

**CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM**

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[**Authority:** 74 O.S., §§ 901 et seq.]

[**Source:** Codified 12-27-91]

**SUBCHAPTER 1. GENERAL PROVISIONS**

<b>Section</b>
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**590:10-1-1. Purpose**

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

[Source: Amended at 22 Ok Reg 126, eff 10-06-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

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

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

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

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

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

(c) If a guardian or conservator has been appointed for a member, joint annuitant or beneficiary by a court of proper jurisdiction, only the named guardian or conservator can act on behalf of the member, joint annuitant or beneficiary. A certified copy of the filed court order of appointment must be filed with the System and will be effective until amended or withdrawn by subsequent court order. The guardian or conservator shall have exclusive authority to act on behalf of the member, joint annuitant or beneficiary unless the court instructs otherwise.

(d) Any person authorized to act on behalf of the member, joint annuitant or beneficiary as provided herein is prohibited from self-dealing relating to the benefit, account or funds of said member, joint annuitant or beneficiary. For purposes of this rule, self-dealing consists of any change or action which alters a previous instruction or document or makes an election or selection, either of which would result in a benefit or pecuniary interest to said attorney-in-fact,

guardian, conservator, custodian or trustee or to the spouse or children of said attorney-in-fact, guardian, conservator, custodian or trustee absent a court order specifically permitting or approving such self-dealing issued by a court of proper jurisdiction. For illustrative purposes, an attorney-in-fact, operating under a durable power of attorney is prohibited from changing the member's beneficiary designation to him or her self and/or prohibited from naming his or her spouse as the joint annuitant under a retirement option.

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

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

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

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

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

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

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

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

(e) Contributions to the Retirement Medical Benefit Fund must be subordinate to the contributions to the Oklahoma Public Employees Retirement Fund for retirement benefits. At no time shall the aggregate actual contributions to the Retirement Medical Benefit Fund (when added to actual contributions for life insurance protection under the plan, if any) be in excess of twenty-five percent (25%) of the total aggregate actual contributions made to the Oklahoma

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Public Employees Retirement Fund (not including contributions to fund past service credits). The Board shall annually determine whether the twenty-five (25%) test has been met. If at any time the Retirement Medical Benefit Fund contributions (plus any life insurance contributions) would exceed the twenty-five percent (25%) test, the excess amount of contributions shall be transferred to the Oklahoma Public Employees Retirement Fund for retirement benefits.

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

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

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

[Source: Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 21 Ok Reg 1759, eff 6-11-04; Amended at 22 Ok Reg 2679, eff 6-07-05 (emergency); Amended at 23 Ok Reg 1482, eff 5-25-06]

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

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

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

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

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

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

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

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

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

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

Any participating county, county hospital, city or town, conservation district, or circuit engineering district or trust shall contribute to the System all required retirement contributions due on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. Any non-state agency employer who remits contributions later than 30 days following the due date, will be assessed a late charge of 1.5%. The late charge will be calculated on the unpaid balance and will compound monthly until paid.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 13 Ok Reg 3327, eff 7-25-96; Amended at 22 Ok Reg 126, eff 10-06-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

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

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

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

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

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

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

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

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

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

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

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

(a) In any circumstance involving an error or miscalculation concerning a retirement account, record or benefit, including, but not limited to 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 make efforts to contact inactive members or beneficiaries if the total amount due to said member or beneficiary is \$25.00 or less, however, said amount shall remain payable to the member or beneficiary upon his or her request. This amount of \$25.00 or less is determined to be de minimis due to the cost in manpower, postage, copying and other reasonable expenses to calculate, invoice, collect or correct such error or miscalculation would exceed the de minimis amount to be corrected. This de minimis amount may be utilized in any plan or account managed or administered by the Board.

(b) 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 in any Plan or account managed or administered by the Board.

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

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

Any member employed at the George Nigh Rehabilitation Institute who elected to retain membership in the Oklahoma Public Employees Retirement System pursuant to 74 O.S. 99 Supp. Section 913.7 shall continue to be an OPERS eligible employee for all purposes. George

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Nigh Rehabilitation Institute shall be designated and considered an OPERS participating employer for these eligible employees only. The University of Oklahoma and the OU Health Sciences Center shall not be considered as a participating employer for any purpose and shall not be designated as such.

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

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

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

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

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

[Source: Added at 20 Ok Reg 319, eff 1-1-03 through 4-14-03 (emergency); Added at 20 Ok Reg 2809, eff 6-19-03 (emergency); Added as 590:10-5-8 at 21 Ok Reg 1759, eff 6-11-04]

**590:10-1-15. Hazardous Duty Members**

Hazardous Duty Members are considered to be those members who participate in hazardous duty employment with a participating employer and who are authorized by law to participate in a special benefit structure within the System, wherein the Hazardous Duty Member makes a higher employee contribution than regular employee members and is eligible for specified retirement benefits after 20 years of service as a Hazardous Duty Member. Hazardous Duty Member shall also include any Post-Hazardous Duty Member who continues to make the higher required contributions following a promotion on or after July 1, 2004, to a non-hazardous duty position within the Department of Corrections as provided in Subchapter 8 of these rules.

[Source: Added at 20 Ok Reg 1750, eff 6-12-03; Amended at 22 Ok Reg 126, eff 10-06-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

**590:10-1-16. Facsimile copies**

An original document containing a member's, joint annuitant's or beneficiary's signature is generally required on all System forms, applications or requests for confidential information except as provided herein or in 590:10-1-3. Retirement notice forms, beneficiary designation

forms, Step-Up election forms and any form which requires a notarized signature, must always be provided as original signed documents. At the sole discretion of the System, a facsimile copy of certain types of other documents may be accepted if the copies are clear, legible and sufficient for imaging purposes. In some instances, these other documents may be accepted by facsimile only if followed by later delivery of an original document. The decision to accept facsimile copies shall be made on a case-by-case basis upon request of the member, joint annuitant or beneficiary. It is the member, joint annuitant or beneficiary's responsibility to verify that the System has received the facsimile copy and that it is legible and acceptable to the System. This rule is applicable to any plan or account managed or administered by the Board.

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

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

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

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

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

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- (1) Member's name - OPERS, URSJJ and SoonerSave computer records maintain only first and middle initials, and not the full name.
  - (2) Member's age - In order to protect our members from potential identity theft, only the current age of the member expressed in whole years shall be provided in response to a general request for the age of a member.
  - (3) Amount of contributions paid in — Contribution statements will show only employee contributions into OPERS and URSJJ. Employer contributions for individual employees are not complete. In response to a general request for a member's "contributions", only the employee contributions will be provided. If a specific request for employer contributions is made, we will provide a copy of the incomplete record with an explanation of the time period covered. For the SoonerSave accounts, the deferral amounts into the 457 Plan are not "contributions" and will not be disclosed. The employer contributions and the transfer of contributions to the Savings Incentive Plan will be provided if specifically requested, however, the amount of interest or earnings will not be released as it is not a "contribution". All account balances for the SoonerSave plans which reflect investment earnings will not be released.
  - (4) Benefits being paid - This information is available only for retired members of OPERS and URSJJ who are currently receiving benefits. SoonerSave does not pay "benefits", therefore, payments from the plan including any distribution amounts, hardship distributions or distribution schedules will not be released.
  - (5) Amount of credited service - This information may not be available for OPERS or URSJJ members who are active and have never had a benefit estimate completed. Therefore, general requests for credited service will be provided on retired or vested members only, and specific requests for credited service for active members will be provided only if the information exists in the file. Credited service is not relevant to or contained in the SoonerSave plans' records and cannot be provided.
  - (6) Any documents verifying credited service or benefits - This information will be provided only if specifically requested for OPERS and URSJJ. The decision whether a document is used to verify credited service or benefits is discretionary and any release of these documents will be approved by the Executive Director on a case-by-case basis. The documents must have all confidential information redacted prior to being released. SoonerSave accounts do not contain information on either credited service or benefits, therefore, documents will not be released from the SoonerSave files.
- (e) Information that is released must always have all Social Security numbers, home addresses and all telephone, pager or cell phone numbers redacted from any records or documents released, pursuant to 74 O.S. § 840-2.11. This will be done by removing or covering the confidential information to ensure that the information cannot be seen from either side of the page.
- (f) Certain information contained in a member's file will remain confidential and will not be released without the member's permission. Examples of such information are:
- (1) Change of address records
  - (2) Insurance information or documents
  - (3) Any health care information
  - (4) Any educational records

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- (5) Tax records
  - (6) Payroll deductions and withholdings
  - (7) Medical documents of any kind
  - (8) Copies of driver's license
  - (9) Social Security numbers or copies of cards
  - (10) Copies of birth certificates, death certificates or baptism documents
  - (11) Copies of military records
  - (12) Any bank account or banking information
  - (13) Copies of passports or other forms of identification
  - (14) Any unemployment information
  - (15) Any worker's compensation information
- (g) This rule is applicable to any plan or account managed or administered by the Board.

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

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

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

[Source: Added at 22 Ok Reg 351, eff 12-14-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

and expenses of the System to retrieve documents for the determination of the actuarial cost to withdraw from the System.

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

### **SUBCHAPTER 3. CREDITED SERVICE**

#### **Section**

- 590:10-3-1. Creditable prior service dates
- 590:10-3-2. Oklahoma school districts
- 590:10-3-3. Optional members prior service [REVOKED]
- 590:10-3-4. Purchase limits [REVOKED]
- 590:10-3-5. Teachers' system credit
- 590:10-3-6. Full-time-equivalent employment
- 590:10-3-7. Unused sick leave credit payment
- 590:10-3-8. Actuarial cost for purchases
- 590:10-3-9. Purchase price payments
- 590:10-3-10. Incentive credit
- 590:10-3-11. Termination credit
- 590:10-3-12. Military service credit
- 590:10-3-13. Credit for involuntary furlough
- 590:10-3-14. Elected official service credit

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

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

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

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

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

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

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

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

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

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

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

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

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

[Source: Amended at 17 Ok Reg 3178, eff 7-27-00; Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 23 Ok Reg 1482, eff 5-25-06; Amended at 25 Ok Reg 1001, eff 5-11-08]

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

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

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

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 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.

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(7) The cost for purchases of delinquent service credit due to employer error for service of one (1) month or less 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.

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

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

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

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

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

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

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

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective

retirement date of the member. If any member or beneficiary elects to pay the balance during the 6 month period provided for in Subsection (4) of this Section, no benefits will be payable until the completion of said 6 month period, or receipt of a signed waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

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

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

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

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

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

- (1) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code;
- (2) an annuity contract described in section 403(b) of the Internal Revenue Code;
- (3) an eligible plan under section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or
- (4) a participant rollover contribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over.

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

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

Pursuant to 74 O.S. §913(b) certain eligible members of the System may purchase up to two (2) full years of incentive credit at actuarial value.

- (1) Incentive credit may be used as participating service or addition to age.
- (2) Members are eligible for purchase of up to 2 years of credit (24 months).
- (3) Employees who are eligible for normal or early retirement because of age or are within 2 years of reaching normal or early retirement age, members who have accumulated at least 78 points toward the Rule of 80, and/or members who have accumulated at least 88 points towards the Rule of 90 are eligible for this purchase, except that elected officials may purchase incentive credit to qualify for the Rule of 80 only and Hazardous Duty Members may purchase incentive credit to qualify only for the Rule of 80 or 90 or for early retirement.
- (4) Incentive credit can not be used as full time equivalent employment. Members must have at least 4 years of the required 6 years of full time equivalent employment in order to be eligible for this purchase and must accrue 6 years of full time equivalent employment prior to retirement.
- (5) Members must be active and participating at the time of purchase or at the time of the transfer pursuant to paragraph (7) of this section.
- (6) This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.
- (7) Eligible members purchasing incentive credit pursuant to this section may transfer a participating service purchase to an addition to age purchase or an addition to age purchase to a participating service purchase. This transfer applies to purchases already made by an eligible member or to purchases currently being made through installment payments pursuant to 590:10-3-9. Full or partial installment payments made pursuant to this section shall not be refundable under any circumstances. Transferring an incentive purchase to another incentive purchase pursuant to this paragraph may not result in an equal transfer.

[Source: Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 21 Ok Reg 1759, eff 6-11-04; Amended at 24 Ok Reg 1135, eff 5-11-07]

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

Pursuant to 74 O. S. §913c, certain eligible members of the System may purchase up to three (3) full years of termination credit.

- (1) Following official notice from a participating employer of an approved reduction-in-force on or after July 1, 1998 and of the those employees subject to said reduction-in-

force, the System will communicate detailed instructions about the purchase of termination credit to those members affected.

(2) Purchase of termination credit allows an eligible member to constructively participate as if still employed by a participating employer until reaching eligibility for normal retirement either at age 62 or by achieving 80/90 points. The purchase of termination credit represents the amount of service which would have accrued through the member's normal retirement date had they not been terminated due to a reduction in force and will allow an eligible member to preserve the same normal retirement date as he or she would have had if the member's position had not been terminated by a reduction-in-force.

(3) Members must have at least six (6) years of full-time equivalent employment with a participating employer in order to be eligible to purchase termination credit.

(4) Members who are between the ages of 59 and 62 (those members who are within 3 years of achieving eligibility for normal retirement at age 62), or who have accumulated at least 74 points toward the Rule of 80 or 84 points toward the Rule of 90 (those members who are within 6 years of achieving eligibility for normal retirement under the 80/90 point provisions), are eligible to purchase termination credit if they are subject to a reduction-in-force.

(5) Members cannot purchase both termination credit and incentive credit.

(6) Members may purchase termination credit not to exceed the amount of years and months required to reach normal retirement. The maximum amount of termination credit which may be purchased is 3 years of service.

(7) The cost to purchase termination credit will be an amount equal to the employee and employer contributions which would have been paid to the System based upon the last full month of compensation.

(8) To purchase termination credit, the member must file a written election of intent within six (6) months from the date the member is terminated. Payment in full must be received by the System within sixty (60) days of the filing of the election to purchase.

(9) Failure to make payment in full by the due date, returning to employment with a participating employer or retirement by the member or surviving spouse at any time prior to the normal retirement date will void the purchase of termination credit. The System will return the purchase price tendered.

[Source: Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99]

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

(a) Any member who joined the System on or before June 30, 2000, can receive up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or

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other similar documentation clearly showing dates, types and places of service. If eligible, a retired member shall receive an increase in his or her monthly benefit as a result of the addition of the military service credit effective with the month following the receipt of the documents and approval by the System.

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

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

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

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

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

(g) Members who served in the Armed Forces of the United States during a war or combat military operation other than World War I, World War II, the Korean War, the Vietnam War or the Gulf War as provided in Section 902 (23) of Title 74 of the Oklahoma Statutes, may be eligible to purchase or receive military service credit for the period of time that he or she actually served in an area of responsibility for a war or combat military operation which lasted for a period of at least ninety (90) days. It is the responsibility of the member to provide sufficient

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documentation to support his or her eligibility for this credit as requested by the System, including, but not limited to, documents showing specific service areas and times.

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

[Source: Added at 21 Ok Reg 1759, eff 6-11-04; Amended at 22 Ok Reg 126, eff 10-06-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

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

(a) 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) 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.

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

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

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- (1) All non-elected credited service will be calculated at the applicable factor multiplied by the member's final average compensation and multiplied by the non-elected years.
  - (2) All elected service will be multiplied by the appropriate computation factor corresponding to the contribution rate selected by the member as an elected official. The salary used for the benefit formula for elected service shall be the elected official's single highest annual compensation as an elected official.
  - (3) The calculations provided for in paragraphs (1) and (2) of this subsection (b) will then be added together to determine the total benefit for such member. Under no circumstances shall the elected official be entitled to apply the contribution rate and the corresponding computation factor selected pursuant to 74 O.S. §913.4(A) or the compensation received as an elected official to the computation of any non-elected service.
  - (4) Fractional year computations made under this section shall be calculated in accordance with 590:10-7-9.
- (c) **Elected service prior to August 22, 2008.** The amendments to 74 O.S. §913.4(C)(3) and (4) in Enrolled Senate Bill 1641 of the 2<sup>nd</sup> Regular Session of the 51<sup>st</sup> Legislature (2008), Section 1, Chapter 105, O.S.L. 2008, did not amend or affect the calculation of service credit for any elected official who was a member of this System and who served as an elected official prior to August 22, 2008.
- (d) **Effective date.** The authorizing legislation for determining elected official service credit provided by this section is Enrolled Senate Bill 1641 of the 2<sup>nd</sup> Regular Session of the 51<sup>st</sup> Legislature (2008), Section 1, Chapter 105, O.S.L. 2008. The emergency clause in SB 1641 failed thereby making the effective date of the legislation ninety (90) days following sine die adjournment, or August 22, 2008. The internal references to July 1, 2008, in 74 O.S. §913.4(C)(3) and (4), shall be interpreted to mean August 22, 2008.

[Source: Added at 26 Ok Reg 120, eff 9-18-08 (emergency); Added at 26 Ok Reg 952, eff 4-25-09]

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

### **Section**

- 590:10-5-1. Maximum level
- 590:10-5-2. Initial opportunity to elect
- 590:10-5-3. Required contributions
- 590:10-5-4. Refund election [REVOKED]
- 590:10-5-5. Effective date of election [REVOKED]
- 590:10-5-6. Member responsibility [REVOKED]
- 590:10-5-7. Statutory compensation contributions
- 590:10-5-8. Compensation for retirement purposes

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

(a) For service prior to July 1, 1994, members may elect to have a maximum compensation level for retirement purposes of up to forty thousand dollars (\$40,000) per annum. For service after July 1, 1994, contributions are required on all allowable compensation up to the maximum compensation level set by Statute.

(b) Effective for plan years beginning after December 31, 2001, the maximum compensation level for retirement purposes shall not exceed \$200,000. This limit shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to compensation for the determination period that begins with or within such calendar year. The determination period is the plan year beginning July 1 through June 30. For retirement purposes in plan years beginning after December 31, 2001, the maximum compensation level for determination periods beginning before January 1, 2002, shall be \$200,000 provided all required contributions have been made on that salary.

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

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

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

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

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

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

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

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

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

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

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

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

Prior to July 1, 1998, a member who chose to increase his or her maximum annual compensation level for service prior to July 1, 1994 must have paid the required statutory contributions on all compensation received each year above \$25,000 up to the maximum \$40,000, plus interest in the amount of seven and one-half percent (7 1/2%) compounded annually. Said interest accrues from the date of the members initial opportunity to make the election. The election is not considered complete until all required contributions and interest have been paid, unless terminated by operation of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) payments which are for reimbursement for expenses incurred by the employee,

(2) payments for maintenance or allowances, including, but not limited to, uniform allowances, clothing allowances, or housing allowances,

(3) any payments or amounts made available to an employee for insurance benefits or benefits allowances, including any amounts paid directly to the employee,

(4) illegal payments made to an employee by an employer,

(5) payments made in error to an employee,

(6) payments made by the employer for services rendered by the employee, which services are not part of the employee's job duties and responsibilities of his or her job position with the participating employer,

(7) payments in the form of tips or commissions paid to an employee in the course of his or her employment,

(8) payments made to other than the employee by the participating employer which are not deducted from the employee's paycheck,

(9) workers compensation benefit payments,

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- (10) any payments made by a participating employer to a non-employee, such as compensation to Board or Commission members,
  - (11) payments made in anticipation of employment, such as signing bonuses,
  - (12) any payments which are excluded from retirement compensation by law.
- (d) The provisions of this rule shall be effective for all compensation paid for service by an employee to the employer on or after July 1, 2003. It shall be the responsibility of the employer to ensure that the appropriate retirement contributions are deducted or paid correctly and in accordance with this rule.
- (e) The compensation of each member as set forth above shall be used for calculating the monthly retirement compensation for each retiring member. Provided, however, the calculation shall include the compensation prior to July 1, 2003, for which retirement contributions were withheld in determining the final average compensation, if applicable, for the highest three (3) years of the last ten (10) years of service.

[Source: Added as 590:10-1-14 at 20 Ok Reg 2809, eff 6-19-03 (emergency); Added at 21 Ok Reg 1759, eff 6-11-04]

**SUBCHAPTER 7. RETIREMENT BENEFITS**

**Section**

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

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

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

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

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

[Source: Amended at 22 Ok Reg 126, eff 10-06-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

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

(a) Only three (3) highest annual longevity payments will be added into the sum of three years of salary (thirty-six months) used in computing the final average compensation. If a retiring member is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payments will be used only in the amount actually paid and if it is one of the three highest longevity payments. The final average salary shall not be reduced if the annual longevity payment causes any one month's salary to exceed the maximum monthly compensation level, provided the annual salary including longevity does not exceed the maximum compensation level.

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

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

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Amended at 16 Ok Reg 2010, eff 6-11-99; Amended at 20 Ok Reg 319, eff 1-1-03 (emergency); Amended at 20 Ok Reg 1750, eff 6-12-03]

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

The monthly benefit to be paid under early retirement shall be based on the actual age in years and months the retirement member has attained on the date retirement benefits are to begin. The reduction factor is based on a level interpolation, between ages 55 and 62.

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

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

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

(2) In the event of the death of the named joint annuitant after the member's retirement date, the member shall provide the System with a copy of the joint annuitant's death certificate as notice of said death. The member's benefit will "pop-up" to reflect the amount of benefit the member would be entitled to absent the selection of an option. The "pop-up" increase becomes effective the first day of the month following the death of the joint annuitant, provided the member has given notice of said death. If the death of the joint annuitant occurred prior to June 30, 1994, the benefit increase may become effective with the July 1994 benefit payment, provided the member has given notice of said death. Retrospective benefits will not be paid for any month prior to July, 1994, and are limited to a maximum of six (6) months. The "pop-up" increase is limited to members retiring with an Option A or Option B.

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

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

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

(3) For purposes of this subsection:

(A) "person responsible for the estate" means the personal representative, executor or administrator of the estate as determined by a court of competent

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jurisdiction, or in the case of a probate waiver as permitted by 74 O.S. § 916.1, the appropriate claiming heir; and

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

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

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

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

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

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

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

**590:10-7-6. Failure to submit documents**

If all of a retired member's required documents have not been received by the fifteenth day of the month in which the first two retirement benefit payments are to be issued, the System will withhold payment of any benefit until all required documents have been received.

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

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

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

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

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

(a) For members or annuitants retiring prior to July 1, 2001, a Retirant or annuitant may authorize the Oklahoma Public Employees Retirement System to deposit their monthly retirement benefit directly to a checking or savings account in a bank, Credit Union and/or Savings and Loan by electronic fund transfer or by paper check. Application for direct deposit will only be accepted on properly completed forms provided by OPERS. Prior to June 30, 2001, the direct deposit may be discontinued at any time upon thirty (30) days' written notice by the member, annuitant or OPERS. After July 1, 2001, if the electronic fund transfer creates an undue hardship on the retiree, the direct deposit may be discontinued only if the member or

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annuitant makes application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the member or annuitant. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.

(b) Effective July 1, 2001, newly retired members or annuitants shall be required to receive monthly benefit payments via electronic fund transfers to a banking or financial institution designated by the member. The retiree or annuitant and receiving institution must complete the form prescribed for this purpose by OPERS. In the event the electronic fund transfer creates an undue hardship on the retiree or annuitant, the member or annuitant may make application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the member or annuitant. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.

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

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

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

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

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

(a) Title 74 O.S. §913(C) provides that a fractional year of six (6) months or more shall be considered as one (1) year, and less than six (6) months shall be disregarded. This round-up provision may be used one time for credited service of a member to establish the benefit of said member. This rule is necessary to prevent the gain or loss of service credit to a member. In no

event shall the rounding up provisions apply if it would result in any member receiving an additional year or years that the member would not otherwise be entitled to.

(b) Title 74 O.S. § 915(A) provides for the computation of retirement benefits of Department of Corrections Correctional and Pardon and Parole Officers at 2.25% for certain credit prior to July 1, 1990, and 2.5% for certain credit after July 1, 1990, and at 2% for all other credit.

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

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

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

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

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

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

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

The retirement benefit payable for the month of death of a member, joint annuitant or survivor shall be payable to said member, joint annuitant, or surviving spouse. In the event the final benefit is returned to the System or is not otherwise paid, said benefit will be paid to the member's estate.

[Source: Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99; Amended at 22 Ok Reg 126, eff 10-06-04 (emergency); Amended at 22 OK Reg 1354, eff 5-26-05]

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

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

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

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

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

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

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

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

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

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member's requested retirement date. All retirement forms shall be prescribed, produced and approved by the System in order to constitute proper notice and retirement selection.

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

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

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

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

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

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

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

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

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

(e) In the actual calculation of the final average compensation for permanent part-time members, only salary received during the last ten (10) years of participation in the System is considered. Out of these ten (10) years, the System will use the 36 monthly entries of salary at the highest hourly rates received by the member. The gross salaries for each of the 36 months are added together. The number of hours of work reported for each of these 36 months are added together. The total salary will be divided by the total number of hours reported, multiplied by 6,240 hours plus the three (3) highest eligible longevity payments (if any), and divided by three (3) to arrive at the final average compensation.

[Source: Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99]

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

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

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

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

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

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

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

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

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

(c) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; the portion of any other distribution(s) that is not includible in gross income, except to the extent provided by paragraph (d) of this section; any distribution upon hardship of the employee; and any other distribution(s) that is reasonably expected to total less than \$200.00 during a year.

(d) 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 portion may be transferred only to an individual retirement account or an individual retirement annuity described in section 408(a) or (b) of the Code or to a qualified plan described in section 401(a) or 403(a) of the Code or to an annuity contract described in 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.

(e) An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, a qualified plan described in section 401(a) of the Code, an annuity contract described in section 403(b) of the Code, or an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.

(f) A distributee includes an employee, former employee, or for the limited purposes set forth in paragraph (h) of this section, a non-spouse beneficiary. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(g) A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(h) Effective January 1, 2007, a non-spouse beneficiary pursuant to section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code, established for the purpose of receiving the

distribution. A rollover pursuant to this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of section 402(c) of the Code.

[Source: Added as 590:10-7-15 at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01; Amended at 22 Ok Reg 2679, eff 6-07-05 (emergency); Amended at 23 Ok Reg 1482, eff 5-25-06; Amended at 24 Ok Reg 1135, eff 5-11-07]

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

(a) Effective January 1, 2004, a member who incurred a disability which would qualify that member for disability retirement benefits pursuant to subsection B. of Section 915 of Title 74 of the Oklahoma Statutes and who elected early retirement pending the receipt of the disability certification may elect to receive disability retirement in lieu of the previously selected early retirement. In order to be eligible for this election, the disability must have been incurred on or after July 1, 1999, and the member must meet all statutory requirements for disability retirement. The member's effective retirement date will not change, however, the member shall be entitled to receive the difference, if any, in the amount of the early benefit and the disability benefit as of the date the member would have been eligible for the disability benefit.

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

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

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

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

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

for the maximum disability retirement and no additional spouse consent is required, however, the member's named beneficiary for Option C will be notified of the change to maximum disability retirement with no survivor benefit.

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

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

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

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

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

(c) **Returning to work for former employer.** A retiree may not be rehired in any capacity by the retiree's same participating employer for a period of one (1) year after the retiree's initial retirement from 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 such same participating employer. The provisions of this subsection shall not apply if the retiree waives his or her benefit as provided under 74 O.S. §914(E)(2).

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

(e) **Independent contractors.**

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

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

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

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

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

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

### **Section**

- 590:10-8-1. Department of Corrections Hazardous Duty Members
- 590:10-8-2. Post-Hazardous Duty Members
- 590:10-8-3. Continuation of Hazardous Duty benefits
- 590:10-8-4. Maximum Participation as a Hazardous Duty Member
- 590:10-8-5. Normal retirement date for Post-Hazardous Duty Members
- 590:10-8-6. Employer Responsibility for Continuation of Hazardous Duty Benefits

[Source: Codified 5-26-05]

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

(1) the member was employed by the Department of Corrections as a correctional officer, probation and parole officer or fugitive apprehension agent on June 30, 2004, or was first hired by the Department of Corrections as a correctional officer, probation and parole officer or fugitive apprehension agent after June 30, 2004; and

(2) the member received a promotion or change in job classification after June 30, 2004; and

(3) the member has participated as a Hazardous Duty Member as a correctional officer, probation and parole officer or fugitive apprehension agent at least five (5) full years.

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

(c) The requirements of this rule shall be applicable for all future employment with the Department of Corrections for any Post-Hazardous Duty Member. Breaks in service will not affect this requirement.

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

In addition to normal retirement at age 62, under Rule of 80 or under Rule of 90, Post-Hazardous Duty Members who are employed by the Department of Corrections at the time of retirement are eligible to retire after completion of at least twenty (20) years of full-time-equivalent employment as provided in 590:10-3-6 of these rules; provided, the required higher contribution for Hazardous Duty Members is paid or the member was employed as a correctional officer or probation and parole officer at the Department of Corrections.

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

**SUBCHAPTER 9. SURVIVORS AND BENEFICIARIES**

**Section**

- 590:10-9-1. Survivors' benefits
- 590:10-9-2. Death benefit payment
- 590:10-9-3. Divorced spouse beneficiaries
- 590:10-9-4. Probate waivers

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

(a) If an active or retired elected official with a minimum of six (6) years of participating service dies, the surviving spouse is eligible to receive one half (1/2) of the elected official's benefit provided the elected official had met the service requirements for retirement. If a retired elected member selected an Option to apply to his/her service, the joint annuitant receives the Option benefit instead of the one half (1/2) benefit to the spouse.

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

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[Source: Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 24 Ok Reg 1135, eff 5-11-07]

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

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).

[Source: Amended at 17 Ok Reg 608, eff 12-2-99 through 7-14-00 (emergency); Amended at 17 Ok 3178, eff 7-27-00]

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

All designations of beneficiaries to a divorced spouse of accumulated employee contributions or the death benefit will be void, unless the divorced spouse has been named after the divorce decree is rendered or if the divorce decree specifies the divorced spouse is entitled to receive the benefits. The System shall void such designation of beneficiary only upon receipt of the divorce decree. The System is not responsible for any payments made in good faith without notice of divorce. The provisions of this rule are applicable for any Plan or account managed or administered by the Board.

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

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

In the event a member dies, leaving no living beneficiary or having designated his Estate as beneficiary, the System may require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. This requirement may be waived for payments in an amount of Ten Thousand Dollars (\$10,000.00) or less upon presentation of the member's valid Last Will and Testament, trust documents or affidavit that a will does not exist, an Affidavit of Heirship naming all heirs to the member's estate, a Hold-Harmless Agreement signed by all heirs, a corroborating affidavit from someone other than an heir who is familiar with the deceased member, and proof of payment of all last debts of the member. These documents shall comply with the provisions of 74 O.S. Section 916.1. If there is any question as to the validity of any document herein required, the judicial appointment shall not be waived.

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

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

**Section**

- 590:10-10-1. Eligibility for Benefit
- 590:10-10-2. Killed in Performance of Duty
- 590:10-10-3. Mortally Wounded in Performance of Duty
- 590:10-10-4. Exclusions
- 590:10-10-5. Surviving Spouse Benefit
- 590:10-10-6. Surviving Spouse Benefit Election
- 590:10-10-7. Surviving Child Benefit
- 590:10-10-8. Filing for Surviving Spouse and Surviving Child Benefits

[Source: Codified 5-26-05]

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

Mortally wounded means a personal injury where death occurs within one (1) year as a direct and proximate result of an injury which would have qualified for death benefits as

provided in this Subchapter. Direct and proximate result means that the injury sustained in the performance of duty is the primary and substantial factor in the resulting death.

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

No benefits shall be paid under this subchapter:

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

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

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

(d) Attending school means enrolled in and regularly attending on a full-time basis an accredited public or private secondary school or institution of higher education. Proof of attending school shall be provided by the person receiving the benefit at the beginning of each semester as well as a copy of grades received at the end of each semester. If there is more than one Surviving Child, proof of school attendance shall not be required unless that child is the sole basis for payment of the benefit or the sole basis for payment of a part of the benefit if the benefit is divided as provided in subsection (e) below. If the Surviving Child drops classes and becomes a part-time student or withdraws from the school or institution of higher education, then benefits shall cease the last day of the month in which the child becomes a part-time student or withdraws. It is the responsibility of both the Surviving Child and the person receiving the benefit payment to provide the proof of attendance and to notify the System of any change in student or marital status of the child.

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

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

(a) Claims for Surviving Spouse and/or Surviving Child benefits should be made as soon as possible following the employee's date of death. Benefits shall be payable beginning with the month following the employee's date of death, however, benefit payments will not commence

until all required documentation has been furnished and a final determination has been made by the System. Required documentation to be provided by the claimant include, but are not limited to, a completed application for benefits, a certified copy of the employee's death certificate, a certified copy of the public record of marriage and certified copies of birth certificates for Surviving Children.

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

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

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

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

[Source: Added at 22 Ok Reg 126, eff 10-06-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

### **Section**

- 590:10-11-1. Transported service credit
- 590:10-11-2. Election to transport
- 590:10-11-3. Member's entry date
- 590:10-11-4. Use of transported service
- 590:10-11-5. Former members reinstated
- 590:10-11-6. Completion of election
- 590:10-11-7. Funds transfer
- 590:10-11-8. Previous transfers or purchases
- 590:10-11-9. State portable service credit
- 590:10-11-10. Eligibility to transfer portable service
- 590:10-11-11. Election to transfer portable service

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- 590:10-11-12. Member's entry date after transfer
- 590:10-11-13. Use of transferred state portable service
- 590:10-11-14. Completion of transfer election
- 590:10-11-15. Funds transfer for portable service
- 590:10-11-16. Previous transfers, purchases or transports

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

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

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

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

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

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

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

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

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

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

Transported service cannot be used to satisfy the full time equivalent employment with a participating employer service requirement. Transported service may be used to determine eligibility for retirement or vesting purposes and to determine the amount and type of retirement benefit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Transferred state portable service cannot be used to satisfy the full time equivalent employment with a participating employer service requirement. Portable service may be used to

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determine eligibility for retirement or vesting purposes and to determine the amount and type of retirement benefit.

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

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

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

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

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

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

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

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

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

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

**SUBCHAPTER 13. EXCESS CONTRIBUTIONS**

**Section**

- 590:10-13-1. Purpose and intent
- 590:10-13-2. Definitions
- 590:10-13-3. Post-tax excess contributions [REVOKED]
- 590:10-13-4. Transfer of excess contributions
- 590:10-13-5. Tax treatment of excess contributions
- 590:10-13-6. Calculations of Earnings
- 590:10-13-7. Residual transfer
- 590:10-13-8. Deceased Eligible Members

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

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

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

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

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

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

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

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

**"Eligible Member"** means a member of the System who was an active participating employee on July 1, 1998, and whose compensation for services exceeded Twenty-five Thousand Dollars (\$25,000) per annum prior to July 1, 1994, and who, prior to July 1, 1998, had

voluntarily elected to pay retirement contributions on the maximum compensation level pursuant to statutes in effect at that time, provided such retirement contributions remain on deposit with the System as of the date of the transfer.

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

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

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

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

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

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

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

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

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

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

### **590:10-13-4. Transfer of excess contributions**

Within ninety (90) days from the receipt of a favorable Private Letter Ruling with respect to the Transfer Legislation, the Board will implement the following procedures for the transfer of Excess Contributions:

- (1) The Board shall cause to be sent a notice of transfer to each Eligible Member who has Excess Contributions. The notice of transfer will contain the following:
  - (A) The amount of the Excess Contributions to be transferred;
  - (B) The amount of Earnings to be transferred;
  - (C) The effective date of the transfer, which must be at least ninety (90) days from the date of mailing of the notice of transfer;
  - (D) A description of the appropriate tax treatment of the transfer, as prescribed by the Private Letter Ruling;
  - (E) A statement that the amount will be credited to the Eligible Member in the Incentive Plan and will not trigger an employer contribution to that Plan;

(F) For Eligible Members who are not state employees or otherwise a participant in the Incentive Plan, a statement that the Eligible Member is only permitted to participate in the Incentive Plan to the extent of the Excess Contributions and will not be eligible to make additional contributions to the Incentive Plan;

(G) An enrollment form to be completed by those Eligible Members who are not state employees or otherwise a participant in the Incentive Plan;

(H) A statement which indicates the investment vehicle chosen by the Board for the initial investment of the transfer amounts and the date the transfer amount will be available for participant directed investment.

(2) In the event an Eligible Member disputes the amount of transfer as set forth in the Notice, the Eligible Member shall provide a written objection to the Board within 30 days of the date of the Notice of Transfer. The objection shall set forth the basis for the objection, including the specific error and the amount the Eligible Member believes is correct. The Board shall respond to the complaint within 30 days. If the Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.

(3) The Board will direct that the Excess Contributions and Earnings are transferred to the Incentive Plan as stated in the notice of transfer.

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

#### **590:10-13-5. Tax treatment of excess contributions**

(a) To the extent permitted by the Private Letter Ruling, the Excess Contributions and Earnings that are transferred to the Incentive Plan will not be considered as an annual addition to the Incentive Plan for purposes of Code Section 415(c).

(b) To the extent required by the Private Letter Ruling, the Board will report the Excess Contributions and Earnings that are transferred to the Incentive Plan on 1099-Rs for the year of the transfer. The entire amount will be reported as non-taxable.

(c) To the extent permitted by the Private Letter Ruling, all Post-tax Excess Contributions transferred will be identified in the Incentive Plan and on 1099-Rs as the Eligible Member's tax basis.

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

#### **590:10-13-6. Calculation of Earnings**

(a) Earnings shall be calculated at the actuarial assumed annual earnings of the System of seven and one-half percent (7 ½%), which shall be compounded at least annually until the date of transfer.

(b) Earnings shall be computed on the principal Excess Contribution for the first compounding period and then added to the principal Excess Contribution. For the second

compounding period, the Earnings are computed on the principal Excess Contribution plus the Earnings from the first compounding period, and so on, until the date of transfer.

(c) Earnings shall be calculated on the principal Excess Contribution beginning with the month the contribution was deposited with the System under the normal payroll system. Any withdrawal and repayment of Excess Contributions prior to July 1, 1998, shall have Earnings calculated only from the time of repayment of the withdrawal. Earnings shall not accrue or be calculated from the initial Excess Contribution date nor will Earnings accrue for any period of time prior to the repayment of the Excess Contributions.

(d) If any amount of Excess Contributions was paid pursuant to the installment payment program provided in 590:10-3-9. Earnings shall not accrue nor be calculated on any Excess Contributions until the purchase was completed and the installment payments were transferred to the Eligible Member's ledgers. By way of example, if the Eligible Member elected to amortize the payment of Excess Contributions over a sixty-month period, the Earnings do not accrue until the month following completion of the sixty-month period.

[Source: Added at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

#### **590:10-13-7. Residual transfer**

(a) The initial transfer of Excess Contributions and Earnings shall include all Eligible Members who did not object to the transfer amount. If an Eligible Member objects to the transfer amount and said objection is not resolved by the date of transfer, the Excess Contributions shall not be included in the initial transfer. The Board shall provide for a residual transfer date to occur at least one year following the initial transfer date.

(b) A member of the System who has Excess Contributions in the Plan but was not identified or included in the initial transfer must notify the System within one year of date of the initial transfer to request the transfer of the Excess Contributions and Earnings. The final transfer of all Excess Contributions shall occur at the time of the residual transfer at least one year following the initial transfer date.

[Source: Added at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

#### **590:10-13-8. Deceased Eligible Members**

If the Excess Contributions of a deceased Eligible Member remain in the Member's account in the System at the time of transfer, the Excess Contributions and Earnings shall be transferred to the Incentive Plan in the same manner as if the Eligible Member were not deceased. Once transferred to the Incentive Plan, distribution shall be governed by the Incentive Plan provisions as provided in 590:35-13-5 and 590:35-13-6. For purposes of a deceased retired Eligible Member, the Excess Contributions shall be considered on deposit if no accumulated employee contributions have been disbursed to a beneficiary.

[Source: Added at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

## SUBCHAPTER 15. LIMITED RETIREMENT BENEFIT

### Section

- 590:10-15-1. Purpose and Intent
- 590:10-15-2. Definitions
- 590:10-15-3. Initial payment of limited benefits
- 590:10-15-4. Subsequent payment of limited benefits
- 590:10-15-5. Tax treatment of limited benefit
- 590:10-15-6. Omitted limited eligible members
- 590:10-15-7. Limited benefit amount
- 590:10-15-8. Deceased limited eligible members

[Source: Codified 7-26-01]

### **590:10-15-1. Purpose and intent**

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

- (1) With respect to the payment of the limited retirement benefits, the Board intends to comply in all respects with the tax qualification requirements for governmental plans applicable to such benefit payments as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto ("Tax qualification requirements").
- (2) In administering this Subchapter, the Board will comply with the legislative intent as contained in the Limited Benefit Legislation.

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

### **590:10-15-2. Definitions**

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

**"Determination Letter"** means the favorable determination letter issued by the Internal Revenue Service to the Board on October 10, 2000, and received by the System on October 30, 2000, applicable to continued qualification of the plan in its present form.

**"Excess Contributions"** means the contributions and payments actually made by a Limited Eligible Member on compensation in excess of Twenty-five Thousand Dollars (\$25,000) per annum prior to June 30, 1994, that remain on deposit with the System as of the date of the receipt of retirement benefits, and includes both pre-tax Excess Contributions and post-tax Excess Contributions.

**"Limited Benefit"** means an additional benefit amount to be paid in addition to the Limited Eligible Member's Regular Retirement Benefit, for only so long as the Regular Retirement Benefit is payable, in the amount of \$200 per month or the amount of Excess Contributions actually paid, whichever is less, until the total amount of Excess Contributions made by that Eligible Member has been paid.

**"Limited Benefit Legislation"** means Enrolled Senate Bill 386, enacted in 1999, as it amends Section 910.5 of Title 74 of the Oklahoma Statutes.

**"Limited Eligible Member"** means a member of the System who was vested or eligible to vest on July 1, 1998, but who was not active and participating nor retired, and whose compensation for services exceeded Twenty-five Thousand Dollars (\$25,000) per annum prior to July 1, 1994, and who, prior to July 1, 1998, had voluntarily elected to pay retirement contributions on the maximum compensation level pursuant to statutes in effect at that time, provided such retirement contributions remain on deposit with the System.

**"Maximum Limited Benefit"** means the amount equal to the total Excess Contributions made by that Limited Eligible Member which has been paid to the Limited Eligible Member in monthly payments or any lesser amount of Limited Benefits which have been paid in the event the normal retirement benefit of the Eligible Member ceases due to death or forfeiture.

**"Regular Retirement Benefit"** means the monthly retirement benefit that the Limited Eligible Member has elected to receive and includes normal, early and disability retirements, excluding retroactive lump-sum disability payments.

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

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

### **590:10-15-3. Initial payment of limited benefits**

Within ninety (90) days from the receipt of the favorable Determination Letter, the Board will implement the following procedures for the payment of the Limited Benefit:

- (1) The Board shall cause to be sent a letter of eligibility to each Limited Eligible Member who has Excess Contributions and who is already receiving a Regular Retirement Benefit from the System as of December 31, 2000. The letter of eligibility will contain the following:
  - (A) The amount of the Excess Contributions determined by the System;
  - (B) The amount and duration of the Limited Benefit payments;
  - (C) The effective date of the first Limited Benefit payment, which must be at least ninety (90) days from the date of mailing of the letter of eligibility;
  - (D) A description of the appropriate tax treatment of the Limited Benefit.
- (2) In the event a Limited Eligible Member disputes the amount of Excess Contributions determined by the System as set forth in the letter of eligibility, the Limited Eligible Member shall provide a written objection to the Board within 30 days of the date of the letter of eligibility. The objection shall set forth the basis for the objection, including the specific error and the amount the Limited Eligible Member believes is correct. The Board shall respond to the objection within 30 days. If the

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Limited Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.

(3) The Board will direct that the Limited Benefit be paid to the Eligible Member as stated in the letter of eligibility.

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

**590:10-15-4. Subsequent payment of limited benefits**

Within ninety (90) days after the effective date of this rule, the Board will implement the following procedures for the payment of the Limited Benefit:

(1) The Board shall cause to be sent a letter of eligibility to each Limited Eligible Member who had not previously been provided a letter of eligibility. The letter of eligibility will contain the following:

- (A) The amount of the Excess Contributions determined by the System;
- (B) The amount and duration of the Limited Benefit payments;
- (C) A description of the expected effective date of the first Limited Benefit payment to coincide with the payment of the third Regular Retirement Benefit;
- (D) A description of the appropriate tax treatment of the Limited Benefit.

(2) In the event a Limited Eligible Member disputes the amount of Excess Contributions determined by the System as set forth in the letter of eligibility, the Limited Eligible Member shall provide a written objection to the Board within 30 days of the date of the letter of eligibility. The objection shall set forth the basis for the objection, including the specific error and the amount the Limited Eligible Member believes is correct. The Board shall respond to the objection within 30 days. If the Limited Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.

(3) The Board will direct that the Limited Benefit be paid to the Limited Eligible Member as stated in the letter of eligibility provided that the Limited Eligible Member begins to receive a Regular Retirement Benefit.

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

**590:10-15-5. Tax treatment of limited benefit**

The Board will report the Limited Benefit payments on 1099-Rs for each year in which payments are made. The entire amount of Limited Benefit payments shall be reported as taxable. The Limited Eligible Member's tax basis shall not be affected by these payments.

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

**590:10-15-6. Omitted limited eligible members**

A Limited Eligible Member who has Excess Contributions in the Plan but was not identified by the System or was not sent a letter of eligibility for the initial or subsequent Limited Benefit payments is responsible to notify the System of his or her eligibility and to request the payment of the Limited Benefit. For any omitted Limited Eligible Member who requests Limited Benefit payments, the Board shall determine eligibility and implement the notice procedures as provided in Sections 3 and 4 of this Subchapter and Chapter of these Rules for such omitted Limited Eligible Members. The Limited Benefit shall be paid only on a prospective basis.

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

**590:10-15-7. Limited benefit amount**

The Limited Benefit shall be paid in an amount not to exceed \$200 per month. The Limited Benefit shall not be subject to cost-of-living adjustments or other similar benefit increases. It shall be payable monthly so long as Limited Eligible Member is receiving a Regular Retirement Benefit until the Limited Eligible Member has received the Maximum Limited Benefit amount. As a result, the final Limited Benefit may be in an amount less than \$200.

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

**590:10-15-8. Deceased limited eligible members**

In the event of the death of a Limited Eligible Member prior to payment of the Maximum Limited Benefit amount, the remaining Limited Benefit shall be payable only if monthly retirement benefits continue to be paid to a joint annuitant under Options A or B or a beneficiary under Option C. The Limited Benefit payment shall be paid to such joint annuitant or beneficiary in the same manner as if the Limited Eligible Member were not deceased, only so long as he or she continues to receive monthly retirement benefits. The Limited Benefit payments shall not count against the contribution amounts payable to a beneficiary pursuant to Title 74 O.S. Section 917 (4).

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

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

**Section**

590:10-17-1. Step-Up

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- 590:10-17-2. Eligibility for Step-Up
- 590:10-17-3. Irrevocable election of Step-Up
- 590:10-17-4. Step-Up effective date
- 590:10-17-5. Step-Up contributions
- 590:10-17-6. Termination, withdrawal and repayment of Step-Up
- 590:10-17-7. Step-Up participating service calculations
- 590:10-17-8. Step-Up and post-retirement employment
- 590:10-17-9. Step-Up decision

[Source: Codified 6-11-04]

**590:10-17-1. Step-Up**

An enhanced benefit computation factor is available to certain members of the Oklahoma Public Employees Retirement System provided an election form is properly completed and filed and additional actuarially determined contributions are paid. This enhanced benefit shall be called "Step-Up".

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

**590:10-17-2. Eligibility for Step-Up**

All state, county and local government employees who are active participants, including retired members who have returned to work, are eligible to make the Step-Up election, with the exception of elected officials and hazardous duty employees as provided in 590:10-1-15 of these rules (such as correctional officers, probation and parole officers, fugitive apprehension agents and Military Department firefighters).

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

**590:10-17-3. Irrevocable election of Step-Up**

(a) Eligible OPERS members may make an irrevocable election to Step-Up or increase their benefit computation factor from 2.0% to 2.5%. Participating members will not be permitted to revoke the Step-Up election or stop the Step-Up contributions once the election has been made. The election is considered to be made upon the earliest of OPERS receipt of a member's completed election form or deposit of the member's Step-Up contributions.

(b) The Step-Up election is an irrevocable election and is binding on all future participation in OPERS, even if there is a break in service, a change in jobs and/or a change in participating employers.

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

**590:10-17-4. Step-Up effective date**

Participation in the Step-Up can be effective as early as the first payroll period following January 1, 2004, provided that the member has signed and filed the election form with his or her Retirement Coordinator prior to that date. After January 1, 2004, the election can be made at enrollment or at any time while participating as an active member. The Step-Up will be effective the first payroll period following the member's election and acceptance of the election by the member's participating employer.

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

**590:10-17-5. Step-Up contributions**

After election of the Step-Up, the employee member is required to make a higher retirement contribution rate during all future participation. The contribution rate is actuarially determined and may be raised or lowered by law in the future.

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

**590:10-17-6. Termination, withdrawal and repayment of Step-Up**

Participating members are not permitted to withdraw any retirement contributions unless the member terminates employment and membership in the System. The Step-Up is binding on future participation in the event that the member elects the Step-Up, and subsequently terminates employment and takes a withdrawal of his or her employee contributions. In the event that such a member returns to employment with a participating employer, he or she must resume participation in the Step-Up. If such a member desires to repay the withdrawal, he or she is required to repay all amounts withdrawn, including any previous Step-Up contributions in order to reinstate the service credit.

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

**590:10-17-7. Step-Up participating service calculations**

The Step-Up will increase the member's computation factor to 2.5% for participating service which is accrued after the election. It will be computed for full years (12 months) of participating service only. For purposes of the Step-Up calculation, 2076 hours equals a full year of participating service. Partial years of service (including participation in the Step-Up for partial years), service prior to the Step-Up election, purchased credit, prior service, military service, transported service, bonus years and unused sick leave will all be calculated at the regular 2% computation factor.

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

**590:10-17-8. Step-Up and post-retirement employment**

(a) A retired member who returns to work with a participating employer and who made an election to participate in the Step-Up prior to his or her retirement, is bound by that election and must continue to participate in the Step-Up for all periods of post-retirement participation. A retired member who returns to work with a participating employer and who either did not have an opportunity to make the election to participate in Step-Up or who was eligible but chose not to make the election can begin participation in the Step-Up at any time during his or her post-retirement employment after January 1, 2004.

(b) For purposes of calculating post-retirement benefits for retired members who choose the Step-Up post-retirement, the addition of post-retirement benefits shall not be calculated at 2.5% until the additional Step-Up contribution has been paid on the entire 2076 hours of participation being used to calculate the member's benefit increase for that year in accordance with 590:10-7-15 and 74 O.S. Section 914.

(c) It is the responsibility of the retired member to select the appropriate time, if ever, to elect the Step-Up for post-retirement participation. For illustrative purposes, if a retired member has participated in post-retirement employment for 1400 hours prior to making the Step-Up election, makes the Step-Up election and continues to participate as a retired member, the next 676 hours of participation while making Step-Up contributions will be combined with the previous 1400 hours and calculated at 2%. All future post-retirement participation will be calculated at 2.5%.

(d) The member cannot change the Step-Up election date and cannot receive a refund of Step-Up contributions made for any periods which are not calculated at 2.5%.

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

**590:10-17-9. Step-Up decision**

Each participating member must evaluate his or her individual circumstances in order to determine whether participation in the Step-Up is appropriate. The System cannot provide advice or calculations for the member regarding the member's decision whether to make the Step-Up election or the timing of that election.

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

**SUBCHAPTER 19. MEDICARE GAP BENEFIT OPTION**

**Section**

590:10-19-1. Purpose and intent

590:10-19-2. Definitions

590:10-19-3. Medicare Gap Benefit option

590:10-19-4. Irrevocable election of Medicare Gap Benefit option

590:10-19-5. Medicare Gap Benefit formula

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- 590:10-19-6. Eligible Members
- 590:10-19-7. Eligibility exclusions
- 590:10-19-8. Calculation of the Medicare Gap Benefit
- 590:10-19-9. Medicare Gap Benefit Inapplicable for joint annuitants
- 590:10-19-10. Pop-up of the Medicare Gap Benefit
- 590:10-19-11. Minimum benefit amount
- 590:10-19-12. Calculation of Cost-of-Living Adjustments
- 590:10-19-13. Medicare Gap benefits and post-retirement employment
- 590:10-19-14. Payments to an alternate payee under a QDRO

[Source: Codified 5-26-05]

**590:10-19-1. Purpose and intent**

By adoption of the rules set out in this Subchapter which implement a "Medicare Gap" benefit option, the Board intends to comply in all respects with IRS tax qualification requirements for governmental plans applicable to such benefit option payments. Specifically, the rules contained in the subchapter will not be fully implemented, and a member will not be eligible to select such a benefit option, until the Board "*receives official written notice that this alternative retirement benefit option satisfies the tax qualification requirements for governmental plans applicable to such benefit options as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto.*" [74:915.3]

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-19-2. Definitions**

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

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

**"Eligible Member"** means a member of the System who retires on or after the Option Effective Date and who is not Medicare-eligible at the time of retirement, except as otherwise provided in this Subchapter.

**"Medicare Gap Benefit"** means an adjusted retirement benefit which is greater than the member's Regular Retirement Benefit for months of payments prior to and including the month the member becomes Medicare-eligible and an actuarially reduced benefit which is less than the member's Regular Retirement Benefit for months of payments after becoming Medicare-eligible and for the remaining lifetime of the member.

**"Medicare Gap Benefit Election"** means an irrevocable election made by an Eligible Member prior to his or her effective date of retirement to receive the alternative benefit option payable pursuant to this Subchapter.

**"Medicare-eligible"** means age 65 or older, or such other age at which a member becomes eligible for Medicare benefits under federal law in effect at the time a member applies for an OPERS retirement benefit. For purposes of this Subchapter, age is calculated as of the first day of the month of birth. For example, a member born September 15, 1940, is considered to be 65 and Medicare-eligible on or after September 1, 2005.

**"Minimum Medicare Gap Benefit"** means a gross monthly benefit payment of \$200.00 per month after all applicable actuarial reductions for either the Pre-Medicare benefit or the Post Medicare benefit.

**"Option Effective Date"** means May 1, 2006, which is the date when the System made the Medicare Gap Benefit option available to Eligible Members.

**"Post Medicare Benefit"** means the actuarially reduced monthly benefit payment for all months of retirement after the member becomes Medicare-eligible.

**"Pre-Medicare Benefit"** means the increased monthly benefit payment for all months of retirement prior to and including the month the member becomes Medicare-eligible.

**"Pre-Medicare Increase"** means the amount added to the Regular Retirement Benefit to equal the Pre-Medicare Benefit.

**"Regular Retirement Benefit"** means the monthly retirement benefit that the Eligible Member would receive absent the Medicare Gap Benefit Election, which includes the actuarial adjustments as a result of the member's election of early retirement and/or survivor benefit options. It does not include amounts refunded of additional contributions paid to a member in the form of a limited retirement benefit under 74 O.S. § 910.5.

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

[Source: Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07; Amended at 25 Ok Reg 46, eff 8-16-07 (emergency); Amended at 25 Ok Reg 1001, eff 5-11-08]]

### **590:10-19-3. Medicare Gap Benefit option**

(a) An alternate retirement benefit option is available to members of the Oklahoma Public Employees Retirement System provided an election form is properly completed and filed with the System after the Option Effective Date and prior to the member's effective retirement date. This alternate benefit option shall be called the Medicare Gap Benefit option. The Medicare Gap Benefit option is intended to permit certain members of the System to elect to receive an increased retirement benefit amount to help cover the cost of the health insurance premiums prior to the time that the member becomes Medicare-eligible, however, the Medicare Gap Benefit may not equal or cover the entire cost of the member's actual health insurance premiums.

(b) As a result of the passage of Section 2 of Enrolled Senate Bill 1112 from the 1<sup>st</sup> Session of the 51<sup>st</sup> Oklahoma Legislature (2007), members electing the Medicare Gap Benefit Option with a retirement effective date on or after July 1, 2007, shall have the Medicare Gap Benefit determined in accordance with these rules.

(c) Despite any provision to the contrary, all members who made the Medicare Gap Benefit Election with a retirement effective date from May 1, 2006, the Option Effective Date, through June 30, 2007, Medicare Gap Benefit means an adjusted retirement benefit which is greater than the member's Regular Retirement Benefit beginning with the first retirement benefit payment

through December of the year the member becomes Medicare-eligible. Beginning in January of the year following such year that the member becomes Medicare-eligible, the retirement benefit will be actuarially reduced making the member's benefit less than the Regular Retirement Benefit for the remaining lifetime of the member.

(d) Any member who has previously filed an application for vested benefits or any other non-active vested member who is considered to have met the sixty (60) day notice requirement for filing his or her retirement application may be permitted to file the election form provided by this section after the member's effective retirement date. However, this filing shall only be permitted if the System determines the member was unable to timely make such election prior to the effective retirement date. In no event shall the filing of this election form be permitted less than fifteen (15) days prior to the first benefit payment to the member. Any election form received and approved by the System within this fifteen-day period shall result in the retirement date of the member being moved to the next month.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 25 Ok Reg 46, eff 8-16-07 (emergency); Amended at 25 Ok Reg 1001, eff 5-11-08; amended at 26 Ok Reg 952]

#### **590:10-19-4. Irrevocable election of Medicare Gap Benefit option**

The Medicare Gap Benefit option election is an irrevocable election. This election shall not be changed under any circumstances on or after the effective date of the member's retirement.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

#### **590:10-19-5. Medicare Gap Benefit formula**

(a) The formula for the Pre-Medicare Increase is not an individualized actuarial calculation. The formula shall be based upon the difference between the average of the non-Medicare Supplement premiums and average of the Medicare Supplement premiums for all health insurance plans offered by the Oklahoma State and Education Employees Group Insurance Board to inactive or retired OPERS members. The formula shall use the average premium amounts for the member only and shall include as an offset the amount of the health insurance subsidy payment made by the System. Pre-Medicare Increase to a retiree's benefit prior to becoming eligible for Medicare, will not always equal the additional cost of the retiree's health insurance.

(b) The Pre-Medicare Increase shall be reviewed and adopted by the Board prior to January 1 of each year to ensure that the formula is based upon new health insurance data.

(c) The Post Medicare Benefit is calculated using actuarially determined factors to reduce the benefit of the retiree thereby ensuring an actuarially neutral cost to the System.

(d) The Board shall adopt the appropriate actuarial tables to ensure the neutral actuarial cost to the System.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

**590:10-19-6. Eligible Members**

Only Eligible Members may elect the Medicare Gap Benefit option. Any member who has retired prior to the Option Effective Date of the Medicare Gap Benefit option is not eligible to make this election or change the type of retirement benefit previously selected. The Medicare Gap Benefit shall be paid only on a prospective basis.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

**590:10-19-7. Eligibility exclusions**

Eligible Member specifically excludes any member who receives retirement benefit payments for any months prior to the Option Effective Date, any member who is retiring under Disability Retirement, and any member electing an Option C. Surviving spouses are not eligible to elect the Medicare Gap Benefit option.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

**590:10-19-8. Calculation of the Medicare Gap Benefit**

- (a) The mortality tables used in the calculation of the Medicare Gap Benefit shall be the same tables adopted by the Board for other OPERS calculations.
- (b) The Pre-Medicare and Post Medicare Benefit payment amounts shall be calculated at the time of retirement and shall not be re-calculated after the member's effective retirement date except to correct errors or as specifically provided in these rules.
- (c) The formula for the Pre-Medicare Increase is applied after the calculation of the Eligible Member's Regular Retirement Benefit which includes any required actuarial reductions made for early retirement or selection of Option A or B and shall be applied based upon the age of the member at time of retirement.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

**590:10-19-9. Medicare Gap Benefit Inapplicable for joint annuitants**

- (a) The Medicare Gap Benefit does not apply to the benefit amount of a joint annuitant or surviving spouse of a member when the member dies prior to his or her effective retirement date.
- (b) Following the death of the member after retirement and election of the Medicare Gap Benefit option, the survivor benefit payments to a named joint annuitant under an Option A or to the surviving spouse of a deceased elected official shall be one-half or 50% of the Regular Retirement Benefit plus any necessary adjustments for COLA's.
- (c) Following the death of the member after retirement and election of the Medicare Gap Benefit option, the survivor benefit payments to a named joint annuitant under an Option B shall be 100% of the Regular Retirement Benefit plus any necessary adjustments for COLA's.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-19-10. Pop-up of the Medicare Gap Benefit**

In the event of the death of the named joint annuitant after the member's retirement date and election of the Medicare Gap Benefit option, the member shall provide the System with a copy of the joint annuitant's death certificate as notice of said death. The member's benefit will "pop-up" to reflect the amount of the original unreduced benefit the member would have been entitled to for both the Pre-Medicare and Post Medicare Benefit payments absent the selection of an Option A or B. The "pop-up" increase becomes effective the first day of the month following the death of the joint annuitant, provided the member has given notice of said death. Retrospective "pop-up" benefits are limited to a maximum of six (6) months.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-19-11. Minimum benefit amount**

An Eligible Member may not elect the Medicare Gap Benefit option if the calculation of either the Pre-Medicare or Post Medicare Benefit amounts would result in a gross benefit payment amount of less than \$200.00 per month calculated at the time of retirement.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-19-12. Calculation of Cost-of-Living Adjustments**

Unless otherwise specified by law, any cost-of-living adjustments to a member's Medicare Gap Benefit shall be calculated based upon the benefit the member is actually receiving at the time of the adjustment. Upon becoming Medicare-eligible, the Post Medicare benefit amounts shall be adjusted to receive the appropriate percentage equivalent of the cost-of-living adjustments granted during the Pre-Medicare Benefit payment period.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-19-13. Medicare Gap benefits and post-retirement employment**

(a) A retired member who returns to work with an OPERS participating employer and who has elected a Medicare Gap Benefit option shall have his or her post-retirement participation calculated in accordance with 590:10-7-15 of these rules. Any additional benefit from post-retirement employment will be calculated and paid without adjustment for either the Pre-Medicare Benefit or Post Medicare Benefit.

(b) A retired member who returns to work with an OPERS participating employer and who has elected a Medicare Gap Benefit option is not eligible to waive receipt of their monthly retirement benefit pursuant to 74 O.S. Section 914 (E) or to have retirement benefits recalculated

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upon termination of employment after completion of thirty-six (36) consecutive months of full-time-equivalent employment.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05]

**590:10-19-14. Payments to an alternate payee under a QDRO**

(a) An Eligible Member for whom a qualified domestic relations order has been filed and previously accepted by the System prior to the effective date of these rules may elect a Medicare Gap Benefit only if the Pre-Medicare and/or Post Medicare Benefit amounts are sufficient to make the required payment to the alternate payee under the QDRO and result in a payment amount to the member of at least \$100.00 per month.

(b) All qualified domestic relations orders filed with the System after the effective date of these rules shall include a provision requiring that the award will only be made for members electing a Medicare Gap Benefit if the member's Pre-Medicare and/or Post Medicare Benefit amounts are sufficient to make the required payment to the alternate payee under the QDRO and result in a payment amount to the member of at least One Hundred Dollars (\$100.00) per month.

[Source: Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 23 Ok Reg, 1482, eff 5-25-06]