions.** As used in this section:

(1) **"Eligible retirement plan"** shall mean a qualified trust described in Section 401(a) of the Code, an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, or a Roth individual annuity (if the individual is eligible for a Roth rollover) described in Section 408(A)(e) that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 18, 2015, an eligible retirement plan includes a SIMPLE IRA as described in Code § 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee's employer under Code § 408(p)(2), as described in Code § 72(t)(6). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

(2) **"Eligible rollover distribution"** means any distribution of all or any portion of the balance to the credit of the distributee,

except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the designated beneficiary of the distributee, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; or any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Code Section 457 or any distribution that is reasonably expected to total less than \$200 during the year.

(3) "**Distributee**" includes a Participant or a Participant's surviving spouse, or, for the limited purposes set forth in paragraph (c) of this section, a non-spouse beneficiary as described in (c) below, as defined by Code Section 401(a)(9)(E).

(4) "**Direct rollover**" means a payment by the Plan to the eligible retirement plan specified by the Distributee.

(c) **Non-spouse beneficiary.** A non-spouse beneficiary pursuant to Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in Section 408(a) of the Code, or an individual retirement annuity described in Section 408(b) of the Code, established for the purpose of receiving the distribution. Such account or annuity shall be treated as an "inherited" individual retirement account or annuity. A rollover under this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of Section 402(c) of the Code.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15 ; Amended at 39 Ok Reg 2085, eff 9-11-22]

#### **590:40-9-40. Direct transfers**

A Participant may request a direct trustee to trustee transfer to a defined benefit governmental plan to purchase permissive service credit.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-41. Transfers and rollover completion**

Any elections for plan-to-plan transfers or rollovers are contingent upon completion and acceptance of all necessary forms and documents. The forms for this purpose shall be provided by OPERS and will have no effect until it is signed, filed, and accepted by OPERS. The Participant or the Beneficiary accepts and acknowledges that he or she has the burden for executing and filing the proper beneficiary designation form.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-42. Federal qualified military service**

(a) **Qualified service.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit regarding qualified military service shall be provided under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), and Section 414(u) of the Code.

(b) **Election of additional deferrals.** A Participant whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) may elect to make additional deferrals to the Plan upon resumption of employment with the Employer equal to the maximum annual deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the annual deferrals, if any, actually made for the Participant during the period of the interruption or leave. This right applies to five (5) years following the resumption of employment, if sooner, for a period equal to three times the period of the interruption or leave. The Employer, in accordance with 74 O.S. §935.6, will make the Employer Contribution for such Participant for the equivalent period.

(c) **Differential wage payments.** To the extent required by Sections 3401(h) and 414(u)(12) of the Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall apply to all similarly situated individuals in a reasonable equivalent manner.

(d) **Death benefits.** Death benefits payable under this Plan shall be paid in accordance with Section 401(a)(37) of the Code, which provides that in the case of a Participant who dies while performing qualified military service (as defined in Section 414(u) of the Code), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that the Plan would otherwise provide had the Participant resumed and then terminated employment with the Employer on account of death.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-9-43. Coronavirus-related distributions [EXPIRED]**

[Source: Added at 37 Ok Reg 874, eff 7-1-20 through 9-14-21 (emergency)<sup>1</sup>]

**Editor's Note:** <sup>1</sup>*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 9-15-21 (after the 9-14-21 expiration of this emergency action), Section 590:40-9-43 was no longer effective. For the official text of the emergency rule that was in effect from 7-1-20 through 9-14-21, see 37 Ok Reg 874.*

**590:40-9-44. Death after December 31, 2021**

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of his or her entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 ½) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70 ½) after December 31, 2019). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either:

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under subsection (4), paragraph (B) shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A).

(2) If the Participant dies before distributions of his or her Account begins and the Participant has no designated Beneficiary,

the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his or her Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this section 590:35-13-13.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

- (A) the surviving spouse of the Participant;
- (B) a child of the Participant who has not reached the age of majority;
- (C) disabled within the meaning of Code Section 72(m)(7);
- (D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or
- (E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B) above shall cease to be an eligible designated Beneficiary as of the date he or she reaches the age of majority.

[Source: Added at 39 Ok Reg 2085, eff 9-11-22]

#### **590:40-9-45. Discontinuance of 2020 required minimum distributions**

(a) Notwithstanding any other provisions of this Chapter, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 2, 2021) but for the enactment of Code § 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either 1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs") will receive those distributions for 2020 unless the Participant or Beneficiary chooses to not receive such distributions.

(b) For purposes of the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs also will be treated as eligible rollover distributions in 2020.

[Source: Added at 39 Ok Reg 2085, eff 9-11-22]

## **PART 9. TRUST**

### **590:40-9-50. Establishment and acceptance of Trust**

There shall be created a Trust under this Subchapter 9 for all Deferrals into the Code Section 457(b) plan. The Board of Trustees shall act as trustee of the Trust. The Board shall take, hold, invest, administer, and distribute, in accordance with this Plan and Trust, all Deferred Compensation and assets paid or delivered to the Board pursuant to the Plan for the uses and purposes herein expressed. The Board shall be accountable for all Deferred Compensation received, but shall have no duty to require any compensation to be deferred or to determine that the amounts received comply with the Plan, or to determine that the Trust Fund is adequate to provide the benefits payable under the Plan.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

### **590:40-9-51. Payments from Trust Fund**

(a) **Payments by Recordkeeper.** The Recordkeeper shall make payments from the Trust Fund to such persons in such manner, at such times, and in such amounts as the Board, acting through OPERS, shall direct. The Recordkeeper shall be fully protected in making, discontinuing, or stopping payments from the Trust Fund in accordance with the directions of the Board or OPERS. The Recordkeeper shall have no responsibility to ascertain whether the directions of the Board or OPERS comply with the Plan or to determine whether the application of payments so made comply with the Plan. When the Board or OPERS directs that any payment is to be made only during or until the time a certain condition exists regarding the payee, any payment made by the Recordkeeper in good faith, without actual notice or knowledge of the changed status or condition of the payee, shall be considered to have been properly made by the Recordkeeper and made in accordance with the direction of the Board or OPERS.

(b) **Administrative expenses.** To the extent permitted by law, the Board shall be reimbursed for its expenses, if any, that are reasonable and necessary for the administration of the Plan and the Trust pursuant to 74 O.S. § 935.6 and 590:40-3-9.

(c) **Taxes.** The Board, acting through OPERS or the Recordkeeper is authorized, to the extent required under applicable law, to withhold from distributions to any payee such sum as the Board determines is necessary to cover federal and state taxes for which the Board may be liable, which are, or may be, assessed with regard to the amount distributable to such payee, in accordance with 590:40-9-37. Upon discharge or settlement of such tax liability, the Board shall pay the

balance of such sum, if any, to such payee or to the estate of the payee. Prior to making any payment or distribution hereunder, the Board may require such releases or other documents from any lawful taxing authority and may require such indemnity from any payee or distributee as the Board shall reasonably deem necessary for its protection.

(d) **Employer payments prohibited.** No amounts shall be payable to the Employer hereunder from the Trust Fund except as provided in the Plan.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-52. Investment of Trust Fund**

(a) **Use of corpus.** The corpus or income of the Trust Fund may not be diverted to or used for any other purpose than the exclusive benefit of the Participants or their Beneficiaries.

(b) **Duties of the Board.** The Board shall perform all acts within its authority under this Plan for the exclusive purpose of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of administering the Plan and Trust. The Board shall further perform such acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Subject to the terms of the preceding sentence, the Board shall diversify the investments of the Trust Fund so as to minimize the risk of large losses by offering diverse investment options to Participants, unless under the circumstances it is clearly prudent not to do so. To the extent applicable for this Plan and Trust, provisions of the Oklahoma Statutes which reference the powers and duties of the Board are incorporated.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-53. Trust Accounts**

At least once each quarter, the Recordkeeper shall provide a written account to the Board setting forth all transactions subsequent to the end of the period covered by its last previous account, and listing the assets of the Trust Fund at the close of the period covered by such account. Each year, the Board shall publish an annual report presented in simple and easily understood language. The annual report shall cover the operation of the Plan and Trust, during the past year, including income, disbursements, and the financial condition of the Plan and Trust and any other information deemed relevant by the Board. The annual report shall be written in such a manner as to permit a readily understandable means for analyzing the financial condition and performance of the Plan and Trust.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-9-54. Miscellaneous**

(a) **Equity in Employer.** The creation of this Trust shall not be construed as giving any person entitled to benefits hereunder or other employees of the Employer, who are not Participants of the Plan, any equity or other interest in the assets, business, or affairs of the Employer.

(b) **Additional bond for Board.** No additional bond, surety or security shall be required of the Board except as may be required by law or by the Employer.

(c) **Insurance for Board.** The Board may procure insurance indemnifying the members of the Board from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board.

(d) **Severability.** If any provision or provisions of this Plan or Trust shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of this Plan or Trust, but shall be fully severable and the Plan and/or Trust shall be construed and enforced as if the illegal or invalid provisions had never been inserted herein.

(e) **Enforcement of Trust Fund.** The Employer shall have the authority, but shall be under no duty, to enforce this Trust on behalf of any and all persons having or claiming any interest in the Trust Fund. In any action or proceeding affecting the Trust Fund or the administration thereof, or for instructions to the Board, the Employer and the Board shall be the only necessary parties, and no employees of the Employer or their beneficiaries, or any other person having or claiming to have an interest in the Trust Fund shall be entitled to any notice of process. Any judgment that may be entered in such action or proceeding shall be binding on all persons having or claiming to have any interest in the Trust Fund.

(f) **Employment contract.** Entering into this Plan and Trust by the Employer and the Participant shall not be construed to give a contract of employment to the Participant or to alter or amend an existing employment contract of the Participant, if in fact one exists, nor shall the entering into this Plan and Trust be construed as affording the Participant any representation or guarantee regarding continued employment.

(g) **Prohibited transaction.** The Board may not engage in a transaction prohibited by Code Section 503(b).

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

## **SUBCHAPTER 11. QUALIFIED DOMESTIC RELATIONS ORDERS - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN**

### **590:40-11-1. Purpose**

(a) **Establish policies and procedures.** The rules of this Subchapter have been adopted to establish policies and procedures for the process of approving qualified domestic relations orders, setting standards for such orders and administering the payment of benefits to alternate payees from each of the Plans.

(b) **Code requirements.** If all or a portion of a Participant's account in the Plans may be assigned to an alternate payee pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in Code Section 414(p), then the applicable requirements of Code Section 414(p) shall be followed by the Plan.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-11-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Qualified Domestic Relations Order"** means an order issued by a district court of the State of Oklahoma pursuant to the domestic relations laws of this state which relates to the provision of marital property rights to a spouse or former spouse of a Participant or provision of support for a minor child or children and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive a portion of the benefits payable with respect to a Participant of the Plan.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-11-3. Filing a qualified domestic relations order**

A Participant, a Participant's former spouse, or the legal representative of either may file a qualified domestic relations order with OPERS. In not more than ninety (90) days of such filing, OPERS will acknowledge receipt and notify all parties listed in the order that the order has been accepted or that clarification of the order must be provided. All qualified domestic relations orders filed with OPERS must be in accordance with Oklahoma Statutes and this Subchapter. No rights or benefits shall be enforceable until the order is accepted by OPERS. Upon acceptance, OPERS shall send the order to the Recordkeeper for processing and payment in accordance with the order. The Recordkeeper may charge the Participant, the alternate payee, or both a fee for processing the order. Such fee may be deducted by the Recordkeeper from the accounts of the Participant and the alternate payee.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-11-4. Contents of qualified domestic relations order**

(a) **Requirements for acceptance.** For a qualified domestic relations order to be accepted and binding on OPERS, the order must meet the requirements as set forth in this Section.

(b) **Contents.** The order must clearly specify the following:

- (1) the name, mailing address, and Social Security number of the Participant and the alternate payee covered by the order;
- (2) the dollar amount or exact percentage of the Participant's benefits to be paid to the alternate payee;
- (3) the characterization of the benefit as to marital property rights or child support, and whether the benefit ceases upon the

- death or remarriage of the alternate payee;
- (4) the order applies to the Participant's accounts in the 401(a) plan, the 457(b) plan, or both;
- (5) the date of marriage and the date of commencement of divorce proceedings giving rise to the order for division of marital property;
- (6) if the order is for child support, the name, date of birth, and Social Security number of each child covered by the order;
- (7) if the order is for child support, the exact amount (if any) awarded in continuing child support for each child and the exact amount (if any) awarded for arrearages; and
- (8) any conditions that will cause the order to terminate.

(c) **Contents not permitted.** The order meets the requirements of this Section only if such order:

- (1) does not require OPERS to provide any type or form of benefit or any option not otherwise provided under the state law as related to this Plan or OPERS;
- (2) does not require OPERS to provide increased benefits;
- (3) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic relations order by OPERS; and
- (4) does not require payment of benefits to an alternate payee prior to the earliest date permitted under the terms of the Plan.

(d) **Amounts required.** The order must provide an exact dollar amount or percentage of total benefit. The order may not provide for a percentage of the benefit accrued on a given date. The order may not provide a formula which requires OPERS to calculate the amount payable to an alternate payee.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-11-5. Payment to alternate payee**

(a) **Amount of award.** The benefit awarded to the alternate payee under the order shall be credited with any interest and investment income or losses attributable to the Participant's account from the valuation date, or closest valuation date, of the account, until the date of total distribution to the alternate payee.

(b) **Commencement date; form of payment.** If the alternate payee so elects, the benefits shall be paid to the alternate payee as soon as administratively feasible following the date the order is approved by OPERS, or at the earliest date permitted under the Code. The benefits payable to the alternate payee shall be in any form or permissible option otherwise available to the Participant under the terms of the Plan. The alternate payee's portion of the benefits payable shall be allocated on a prorata basis from all the accounts or investment options maintained under the Plan on behalf of the Participant. Unless the alternate payee elects an immediate distribution that is permitted under the Plan at the time the order is submitted to and approved by OPERS, such benefits shall be segregated and separately maintained in a nonforfeitable

account established on behalf of the alternate payee. This account shall initially be established in the same fund mix percentages as the Participant account. The alternate payee shall be responsible for paying any applicable withdrawal charges imposed under any investment account with respect to the alternate payee's share under the Plan.

(c) **Taxes.** The alternate payee who is the spouse or former spouse of the Participant shall be treated as a distributee of any distributions or payments made to the alternate payee under the order, and as such, Federal and Oklahoma state income taxes will be withheld from the payment to the alternate payee in accordance with applicable federal and state statutes.

(d) **Change of address.** It is the responsibility of the alternate payee to notify OPERS of any change in the alternate payee's address.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-11-6. Alternate payee's rights**

After the order has been accepted by OPERS, but before the alternate payee receives a total distribution under the Plan, the alternate payee shall be entitled to all of the rights and privileges afforded to Plan beneficiaries, including but not limited to, the rules regarding the right to designate a beneficiary for death benefit purposes and the right to direct Plan investments, but only to the extent permitted under the Plan.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-11-7. Death of Participant or alternate payee**

(a) **Death of Participant.** If the Participant predeceases the alternate payee, the Participant's death shall not affect the alternate payee's right to the portion of benefits as set forth in the order.

(b) **Death of alternate payee.** In the event of the alternate payee's death prior to receiving the full amount of benefits assigned under the order and under the benefit option chosen by the alternate payee, the alternate payee's beneficiaries, as designated on the appropriate form, shall receive the remainder of any unpaid benefits under the terms of the order. In the absence of a beneficiary designation, the unpaid benefits shall be paid the alternate payee's estate. If there is no estate, the distribution of benefits may be made to the first of the following:

- (1) surviving spouse;
- (2) surviving children in equal shares;
- (3) surviving parents in equal shares;
- (4) surviving siblings in equal shares.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-11-8. Termination of a qualified domestic relations order**

(a) **Termination.** A qualified domestic relations order, whether for provision of marital property or child support, will terminate when OPERS has fully met the provisions of the order.

(b) **Remarriage of alternate payee.** In the event a qualified domestic relations order requires the benefits payable to an alternate payee to terminate upon the remarriage of the alternate payee, OPERS shall terminate the benefit only upon the receipt of a certified copy of a marriage license, or a copy of a certified order issued by the court that originally issued the qualified domestic relations order declaring the remarriage of the alternate payee.

(c) **Termination of child support.** If the qualified domestic relations order is for continuing child support obligations, the order shall cease upon the death of a minor child. If the qualified domestic relations order is for arrearages owed for child support, the order shall not cease upon the death of a minor child.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

#### **590:40-11-9. System not subject to ERISA**

For purposes of this Subchapter, the Plan shall not be subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. Section 1001, et seq., as amended from time to time, or rules and regulations promulgated thereunder, and court cases interpreting said act. The order should not reference ERISA.

[Source: Added at 32 Ok Reg 2179, eff 9-11-15]

