

**TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM
CHAPTER 15. UNIFORM RETIREMENT SYSTEM FOR JUSTICES AND JUDGES**

SUBCHAPTER 5. EXCESS BENEFIT PLAN AND TRUST

590:15-5-1. Establishment and purpose

(a) **Establishment.** The "Uniform Retirement System for Justices and Judges Excess Benefit Plan and Trust" is hereby established effective as of November 1, 2010, pursuant to Code Section 415, 20 O.S. §1104.1, and the Excess Benefit Plan and Trust document which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, and as adopted by the Board of Trustees.

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

590:15-5-2. Definitions

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

"Administrator" means the Oklahoma Public Employees Retirement System.

"Beneficiary" means any person named by a member to receive any benefits as provided by 20 O.S. §§1101 et seq. If there is no beneficiary living at time of member employee's death, the member's estate shall be the beneficiary.

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

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

"Employer" means the State of Oklahoma, which has agreed to make contributions to the URSJJ Plan on behalf of its employees.

"Excess Benefit" means the benefit determined in accordance with 590:15-5-5(a) and Section 4.01 of the Excess Benefit Plan document.

"Excess Benefit Fund" means the trust fund established by the Board pursuant to Article VI of the Excess Benefit Plan document, pursuant to the provisions of 20 O.S. §1104.1, and as set forth in 590:15-5-7.

"Excess Benefit Plan" means the "Uniform Retirement System for Justices and Judges Excess Benefit Plan and Trust" established pursuant to Code Section 415 and 20 O.S. §1104.1.

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

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

"Retiree" means a member who has retired under the URSJJ Plan.

"Retirement Benefit" means a monthly income with benefits accruing from the first day of the month coinciding with installments by the URSJJ Plan, whether payable for a temporary period or following retirement and ending on the last day of the month in which death occurs throughout the future life of a Retired Member or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to 20 O.S. §§1101 et seq. or as otherwise allowed to be paid at the discretion of the Board, without regard to any limitations on such retirement income or benefit under Code Section 415(b).

"Retirement Fund" means the reserves of the URSJJ Plan.

"State" means the State of Oklahoma.

"Trustees" means the members of the Board.

"URSJJ Plan" means the retirement plan administered by the Oklahoma Public Employees Retirement System. The URSJJ Plan document consists of the applicable Oklahoma statutes and rules and regulations.

590:15-5-3. Construction

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

590:15-5-4. Participation

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

590:15-5-5. Payment of benefits

(a) **Benefit amount.** A Participant in the Excess Benefit Plan shall receive a benefit in an amount equal to the amount of Retirement Benefit that would have been payable to, or with respect to, a Participant by the URSJJ Plan that could not be paid because of the application of the limitations on such Retirement Benefit under Code Section 415(b). An Excess Benefit under the Excess Benefit Plan shall be paid only if and to the extent the Participant is receiving a Retirement Benefit from the URSJJ Plan.

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

(c) **Time for Payment.** Each Plan Year, the Excess Benefit to which a Participant is entitled under the Excess Benefit Plan shall be paid from the Excess Benefit Fund commencing during or

with the month in which all monthly payments of the Retirement Benefit (as limited by Code Section 415(b)) under the URSJJ Plan have been paid, and such Excess Benefit shall be paid from that month to the end of the Calendar Year falling within the applicable Plan Year.

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

590:15-5-6. Contributions and funding

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

(b) **Contributions.** The Administrator shall determine the amount necessary to pay the Excess Benefit under the Excess Benefit Plan for each Plan Year for the Employer. The required contribution for the Employer shall be the aggregate of the Excess Benefits payable to all Participants of the Employer for such Plan Year plus an amount determined by the Board to be a necessary and reasonable expense of administering the Excess Benefit Plan. The amount determined to be necessary to pay the Excess Benefit of a Participant and administrative expenses of the Excess Benefit Plan shall be withheld from contributions to the URSJJ Plan before being credited to the Retirement Fund and deposited into the Excess Benefit Fund established under Article VI of the Excess Benefit Plan document and 590:15-5-7. Employer contributions shall be made at a time or times determined by the Board, but shall be made no less frequently than annually. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Excess Benefit Fund, shall be first used to pay the administrative expenses of the Excess Benefit Plan, then shall be deposited to the Excess Benefit Fund and used to fund Excess Benefits of Participants in future Plan Years.

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

590:15-5-7. Trust fund

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

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

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

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

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

590:15-5-8. Administration

(a) **Administrative Authority.** The Board shall have the authority to control and manage the operation and administration of the Excess Benefit Plan. The Board and the Administrator shall have the same rights, duties and responsibilities respecting the Excess Benefit Plan as the Board and the Administrator have with respect to the URSJJ Plan pursuant to 20 O.S. §1108, unless modified by Code Section 415 and its implementing regulations, or 20 O.S. §1104.1.

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

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

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

(3) pursuant to Article IV of the Excess Benefit Plan document, to make payments from the Excess Benefit Fund to Participants;

(4) to contract with a third party to perform designated administrative services under this Excess Benefit Plan;

(5) subject to and consistent with the Code, to construe and interpret the Excess Benefit Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Excess Benefit Plan with respect to same.

(c) **Action by the Board.** Any action by the Board that is supported by competent, material, and substantial evidence and that is not found to be an abuse of discretion shall be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board shall be the sole and final judge of such expediency.

(d) **Payment of benefits and erroneous payments.** The Board, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the Participant to receive the payment. Any benefit payment that according to the terms of the Excess Benefit Plan and the benefits provided hereunder should not have been made may be recovered as provided in 20 O.S. §1111.

590:15-5-9. Plan amendments

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

590:15-5-10. Nonassignability and exemption from taxation and execution

The interests of Participants under this Excess Benefit Plan are hereby exempt from any state, county, municipal or local tax, and shall not be subject to execution, garnishment, attachment, or any other process of law whatsoever, and shall be unassignable, to the extent and except as otherwise provided by 20 O.S. §1111.

590:15-5-11. Federal and state taxes

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

590:15-5-12. Investment

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

590:15-5-13. Conflicts and limitation of rights

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

Excess Benefit Plan to comply with the System Plan and all applicable Oklahoma statutes and rules, shall prevail over any different interpretation.

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

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

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

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

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