

**TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM  
CHAPTER 40. DEFINED CONTRIBUTION SYSTEM**

**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.

**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.

**590:40-1-3. Definitions**

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

**"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.

**"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,
  - (xiii) 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

(ii) 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.

**"Recordkeeper"** means the company designated by the Board of Trustees to perform recordkeeping, administrative, and investment services to the DC System.

**"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.

**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.

**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.

#### **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.

#### **590:40-3-4. Applicable law**

Oklahoma law shall apply in determining the construction and validity of the Plans.

#### **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.

#### **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.

#### **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.

**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.

**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 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, USRJJ, DCP, and SIP to OPERS defined benefit plan for the payments made on their behalf effective for the succeeding year beginning July 1.

**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.

**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.

**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.

**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 3 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.

**590:40-5-6. Employee additional contributions to the 457(b) plan.**

(a) **Additional contributions; deposit of funds.** Participants may contribute additional voluntary 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.** A Participant may change the voluntary contribution rate once per calendar year only during the option period as set forth by the Board. The Participant shall give notice to OPERS of such change prior to or during the option period. Any request for a change in the amount of the voluntary deferral subject to Employer matching received by OPERS after the close of the option period shall not be granted until the next option period. The contribution rate selected by the Participant shall be continuous and remain in effect until a change is made by the Participant during the next option period.

(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.

**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.

**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.

## **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.

### **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.

#### **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.

### **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.

#### **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.

#### **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.

## **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.

#### **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.

#### **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.

### **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.

#### **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.

## **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.

### **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).

### **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.

## **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 or common/collective trust fund;
- (5) any combination of the investment options in paragraphs (1) through (4) of this Section.

### **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.

**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.

**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.

**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 70 ½ years of age, 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.

**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.

**590:40-7-32. Late retirement**

If the Participant continues employment after attaining 70 ½ years of age, 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 70 ½.

**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.

**590:40-7-34. Death**

(a) **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.

(b) **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 (i) 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 (ii) 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.

**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.

**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. 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).

#### **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 (i) attains age 70 ½ or (ii) retires.

#### **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.

## **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 (i) \$40,000 (as adjusted pursuant to Code Section 415(d) or (ii) 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(I)(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)(3), 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.

#### **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.

#### **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).

## 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.

### **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.

**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.

**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 ~~effected~~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.

**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).

## **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.

#### **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.

### **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.

## **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.

### **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.

### **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.

**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.

**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 or common/collective trust fund;
- (5) any combination of the investment options in paragraphs (1) through (4) of this Section.

**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.

**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.

**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.

**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 age of 70 ½ years of age, 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.

(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.

**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.

**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.

**590:40-9-28. Late retirement**

If the Participant continues employment after attaining 70 ½ years of age, 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 age seventy (70) years and six (6) months. No additional deferrals under this Plan may be made by the Participant after termination of employment.

**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.

**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.

**590:40-9-31. Death**

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.

**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.

**590:40-9-33. Payment and distribution options**

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.

**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.

**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.

### **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.

### **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. 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.

### **590:40-9-38. Rollovers from other plans**

The Plan will accept Participant or Employee rollover contributions and/or direct rollovers of distributions from an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, unless the prior Code Section 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.

### **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. 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.

#### **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.

#### **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.

#### **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.

## **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.

### **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.

#### **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.

#### **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.

#### **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).

### **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.

### **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.

### **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.

### **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.

#### **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.

#### **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.

**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.

**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.

**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.