

**TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM  
CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**SUBCHAPTER 1. GENERAL PROVISIONS**

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

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

(b) ~~The System shall also not be required to make efforts to contact inactive members or beneficiaries if the total amount due to said the member or beneficiary is \$25.00 One Hundred Dollars (\$100.00) or less, however. However, said the amount shall remain payable to the member or beneficiary upon his or her request. This amount of \$25.00-\$100.00 or less is determined to be de minimis due to the cost in manpower personnel, location services, postage, copying and other reasonable expenses necessary to calculate, invoice, collect or correct such error or miscalculation locate such members and beneficiaries which would exceed the de minimis amount to be corrected. This de minimis amount may be utilized-used in any plan or account managed or administered by the Board.~~

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

**SUBCHAPTER 3. CREDITED SERVICE**

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

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

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

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

- (B) making certain types of purchases of service credit which represent actual employment with a participating employer of the System.
- (2) Each hour for which retirement contributions are paid shall credit the member with one (1) hour of full-time-equivalent employment. One hundred seventy-three (173) hours shall constitute one month of full-time-equivalent employment
- (3) Examples of service and/or employment which do not constitute full-time-equivalent employment include, but are not limited to: overtime, leave without pay, unused sick leave, bonus years, temporary or seasonal employment, prior service or military service granted free of charge, purchased military service credit other than purchases pursuant to the Uniformed Services Employment and Reemployment Rights Act, service purchased from another retirement system including transported service except as provided in Sections 590:10-11-4 and 590:10-11-13, and purchased incentive, severance or termination credit.
- (4) Examples of service and/or employment which do constitute full-time-equivalent employment include, but are not limited to: purchased prior service, repayment of withdrawn contributions, purchase of elected service, purchased temporary total disability credit, purchases pursuant to the Uniformed Services Employment and Reemployment Rights Act, and delinquent service paid for by the employer.
- (b) For purposes of determining the full-time-equivalent employment for elected officials, if the elected official is in office and participating for fifteen (15) days or more in either the first or last month in such office, the full month will be credited as service for such official. If an elected official resigns from office effective on a day other than the last day of the month, then such elected official shall not receive credit for a full month, but only those hours of full-time-equivalent employment service for that month.
- (c) Elected officials who elect to participate within ninety (90) days after taking office, and those elected officials who fail to file an election within the ninety-day period and are automatically enrolled in the System, shall be deemed to begin service in the System on the date the elected official takes office. The elected official and the employer shall be responsible for the necessary contributions to cover such time period.

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

- (a) **Actuarial costs.** Effective January 1, 1991, all purchases of service credit, including incentive credit pursuant to 74 O.S. §913.5, or employer error costs pursuant to 74 O.S. §917(7), shall be based upon the actuarial cost of the incremental projected benefits to be purchased.
- (1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions utilized in the actuarial valuation report for the Fiscal Year ending June 30 of the prior year.
- (2) The actuarial value shall be based upon the member's age, salary and contribution level at the time of purchase, together with the earliest age for retirement with maximum benefits and actuarially assumed salary at the time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.
- (3) For purposes of determining this actuarial cost, the member's age shall be rounded up or down to the nearest birthday.

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

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

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

~~(7)~~(b) **Delinquent service costs.** The cost for purchases of delinquent service credit ~~due to employer error~~ for service of one (1) month or less which is based on employer error and which is one (1) or more years past due shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum. If delinquent service of one (1) year or less is identified and paid for within one (1) year from the beginning service date, the cost will be calculated at employer and employee contributions only. The cost for delinquent service credit for service of more than one (1) month and which is over one (1) year past due shall be calculated at actuarial cost. The cost for any delinquent service credit for a retiree returning to work shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum.

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

(a) **Office of Personnel Management approved furloughs.** A leave of absence as a result of an involuntary furlough established by the Office of Personnel Management under OPM Rule 530:10-15-48- ~~Involuntary leave without pay (furlough),~~ or as it may be amended, may be credited as participating service. It is the responsibility of the employer to provide a copy of the furlough plan approved by the Administrator of the Office of Personnel Management, ~~a list of the affected employees and the dates, times and hours that each employee was placed on leave without pay.~~

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

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

### **SUBCHAPTER 7. RETIREMENT BENEFITS**

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

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

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

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

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

(e) **Independent contractors.**

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

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

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

employee, and the employer and employee will be subject to the laws and rules regarding post-retirement employment.

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

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

(1) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in 74 O.S. §901 et seq.

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

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

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

(A) ~~Distributed~~ distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death (or, if the designated beneficiary is the member's surviving spouse, beginning no later than the date on which the member would have attained age 70 1/2), or

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

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

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

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

(c) The retirement system shall make reasonable efforts to locate missing members, survivors and beneficiaries in order to comply with the required minimum distribution provisions

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retirement system may have available for a member or any type of locator service.

## **SUBCHAPTER 9. SURVIVORS AND BENEFICIARIES**

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

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

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

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

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

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

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

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

## **SUBCHAPTER 17. STEP-UP ELECTION AND BENEFITS**

### **590:10-17-10. Step-up benefits not eligible for Excess Benefit Plan**

Participating members in the Step-Up shall not be permitted to participate in the Excess Benefit Plan as set forth in 590:10-21-1 et seq. adopted pursuant to 74 O.S. §915.1 and which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, to the extent any excess benefit, as defined in 590:10-21-2, is attributable to the Step-Up election.

## **SUBCHAPTER 21. EXCESS BENEFIT PLAN AND TRUST**

### **590:10-21-1. Establishment and purpose**

(a) **Establishment.** The "Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust" is hereby established effective as of November 1, 2010, pursuant to Code Section 415, 74 O.S. §915.1, and the Excess Benefit Plan and Trust document which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, and as adopted by the Board of Trustees.

(b) **Purpose.** The purpose of this Excess Benefit Plan is solely to provide the part of a Participant's Retirement Benefit that would otherwise have been payable by the System except for the limitations of Code Section 415(b). This Excess Benefit Plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Code Section 415(m)(3) and shall be interpreted and construed consistently with such intent. This Excess Benefit Plan is an "exempt governmental deferred compensation plan" described in Code Section 3121(v)(3). Code Sections 83, 402(b), 457(a), and 457(f)(1) shall not apply to this Excess Benefit Plan.

### **590:10-21-2. Definitions**

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

**"Administrator"** means the System.

**"Beneficiary"** means any person named by a member to receive any benefits as provided by 74 O.S. §§901 et seq. If there is no beneficiary living at the time of member employee's death, the member's estate shall be the beneficiary.

**"Board"** means the Oklahoma Public Employees Retirement System Board of Trustees.

**"Code"** means the Internal Revenue Code of 1986, as amended, as applicable to a governmental plan, or corresponding provisions of any subsequent federal income tax law.

**"Excess Benefit"** means the benefit determined in accordance with 590:10-21-5(a) and Section 4.01 of the Excess Benefit Plan document.

**"Excess Benefit Fund"** means the trust fund established by the Board pursuant to Article VI of the Excess Benefit Plan document, pursuant to the provisions of 74 O.S. §915.1, and as set forth in 590:10-21-7.

**"Excess Benefit Plan"** means the "Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust" established pursuant to Code Section 415 and 74 O.S. §915.1.

**"OPERS Plan"** refers to the retirement plan administered by the Oklahoma Public Employees Retirement System. The OPERS Plan document consists of the applicable Oklahoma statutes and rules and regulations.

**"Participant"** means a Retiree or Beneficiary who is entitled to benefits under the Excess Benefit Plan.

**"Participating Employer"** means an eligible employer who has agreed to make contributions to the System on behalf of its employees, provided such employer is the State, a political subdivision of the State, or an agency or instrumentality of the State. No employer

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Section 414(d) shall be permitted to participate in the Excess Benefit Plan.

**"Plan Year"** means the calendar year for the purpose of this Excess Benefit Plan.

**"Retiree"** means a member who has retired under the System.

**"Retirement Benefit"** means a monthly income with benefits accruing from the first day of the month coinciding with installments by the Plan, whether payable for a temporary period or following retirement and ending on the last day of the month in which death occurs throughout the future life of a Retired Member or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to 74 O.S. §§901 et seq. or as otherwise allowed to be paid at the discretion of the Board, without regard to any limitations on such retirement income or benefit under Code Section 415(b).

**"Retirement Fund"** means the reserves of the System.

**"State"** means the State of Oklahoma.

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

**"Trustees"** means the members of the Board.

### **590:10-21-3. Construction**

Whenever any actuarial present value or actuarial equivalency is to be determined under the Excess Benefit Plan to establish a benefit, it shall be based on such reasonable actuarial assumptions as may be approved in the sole discretion of the Board, and shall be determined in a uniform manner for all similarly situated Participants.

### **590:10-21-4. Participation**

All Retirees and Beneficiaries of the System are required to participate in the Excess Benefit Plan if their Retirement Benefit from the System for a Plan Year is limited during the applicable Calendar Year by Code Section 415(b). The Board shall determine for each Plan Year which Retirees and Beneficiaries are required to participate in the Excess Benefit Plan. Participation in the Excess Benefit Plan shall commence each Plan Year once a Retiree or Beneficiary has an Excess Benefit in that Plan Year as determined by the Calendar Year Code Section 415 limits. Participation in the Excess Benefit Plan shall cease for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or if all benefit obligations under the Excess Benefit Plan to the Retiree or Beneficiary have been satisfied.

### **590:10-21-5. Payment of benefits**

(a) **Benefit amount.** A Participant in the Excess Benefit Plan shall receive a benefit in an amount equal to the amount of Retirement Benefit that would have been payable to, or with respect to, a Participant by the System that could not be paid because of the application of the limitations on such Retirement Benefit under Code Section 415(b). Provided, however, that the Excess Benefit Plan will not pay any Excess Benefit which results from the 2.5% step-up election pursuant to 74 O.S. §919.1(1)(e). An Excess Benefit under the Excess Benefit Plan shall be paid only if and to the extent the Participant is receiving a Retirement Benefit from the System.

(b) **No election to defer.** No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Excess Benefit Plan.

(c) **Time for Payment.** Each Plan Year, the Excess Benefit to which a Participant is entitled under the Excess Benefit Plan shall be paid from the Excess Benefit Fund commencing during or with the month in which all monthly payments of the Retirement Benefit (as limited by Code Section 415(b)) under the System have been paid, and such Excess Benefit shall be paid from that month to the end of the Calendar Year falling within the applicable Plan Year.

(d) **Form of Benefit.** The form of the Excess Benefit shall be the same form as the Participant's Retirement Benefit.

#### **590:10-21-6. Contributions and funding**

(a) **Funding.** The Excess Benefit Plan shall be, and remain, unfunded, and the rights, if any, of any person to any benefits hereunder shall be those specified herein. The Excess Benefit Plan constitutes a mere unsecured promise by the Participating Employers, on whose behalf the Retirement Benefit and Excess Benefits are paid to the Participant, to make benefit payments in the future.

(b) **Contributions.** The Administrator shall determine the amount necessary to pay the Excess Benefit under the Excess Benefit Plan for each Plan Year for each Employer. The required contribution for all participating employers shall be the aggregate of the Excess Benefits payable to all Participants of all participating employers for such Plan Year plus an amount determined by the Board to be a necessary and reasonable expense of administering the Excess Benefit Plan. The amount determined to be necessary to pay the Excess Benefit of a Participant and administrative expenses of the Excess Benefit Plan shall be withheld from contributions to the System before being credited to the Retirement Fund and deposited into the Excess Benefit Fund established under Article VI of the Excess Benefit Plan document and 590:10-21-7. Participating Employer contributions shall be made at a time or times determined by the Board, but shall be made no less frequently than annually. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Excess Benefit Fund, shall be first used to pay the administrative expenses of the Excess Benefit Plan, then shall be deposited to the Excess Benefit Fund and used to fund Excess Benefits of Participants in future Plan Years.

(c) **Contributions not to be credited to OPERS Plan.** Under no circumstances will Employer contributions to fund the Excess Benefits under the Plan be credited to the OPERS Plan. The amounts determined to be necessary to provide the Excess Benefit under the Excess Benefit Plan for each Participant shall be accounted for separately. However, such separate accounting shall not be deemed to set aside such amounts for the benefit of a Participant. Benefits under the Excess Benefit Plan shall be paid from the Excess Benefit Fund.

#### **590:10-21-7. Trust fund**

(a) **Establishment of Excess Benefit Fund.** A trust fund, referred to as the Excess Benefit Fund, is established as a valid trust under the law of the State, which is separate from the Retirement Fund, to hold contributions of the Participating Employers. Contributions to the Excess Benefit Fund shall be held separate and apart from the funds comprising the Retirement Fund and shall not be commingled with assets thereof. The Board shall prescribe a detailed

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Benefit Plan to the Excess Benefit Fund.

(b) **Excess Benefit Fund Purpose.** The Excess Benefit Fund is maintained solely for the purpose of providing Excess Benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m).

(c) **Excess Benefit Fund Assets.** All assets held by such Excess Benefit Fund to assist in meeting the Participating Employers' obligations under the Excess Benefit Plan, including all amounts of Participating Employers' contributions made pursuant to the Excess Benefit Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, shall be, and remain, the general, unpledged, unrestricted assets of the Excess Benefit Fund. The Excess Benefit Fund shall be held separate and apart from other funds of the Employers and shall be used exclusively for the uses and purposes of Participants and general creditors as set forth herein. Participants shall have no preferred claim on, or any beneficial interest in, any assets of the Excess Benefit Fund. Any assets held by the Excess Benefit Fund shall be subject to the claims of the contributing Employer's general creditors under federal and state law in the event of insolvency, to the extent of the affected Employer's undistributed contributions, if any.

(d) **Grantor Trust.** The Excess Benefit Fund is intended to be a grantor trust, of which the contributing Participating Employers are the grantors, within the meaning of Code Sections 671 through 679 and shall be construed accordingly. This provision shall not be construed to create an irrevocable trust of any kind.

(e) **Excess Benefit Fund Income.** Income accruing to the Excess Benefit Fund in respect of the Excess Benefit Plan shall constitute income derived from the exercise of an essential governmental function upon which the Excess Benefit Fund shall be exempt from tax under Code Section 115, as well as Code Section 415(m)(1).

### **590:10-21-8. Administration**

(a) **Administrative Authority.** The Board shall have the authority to control and manage the operation and administration of the Excess Benefit Plan. The Board and the Administrator shall have the same rights, duties and responsibilities respecting the Excess Benefit Plan as the Board and the Administrator have with respect to the OPERS Plan pursuant to 74 O.S. §§909, 909.1 and 909.2, unless modified by Code Section 415 and its implementing regulations, or 74 O.S. §915.1.

(b) **Powers of the Board.** The Board shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Board:

(1) to establish procedures with respect to administration of the Excess Benefit Plan not inconsistent with the Excess Benefit Plan and the Code, and to amend or rescind such procedures;

(2) to determine, consistent with the Excess Benefit Plan, the OPERS Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Excess Benefit Plan and eligibility for distribution of benefits from the Excess Benefit Plan, and the status of any person claiming benefits under the Excess Benefit Plan;

- (3) pursuant to Article IV of the Excess Benefit Plan, to make payments from the Excess Benefit Fund to Participants;
- (4) to contract with a third party to perform designated administrative services under this Excess Benefit Plan;
- (5) subject to and consistent with the Code, to construe and interpret the Excess Benefit Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Excess Benefit Plan with respect to same.
- (c) **Action by the Board.** Any action by the Board that is supported by competent, material, and substantial evidence and that is not found to be an abuse of discretion shall be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board shall be the sole and final judge of such expediency.
- (d) **Payment of benefits and erroneous payments.** The Board, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the Participant to receive the payment. Any benefit payment that according to the terms of the Excess Benefit Plan and the benefits provided hereunder should not have been made may be recovered as provided in 74 O.S. §924.

#### **590:10-21-9. Plan amendments**

The Board from time to time may amend, suspend, or terminate any or all of the provisions of this Excess Benefit Plan as may be necessary to comply with Code Section 415(m) and to maintain the Excess Benefit Plan's or the System's qualified status under the Code.

#### **590:10-21-10. Nonassignability and exemption from taxation and execution**

The interests of Participants under this Excess Benefit Plan are hereby exempt from any state, county, municipal or local tax, and shall not be subject to execution, garnishment, attachment, or any other process of law whatsoever, and shall be unassignable, to the extent and except as otherwise provided by 74 O.S. §§923 and 924.

#### **590:10-21-11. Federal and state taxes**

The Board, the Participating Employers, and the Administrator do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Excess Benefit Plan.

#### **590:10-21-12. Investment**

The Board may hold such portion of the Excess Benefit Plan uninvested as the Board deems advisable for making distributions under the Excess Benefit Plan, or may invest assets of the Excess Benefit Plan pending the Excess Benefit payments. The Board shall not purchase an annuity contract with the assets of the Excess Benefit Fund.

#### **590:10-21-13. Conflicts and limitation of rights**

(a) **Conflicts.** In resolving any conflict between provisions of the Excess Benefit Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Excess Benefit Plan, the interpretation that (i) causes the Excess Benefit Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Excess Benefit Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Excess Benefit Plan to comply with all applicable requirements of the Code, and (iii) causes the Excess Benefit Plan to comply with the System Plan and all applicable Oklahoma statutes and rules, shall prevail over any different interpretation.

(b) **Limitation of rights.** Neither the establishment nor maintenance of the Excess Benefit Plan, nor any amendment thereof nor any act or omission under the Excess Benefit Plan (or resulting from the operation of the Excess Benefit Plan) shall be construed as:

(1) conferring upon any Participant or any other person a right or claim against the Board, Trustees, Participating Employers, or Administrator, if any, except to the extent that such right or claim shall be specifically expressed and provided in the Excess Benefit Plan;

(2) creating any responsibility or liability of the Participating Employers for the validity or effect of the Excess Benefit Plan;

(3) a contract between the Participating Employers and any Participant or other person; or

(4) being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Participating Employers or any Participant or other person to continue or terminate the employment relationship at any time.