

OPERS PROPOSED AMENDMENTS TO PERMANENT RULES

CHAPTER 40. DEFINED CONTRIBUTION SYSTEM

SUBCHAPTER 7. DEFINED CONTRIBUTION 401(a) PLAN

Summary: This change allows participants to receive a distribution of their funds which have been rolled into their Pathfinder account without meeting the requirements for separation from service.

590:40-7-30. Commencement

(a) **Events initiating benefits.** In the event of a Participant's separation from service as a result of Termination of Service, Normal Retirement, Disability, or death, the Participant shall be entitled to receive a distribution of the vested funds in his or her Account under the Trust Fund. In the event that a Participant dies before the entire balance of the Account is distributed, 590:40-7-34 shall apply.

(b) **Electing time for commencing of benefits.** The Participant may elect, on forms prescribed by OPERS, the time at which distributions under the Plan are to commence by designating the month and year during which the first distribution is to be made; however, in no event shall payment begin later than the required beginning date, which is the later of the April 1 following the calendar year in which the Participant attains the age of 70 ½ years of age, except as provided in 590:40-7-32, or the April 1 of the year following the calendar year in which the Participant terminates. The payment of benefits shall begin no earlier than forty-five (45) days after the occurrence of the event that gives rise to the beginning of the payment of benefits. If the Participant fails to apply for benefits after the required beginning date, the Board shall begin distribution of the Participant's entire interest as required by these rules in the form provided in 590:40-7-35.

(c) **Distribution of rollover contributions.** Rollover contributions as described in 590:40-7-10 are not subject to the requirements for separation of service as described in section (a) and shall be available for distribution within 30 days of acceptance of a properly completed distribution form as prescribed by OPERS.

EMERGENCY RULES PREVIOUSLY ADOPTED

SUBCHAPTER 1. GENERAL PROVISIONS – APPLICABLE TO THE 401(a) PLAN AND THE 457(b) PLAN

Summary: Session-only employees were added to the definition of employee to conform to HB 1376.

590:40-1-3. Definitions

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

"401(a) plan" means the defined contribution money purchase plan that is qualified under Section 401(a) of the Code as a governmental plan.

"457(b) plan" means the defined contribution plan that is an eligible governmental plan under Section 457(b) of the Code.

"Account" or **"Accounts"** means any of the accounts established for a Participant under the Plans, as described in 74 O.S. Supp. 2014, §935.6, 590:40-7-1 and 590:40-9-10.

"Beneficiary" means the persons or entities designated by the Participant on forms prescribed by OPERS.

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

"Code" means the Internal Revenue Code of 1986, as amended.

"Compensation" means:

(A) Taxable gross income from the Employer and shall include amounts deferred pursuant to Code Sections 125, 402(h), 402(a)(8), 457(b), 414(h), and 403(b). For purposes of the Plans, only compensation from the Employer that is attributable to services performed for the Employer may be includable in gross income.

(B) Compensation also means all salary and wages, including amounts deferred under the Plans, payable to a Participant for personal services performed for a participating employer.

(C) Despite any provision to the contrary, the compensation taken into account for any Employee in determining the contribution or benefit accruals for any plan year shall be limited to the annual compensation limit under Section 401(a)(17) of the Code.

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

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

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

(E) Subject to the limitations contained elsewhere in the Chapter, salary and wages include, by way of example and not by limitation, the following:

(i) any longevity payments made to Employees based upon a standardized plan which recognizes length of service to the Employer,

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

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

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

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

(F) Any payments made by an Employer to an Employee which do not meet the definition of salary or wages as set forth in this section are not to be considered compensation for purposes of the Plan, including but not limited to the following:

- (i) payments which are for reimbursement for expenses incurred by the Employee,
- (ii) payments for maintenance or allowances, including, but not limited to, uniform allowances, clothing allowances, or housing allowances,
- (iii) any payments or amounts made available to an Employee for insurance benefits or benefits allowances, including any amounts paid directly to the Employee,
- (iv) illegal payments made to an Employee by an Employer,
- (v) payments made in error to an Employee,
- (vi) payments made by the Employer for services rendered by the Employee, which services are not part of the Employee's job duties and responsibilities of his or her job position with the Employer,
- (vii) payments in the form of tips or commissions paid to an Employee in the course of his or her employment,
- (viii) payments made to other than the Employee by the Employer which are not deducted from the Employee's paycheck,
- (ix) workers compensation benefit payments,
- (x) any payments made by an Employer to a non-Employee, such as compensation to board or commission members,
- (xi) payments made in anticipation of employment, such as signing bonuses,
- (xiii) any payments which are excluded from retirement compensation by law.

(G) It shall be the responsibility of the Employer to ensure that the appropriate contributions are deducted or paid correctly and in accordance with this definition.

"Contribution" means a contribution by the Employer or by a Participant to the 401(a) plan.

"Deferral" or "Deferred compensation" means that portion of the Participant's Compensation which is withheld and invested in the 457(b) plan.

"Defined Contribution System" or "DC System" means the program established under 74 O.S. Supp. 2014, §§ 935.1 through 935.11 and this Chapter that consists of the 401(a) plan and the 457(b) plan.

"Disability" or "Disabled" means a Participant who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration, or as defined by Code Section 72(m)(7). A Participant shall not be considered to be disabled unless proof of the existence of the disability is provided in such manner as OPERS may require.

"Emergency withdrawals" means withdrawals of funds because of an unforeseeable emergency and are only permitted under the 457(b) plan to the extent reasonably needed to satisfy the emergency need.

"Employee" means:

(A) Any person who first becomes employed by any participating employer in OPERS, as defined by paragraph (25) of Section 902 of Title 74 of the Oklahoma Statutes, on or after November 1, 2015. Employee shall also include any statewide

elected official or legislator whose first service as an elected official occurs on or after November 1, 2015. Employee shall not include:

(i) Employees who are initially employed in the positions described in divisions (i), (ii), and (iii) of subparagraph (d) of paragraph (24) of Section 902 of Title 74 of the Oklahoma Statutes;

(ii) County elected officials, or any employee of a county, county hospital, city or town, conservation district, circuit engineering district, and any public or private trust in which a county, city or town participates and is the primary beneficiary; and

(ii) District attorneys, assistant district attorneys, or other employees of the district attorney's office.

(B) Any person first licensed by the Department of Rehabilitative Services as a vending stand operator or managing operator on or after November 1, 2015, as defined by Section 929 of Title 74 of the Oklahoma Statutes, and who elects to participate in the Defined Contribution System shall be considered an Employee for purposes of this Chapter ~~and eligible for participation in the Defined Contribution System.~~

(C) Any person employed on or after November 1, 2015, by the Legislative Service Bureau, State Senate or House of Representatives for the full duration of a regular legislative session and who elects to participate in the Defined Contribution System shall be considered an Employee for purposes of this Chapter.

"Employer" means the State of Oklahoma, its agencies, any duly constituted authority or instrumentality of the State of Oklahoma, and any participating employer in OPERS as defined by paragraph (25) of Section 902 of Title 74 of the Oklahoma Statutes.

"Employer contribution" means the amount contributed to the 401(a) plan by the Employer on behalf of each Participant.

"Fiscal Year" means the fiscal year of the State of Oklahoma, which is July 1 to June 30.

"Normal Retirement" means the first date upon which each of the following shall have occurred: separation from service and attainment of Normal Retirement Age under the applicable Plan.

"OPERS" means the Oklahoma Public Employees Retirement System.

"Participant" means an Employee who is eligible and participating in a Plan or who has funds invested in accordance with its provisions or any former Employee who has not received a distribution of his or her entire interest under the Plan. Participant also includes the Employee's surviving beneficiary and an alternate payee who has been awarded a separate account in accordance with Subchapter 11 of this Chapter.

"Plan Year" means the twelve month period ending on June 30.

"Plans" refers collectively to the 401(a) plan and the 457(b) plan.

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

"Termination of Service" means the bona fide separation, severance, or termination of the Participant's employment or service in which the Employer and Employee relationship is completely severed prior to Normal Retirement, Disability, or death.

"Trust" means the trusts established under Subchapters 7 and 9 of this Chapter.

"Trust Fund(s)" means the funds established under the Trusts created in Subchapters 7 and 9 of this Chapter, with the Board of Trustees as trustee, and held by the Board in accordance

with these Plans and Trusts, to which deposits and contributions under these Plans and Trusts will be made and out of which benefits under these Plans and Trusts will be provided.

"Trustee" means the individuals appointed to the Board of Trustees to administer the Trust Funds in accordance with this Plan and includes persons selected by the Board of Trustees to act as a trustee of the Trust Fund(s).

"Valuation Date" means each business day of the calendar year, and on each such day, the Recordkeeper shall determine the value of the Trust Funds.

SUBCHAPTER 5. ELIGIBILITY AND PARTICIPATION – APPLICABLE TO THE 401(a) PLAN AND THE 457(b) PLAN

Summary: Enrollment dates for both the 457(b) plan and the 401(a) plan are aligned so that enrollment in both plans will begin the month following employment or reemployment, not the entry date. This conforms to HB 1376. Also clarifies that once an employee is eligible, he or she will remain eligible. States that session-only employees meet the eligibility requirements.

590:40-5-1. Participation in 401(a) plan and 457(b) plan

(a) **Eligibility.** Each Employee shall become a Participant on the ~~entry date of employment~~ first day of the month following the date of employment with an Employer for the mandatory contributions as set forth in 74 O.S. §935.5 and 590:40-5-5. Participants may participate in voluntary deferrals to the 457(b) plan set forth in 74 O.S. §935.5 and 590:40-5-6 beginning the first day of the month following the entry date of employment. An Employee shall participate in the DC System if the Employee is employed in a full-time-equivalent position or any position which is less than full-time but more than a half-time position and includes employee benefits such as health insurance and leave time. The determination of whether an Employee is in an employment position which is more than a half-time position shall be made by the Employer and such determination shall be exclusively relied upon by OPERS. Members who have been declared eligible to participate in the DC System, but subsequently fall below the level of eligibility for a new member, shall continue to participate in the System.

(b) **Participation upon reemployment.** A former Participant or former Employee who satisfies the eligibility requirements in this section shall become a Participant ~~immediately~~ in the DC System ~~upon~~ the first day of the month following the date of reemployment.

(c) **Change in employment status.** In the event a Participant is no longer a member of an eligible class of Employees and becomes ineligible to participate in the DC System, the individual will participate immediately upon returning to an eligible class of Employees.

(d) **Previous participation in defined benefit plan.** Any employee first employed by an Employer prior to November 1, 2015, and was a participating member in OPERS defined benefit plan set forth in 74 O.S. §§ 901 et seq. shall not be a Participant in the DC System. Such employees shall participate in OPERS defined benefit plan set forth in 74 O.S. §§ 901 et seq. regardless of whether the individual maintained membership in the OPERS defined benefit plan. If an employee is first employed by an Employer on or after November 1, 2015, in a position in which the employee is eligible to participate in OPERS defined benefit plan, and such employee subsequently terminates service with such Employer and becomes employed in a position which is eligible under the DC System, the employee shall no longer participate in OPERS defined benefit plan but shall participate in the DC System.

Summary: Contribution percentages are changed to reflect the contribution amounts in HB 1376.

590:40-5-5. Employee mandatory contributions to the 401(a) plan

Each Participant shall participate in the 401(a) Plan at a minimum contribution rate of ~~3~~ 4.5% of the Employee's Compensation. These funds, designated as Employee contributions, shall be paid by the Employer for all Participants and picked up in order to be treated as Employer Contributions under the provisions of Code Section 414(h)(2) and 74 O.S. §935.8. The Employer shall remit the contributions to OPERS for deposit into an Account or Accounts maintained on behalf of the Participant. The mandatory ~~3~~ 4.5% Employee contribution shall be placed by OPERS in the Code Section 401(a) plan as set forth by the Board of Trustees and in accordance with this Chapter.

Summary: Contribution percentages are changed to reflect the contribution and matching amounts in HB 1376. The limit is removed on non-matched deferrals.

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

(a) **Additional contributions; deposit of funds.** ~~In the month following employment and enrollment in the Plan, Participants may contribute additional voluntary deferrals, above the 3 4.5% required contribution rate, in 1% increments up to a maximum combined rate, including both the required and voluntary deferrals, of 7%. Participants may not contribute at a fractional or percentage rate different from the rates set forth in this Section or in Section 935.5 of Title 74 of the Oklahoma Statutes. All deferrals above the mandatory 3 4.5% contribution rate shall be considered voluntary deferrals, and shall be matched by the Employer up to but not exceeding 7%. Participants may contribute 7% of compensation and it shall be matched by the Employer. Participants may contribute more than 7% of compensation, but any such amount over the 7% rate shall not be eligible for Employer matching amounts. All voluntary deferrals shall be subject to the maximum deferral limits allowed under the Code and as set forth in Subchapter 9 of this Chapter. Voluntary deferrals shall be paid and remitted in the same manner as the mandatory contributions. All voluntary deferrals are intended to meet the requirements of Code Sections 457(b). All voluntary deferrals over the 3 4.5% mandatory contribution shall be placed by OPERS in the 457(b) plan as set forth by the Board of Trustees and in accordance with Subchapter 9 of this Chapter.~~

(b) **Change in deferral rate.** A Participant may change the voluntary contribution rate once per calendar year only during the option period as set forth by the Board. The Participant shall give notice to OPERS of such change prior to or during the option period. Any request for a change in the amount of the voluntary deferral subject to Employer matching received by OPERS after the close of the option period shall not be granted until the next option period. The contribution rate selected by the Participant shall be continuous and remain in effect until a change is made by the Participant during the next option period. ~~A Participant shall be permitted to change voluntary deferrals above the 7% rate, which deferrals are not matched by the Employer, outside of the option period but not more than once per month.~~

(c) **Notice.** Any notice required under this Section means communication on forms approved by OPERS or the Recordkeeper, through the website of OPERS or the Recordkeeper, or through a dedicated telephone service of OPERS or the Recordkeeper.

Summary: Contribution percentages are changed to reflect the contribution and matching amounts in HB 1376.

590:40-5-7. Employer matching contributions to the 401(a) plan

(a) **Employer contributions.** The Employer shall contribute to the Trust Fund the amount referred to as Employer contributions. The Employer contributions shall consist of the funds the Employer uses to match the contributions paid by the Participant. Employer contributions shall not be less than ~~three percent (3%)~~ 6% of compensation, but ~~may~~ shall be 4%, 5%, 6%, or 7% of compensation if the Participant elects ~~additional voluntary deferrals to contribute 7% of compensation.~~ Payment of matching contributions shall be made by the Employer to OPERS within five (5) business days of the payroll date for the Participant.

(b) **Placement in accounts.** All Employer matching contributions shall be placed by OPERS in Accounts established for the Participant under the 401(a) plan as set forth in Subchapter 7 of this Chapter. In no event shall any Employer matching contributions be placed in the 457(b) plan.

Summary: Clarifies the start date for the calculation of vesting and clarifies the contributions in which the employee is vested.

590:40-5-15. Vesting

(a) **Employee deferrals and contributions.** Each Participant shall acquire a vested interest in his or her accounts in the 401(a) plan and the 457(b) plan of one hundred percent (100%) of the Participant's contributions or deferrals, including any gains or losses on such contributions or deferrals, at all times.

(b) **Employer matching amounts.** Each Participant shall acquire a vested interest in his or her Employer contributions, including any gains or losses on such contributions, in the 401(a) plan in accordance with the following vesting schedule:

(1) At the end of the first full year of participation, the Participant shall be vested in 20% of the Employer's matching contributions;

(2) At the end of the second full year of participation, the Participant shall be vested in 40% of the Employer's matching contributions;

(3) At the end of the third full year of participation, the Participant shall be vested in 60% of the Employer's matching contributions;

(4) At the end of the fourth full year of participation, the Participant shall be vested in 80% of the Employer's matching contributions; and

(5) At the end of the fifth full year of participation and thereafter, the Participant shall be vested in 100% of the Employer's matching contributions.

(6) For purposes of this subsection, the Participant's first day of employment shall be used to determine the first day of participation.

(c) **Full or partial termination.** In the event of a full or partial termination of a Plan, or a complete discontinuance of Employer contributions to the Plan, the accounts of affected Participants under the Plan shall be 100% vested and nonforfeitable to the extent required by federal law.

Summary: A year for vesting will be calculated by the passage of 365 days. The withdrawal of vested contributions will not impact the vesting schedule of a member. Language has been added to prevent the forfeiture of session-only employees after the end of each session.

590:40-5-16. Years of service for vesting; forfeiture – 401(a) plan

(a) **Full years.** Only full years of participation by the Participant with an Employer shall be counted toward vesting. A full year of participation shall mean a period of ~~twelve (12) consecutive months~~ 365 days beginning on the participant's ~~participation~~ date of employment and each ~~anniversary~~ 365 days thereof. Participants must complete a full year of participation to be vested according to the schedule set forth in 590:40-5-15. Partial years shall not round up but shall round down to the nearest full year of participation. For example, a Participant with 3 years and ~~10 months~~ 300 days of participation shall be vested in 100% of his or her Employer contributions, and 60% of the Employer contributions, and any investment gains or losses on such amounts.

(b) **Breaks in service.** For purposes of determining the vested interest of a Participant, all full years of participation, including breaks in service, shall be credited toward vesting ~~without regard to any breaks in service~~, unless there is a Termination of Service. The determination of whether a Participant has completed a full year of participation for vesting purposes shall be made by OPERS.

(c) **~~Withdrawal~~ Forfeiture of contributions from Plan; forfeiture.** If a Participant ~~withdraws all vested contributions in the 401(a) plan as a result of Termination of Service~~ terminates service with an Employer or otherwise becomes ineligible to participate in the 401(a) plan, the portion of Employer contributions which are not vested shall be forfeited to the 401(a) plan ninety (90) days after the Termination of Service. ~~If a Participant ceases to be eligible under the 401(a) plan or terminates service with an Employer but does not withdraw all vested contributions, the Participant shall remain eligible to receive the portion of Employer contributions which were previously not vested if the Participant returns to employment with an Employer, continues participation in the Plan, and becomes vested in such contributions.~~ Upon reemployment with an Employer and satisfying the eligibility requirements to become a Participant, the reemployed Participant shall receive credit for the previously vested years and days of service and be vested at the same percentage the Participant was vested when service was previously terminated. However, under no circumstances shall the Participant be entitled to any previously forfeited Employer contributions, including any gains or losses on such contributions. A person employed by the Legislative Service Bureau, State Senate or House of Representatives for the full duration of a regular legislation session shall not have the non-vested portion of his or her Employer contributions forfeited if he or she is rehired by the Legislative Service Bureau, State Senate or House of Representatives by February 1st of the following legislative session.

SUBCHAPTER 7. DEFINED CONTRIBUTION 401(a) PLAN

Summary: Contribution percentages are changed to reflect the contribution amounts in HB 1376.

590:40-7-1. Establishment of Accounts

OPERS shall establish Accounts for each Participant to reflect the Participant's mandatory ~~three percent (3%)~~ (4.5%) contribution and the matching Employer Contribution. Each Account shall be subdivided further and separate records shall be maintained showing the manner in which each Account is invested. Separate records also shall be maintained with respect to each Account showing the amount of contributions, distributions, vested balance, and the amount of income, expenses, gains, and losses attributable thereto. All subaccounts shall be referred to as a Participant's Account. The interest of each Participant shall comprise the amount in the Account, as determined under 590:40-7-3, plus credits, representing the Participant's allocable share of contributions, profits, income, and other increments attributable to such contributions, and minus debits, representing the Participant's proportionate share of losses and other decrements or expenses under the Plan and all distributions under the Plan made to or regarding that Participant. These records shall be maintained by the Plan on a calendar quarter-end basis only and available for seven (7) years.

Summary: Clarifies that the funds subject to forfeiture include the investment gains and losses.

590:40-7-21. Vesting

A Participant shall at all times be vested at one hundred percent (100%) in his or her account containing solely the Participant's contributions, and the investment gains and losses on those contributions. A Participant shall be vested in the Employer's matching contributions, and the gains and losses on those contributions, in accordance with the vesting schedule set forth in 590:40-5-15. All matching Employer contributions, and the investment gains and losses on those contributions, in the Participant's Account that are not vested at the time the Participant terminates participation in the Plan shall be subject to forfeiture in accordance with 590:40-5-16(c).

Summary: Clarifies that the funds subject to criminal forfeiture include the investment gains and losses.

590:40-7-22. Forfeitures

Matching contributions, and the investment gains and losses on those contributions, in the Account of a Participant may be forfeited pursuant to Section 24.1 of Title 51 of the Oklahoma Statutes. To the extent any forfeiture occurs, such forfeiture shall be retained and used by the Plan under 590:40-3-9.

Summary: Clarifies the type of investment vehicle allowed.

590:40-7-25. Investment contracts

Employer and Participant contributions shall be delivered by the Employer to OPERS to be invested in one or more of the following types of contracts or accounts issued or made available by a company or companies approved by the Board:

- (1) savings account in an institution or institutions as determined by the Board;
- (2) deferred fixed interest contract or other type of investment;
- (3) deferred variable interest contract or other types of investment;

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

Summary: Payment of benefits shall be no earlier than 45 days. This is in line with SoonerSave.

590:40-7-30. Commencement

(a) **Events initiating benefits.** In the event of a Participant's separation from service as a result of Termination of Service, Normal Retirement, Disability, or death, the Participant shall be entitled to receive a distribution of the vested funds in his or her Account under the Trust Fund. In the event that a Participant dies before the entire balance of the Account is distributed, 590:40-7-34 shall apply.

(b) **Electing time for commencing of benefits.** The Participant may elect, on forms prescribed by OPERS, the time at which distributions under the Plan are to commence by designating the month and year during which the first distribution is to be made; however, in no event shall payment begin later than the required beginning date, which is the later of the April 1 following the calendar year in which the Participant attains the age of 70 ½ years of age, except as provided in 590:40-7-32, or the April 1 of the year following the calendar year in which the Participant terminates. The payment of benefits shall begin no earlier than ~~thirty (30)~~ forty-five (45) days after the occurrence of the event that gives rise to the beginning of the payment of benefits. If the Participant fails to apply for benefits after the required beginning date, the Board shall begin distribution of the Participant's entire interest as required by these rules in the form provided in 590:40-7-35.

Summary: Corrects a typographical error.

590:40-7-53. Trust accounts

At least each quarter, the Recordkeeper shall provide a written account to the Board of Trustees setting forth all transactions ~~effected~~affected by it subsequent to the end of the period covered by its last previous account, and listing the assets of the Trust Fund at the close of the period covered by such account. Each year, the Board of Trustees shall publish an annual report presented in simple and easily understood language. The annual report shall cover the operation of the Plan and Trust, during the past year, including income, disbursements, and the financial condition of the Plan and Trust and any other information deemed relevant by the Board of Trustees. The annual report shall be written in such a manner as to permit a readily understandable means for analyzing the financial condition and performance of the Plan and Trust.

SUBCHAPTER 9. DEFINED CONTRIBUTION 457(b) PLAN

Summary: This puts the participant on notice that matching contributions will be suspended if maximum limits are exceeded.

590:40-9-1. Maximum deferrals

The maximum amount of the Deferral under the Plan for any calendar year shall not exceed the lesser of (i) the "Applicable Dollar Amount" or (ii) the Participant's "Includible Compensation" for the calendar year. For purposes of this Section, the Applicable Dollar Amount is the amount established under Section 457(e)(15) of the Code; and the Participant's Includible Compensation has the same definition as "Compensation" in 590:40-7-46. The Participant is responsible for monitoring his or her contributions to ensure that he or she does not exceed the applicable limits. Employer matching contributions will be suspended for the remainder of the calendar year once the applicable limits are reached.

Summary: Clarifies the type of investment vehicle allowed.

590:40-9-20. Investment contracts

The deferred amount shall be delivered by the Employer to OPERS to be invested in one or more of the following types of contracts or accounts issued or made available by a company or companies approved by the Board:

- (1) savings account in an institution or institutions as determined by the Board;
- (2) deferred fixed interest contract or other type of investment;
- (3) deferred variable interest contract or other type of investment;
- (4) mutual fund or common/collective trust fund;
- (5) any combination of the investment options in paragraphs (1) through (4) of this Section.

Summary: Employer contributions are not deposited into the 457(b) plan making this language unnecessary.

590:40-9-23. Default options

(a) **Failure to select.** In the event a Participant fails to select any investment option upon enrollment in the Plan, the Board shall, by resolution, establish a default investment option for contributions received from the Participant ~~and a default option for matching Employer contributions~~. Contributions invested in the default option shall remain in such option until the Participant directs the contributions to be invested in another investment option offered by the Plan.

(b) **Termination or elimination of options.** In the event of termination or elimination of any investment option from continued offering under the Plan, the Board may select default investment options for placement of affected funds. The Board may also designate periods where Participants may have no access to select investment options.

Summary: Payment of benefits shall be no earlier than 45 days. This is in line with SoonerSave.

590:40-9-25. Commencement of benefits

The payment of amounts deferred under the Plan shall become payable:

- (1) No earlier than ~~thirty (30)~~ forty-five (45) days after the Participant separates from service with the Employer, through termination or retirement; or

(2) Distribution of a Participant's account must begin no later than the required beginning date, which is the later of the April 1 following the calendar year in which the Participant attains the age of 70 ½ years of age, except as provided in 590:40-9-28, or the April 1 of the year following the calendar year in which the Participant terminates. If a Participant fails to apply for distribution by the later of either of those dates, the Board shall begin distribution of the Participant's entire interest as required by this Section in the form provided in 590:40-7-35.

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

Summary: Payment of benefits shall be no earlier than 45 days. This is in line with SoonerSave.

590:40-9-32. Method of payment

The payment of benefits shall begin no earlier than ~~thirty (30)~~ forty-five (45) days after the event that gives rise to the beginning of the payment of benefits. The Board may direct that the method of payment be directly from the company that issues the contracts in which investments have been made, directly to the Participant or a designated Beneficiary under the payment option elected by the Participant.

Summary: This allows employees who are not participating in the 457(b) plan to rollover funds.

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

The Plan will accept Participant or Employee rollover contributions and/or direct rollovers of distributions from an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, unless the prior Code Section 457 account includes funds previously transferred or rolled-over which require tax accounting or distribution rules that are different from those contained in this Plan.