

## CHAPTER 25. DEFERRED COMPENSATION

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[Authority: 74 O.S., §§ 1701 et seq.]

[Source: Codified 12-27-91]

### SUBCHAPTER 1. GENERAL PROVISIONS

#### Section

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#### **590:25-1-1. Purpose**

The rules in this Chapter are adopted to insure the efficient and orderly administration of the State Employees Deferred Compensation Plan and to provide guidelines for the investment of funds which have been deferred from the salaries of state employees. The Plan and Trust are intended to meet the requirements of Internal Revenue Code Sections 457 and 501(a).

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98]

#### **590:25-1-2. Statutory citations**

The rules contained in this Chapter are the adopted Oklahoma State Employees Deferred Compensation Plan, as authorized by Sec. 457 of the Internal Revenue Code and in accordance with the provisions of Chapter 45 of Title 74, Oklahoma Statutes. The Plan consists of the following provisions and is applicable to each State employee who enrolls in the Plan.

#### **590:25-1-3. Definitions**

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

**"Account"** means any of the accounts established for a Participant under the Plan, as described in Section 8 of Subchapter 5 of Chapter 25.

**"Amendments, alterations and changes"** means all Annuities, Mutual Fund(s), and Savings contracts can be altered, amended, changed or substituted for, from time to time by action of a majority of the Board and such altered, amended, changed, or substituted contract or contracts thereafter shall be used in the Plan.

**"Beneficiary"** means beneficiary or beneficiaries designated by the Participant in his Agreement with the Employer. If more than one designated beneficiary survives the participant, payments shall be made equally to the surviving beneficiaries unless otherwise provided in the Agreement. Nothing herein shall prevent the Participant from designating primary and secondary beneficiaries.

**"Board"** means the Oklahoma Public Employees Retirement System Board of Trustees, acting by and through the Plan Administrator.

**"Code"** shall mean the Internal Revenue Code of 1986, as amended.

**"Contracts and savings"** means any deferred fixed annuity, variable annuity, mutual fund, common trust fund, savings account, or any combination thereof, authorized by applicable law or regulation to be sold or made available in the State of Oklahoma by any company or companies approved by the Board.

**"Deferral"** means a postponement of recognition of income taxes to be paid on salary withheld and invested with the Oklahoma State Employees Deferred Compensation Plan.

**"Deferred compensation"** means that portion of the Participant's compensation which the Participant and the Employer mutually agree to defer until the conditions set forth in the Deferred Compensation Plan are met.

**"De-minimis account"** means an inactive plan account that does not exceed the amount allowed by the Internal Revenue Code.

**"Disability"** means an actual and continuous physical or mental incapacity which causes the Participant to be retired with a disability retirement under the Participant's retirement plan.

**"Emergency withdrawals"** means withdrawals of amounts because of an unforeseeable emergency and are only permitted to the extent reasonably needed to satisfy the emergency need.

**"Employee"** means any officer or employee of the executive, legislative, or judicial branches of the Employer who is an active member of a public retirement system of this state, but does not include:

- (A) Employees of the public elementary, secondary, or area vocational school districts;
- (B) Employees of The Oklahoma State System of Higher Education except employees of the Oklahoma State Regents of Higher Education, the employees of the governing boards and the employees at the George Nigh Rehabilitation Institute or the Medical Technology and Research Authority of Oklahoma who remain participating members of OPERS;
- (C) Persons on temporary, student, internship, or other limited-term appointments except for Executive Fellows in the Carl Albert Public Internship Program;
- (D) Persons employed pursuant to Section 1.6a of Title 53 of the Oklahoma Statutes or Section 1806.1 of Title 74 of the Oklahoma Statutes.

**"Employer"** means The State of Oklahoma, its agencies and any duly constituted authority or instrumentality of the State of Oklahoma.

**"Gender and number"** Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine, and the definition of any terms herein in the singular may also include the plural.

**"Normal retirement age"** means not later than April 1 of the calendar year following that in which the Participant attains age seventy (70) years and six (6) months if the Participant is no longer employed by the Employer or April 1 of the calendar year following that in which the Participant severs employment after attaining the age seventy (70) years and six (6) months and beginning no earlier than the earliest age at which the Participant can retire under any state retirement system with full benefits.

**"Participant"** means an individual who is eligible and agrees to defer compensation under the Plan.

**"Plan"** means the current Oklahoma State Employees Deferred Compensation Plan and as it may be amended from time to time.

**"Plan Administrator"** means the person or persons appointed by the Executive Director of the Oklahoma Employees Retirement System to administer the Plan pursuant to Section 1 of Subchapter 13 of this Chapter 25.

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

**"Recordkeeper"** means the company designated by the Board to perform recordkeeping, administrative, and/or investment services to the Plan.

**"Retirement"** means the first date upon which each of the following shall have occurred: Separation from Service and attainment of Normal Retirement Age.

**"Termination of service"** means the severance of the Participant's employment relationship with the Employer prior to his retirement, death or disability.

**"Trust"** means the provisions of this document that comprise the trust established hereunder, effective January 1, 1998.

**"Trust Fund"** means the fund established under the Trust, with the Board of Trustees as trustee, and held by said trustee in accordance with this Plan and Trust, to which deposits and Deferred Compensation under this Plan and Trust will be made and out of which benefits under this Plan and Trust will be provided.

**"Trustee"** means the individuals appointed to the Board of Trustees to administer the Trust Fund in accordance with this Plan and Trust.

**"Valuation Date"** means each business day of the calendar year. On each Valuation Date, the Recordkeeper shall determine the value of the Trust Fund.

**"Unforeseeable emergency"** means severe financial hardship to the Participant, resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

(A) The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

(i) Through reimbursement or compensation by insurance or otherwise.

(ii) By liquidation of the Participant's assets, to the extent the liquidation of these assets would not itself cause severe financial hardship, or

(iii) By cessation of deferrals under the Plan.

(B) Foreseeable personal expenditures normally budgetable, such as a down payment for a home, mortgage payments, rent, credit card debt, the purchase of an automobile, college or other schooling expense, etc., will not constitute an unforeseeable emergency.

**"Variable annuity contract"** means a Group Variable Annuity Contract approved for sale in the State of Oklahoma by any company or companies approved by the Board.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 13 Ok Reg 3333, eff 7-25-96; Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98; Amended at 17 Ok Reg 894, eff 2-10-00 through 7-14-00 (emergency); Amended at 17 Ok Reg 3185, eff 7-27-00; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02; Amended at 20 Ok Reg 1753, eff 6-12-03]

### **SUBCHAPTER 3. ELECTION TO DEFER COMPENSATION**

#### **Section**

- 590:25-3-1. Election limits
- 590:25-3-2. Catch-up election
- 590:25-3-3. Discontinuation
- 590:25-3-4. New employees
- 590:25-3-5. Over Age 50 Catch-up Limits

#### **590:25-3-1. Election limits**

(a) The Employee may elect to participate in this Plan and consent to the Employer, deferring a predetermined amount equivalent to at least Twenty-Five Dollars (\$25.00) a month. Effective January 1, 2002, the maximum that may be deferred under the Plan for the taxable year shall not exceed the lesser of the maximum amount allowed each year as determined by the Internal Revenue Service or one hundred percent (100%) of the employee's includable compensation. For purposes of the Plan, only compensation from the Employer that is attributable to services performed for Employer may be includable in gross income. Compensation includes payments made by the later of 2 1/2 months after severance from employment or the end of the calendar year that includes the date of the Participant's severance from employment if they are payments that, absent a severance from employment, would have been paid had the Participant continued in employment with the Employer and are:

- (1) Regular compensation for services during the Participant's regular working hours, or compensation for services outside the Employee's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and the compensation would have been paid to the Participant prior to a severance from employment if the Participant had continued employment with the Employer; or

- (2) payments for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued; or
  - (3) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Qualified Participant at the same time if the Participant had continued employment with the Employer and only to the extent that the payment is includible in the Qualified Participant's gross income.
- (b) Includable compensation excludes amounts converted under the State's Internal Revenue Code Section 125 Plan and employee retirement contributions that are tax-deferred. The deferment will commence no sooner than the first pay period of the month following the date the enrollment application is properly completed by the Employee and accepted by the Plan Administrator.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02; Amended at 20 Ok Reg 1753, eff 6-12-03; Amended at 27 Ok Reg 1047, eff 5-13-10]

#### **590:25-3-2. Catch-up election**

- (a) In addition to the maximum limits under 590:25-3-1, the Plan provides for a limited catch-up election which will permit a Participant to defer the lesser of (i) \$15,000.00 annually or (ii) his or her regular maximum as allowed under the plan plus any allowable amounts that were not used for the years after 1978 ("alternate catch-up limit"). Effective January 1, 2002, the Plan provides for a limited catch-up election which will permit a Participant to defer the lesser of two times the applicable IRS limit for the year or the alternate catch-up limit.
- (b) This election is only available once. A Participant may use the catch up limitation only if not previously used under this or any other plan. The election may be made no sooner than the last three taxable years immediately preceding the taxable year in which the Participant reaches Normal retirement age. It can be made with respect to all three (3) years.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02; Amended at 21 Ok Reg 1766, eff 6-11-04]

#### **590:25-3-3. Discontinuation**

The election of the Employee to participate under this Plan and the amount of compensation to be deferred is continuous, except that the Employee may discontinue participation or change his deferral amount at any time during the year by giving authenticated notice at least thirty (30) days prior to the effective date of such change. An Employee who elects to discontinue participation shall not again become eligible to participate in the Plan until one (1) month has elapsed from the Discontinuation Date, or as provided in 590:25-9-12. For purposes of this rule, authenticated means participant communication through the Plan's website, through the Recordkeeper's dedicated toll-free telephone service or by approved written form.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 18 Ok Reg 552, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3266, eff 7-26-01; Amended at 20 Ok Reg 1753, eff 6-12-03; Amended at 21 Ok Reg 1766, eff 6-11-04]

**590:25-3-4. New employees**

Any person who becomes a new Employee after the effective date of the Plan, shall have the option upon his employment to become a Participant by election to defer a portion of his prospective compensation for the balance of the year in which he becomes a new Employee.

**590:25-3-5. Over Age 50 Catch-up Limits**

In addition to the maximum limits under 590:25-3-1, the Plan provides for a special catch-up for all employees who have attained age 50 before the close of the plan year. Such additional contributions shall be in accordance with, and subject to the limitations of Section 414(v) of the Internal Revenue Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of section 457 of the Internal Revenue Code. This catch-up may not be used in the same years the employee is using the election under 590:25-3-2.

[Source: Added at 19 Ok Reg 746, eff 12-20-01 (emergency); Added at 19 Ok Reg 1481, eff 5-28-02]

**SUBCHAPTER 5. ASSETS, CREDITS, ACCOUNTS AND REPORTS**

**Section**

- 590:25-5-1. Remittance
- 590:25-5-2. Investment options [REVOKED]
- 590:25-5-3. Option transfers [REVOKED]
- 590:25-5-4. Accounting [REVOKED]
- 590:25-5-5. Individual account ownership [REVOKED]
- 590:25-5-6. Records
- 590:25-5-7. Asset ownership [REVOKED]
- 590:25-5-8. Establishment of Accounts
- 590:25-5-9. Statement of a participant's Account
- 590:25-5-10. Valuation of Accounts
- 590:25-5-11. Deemed deferrals

**590:25-5-1. Remittance**

The Employer shall remit Deferred Compensation in a timely manner so that participation amounts may be posted and transferred to the investment option selected by the state employee within ten (10) business days of the payday, end of payroll period or process date, whichever is later. The Board shall have no duty to determine whether the funds remitted by the Employer are correct nor to collect or enforce such payment. The Deferred Compensation of the Employee shall be invested in accordance with the investment election of the Participant as provided in 590:25-7-3 of these rules.

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[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98; Amended at 20 Ok Reg 1753, eff 6-12-03]

**590:25-5-2. Investment options [REVOKED]**

[Source: Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

**590:25-5-3. Option transfers [REVOKED]**

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 13 Ok Reg 3333, eff 7-25-96; Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

**590:25-5-4. Accounting [REVOKED]**

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

**590:25-5-5. Individual account ownership [REVOKED]**

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

**590:25-5-6. Records**

Subject to the provisions of 590:10-1-18 of these rules, all information, documents and copies thereof contained in a Participant's Plan file shall be given confidential treatment and shall not be made public by the Plan without prior written consent of the Participant to which it pertains, but shall be subject to subpoena or court order.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98; Amended at 22 Ok Reg 133, eff 10-06-04 (emergency); Amended at 22 Ok Reg 1365, eff 5-26-05]

**590:25-5-7. Asset ownership [REVOKED]**

[Source: Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

**590:25-5-8. Establishment of Accounts**

The Plan Administrator shall cause Accounts to be established for each Participant, to reflect such Participant's Deferred Compensation. Each Account shall be subdivided further and separate records shall be maintained showing the manner in which each such Account is

invested. Separate records also shall be maintained with respect to each such Account showing the amount of Deferred Compensation thereto, distributions therefrom, and the amount of income, expenses, gains and losses attributable thereto. All such subaccounts are referred to herein as a Participant's "Account." In general, the interest of each Participant hereunder at any time shall consist of the amount in his Account, as determined under Section 10 of this Subchapter, plus credits (representing the Participant's Deferred Compensation, profits, income, and other increments attributable to such Deferred Compensation) and minus debits (representing the Participant's proportionate share of losses and other decrements or expenses under the Plan and any and all distributions under the Plan made to or in respect of that Participant). These records shall be maintained by the Plan on a calendar quarter-end basis only and available for a period of three (3) years.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98; Amended at 20 Ok Reg 1753, eff 6-12-03]

#### **590:25-5-9. Statement of a Participant's Account**

The Recordkeeper, as soon as practicable after the end of each calendar quarter of the year, or more frequently, as the Plan Administrator may determine, shall mail or distribute to each Participant (including those who have incurred a Termination of Service) a statement setting forth the Account of such Participant as of the end of such period. Such statement shall be deemed to have been accepted as correct unless written notice to the contrary is received by the Plan Administrator and/or Recordkeeper within sixty (60) days after the mailing or distribution of such statement to the Participant.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

#### **590:25-5-10. Valuation of Accounts**

The Recordkeeper shall value the investments each business day. On each Valuation Date, there shall be allocated to the Accounts of each Participant the proportionate share of the increase or decrease in the fair market value of the Participant's Accounts in each of the investments, based on the beginning balance of such Accounts for such day. The Recordkeeper for the Plan may determine the increase or decrease in the fair market value of the Participant's Account in each of the investments on a cash, share or unit accounting basis. Whenever an event requires a determination of the value of the Participant's Accounts, the value shall be computed as of a Valuation Date coincident with or following the date of the event. These daily valuation records shall be maintained by the Recordkeeper for a period of one (1) year. Thereafter, Account information will be available on a quarter-end basis as provided in 590:25-5-8 of these rules.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98; Amended at 20 Ok Reg 1753, eff 6-12-03]

**590:25-5-11. Deemed deferrals**

This section shall apply if an employee has made a proper election to defer compensation and the election forms are received by the Plan on a timely basis but the deferral is not made at the first available payroll period through no fault of the employee. Upon approval of the Plan Administrator, the employee may double the deferral in the first possible month following discovery of the error in order to establish participation as originally intended. Solely for purposes of determining eligibility for any employer contribution, the employees participation in the Plan will then be deemed to have begun in the month for which that deferral should have originally occurred. The deemed deferral provision of this section shall not alter any tax ramifications that are otherwise applicable.

[Source: Added at 15 Ok Reg 1239, eff 1-26-98 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98; Amended at 17 Ok Reg 610, eff 12-2-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3185, eff 7-27-00]

**SUBCHAPTER 7. INVESTMENT OF DEFERRED AMOUNTS**

Section

- 590:25-7-1. Investment contracts
- 590:25-7-2. Investment authority
- 590:25-7-3. Participant directed investments

**590:25-7-1. Investment contracts**

The deferred amount shall be delivered by the Employer to the Board 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) Make deposits through a savings account in an institution or institutions as determined by the Board;
- (2) Make deposits to a deferred fixed interest contract or other type of investment;
- (3) Make deposits to a deferred variable interest contract or other type of investment;
- (4) Make deposits to a mutual fund or common trust fund;
- (5) Make deposits to any combination of the investment options in subparagraphs (1) through (4) of this Section may be selected by the employee.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 13 Ok Reg 3333, eff 7-25-96; Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98; Amended at 18 Ok Reg 552, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3266, eff 7-26-01]

**590:25-7-2. Investment authority**

The investment options shall be selected in accordance with Section 1701 of Title 74 of the Oklahoma Statutes and Section 4 of Subchapter 1 of Chapter 20 of these Rules.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

**590:25-7-3. Participant directed investments**

(a) A Participant's Account shall be invested in accordance with the investment election of the Participant in accordance with the limitations established by the Board of Trustees pursuant to these rules, the investment policy or any pertinent contractual or investment fund provisions. The Employer, Board, Plan Administrator, Coordinator, and Recordkeeper shall be under no duty to question any investment direction of a Participant, or to review any directed investments, or to make suggestions to the Participant, nor shall they be held responsible in any manner for investment loss or depreciation in asset value of any investment.

(b) 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.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98; Amended at 18 Ok Reg 552, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3266, eff 7-26-01]

**SUBCHAPTER 9. BENEFITS**

**Section**

- 590:25-9-1. Commencement of benefits
- 590:25-9-2. Distribution schedule
- 590:25-9-3. Benefit totals
- 590:25-9-4. Normal retirement [REVOKED]
- 590:25-9-5. Late retirement
- 590:25-9-6. Disability retirement
- 590:25-9-7. Termination of employment
- 590:25-9-8. Death
- 590:25-9-9. Designated beneficiary
- 590:25-9-10. Method of payment
- 590:25-9-11. Payment and distribution options
- 590:25-9-12. Emergency withdrawals
- 590:25-9-13. Plan-to-plan transfers
- 590:25-9-14. Employee transfers
- 590:25-9-15. Taxation
- 590:25-9-16. Rollovers from other plans
- 590:25-9-17. Rollovers to other plans
- 590:25-9-18. Direct transfers
- 590:25-9-19. Transfers and rollover completion
- 590:25-9-20. Federal qualified military service
- 590:25-9-21. Discontinuance of 2009 required minimum distributions

**590:25-9-1. Commencement of benefits**

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

- (1) No earlier than thirty (30) days after the Participant separates from service with the State, through termination or retirement; or
- (2) No later than April 1 of the calendar year after the year the participant attains age 70 1/2 years of age, except as provided in 590:25-9-5.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02; Amended at 28 Ok Reg 677, eff 5-12-11]

**590:25-9-2. Distribution schedule**

Distributions must be made primarily for the benefit of the Participant. A distribution which begins prior to the death of a Participant must be in a form so the total benefit amount will be paid over a period not to exceed the life expectancy of the Participant and a designated beneficiary.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02; Amended at 28 Ok Reg 677, eff 5-12-11]

**590:25-9-3. Benefit totals**

The Participant shall be entitled to have paid to him the benefits created by his participating in this Deferred Compensation Plan, in accordance with the provisions of this Chapter. Generally, the benefits payable to the Employee will be the equivalent of the total benefits created by the investment selection made by the Participant, taking into consideration market losses and gains where applicable.

**590:25-9-4. Normal retirement [REVOKED]**

[Source: Revoked at 12 Ok Reg 3249, eff 7-27-95]

**590:25-9-5. Late retirement**

If the Participant continues his employment after attaining 70 1/2 years of age, all benefits payable under the Plan may be deferred until the Participant retires, terminates his employment, dies or when the Participant is faced with an unforeseeable emergency. If the Participant is not an active State employee, the payment of benefits must begin no later than April of the calendar year following the calendar year in which the Participant attained age seventy (70) years and six (6) months. No additional deferrals under this Plan may be made by the Participant after termination of employment.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95]

**590:25-9-6. Disability retirement**

If an Employee becomes permanently disabled in accordance with any State retirement system disability provision, the Participant shall be deemed to be retired and will be paid the benefits appropriate to such retirement.

**590:25-9-7. Termination of employment**

Effective January 1, 2002, if a Participant terminates his employment with the State before reaching Normal retirement age, the total accumulated benefits under the Plan will be payable to him in accordance with his election under 590:25-9-11.

[Source: Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02]

**590:25-9-8. Death**

If the Participant dies prior to receiving Plan benefits, the benefits payable under this Plan shall be paid to his or her designated beneficiary in accordance with the distribution option selected by the designated beneficiary. If the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated beneficiary in accordance with the distribution option selected by the Participant unless the beneficiary selects a different distribution option in accordance with Plan provisions.

[Source: Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02; Amended at 20 Ok Reg 1753, eff 6-12-03; Amended at 28 Ok Reg 677, eff 5-12-11]

**590:25-9-9. Designated beneficiary**

The Participant shall have the right to file with the Board, a written beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the Participant's death. Following the death of the Participant, the beneficiary shall also have the right to file with the Board, a written beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the beneficiary's death.

- (1) The form for this purpose shall be provided by the Board and will have no effect until it is signed, filed with the Board by the Participant or the beneficiary, and accepted by the Board.
- (2) If the Participant or beneficiary dies without having a beneficiary form on file, the payments shall be made to the properly appointed fiduciary of the Participant's probate estate. Provided that if a fiduciary has not been appointed and qualified within one hundred twenty (120) days after the death, the payment may be made first, to a surviving spouse, second, to a surviving child or children, third, to a surviving parent or parents.
- (3) The Participant and the beneficiary accepts and acknowledges that he has the burden for executing and filing, with the Board, a proper beneficiary designation form.

[Source: Amended at 20 Ok Reg 1753, eff 6-12-03]

**590:25-9-10. Method of payment**

The payment of benefits shall begin no earlier than thirty (30) days after the occurrence of 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.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02; Amended at 28 Ok Reg 677, eff 5-12-11]

**590:25-9-11. Payment and distribution options**

The payment, method of payment and any distribution options shall be available in accordance with the benefit payment elections as set forth on the appropriate distribution request form. If the Participant elects to receive a deferred payout, the date selected for payouts to begin may be changed upon written notice to the Plan Administrator prior to the previously selected payout date subject to any applicable minimum distribution requirements. The method of payment may be changed upon written notice to the Plan Administrator.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02; Amended at 28 Ok Reg 677, eff 5-12-11]

**590:25-9-12. Emergency withdrawals**

Notwithstanding any other provisions of this Chapter, in the event of an unforeseeable emergency or financial hardship, such event being beyond the control of the Participant, a Participant may request the Plan Administrator to pay benefits to him or her immediately. If the application and justification for payment is approved by the Plan Administrator, payment will generally be processed by the Recordkeeper within ten (10) business days upon authorization from the Plan. Benefits to be paid shall be limited strictly to that amount needed to meet the emergency situation constituting financial hardship. Any remaining benefits shall be paid in accordance with this Chapter. Effective February 1, 2002, two (2) or more emergency withdrawals paid will result in cancellation of that Participant's deferrals into the Plan for a period of not less than six (6) months following payment of the emergency withdrawal. For purposes of this rule any emergency withdrawals since the Participant's initial enrollment into the Plan will be considered when applying this rule except that no cancellation will occur until the Participant has had a subsequent emergency withdrawal after February 1, 2002. The Participant will be responsible for re-establishing his deferral amount upon completion of the six-month cancellation period.

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[Source: Amended at 13 Ok Reg 3333, eff 7-25-96; Amended at 18 Ok Reg 552, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3266, eff 7-26-01; Amended at 19 Ok Reg 801, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02; Amended at 21 Ok Reg 1766, eff 6-11-04]

### **590:25-9-13. Plan-to-plan transfers**

This Plan will accept Deferred Compensation of an individual under another eligible state or municipal §457 plan, unless the transferring 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. It will also permit transfers to another §457 plan if the Employers receiving such amounts provide for the acceptance of these monies.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98; Amended at 20 Ok Reg 1753, eff 6-12-03]

### **590:25-9-14. Employee transfers**

If the Participant separates from service with a State agency in order to accept employment with another such State agency within the State, payout will not begin upon separation from service, regardless of any provision of the Plan.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98]

### **590:25-9-15. Taxation**

Benefits paid from the Deferred Compensation Plan are subject to the applicable Federal and State withholding rules and apply to all payments except those authorized for transfer to another §457 plan or rollover to an eligible retirement plan. Pursuant to Section 2 of Subchapter 15 of Chapter 25, the Board may withhold amounts necessary to cover federal and state taxes from such payments. Effective January 1, 2002, all payments will be reported on Form 1099-R.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98; Amended at 19 Ok Reg 746, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1481, eff 5-28-02]

### **590:25-9-16. Rollovers from other plans**

Effective January 1, 2002, the plan will accept Participant rollover contributions and/or direct rollovers of distributions made after December 31, 2001, 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 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.

[Source: Added at 19 Ok Reg 746, eff 12-20-01 (emergency); Added at 19 Ok Reg 1481, eff 05-28-02; Amended at 20 Ok Reg 1753, eff 6-12-03]

**590:25-9-17. Rollovers to other plans**

- (a) Effective January 1, 2002, notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) As used in this section:
- (1) "Eligible retirement plan", for purposes of a direct rollover, shall mean a qualified trust described in Section 401(a) of the Code, an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, or a Roth individual annuity (if the individual is eligible for a Roth rollover) described in Section 408(A)(e) for distributions made after December 31, 2007, that accepts the distributee's eligible rollover distribution. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.
  - (2) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the designated beneficiary of the distributee, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); or (iv) any amount that is distributed on account of hardship.
  - (3) "Distributee" includes a Participant or a Participant's surviving spouse, or for the limited purposes set forth in paragraph (c) of this section, a non-spouse beneficiary.
- (c) 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.
- (d) Except as otherwise provided, this section shall apply to distributions made after December 31, 2001.

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[Source: Added at 19 Ok Reg 746, eff 12-20-01 (emergency); Added at 19 Ok Reg 1481, eff 05-28-02; Amended at 24 Ok Reg 1140, eff 5-11-07; Amended at 27 Ok Reg 1047, eff 5-13-10; Amended at 29 Ok Reg 506, eff 5-11-12]

**590:25-9-18. Direct transfers**

A Participant may request a direct trustee to trustee transfer to a defined benefit governmental plan to purchase permissive service credit.

[Source: Added at 19 Ok Reg 746, eff 12-20-01 (emergency); Added at 19 Ok Reg 1481, eff 5-28-02]

**590:25-9-19. Transfers and rollover completion**

Any elections for plan-to-plan transfers or rollovers are contingent upon completion and acceptance of all necessary forms and documents. The forms for this purpose shall be provided by the Board and will have no effect until it is signed, filed with the Board by the Participant or the beneficiary, and accepted by the Board. The Participant and the Beneficiary accepts and acknowledges that he has the burden for executing and filing, with the board, the proper beneficiary designation form.

[Source: Added at 20 Ok Reg 1753, eff 6-12-03]

**590:25-9-20. Federal qualified military service**

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), and Section 414(u) of the Code.

(b) A Qualified Participant whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) may elect to make additional deferrals to the Plan upon resumption of employment with the Employer equal to the maximum annual deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the annual deferrals, if any, actually made for the Participant during the period of the interruption or leave. This right applies to five (5) years following the resumption of employment, if sooner, for a period equal to three times the period of the interruption or leave. The Employer, in accordance with 74 O.S. §1701, will make the Employer Contribution for such Qualified Participant for the equivalent period.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential

wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonable equivalent manner.

(d) Effective January 1, 2007, death benefits payable under this Plan shall be paid in accordance with Section 401(a)(37) of the Code, which provides that in the case of a Participant who dies while performing qualified military service (as defined in Section 414(u) of the Code), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that the Plan would otherwise provide had had the Participant resumed and then terminated employment with the Employer on account of death.

[Source: Added at 27 Ok Reg 1047, eff 5-13-10; Amended at 29 Ok Reg 506, eff 5-11-12]

**590:25-9-21. Discontinuance of 2009 required minimum distributions**

(a) Notwithstanding the provisions of 590:25-9-1 through 25-9-5 of these rules, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Internal Revenue Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding 590:25-9-17 of these rules, and solely for the purposes of applying the direct rollover provisions of the plan, certain additional distributions in 2009 will be treated as eligible rollover distributions.

(b) For purposes of the direct rollover provisions of the plan, both 2009 RMDs and Extended RMDs will be eligible rollover distributions without regard to IRS Section 401(a)(9)(H).

[Source: Added at 30 Ok Reg 554, eff 5-11-13]

**SUBCHAPTER 11. ADMINISTRATION OF PLAN**

**Section**

- 590:25-11-1. General
- 590:25-11-2. Applicable law
- 590:25-11-3. Accountability of options [REVOKED]
- 590:25-11-4. Tax consequences
- 590:25-11-5. Protected rights
- 590:25-11-6. Amendment of Plan and/or Trust
- 590:25-11-7. Termination

**590:25-11-1. General**

The Board shall administer the Deferred Compensation Plan and shall be responsible for the policies and rules for the general administration of the Plan in accordance with Title 74 O.S. 1981, Sec. 1701, as amended.

**590:25-11-2. Applicable law**

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

**590:25-11-3. Accountability of options [REVOKED]**

[Source: Revoked at 15 Ok Reg 974, eff 12-8-97 (emergency); Revoked at 15 Ok Reg 3275, eff 7-13-98]

**590:25-11-4. Tax consequences**

The Employer and the Board do not and cannot represent or guarantee that any particular Federal or State income, payroll, personal property or other tax consequence will occur because of the Participant's participation in the Plan. The Participant should consult with his own representative regarding all questions on Federal or State income, payroll, personal property or other tax consequences arising from participation in the Plan.

**590:25-11-5. Protected rights**

The rights of the Participant under this Plan shall not be subject to the rights of creditors of the Participant or any beneficiary, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for creditors or other third persons.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 17 Ok Reg 3185, eff 7-27-00]

**590:25-11-6. Amendment of Plan and/or Trust**

The Board may at any time amend or modify this Plan and/or Trust with or without the consent of the Participant [or any beneficiary thereof] provided that:

- (1) All amendments shall be accomplished in accordance with the Administrative Procedures Act. No amendments shall deprive the Participant of any of the benefits to which he is entitled under this Plan and/or Trust with respect to deferred amounts credited to his account prior to the effective date of the amendment;
- (2) This Plan and/or Trust alone, and any properly adopted amendment thereof, shall constitute the total Plan and/or Trust or contract between the Employer and the Participant regarding the Plan and/or Trust; no oral statement regarding the Plan and/or Trust may be relied upon by the Participant;

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(3) This Plan and/or Trust and any properly adopted amendment, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors and assigns and on all designated beneficiaries of the Participant, and

(4) No amendment shall authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98]

**590:25-11-7. Termination**

It is the present intention of the Employer to maintain this Plan and/or Trust. Nevertheless, the Employer reserves the right, at any time, to discontinue or terminate this Plan and/or Trust.

(1) If the Plan and/or Trust is curtailed or terminated, the Board shall nonetheless be responsible for the supervision and the payment of the benefits resulting from amounts contributed prior to the amendment, modification or termination in accordance with this Chapter.

(2) The Plan and Trust may be terminated at any time by the Employer, by giving notice in writing to the Board, which notice shall recite the date upon which the termination would be effective. After receipt of such notice, the Board shall continue to hold, invest and administer the Plan and Trust until the assets are liquidated and distributed to Participants and Beneficiaries. The distribution of assets shall occur as soon as administratively practicable after the termination of the Plan. The Trust shall terminate only when no assets of the Trust remain in the possession of the Board.

(3) The Trust is hereby designated as constituting a part of the Plan intended to be tax exempt under Code Sections 457 and 501(a). Until advised otherwise, the Board may conclusively assume that this Trust is tax exempt under Code Section 501(a) and that this Trust is exempt to that extent from federal income taxes.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

**SUBCHAPTER 13. ADMINISTRATION FUNCTIONS OF THE PLAN**

**Section**

590:25-13-1. Administrative staff

590:25-13-2. Deferred Compensation Coordinator

590:25-13-3. Completing forms

590:25-13-4. Prospectus [REVOKED]

590:25-13-5. Deferred Compensation Coordinator as liaison

590:25-13-6. General responsibilities of the Deferred Compensation Coordinator

**590:25-13-1. Administrative staff**

The Executive Director of the Oklahoma Public Employees Retirement System shall be responsible for selection and retention of the Plan Administrator and shall provide oversight and assistance in the general administration of the Oklahoma State Employees Deferred Compensation Plan. The Executive Director, the Plan Administrator, the Deputy Director, and such other persons designated by the Executive Director, are authorized to sign all vouchers or warrants issued for the Deferred Compensation Plan.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 13 Ok Reg 3333, eff 7-25-96; Amended at 20 Ok Reg 1753, eff 6-12-03]

**590:25-13-2. Deferred Compensation Coordinator**

(a) The appointing authority of each State agency shall designate a Coordinator to conduct all business transactions between the agency and the Oklahoma State Deferred Compensation Plan and shall notify the Board of Trustees for the Oklahoma Public Employees Retirement System of the designee in writing. All Deferred Compensation Coordinators shall be furnished an informational booklet on the Oklahoma State Deferred Compensation Plan. Employees should send all correspondence to the Deferred Compensation Coordinator who will forward it to the Board of Trustees. All forms and correspondence should identify the Participant by name, Social Security Number and agency.

(b) The Coordinator is employed by and under the authority of each State agency and is not an employee of the Plan. The Plan will make available information and training opportunities, however, it is the responsibility of the Coordinator to become familiar with the Plan provisions and keep abreast of all changes and amendments. Neither the Plan nor the Board will be liable for or bound by any mistakes, errors or misrepresentations of the Coordinators.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95; Amended at 20 Ok Reg 1753, eff 6-12-03]

**590:25-13-3. Completing forms**

Applicants for enrollment in the Deferred Compensation Plan will obtain Enrollment/Change forms from the Deferred Compensation Coordinator, the office of the Plan Administrator or, if available, from the Plan website or the Recordkeeper. The Coordinator will assist Participants in the preparation and submission of the enrollment agreement, changes in beneficiary, deferrals, and requests for payment of contributions for reason of termination of employment or unforeseeable emergency.

[Source: Amended at 15 Ok Reg 974, eff 12-8-97 (emergency); Amended at 15 Ok Reg 3275, eff 7-13-98; Amended at 20 Ok Reg 1753, eff 6-12-03]

**590:25-13-4. Prospectus [REVOKED]**

[Source: Revoked at 12 Ok Reg 3249, eff 7-27-95]

**590:25-13-5. Deferred Compensation Coordinator as liaison**

The Deferred Compensation Coordinator shall serve as a liaison representative between the Board of Trustees for the Deferred Compensation Plan and the Participant. The Coordinator shall be responsible for the proper preparation and submission of the Enrollment Application to the Board for final processing.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95]

**590:25-13-6. General responsibilities of the Deferred Compensation Coordinator**

The Deferred Compensation Coordinator shall inform Applicants and Participants concerning the Plan benefits and the Rules and Regulations applicable to enrollment, participation and termination. The Coordinator shall assist the Participant if any explanations of payment are needed to satisfy the Employee, or contact the Board, as necessary, for assistance to the Participant.

[Source: Amended at 12 Ok Reg 3249, eff 7-27-95]

**SUBCHAPTER 15. TRUST**

**Section**

- 590:25-15-1. Establishment and acceptance of Trust
- 590:25-15-2. Payments from Trust Fund
- 590:25-15-3. Investment of Trust Fund
- 590:25-15-4. Trust Accounts
- 590:25-15-5. Miscellaneous

[Source: Codified 7-13-98]

**590:25-15-1. Establishment and acceptance of Trust**

The Board of Trustees acts as trustee of the Trust. The Board takes, holds, invests, administers and distributes in accordance with this Plan and Trust, all Deferred Compensation and assets paid or delivered to the Board pursuant to the Plan for the uses and purposes herein expressed. The Board shall be accountable for all Deferred Compensation received, but shall have no duty to require any compensation to be deferred or to determine that the amounts received comply with the Plan, or to determine that the Trust Fund is adequate to provide the benefits payable pursuant to the Plan.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

**590:25-15-2. Payments from Trust Fund**

(a) The Recordkeeper shall make payments from the Trust Fund to such persons in such manner, at such times and in such amounts as the Board, acting through the Plan Administrator, shall direct. The Recordkeeper shall be fully protected in making, discontinuing, or stopping payments from the Trust Fund in accordance with the directions of the Board and/or the Plan Administrator. The Recordkeeper shall have no responsibility to see to the application of payments so made or to ascertain whether the directions of the Board and/or Plan Administrator comply with the Plan. When the Board and/or the Plan Administrator directs that any payment is to be made only during or until the time a certain condition exists regarding the payee, any payment made by the Recordkeeper in good faith, without actual notice or knowledge of the changed status or condition of the payee, shall be considered to have been properly made by the Recordkeeper and made in accordance with the direction of the Board and/or Plan Administrator.

(b) To the extent permitted by law, the Board shall be reimbursed for its expenses, if any, that are reasonable and necessary for the administration of the Plan and the Trust. The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Plan and the Trust, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the USRJJ, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

(c) The Board, acting through the Plan Administrator and/or Recordkeeper is authorized, to the extent required under applicable law, to withhold from distributions to any payee such sum as the Board determines is necessary to cover federal and state taxes for which the Board may be liable, which are, or may be, assessed with regard to the amount distributable to such payee, in accordance with Section 15 of Subchapter 9 of Chapter 25. Upon discharge or settlement of such tax liability the Board shall pay the balance of such sum, if any, to such payee or to his estate. Prior to making any payment or distribution hereunder, the Board may require such releases or other documents from any lawful taxing authority and may require such indemnity from any payee or distributee as the Board shall reasonably deem necessary for its protection.

(d) No amounts shall be payable to the Employer hereunder, from the Trust Fund, except as provided in the Plan.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98; Amended at 29 Ok Reg 507, eff 5-11-12]

**590:25-15-3. Investment of Trust Fund**

- (a) The corpus or income of the Trust Fund may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.
- (b) The Board shall perform all acts within its authority under this agreement for the exclusive purpose of providing benefits to Plan Participants and their beneficiaries and defraying reasonable expenses of administering the Plan and Trust, and shall perform such acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Subject to the terms of the preceding sentence, the Board shall diversify the investments of the Trust Fund so as to minimize the risk of large losses by offering diverse investment options to Participants, unless under the circumstances it is clearly prudent not to do so. To the extent applicable for this Plan and Trust, provisions of the Oklahoma Statutes which reference the powers and duties of the Board are incorporated.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

#### **590:25-15-4. Trust Accounts**

No less frequently than quarterly, the Recordkeeper shall provide a written account to the Board setting forth all transactions effected 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 shall publish an annual report presented in simple and easily understood language. The annual report shall cover the operation of the Plan and Trust, during the past year, including income, disbursements, and the financial condition of the Plan and Trust and any other information deemed relevant by the Board. The annual report shall be written in such a manner as to permit a readily understandable means for analyzing the financial condition and performance of the Plan and Trust.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]

#### **590:25-15-5. Miscellaneous**

- (a) The creation of this Trust shall not be construed as giving any person entitled to benefits hereunder or other employees of the Employer, who are not Participants of the Plan, any equity or other interest in the assets, business, or affairs of the Employer.
- (b) No additional bond, surety or security shall be required of the Board except as may be required by law or by the Employer.
- (c) The Board may procure insurance indemnifying the members of the Board from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board.
- (d) If any provision or provisions of this Plan and/or Trust shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Plan and/or Trust, but shall be fully severable and the Plan and/or Trust shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.
- (e) The Employer shall have the authority, but shall be under no duty, to enforce this Trust on behalf of any and all persons having or claiming any interest in the Trust Fund. In any action

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or proceeding affecting the Trust Fund or the administration thereof, or for instructions to the Board, the Employer and the Board shall be the only necessary parties, and no employees of the Employer or their beneficiaries, or any other person having or claiming to have an interest in the Trust Fund shall be entitled to any notice of process, and any judgment that may be entered in such action or proceeding shall, be binding on all persons having or claiming to have any interest in the Trust Fund.

(f) Entering into this Plan and Trust by the Employer and the Participant shall not be construed to give a contract of employment to the Participant or to alter or amend an existing employment contract of the Participant, if in fact one exists, nor shall the entering into this Plan and Trust be construed as affording the Participant any representation or guarantee regarding his continued employment.

[Source: Added at 15 Ok Reg 974, eff 12-8-97 (emergency); Added at 15 Ok Reg 3275, eff 7-13-98]