

**PERMANENT RULES AND REGULATIONS FOR THE OKLAHOMA  
PUBLIC EMPLOYEES RETIREMENT SYSTEM  
Title 590 - Oklahoma Public Employees Retirement System**

**Chapter 35 - Deferred Savings Incentive Plan**

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**Subchapter 1 - General Provisions**

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**590:35-1-1. Purpose**

- (a) The Rules in this Chapter are adopted to insure the efficient and orderly administration of the Oklahoma State Employees Deferred Savings Incentive Plan, to establish policies and procedures for implementing and administering the Plan, and to provide guidelines for the investment of funds which have been contributed for the benefit of State Employees.
- (b) The Plan has been established as a money purchase pension plan pursuant to Internal Revenue Code Section 401(a). This Plan is intended to qualify as a "governmental plan" within the meaning of Internal Revenue Code Section 414(d) and is not subject to the Employee Retirement Income Security Act of 1974 ("ERISA"). The Plan and Trust are intended to meet the requirements of Internal Revenue Code Sections 401(a) and 501(a).

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

**590:35-1-2. Statutory citations**

The Rules contained in this Chapter are the adopted Oklahoma State Employees Deferred Savings Incentive Plan, as authorized by Internal Revenue Code Section 401(a) and in accordance with the provisions of Section 1707 of Title 74 of the Oklahoma Statutes. The Plan consists of the following provisions and is applicable to each Qualified Participant in the Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-1-3. 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 590:35-5-1.

**"Allocation Date"** means each business day of the calendar year.

**"Beneficiary"** means beneficiary or beneficiaries designated in writing by the Participant. If more than one designated beneficiary survives the Participant, payments shall be made equally to the surviving beneficiaries unless otherwise provided in the form provided by the Plan Administrator. Nothing herein shall prevent the Participant from designating primary and contingent beneficiaries.

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

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

**"Compensation"** with respect to a Participant means taxable gross income from the Employer. Notwithstanding the prior sentence, Compensation shall include amounts deferred pursuant to Code Sections 125, 402(h), 402(a)(8), 457, 414(h), and 403(b). For purposes of the Plan, only compensation from the Employer that is attributable to services performed for the Employer may be includable in gross income. The Compensation taken into account under the Plan shall not exceed the "OBRA '93 annual compensation limit." The "OBRA '93 annual compensation limit" is \$150,000, as adjusted by the Commissioner of Internal Revenue for increases in the cost of living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined ("Determination Period") beginning in such calendar year. If a Determination Period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the Determination Period, and the denominator of which is 12. Compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed Two Hundred Thousand Dollars (\$200,000), as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Compensation means Compensation during the Plan Year or other consecutive twelve (12) month period over which Compensation is otherwise determined under the Plan (the Determination Period). The cost-of-living adjustment in effect for a calendar year applies to Compensation for the Determination Period that begins with or within such calendar year.

**"Deferred Compensation Plan"** means the Oklahoma State Employees Deferred Compensation Plan and as it may be amended from time to time, which is governed by Code Section 457.

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

**"Early Retirement"** means the first date upon which each of the following shall have occurred: separation from service and attainment of Early Retirement Age.

**"Early Retirement Age"** means age 55.

**"Effective Date"** means January 1, 1998.

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

**"Employer Contribution"** means the amount contributed to the Plan by the Employer on behalf of Participants under Section 590:35-7-1.

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

**"Limited Participant"** means a Participant who is not a State Employee or who is not otherwise a Qualified Participant and who has amounts in the Plan as a result of the transfer of excess contributions from the Oklahoma Public Employees Retirement System pursuant to Section 910.5 of Title 74 of the Oklahoma Statutes.

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

**"Normal Retirement Age"** means age 62.

**"Participant"** means a State Employee who is participating in the Plan or who has funds invested in accordance with its provisions or any former State Employee who is retired or who has had a Termination of Service, but who has not received a distribution of his entire interest under the Plan or a person who has funds invested in the Plan as a result of the transfer of excess contributions from the Oklahoma Public Employees Retirement System.

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

**"Plan Administrator"** means the person designated by the Board of Trustees to administer the Plan.

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

**"Qualified Participant"** means a State Employee who is an active participant in the Oklahoma State Employees Deferred Compensation Plan making deferrals of at least twenty-five dollars (\$25.00) per month.

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

**"State Employee"** means any officer or employee of the executive, legislative or judicial branches of the government of the State of Oklahoma who is an active member of a public retirement system of the State of Oklahoma, 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 and employees of the governing boards;
- (C) Persons on temporary, student, internship, or other limited-term appointments except for Executive Fellows in the Carl Albert Public Internship Program created in Section 840-3.4 of Title 74 of Oklahoma Statutes;
- (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; or

**"Termination of Service"** means the severance of the Participant's employment relationship with the Employer prior to his Early Retirement, Normal Retirement, death or Disability, including Limited Participants severing the employment relations with an OPERS participating employer.

**"Trust"** means the provisions of this document that comprise the trust established hereunder.

**"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 contributions 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.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99; Amended at 19 Ok Reg 749, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1486, eff 5-28-02]

#### **590:35-1-4. 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.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **Subchapter 3 - Eligibility and Participation**

Section 590:35-3-1 Eligibility

Section 590:35-3-2 Application for participation

Section 590:35-3-3 Termination of Participation

#### **590:35-3-1. Eligibility**

All Qualified Participants are eligible to participate in this plan. A Qualified Participant shall be eligible for an allocation of contributions for the month provided a salary deferral of at least twenty-five dollars (\$25.00) for said month was made to the Deferred Compensation Plan even if the Participant terminates participation during said month.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-3-2. Application for participation**

Participation in the Plan for a Qualified Participant is automatic following one month of participation in the Deferred Compensation Plan and completion of the enrollment documents required by the Plan. Participation in this Plan is not voluntary and an otherwise eligible Qualified Participant may not opt out of this Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-3-3. Termination of Participation**

A Participant shall cease to be eligible for allocations of contributions under the Plan upon the Participant's cessation of contributions to the Deferred Compensation Plan, Termination of Service, Early Retirement, Normal Retirement, death or Disability. A Participant's participation in the Plan shall cease upon the complete distribution of a Participant's Account balance.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

## **Subchapter 5 - Accounts**

Section 590:35-5-1	Establishment of Accounts
Section 590:35-5-2	Statement of a Participant's Account
Section 590:35-5-3	Valuation of Accounts

### **590:35-5-1. Establishment of Accounts**

The Plan Administrator shall cause Accounts to be established for each Participant, to reflect such Participant's Employer Contributions. 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 contributions 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 590:35-5-3, 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 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 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 20 Ok Reg 1759, eff 6-12-03]

### **590:35-5-2. 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 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-5-3. 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 590:35-5-1 of these rules.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 20 Ok Reg 1759, eff 6-12-03]

## **Subchapter 7 - Contributions**

Section 590:35-7-1	Employer contributions
Section 590:35-7-2	Employee contributions
Section 590:35-7-3	Rollover contributions
Section 590:35-7-4	Time and method of payment of contributions
Section 590:35-7-5	Funding vehicle
Section 590:35-7-6	Mistaken Employer Contribution

### **590:35-7-1. Employer contributions**

(a) The Employer shall contribute to the Trust Fund an amount referred to as an Employer Contribution. Such contribution shall be calculated as follows: in accordance with 74 O.S. §1707, a contribution in the amount of or equivalent to Twenty-Five Dollars (\$25.00) per month shall be made to the Plan on behalf of each Qualified Participant, as soon as practicable after receipt.

(b) Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will 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 Internal Revenue Code.

(1) 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 reasonably equivalent manner.

(2) Effective January 1, 2007, death benefits payable under this Plan shall be paid in accordance with Section 401(a)(37) of the Internal Revenue 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 Internal Revenue 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 the Participant resumed and then terminated employment with the Employer on account of death.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99; Amended at 27 Ok Reg 1049, eff 5-13-10; Amended at 29 Ok Reg 507, eff 5-11-12; Amended at 31 Ok Reg 2319, eff 9-12-14]

### **590:35-7-2. Employee contributions**

Employees are not required or permitted to make contributions under this Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-7-3. Rollover contributions**

- (a) Qualified Participants may make rollover contributions to this Plan, provided such rollover contributions meet the requirements under Code Sections 402(c)(4), 403(a)(4), or 408(d)(3), or any other applicable section of the Code or regulations.
- (b) Effective January 1, 2002, the Plan shall accept direct rollovers of eligible pre-tax rollover distributions excluding after-tax employee contributions, made after December 31, 2001, from the following types of plans:
- (1) a qualified plan described in Code Section 401(a) or 403(a);
  - (2) an annuity contract described in Code Section 403(b); and
  - (3) an eligible plan under Code Section 457(b) 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.
- (c) Effective January 1, 2002, the Plan shall accept a Participant contribution of an eligible pre-tax rollover distribution excluding after-tax employee contributions, from the following types of plans:
- (1) a qualified plan described in Code Section 401(a) or 403(a);
  - (2) an annuity contract described in Code Section 403(b); and
  - (3) an eligible plan under Code Section 457(b) 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.
- (d) The Plan shall accept a Participant rollover contribution of the portion of a pre-tax distribution from an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includable in gross income.
- [Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99; Amended at 19 Ok Reg 749, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1486, eff 5-28-02; Amended at 20 Ok Reg 1759, eff 6-12-03]

### **590:35-7-4. Time and method of payment of contributions**

The Employer shall make all contributions to the Trust Fund in the form of cash. Employer Contributions for any Plan Year shall be paid to the Trust Fund monthly, but in any event, no later than the 15th day of the sixth calendar month following the Fiscal Year of the Employer with or within which the particular limitation year ends.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-7-5. Funding vehicle**

There is hereby created in the State Treasury a State fund to be entitled the "Oklahoma State Employees Deferred Savings Incentive Plan Fund." The purpose of said fund is to receive periodic State appropriated or transferred funds from the State Treasury, as provided in Section 1707 of Title 74 of the Oklahoma Statutes, and make the contributions to the Plan and Trust Fund on behalf of Qualified Participants.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-7-6. Mistaken Employer Contribution**

(a) If, due to a mistake of fact, an Employer Contribution has been allocated to an Account in error, the Recordkeeper shall reallocate from such Account to a suspense account as soon as administratively possible but not later than the Plan Year immediately following the Plan Year in which the mistaken Employer Contribution was made:

(1) If the Employer Contribution has experienced a gain, the amount of the Employer Contribution, plus any gain attributable to that contribution, or

(2) If the Employer Contribution has experienced a loss, the remaining amount of the Employer Contribution: or

(3) If the Employer Contribution has experienced no gain or no loss, the amount of the Employer Contribution.

(b) Amounts so reallocated to a suspense account shall be used to reduce the Employer Contribution.

[Source: Added at 15 Ok Reg 1240, eff 1-26-98 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **Subchapter 9 - Allocations and Vesting**

Section 590:35-9-1 Allocation of Employer Contributions

Section 590:35-9-2 Vesting

#### **590:35-9-1. Allocation of Employer Contributions**

As of the Allocation Date, the Recordkeeper shall allocate the Employer Contribution to the Account of each Qualified Participant (or, where applicable, to a Beneficiary in respect of a Qualified Participant) on whose behalf such contribution was made.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-9-2. Vesting**

A Participant shall at all times be 100% vested in his Account, provided that a Participant's Account may be forfeited pursuant to Section 24.1 of Title 51 of the Oklahoma Statutes. To the extent any forfeitures occur, such forfeitures shall be retained and used by the Plan pursuant to Section 590:35-19-7.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99]

### **Subchapter 11 - Investments**

Section 590:35-11-1 Investment authority

Section 590:35-11-2 Participant directed investments

#### **590:35-11-1. Investment authority**

The investment options shall be selected in accordance with Section 1701 of Title 74 of the Oklahoma Statutes and Section 590:20-1-4 of these Rules, provided such investment options satisfy the requirements of the Code for qualified plan investments. All Plan assets which have not been directed by the Participant shall be invested by the Trustee in accordance with the investment options selected by the Participant for his or her 457 Deferred Compensation Plan assets.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-11-2. 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 directed 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 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 18 Ok Reg 554, eff 12-28-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3268, eff 7-26-01]

## **Subchapter 13 - Benefits and Distributions**

Section 590:35-13-1 Commencement

Section 590:35-13-2 Benefit totals

Section 590:35-13-3 Late retirement

Section 590:35-13-4 Disability retirement

Section 590:35-13-5 Death

Section 590:35-13-6 Designated beneficiary

Section 590:35-13-7 Payment and distribution options

Section 590:35-13-8 Plan-to-plan transfers

Section 590:35-13-9 Rollovers to eligible retirement plan

Section 590:35-13-10 Minimum distribution requirements

Section 590:35-13-11 Administrative distributions

Section 590:35-13-12 Discontinuance of 2009 required minimum distributions

### **590:35-13-1. Commencement**

(a) In the event of a Participant's separation from service as a result of Early Retirement, Normal Retirement, death, Disability or Termination of Service, the Participant shall be entitled to receive a distribution of his or her Account under the Trust Fund. In the event that a Participant dies before the entire balance of his or her Account is distributed, Section 590:35-13-5 shall apply.

(b) 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 provided by Code Section 401(a)(9). 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.

(c) Rollover contributions as described in 590:35-7-3 are not subject to the requirements for separation of service and shall be available for distribution within 45 days of acceptance of a properly completed distribution form as prescribed by OPERS.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 20 Ok Reg 1759, eff 6-12-03; Amended at 28 Ok Reg 678, eff 5-12-11; Amended at 33 Ok Reg 1816, eff 9-11-16]

### **590:35-13-2. Benefit totals**

The Participant shall be entitled to have paid to him the benefits created by his participating in this Plan, in accordance with the provisions of this Chapter. Generally, the benefits payable to the Participant 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.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99]

### **590:35-13-3. 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 or dies. If the Participant is not an active State Employee, the payment of benefits must begin no later than April 1 of the calendar year following the calendar year in which the Participant attained age 70 1/2.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-13-4. Disability retirement**

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

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99]

### **590:35-13-5. Death**

(a) If the Participant dies prior to receiving Plan benefits, or 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 of the Participant in accordance with the distribution option selected by the Participant or the Beneficiary.

(b) Distributions must be made primarily for the benefit of the Participant (or former Participant). Therefore, distribution which begins prior to the death of a Participant must be in a

form such that the total benefit amount will be paid over a period not to exceed the life expectancy of the Participant and a designated Beneficiary. Any amount not distributed to the Participant during his or her lifetime shall be distributed after the death of the Participant at least as rapidly as under the method of distribution used as of the date of his or her death. In addition, if the Participant dies prior to the commencement of distributions, the Participant's Account shall be distributed to the Beneficiary, commencing within one year of the employee's death, over the life of such Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary) but not to exceed 15 years; provided however if such Beneficiary is the surviving spouse of the Participant, then (i) such distributions shall, in all events, commence no later than December 31 of the calendar year in which the Participant would have attained age 70 1/2 (or such other date as may be permitted under applicable Treasury Regulations), and (ii) benefits payable to such spouse shall be completed during a period not in excess of such spouse's life expectancy. Life expectancies will not be recalculated annually.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 28 Ok Reg 678, eff 5-12-11]

#### **590:35-13-6. Designated beneficiary**

The Participant shall have the right to file with the Plan Administrator a 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. The Beneficiary shall have the right to apply to the Plan Administrator to amend the payment option as previously elected by the Participant.

(1) The form for this purpose shall be provided by the Plan Administrator and will have no effect until it is signed, filed with the Plan Administrator by the Participant or Beneficiary, and accepted by the Plan Administrator.

(2) If the Participant dies without having a Beneficiary form on file or is not survived by the designated Beneficiary, the payments shall be made to the beneficiary designated by the Participant pursuant to Section 590:25-9-9.

(3) If the Participant dies without having a Beneficiary form on file or is not survived by the designated Beneficiary under this Plan or the Deferred Compensation Plan, 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.

(4) The Participant accepts and acknowledges that he has the burden for executing and filing, with the Plan Administrator, a proper beneficiary designation form.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 36 Ok Reg 1948, eff 9-13-19]

#### **590:35-13-7. Payment and distribution options**

Subject to the provisions of Section 590:35-13-1 herein, a Participant (or Beneficiary, where applicable) may elect within the period and on the forms prescribed by the Plan Administrator, to receive the balance of his or her Account in the form of:

(1) Lump sum, payable in cash;

(2) Substantially level periodic installments;

(3) Any other form approved by the Plan Administrator or the Trustees.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 28 Ok Reg 678, eff 5-12-11]

**590:35-13-8. Plan-to-plan transfers**

This Plan, at the Board of Trustee's discretion, may make or receive plan-to-plan transfers to or from other qualified plans, provided the requirements of Code Section 414(1) are met.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99]

**590:35-13-9. Rollovers to eligible retirement plan**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, 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 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: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income, except to the extent provided by paragraph (c) of this section; and effective for distributions made after December 31, 2001, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(2) "Eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or a qualified trust described in Code Section 401(a), or Roth individual annuity (if the individual is eligible for a Roth rollover) described in Code 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 Code Section 403(b) and an eligible plan under Code Section 457(b) 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 relation order, as defined in Code Section 414(p).

(3) "Distributee" means a Participant. In addition, the Participant or the Participant's surviving spouse are distributees with regard to the interest of the spouse. For the limited purposes set forth in paragraph (d) of this section, distributee means a non-spouse beneficiary.

(4) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.

(c) A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross

income. However, such a portion may be transferred only to an individual retirement account or an individual retirement annuity described in section Code Section 408(a) or (b) of the Code, a qualified plan described in section Code Sections 401(a) or 403(a) of the Code, or to an annuity contract described in section Code Section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(d) Effective January 1, 2007, a non-spouse beneficiary pursuant to section Code 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 Code Section 408(a) of the Code, or an individual retirement annuity described in section Code 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 Code Section 402(c) of the Code.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 19 Ok Reg 749, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1486, eff 5-28-02; Amended at 21 Ok Reg 1767, eff 6-11-04; Amended at 24 Ok Reg 1141, eff 5-11-07; Amended at 27 Ok Reg 1049, eff 5-13-10; Amended at 29 Ok Reg 507, eff 5-11-12]

#### **590:35-13-10. Minimum distribution requirements**

(a) Notwithstanding anything herein to the contrary, the following minimum distribution requirements will apply.

(b) All distributions required under this Section shall be determined and made in accordance with Code Section 401(a)(9) and the proposed Treasury Regulations thereunder, including the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G) and Section 1.401(a)(9)-2 of the proposed Treasury Regulations, or any successor rules or regulations.

(c) The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

(d) **Limits on Distribution Periods.** As of the first Distribution Calendar Year, distributions, if not made in a single lump sum, may be made over one of the following periods (or a combination thereof):

- (1) the life of the Participant,
- (2) the life of the Participant and a designated Beneficiary
- (3) a period certain not extending beyond the Life Expectancy of the Participant, or
- (4) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.

(e) If the Participant's interest is to be distributed in other than a single lump sum, the following minimum distribution rules shall apply on or after the Required Beginning Date:

(1) If a Participant's benefit is to be distributed over (i) a period not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's designated Beneficiary or (ii) a period not extending beyond the life expectancy of the designated Beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first Distribution Calendar Year must at least equal the quotient obtained by dividing the Participant's benefit by the Applicable Life Expectancy.

(2) The amount to be distributed each year, beginning with distributions for the first Distribution Calendar Year shall not be less than the quotient obtained by dividing the

Participant's benefit by lesser of (i) the Applicable Life Expectancy or (ii) if the Participant's Spouse is not the designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of Section 1.401(a)(9)-2 of the proposed Treasury Regulations. Distributions made after the death of the Participant shall be distributed using the Applicable Life Expectancy in (1) above as the relevant divisor without regard to proposed Treasury Regulations Section 1.401(a)(9)-2.

(3) The minimum distribution required for the Participant's first Distribution Calendar Year must be made on or before the Participant's Required Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, must be made on or before December 31 of that Distribution Calendar Year.

(f) If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code Section 401(a)(9) and the proposed Treasury Regulations thereunder.

(g) For purposes of this Section, the following terms shall have the meanings as set forth below:

(1) **"Applicable Life Expectancy"** means the life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or designated Beneficiary) as of the Participant's (or designated Beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. Life expectancies will not be recalculated annually. If annuity payments commence before the Required Beginning Date, the applicable calendar year is the year payments commence. If distribution is in the form of an immediate annuity purchased after the Participant's death with the Participant's remaining interest, the applicable calendar year is the year of purchase.

(2) **"Distribution Calendar Year"** means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to this Section.

(3) **"Participant's Benefit"** means the Participant's Account as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year ("Valuation Calendar Year") increased by the amount of any contributions allocated to the Account as of dates in the Valuation Calendar Year after the Valuation Date and decreased by distributions made in the Valuation Calendar Year after the Valuation Date. If any portion of the minimum distribution for the first Distribution Calendar Year is made in the second Distribution Calendar Year on or before the Required Beginning Date, the amount of the minimum distribution made in the second Distribution Calendar Year shall be treated as if it has been made in the immediately preceding Distribution Calendar Year.

(4) **"Required Beginning Date"** means the later of the first day of April of the calendar year following the calendar year in which the Participant (i) attains age 70-1/2 or (ii) retires.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 16 Ok Reg 617, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2019, eff 6-11-99]

#### **590:35-13-11. Administrative distributions**

(a) This rule applies only to a Limited Participant who is not a state employee and who is not eligible for additional contributions to the Plan after the transfer of Excess Contributions pursuant to Subchapter 13 of Chapter 10 of these rules.

(b) If such Limited Participant has an account balance in the Plan of less than two hundred dollars (\$200), the Plan Administrator shall distribute to the Limited Participant his or her account balance in a lump-sum as soon as administratively feasible without a written application for distributions by the Limited Participant. The Plan Administrator shall not make this distribution in a calendar year to a Limited Participant who has taken a distribution from the Plan in that same calendar year if that distribution, when aggregated with the administrative distributions provided in this rule, would equal or exceed two hundred dollars (\$200).

[Source: Added at 17 Ok Reg 3187, eff 7-27-00]

#### **590:35-13-12. Discontinuance of 2009 required minimum distributions**

(a) Notwithstanding the provisions of 590:35-13-10 of the plan, 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 590:35-13-9 of the plan, 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 15 - Limitations on Annual Additions**

Section 590:35-15-1 General

Section 590:35-15-2 Definitions

Section 590:35-15-3 Adjustments for excess amount

Section 590:35-15-4 Combination of defined contribution plan and defined benefit plan

#### **590:35-15-1. General**

(a) In no event shall the Annual Addition for any Plan Year (which shall be the "Limitation year" within the meaning of Treasury Regulations Section 1.415-2(b)) to the Accounts of any Qualified Participant exceed the lesser of (i) \$30,000, or (ii) twenty-five percent (25%) of the Compensation, as defined below, actually paid or made available to the Qualified Participant by the Employer during the Limitation Year ("Maximum Permissible Amount"). The Compensation limitation referred to in (2) below shall not apply to any contribution for medical benefits (within

the meaning of Code Sections 401(h) or 419A(f)(2)) which is otherwise treated as an Annual Addition under Code Sections 415(I)(1) or 419A(d)(2).

(b) This Section shall be effective for Plan Years beginning after December 31, 2001. Except to the extent permitted under Code Section 414(v), if applicable, the Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the Maximum Permissible Amount, the lesser of:

(1) Forty Thousand Dollars (\$40,000), as adjusted for increases in the cost-of-living under Code Section 415(d), or

(2) One hundred percent (100%) of the Participant's Compensation, within the meaning of Code Section 415(c)(3), for the Limitation Year.

(c) The amount of Annual Addition which may be allocated under this Plan on a Qualified Participant's behalf for a Limitation Year shall not exceed the Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Qualified Participant's Account for the same Limitation Year under any other qualified defined contribution plan, under any welfare benefit fund, as defined in Code Section 419(e), or under any individual medical benefit account, as defined in Code Section 415(l)(2); as maintained by the Employer and which provide an Annual Addition during any Limitation Year.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 19 Ok Reg 749, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1486, eff 5-28-02]

### **590:35-15-2. Definitions**

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

"Annual addition" means the sum for any Plan year of the following amounts allocated on behalf of a Qualified Participant for a Limitation Year:

(A) All Employer contributions;

(B) All Qualified Participant contributions determined without regard to any rollover contributions (as defined in Code Sections 402(c), 403(a)(4), 403(b)(8), and 408(d)(3)) without regard to Qualified Participant contributions to a simplified employee pension which are excludable from gross income under Code Section 408(k)(6);

(C) All forfeitures;

(D) Amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer; and

(E) Amounts derived from contributions which are attributable to post-retirement benefits allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer. Subparagraph (ii) of Section 590:35-15-1 shall not apply to any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is treated as an Annual addition. For purposes of this Subchapter, excess amounts reapplied to reduce Employer contributions under Section 590:-15-3 in the Limitation Year shall also be included as an Annual Addition for such Limitation Year.

"Compensation" means:

(A) For purposes of applying the limitation of Code Section 415, a Qualified Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of

employment with the Employer maintaining this Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulation Section 1.62-2(c)), and excluding the following:

(i) Distributions from a plan of deferred compensation, regardless of whether such amounts are includable in the gross income of the Qualified Participant when distributed; and

(ii) other amounts which receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includable in the gross income of the Qualified Participant). Compensation shall also include contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Qualified Participant under Code Sections 125, 132(f)(4), 401(k), 408(k), 403(b) or 457. For purposes of applying the limitation of this Subchapter, Compensation for a Limitation Year is the Compensation actually paid or made available to the Qualified Participant within the Limitation Year. Notwithstanding the preceding sentence, Compensation for a Qualified Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the Compensation such Qualified Participant would have received for the Limitation Year if such Qualified Participant had been paid at the rate of Compensation paid immediately before becoming permanently and totally disabled. If the Plan provides for the continuation of such contributions on behalf of all Qualified Participants who are permanently and totally disabled for a fixed or determinable period, then imputed Compensation may be taken into account for a disabled Qualified Participant. Such contributions on behalf of a permanently and totally disabled Qualified Participant must be nonforfeitable when made.

(B) Payments made by the later of 2 1/2 months after severance from employment or the end of the limitation year that includes the date of the Qualified Participant's severance from employment shall be included in compensation if they are payments that, absent a severance from employment, would have been paid to the Qualified Participant while the Qualified Participant continued in employment with the Employer and are:

(i) Regular compensation for services during the Qualified Participant's regular working hours, or compensation for services outside the Participant'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

(ii) payments for unused accrued bona fide sick, vacation or other leave, but only if the Qualified Participant would have been able to use the leave if employment had continued; or

(iii) 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 includable in the Qualified Participant's gross income.

(C) Any payments not described in paragraph (B) of this definition are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment. However, payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts

the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(D) An employee who is in qualified military service (within the meaning of Code Section 414(u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

(i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or

(ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(E) For purposes of Code Section 415(c) and this subchapter, compensation of each Participant taken into account in determining allocations for any Plan Year shall not exceed the applicable limit established by Code Section 401(a)(17) as of the first day of the Plan Year, as increased for the cost-of-living adjustment (Two Hundred Thirty Thousand Dollars (\$230,000 for 2008)). The cost-of-living adjustment in effect for a calendar year applies to compensation for the Plan Year that begins with or within such calendar year.

"Employer" means, for purposes of this Subchapter, the Employer and all members of a controlled group of corporations (as defined in Code Section 414(b) and as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c) and as modified by Code Section 415(h)), or an affiliated service group (as defined in Code Section 414(m)), of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to Treasury Regulations under Code Section 414(o).

"Limitation year" means the Plan Year ending on December 31.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 27 Ok Reg 1049, eff 5-13-10]

### **590:35-15-3. Adjustments for excess amount**

If there is an Annual Addition in excess of the limitation set forth in this Subchapter or any other excess amount subject to correction under the Employee Plan Compliance Resolutions System (or other similar Internal Revenue Service correction program), such amount will be corrected as permitted under the Employee Plan Compliance Resolutions System (or other similar Internal Revenue Service correction program).

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 29 Ok Reg 507, eff 5-11-12]

### **590:35-15-4. Combination of defined contribution plan and defined benefit plan**

(a) For Limitation Years commencing before January 1, 2000, if a Qualified Participant also is, or was, covered under a defined benefit plan maintained, or contributed to, by the Employer, the sum of the amounts determined under (1) and (2) below may not exceed 1.0 in any Limitation Year.

(1) The Qualified Participant's "defined benefit fraction" - A fraction, the numerator of which is the sum of the Qualified Participant's projected annual benefits under all defined benefit plans (whether or not terminated) maintained, or contributed to, by the Employer, and the denominator

of which is the lesser of (A) 1.25 times the dollar limitation of Code Section 415(b) and (d) for the Limitation Year, or (B) 1.4 times the Qualified Participant's average compensation for the 3 consecutive years that produces the highest average; and

(2) The Qualified Participant's "defined contribution fraction" - A fraction, the numerator of which is the sum of the Annual Additions (within the meaning of Code Section 415(c)(2)) to the Qualified Participant's Account under all defined contribution plans (whether or not terminated) maintained, or contributed to, by the Employer for the current and all prior Limitation Years (minus the amount, if any, determined under Treasury Regulations issued pursuant to Section 235(g) of the Tax Equity and Fiscal Responsibility Act of 1982), and the denominator of which is the lesser of the following amounts determined for such year and for each prior year of service with the Employer:

(A) 1.25 times the dollar limitation in effect under Code Section 415(c)(1)(A) for such year, or  
(B) 1.4 times the amount which may be taken into account under Code Section 415(c)(1)(B).

(b) For purposes of (a) above, effective for Limitation Years commencing before January 1, 2000, "projected annual benefits" means the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the defined benefit plan, if the Participant continued employment until Normal Retirement Age (or current age, if later) and the Participant's Compensation for the Limitation Year and all other relevant factors used to determine such benefit remained constant until Normal Retirement Age (or current age, if later). If, in any Limitation Year, the sum of the defined benefit plan fraction and the defined contribution plan fraction will exceed 1.0, the rate of benefit accruals under the defined benefit plan will be reduced so that the sum of the fraction equals 1.0.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

## **Subchapter 17 - Trust**

Section 590:35-17-1 Establishment and acceptance of Trust

Section 590:35-17-2 Payments from Trust Fund

Section 590:35-17-3 Investment of Trust Fund

Section 590:35-17-4 Trust accounts

Section 590:35-17-5 Miscellaneous

590:35-17-1. Establishment and acceptance of Trust

(a) The Board of Trustees acts as trustee of the Trust. The Board of Trustees takes, holds, invests, administers and distributes in accordance with this Plan and Trust, all contributions and assets paid or delivered to the Board of Trustees pursuant to the Plan for the uses and purposes herein expressed.

(b) The Board of Trustees shall be accountable for all contributions received, but shall have no duty to require any contributions to be made 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 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-17-2. 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 of Trustees, 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 of Trustees 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 of Trustees and/or Plan Administrator comply with the Plan. When the Board of Trustees 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 of Trustees and/or Plan Administrator.
- (b) To the extent permitted by law, the Board of Trustees shall be reimbursed for its expenses, if any, that are reasonable and necessary for the administration of the Plan and the Trust pursuant to Section 590:35-19-7.
- (c) The Board of Trustees, 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 of Trustees determines is necessary to cover federal and state taxes for which the Board of Trustees may be liable, which are, or may be, assessed with regard to the amount distributable to such payee. Upon discharge or settlement of such tax liability the Board of Trustees 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 of Trustees 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 of Trustees 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 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-17-3. 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 of Trustees 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 of Trustees 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.
- (c) To the extent applicable for this Plan and Trust, provisions of the Oklahoma Statutes which reference the powers and duties of the Board of Trustees are incorporated.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-17-4. Trust accounts**

No less frequently than quarterly, the Recordkeeper shall provide a written account to the Board of Trustees 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 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.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-17-5. 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 of Trustees except as may be required by law or by the Employer.
- (c) The Board of Trustees may procure insurance indemnifying the members of the Board of Trustees from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board of Trustees.
- (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 or proceeding affecting the Trust Fund or the administration thereof, or for instructions to the Board of Trustees, the Employer and the Board of Trustees 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 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

## **Subchapter 19 - Administration of Plan**

- Section 590:35-19-1 General
- Section 590:35-19-2 Applicable law
- Section 590:35-19-3 Tax consequences
- Section 590:35-19-4 Protected rights
- Section 590:35-19-5 Amendment
- Section 590:35-19-6 Discontinuance of Contributions/Termination
- Section 590:35-19-7 Payment of expenses
- Section 590:35-19-8 Records

### **590:35-19-1. General**

The Board of Trustees, shall administer the Plan and shall be responsible for the policies and rules for the general administration of the Plan in accordance with Title 74 O.S. 1997 Supp., Sec. 1707.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-19-2. Applicable law**

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

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-19-3. Tax consequences**

The Employer and the Board of Trustees 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.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-19-4. 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, except as to federal tax levies and judgments resulting from unpaid tax assessment, and to payments actually paid to the Participant or his Beneficiary and as provided in Chapter 30 of these Rules. It is agreed that neither the Participant nor his Beneficiary nor any other designee shall have any right to commute, sell, assign, pledge, encumber, transfer, or otherwise convey the right to receive any payments hereunder which payments and right hereto are expressly declared to be nonassignable and nontransferable, except as provided in Chapter 30 of these Rules.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-19-5. Amendment**

The Board of Trustees 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 contributions credited to his Account prior to the effective date of the amendment;
- (2) This Plan and Trust alone, and any properly adopted amendment thereof, shall constitute the total Plan and Trust or contract between the Employer and the Participant regarding the Plan and Trust; no oral statement regarding the Plan and Trust may be relied upon by the Participant;
- (3) This Plan and 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: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-19-6. Discontinuance of Contributions/Termination**

- (a) It is the present intention of the Employer to maintain this Plan. Nevertheless, the Employer reserves the right, at any time, to discontinue or terminate the Plan, to terminate the Employer's liability to make further contributions to this Plan, and/or to suspend contributions for a fixed or indeterminate period of time.
- (b) If the Plan is curtailed, terminated, or the contributions suspended permanently, the Board of Trustees 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. Upon complete discontinuance of the Employer's Contributions or full or partial termination of the Trust, all affected Participant's rights to benefits shall remain fully vested.
- (c) The Plan and Trust may be terminated at any time by the Employer, by giving notice in writing to the Board of Trustees, which notice shall recite the date upon which the termination shall be effective. After receipt of such notice, the Board of Trustees shall continue to hold, invest and administer the Plan and Trust until the assets are liquidated and distributed to the 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 of Trustees.
- (d) The Trust is hereby designated as constituting a part of the Plan intended to continue to qualify and to be tax exempt under Code Sections 401(a) and 501(a). Until advised otherwise, the Board of Trustees may conclusively assume that this Trust is qualified under Code Section 501(a) and that this Trust is exempt to that extent from federal income taxes. Anything herein to the contrary notwithstanding, if a determination letter is issued by the Internal Revenue Service to the effect that the Plan and Trust do not meet the requirements of Code Sections 401 (a) and 501(a), as initially submitted, the Employer shall be entitled, at its option, to withdraw all contributions made, in which event the Plan and the Trust shall then terminate and all rights of the Participants shall terminate effective as of the date of the adverse determination letter.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-19-7. Payment of expenses**

(a) Forfeitures pursuant to Section 590:35-9-2, if any, shall be used to pay Plan and/or Trust expenses. To the extent not paid by the Employer, all costs and expenses incurred in administering this Plan and Trust shall be paid by the Plan and Trust, through the reduction of each Participant's Account.

(b) The fees payable for actuarial, consulting, legal, accounting or other reasonable and necessary services relating to the administration of the Plan and Trust, as provided for therein, including expenses for the Board of Trustees, shall be payable by the Board of Trustees out of the Trust Fund, and until so paid shall constitute a first and prior charge and lien against the Trust Fund, to the extent not paid by the Employer.

(c) The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Plan, 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.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 29 Ok Reg 507, eff 5-11-12]

### **590:35-19-8. 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: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

## **Subchapter 21 - Administration Functions of the Plan**

Section 590:35-21-1 Administrative staff

Section 590:35-21-2 Duties of Plan Administrator

Section 590:35-21-3 Oklahoma State Employee Deferred Savings Incentive Plan Coordinator ("Coordinator")

Section 590:35-21-4 Completing forms

Section 590:35-21-5 Coordinator as liaison

Section 590:35-21-6 General responsibilities of the Coordinator

### **590:35-21-1. 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 Savings Incentive 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 Savings Incentive Plan.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 20 Ok Reg 1759, eff 6-12-03]

### **590:35-21-2. Duties of Plan Administrator**

Subject to the provisions of Section 1707 of Title 74 of the Oklahoma Statutes, the following provisions shall be applicable to the Plan Administrator:

(1) The Plan Administrator will operate and administer the Plan and shall have all powers necessary to accomplish that purpose, and will determine all questions arising under or in connection with the Plan. Whenever directions, designations, applications, requests, or other notices are to be given by a Participant under the Plan, they shall be on forms prescribed by the Plan Administrator and shall be filed when and in such manner as shall be specified by the Plan Administrator. Determinations on all questions arising out of or in conjunction with the provisions of the Plan, not herein required to be determined by the Board of Trustees shall be made by the Plan Administrator, and any such determination shall be conclusive and binding upon all persons having an interest in or under this Plan, subject to the administrative hearing procedures set forth in 590:1-1-6.

(2) Without limiting the powers set forth in paragraph (1) of this Section, the Plan Administrator shall have the power (i) to meet special circumstances not anticipated or covered in the Plan; (ii) to employ such agents and assistants, administrative service providers, such counsel and such clerical, actuarial and other services as the Plan Administrator may require in carrying out the provisions of the Plan; and (iii) to authorize one or more of their number or any agent to execute or deliver any instrument on behalf of the Plan Administrator.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

### **590:35-21-3. Oklahoma State Employee Deferred Savings Incentive Plan Coordinator ("Coordinator")**

(a) The Coordinator for the Deferred Compensation Plan, as designated under Section 590:25-13-2, shall be the Coordinator for this Plan. The Coordinator shall be furnished appropriate information on the Oklahoma State Employees Deferred Savings Incentive Plan. State Employees should send all correspondence to his or her Coordinator who will forward it to the Plan Administrator. 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: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 20 Ok Reg 1759, eff 6-12-03]

#### **590:35-21-4. Completing forms**

Participants in the Plan will obtain Enrollment/Change forms from the Coordinator, the office of the Plan Administrator or, if available, from the Plan website or the Recordkeeper. Pursuant to Section 1707 of Title 74 of the Oklahoma Statutes, the Administrator of the Office of Personnel Management and the Director of State Finance shall be responsible for the provision of such information and assistance as may be necessary to determine which State Employees are Qualified Participants. The Coordinator will assist Participants in the preparation and submission of the Enrollment/Change form and requests for payment of benefits for reason of termination of employment.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98; Amended at 20 Ok Reg 1759, eff 6-12-03]

#### **590:35-21-5. Coordinator as liaison**

The Coordinator shall serve as a liaison representative between the Board of Trustees, the Plan Administrator, and the Participant.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]

#### **590:35-21-6. General responsibilities of the Coordinator**

The 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, or contact the Plan Administrator, as necessary, for assistance to the Participant.

[Source: Added at 15 Ok Reg 793, eff 11-12-97 (emergency); Added at 15 Ok Reg 3282, eff 7-13-98]