PERMANENT RULES AND REGULATIONS FOR THE OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM

Title 590 - Oklahoma Public Employees Retirement System

Chapter 10 - Public Employees Retirement System

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590:10-1-1. Purpose

The Rules of this Chapter have been adopted to establish policies and procedures for implementing and administering the Oklahoma Public Employees Retirement System. The procedures are also used to implement and administer the Uniform Retirement System for Justices and Judges, the Oklahoma State Employees Deferred Compensation Plan and the Oklahoma State Employees Savings Incentive Plan where specifically noted.
[**Source:** Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

590:10-1-2. Subsequent ineligibility

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

590:10-1-3. Authorized member signature

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

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

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

(d) Any person authorized to act on behalf of the member, joint annuitant or beneficiary as provided herein is prohibited from self-dealing relating to the benefit, account or funds of said member, joint annuitant or beneficiary. For purposes of this rule, self-dealing consists of any change or action which alters a previous instruction or document or makes an election or selection, either of which would result in a benefit or pecuniary interest to said attorney-in-fact, guardian, conservator, custodian or trustee or to the spouse or children of said attorney-in-fact, guardian, conservator, custodian or trustee absent a court order specifically permitting or approving such self-dealing issued by a court of proper jurisdiction. For illustrative purposes, an attorney-in-fact, operating under a durable power of attorney is prohibited from changing the member's beneficiary designation to him or her self and/or prohibited from naming his or her spouse as the joint annuitant under a retirement option.

(e) In the event that a named joint annuitant or beneficiary is a minor, the System will accept documents signed by a guardian appointed for the minor by a court of proper jurisdiction. If the property belonging to the minor is $10,000 or less, the System will accept documents signed by an authorized parent, relative or custodian pursuant to the Oklahoma Uniform Transfers to Minors Act. The parent, relative or custodian must provide all required forms and documentation for approval at the sole discretion of the System.
(f) This rule is applicable to any plan or account managed or administered by the Board.
[**Source:** Amended at 21 Ok Reg 1759, eff 6-11-04]

590:10-1-4. Health insurance contribution
(a) The Oklahoma Public Employees Retirement System shall contribute the amount required by law towards the cost of health insurance coverage under the State and Education Employees Group Insurance Plan or other eligible group insurance plans only for retired members who actually receive a monthly retirement benefit for that month. This contribution shall not be made for beneficiaries, survivors or directly to the retired member.
(b) For eligible group health insurance plans other than the State and Education Employees Group Insurance Plan, the System will contribute the amount required by law after the group insurance plan has made application to the System and completed any necessary and required forms and/or agreements. The group insurance plan must be in compliance with Oklahoma law and offer insurance to all of the covered participating employer's employees, former employees who are vested and former employees who retired from that covered employer. The insurance plan shall provide a certification monthly detailing each covered retired member in the form and manner required by the System. The subsidy shall be paid in arrears for each eligible retired member.
(c) Pursuant to the federal Internal Revenue Code Section 401(h) and Treasury Regulation §1.401-14, the Retirement Medical Benefit Fund shall be maintained as a sub-account of the Oklahoma Public Employees Retirement Fund. From the Retirement Medical Benefit Fund, OPERS shall remit the amount specified in 74 O.S. Section 1316.2 for health insurance premiums.
(d) All contributions to the Retirement Medical Benefit Fund shall be reasonable and ascertainable.
(e) Contributions to the Retirement Medical Benefit Fund must be subordinate to the contributions to the Oklahoma Public Employees Retirement Fund for retirement benefits. At no time shall the aggregate actual contributions to the Retirement Medical Benefit Fund (when added to actual contributions for life insurance protection under the plan, if any) be in excess of twenty-five percent (25%) of the total aggregate actual contributions made to the Oklahoma Public Employees Retirement Fund (not including contributions to fund past service credits). The Board shall annually determine whether the twenty-five (25%) test has been met. If at any time the Retirement Medical Benefit Fund contributions (plus any life insurance contributions) would exceed the twenty-five percent (25%) test, the excess amount of contributions shall be transferred to the Oklahoma Public Employees Retirement Fund for retirement benefits.
(f) Forfeitures in the Retirement Medical Benefit Fund shall not be allocated to individual accounts under the fund, but shall be used for account expenses.
(g) At no time prior to the satisfaction of all liabilities under the Retirement Medical Benefit Fund or termination of the fund shall any assets in the fund be used for, or diverted to, any purpose other than the providing of payment of the Oklahoma Public Employees System's

portion of the monthly retiree health insurance premium benefit described by Title 74 O.S. Section 1316.2 and the payment of administrative expenses. Assets in the Retirement Medical Benefit Fund may not be used for retirement or disability benefits or any other purposes for which other assets held in the Oklahoma Employees Retirement Fund are used.
(h) The provisions of section 401(h)(5) of the Internal Revenue Code of 1986, as amended from time to time, shall apply upon the satisfaction of all liabilities under law and the Oklahoma Public Employees Retirement Fund.
[**Source:** Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 21 Ok Reg 1759, eff 6-11-04; Amended at 22 Ok Reg 2679, eff 6-7-05 (emergency); Amended at 23 Ok Reg 1482, eff 5-25-06]

590:10-1-5. Withdrawal of contributions
(a) A member of the System who has terminated employment with a participating employer shall be eligible to withdraw the amount of employee contributions and money he or she has paid into the System provided that the employee does not return to employment with such participating employer, or with another participating employer, within four (4) calendar months.
(b) The member shall file the proper application with the System. Payment shall be made by the System after receipt of all required forms and after four (4) calendar months have elapsed. Any member who applies for a withdrawal of his or her contributions and is eligible for a vested benefit shall be notified of the value of the benefit and when they would be eligible to begin receiving a benefit. The member must sign a written waiver of that benefit before withdrawal will be processed for payment. Payment of the withdrawal may be delayed beyond four (4) months in order to complete the offer of the vested benefit.
(c) In the event that a member is paid his or her contributions and the System discovers that the employee returned to employment with a participating employer within four (4) months, the employee shall be required to repay the withdrawal immediately. If the employee fails to repay the ineligible withdrawal, he or she shall not be entitled to any subsequent withdrawals until six (6) calendar months have elapsed in order to verify that they are no longer employed.
(d) Payment of these accumulated contributions may be made in less than four (4) calendar months only in the event that a member is not eligible to elect a vested benefit pursuant to this section and said member is terminally ill, as evidenced by a physician's certification that the member is not expected to live beyond four (4) months.
[**Source:** Amended at 21 Ok Reg 1759, eff 6-11-04]

590:10-1-6. Dual membership
It may be possible for a member of this System to participate in another state retirement system during the same time period, due to separate employments. No member shall be allowed to purchase credited service from another state retirement system which represents the same time period as service already credited under this System, except as provided in Subchapter 11 of these rules.
[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95]

590:10-1-7. Non-state agency contributions
Any participating county, county hospital, city or town, conservation district, or circuit engineering district or trust shall contribute to the System all required retirement contributions due on a monthly basis. All required contributions and supporting documentation must be

received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. Any non-state agency employer who remits contributions later thanthirty (30) days following the due date, will be assessed a late charge of three percent (3%). The late charge will be calculated on the unpaid balance and will compound monthly until paid.
[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 13 Ok Reg 3327, eff 7-25-96; Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

590:10-1-8. Reinstated entry date

Any former member of OPERS who has previously withdrawn contributions and who repays said withdrawal as permitted by law, shall have his or her initial entry date into the System reinstated. Any person who transports service from Teachers' Retirement System shall be eligible to use his or her initial entry date into the Teachers' System for OPERS purposes.
[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95]

590:10-1-9. Receipt of documents

Except as provided in 590:10-1-7 and 590:10-7-6 of these rules and except for the Retirement Notice and Application form, any notices, letters, payments or other documents will be considered received on the date actually received in the offices of the System, as evidenced by the OPERS date stamp, or the date of postmark on the envelope, whichever is earliest.
[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 20 Ok Reg 1750, eff 6-12-03]

590:10-1-10. Recordkeeping requirements

(a) The System reserves the right to use any information contained in a member's file, in the format necessary, for the recordkeeping, data processing and administrative use of the System. This includes, but is not limited to, use of names or initials, social security numbers, birth dates and zip codes. All formatting and data requirements shall be determined by the System, upon review from time to time.
(b) Any participating employer shall be responsible to furnish all required information reasonably requested by the System to insure compliance with all applicable federal and state laws, rules and regulations. The System reserves the right to withhold activity pending timely receipt of this information, including but not limited to, refunds, withdrawal payments and retirement processing.
[**Source:** Added at 13 Ok Reg 3327, eff 7-25-96]

590:10-1-11. De minimis provisions

(a) In any circumstance involving an error or miscalculation concerning a retirement account or record, including, but not limited to employer and/or employee contributions and interest, in the amount of $25.00 or less, the System shall not be required to correct such error or miscalculation, solely at the discretion of the System. The System shall also not be required to correct an error or miscalculation involving a monthly retirement benefit in the amount of $5.00 or less, solely at the discretion of the System. The amounts set forth in this subsection are determined to be de minimis due to the cost to calculate, invoice, collect or correct such error or

miscalculation which would exceed the amount to be corrected. This de minimis amount may be used in any plan or account managed or administered by the Board.
(b) The System shall not be required to make efforts to contact inactive members or beneficiaries if the total amount due to the member or beneficiary is One Hundred Dollars ($100.00) or less. However, the amount shall remain payable to the member or beneficiary upon his or her request. This amount of $100.00 or less is determined to be de minimis due to the cost in personnel, location services, postage, copying and other reasonable expenses necessary to locate such members and beneficiaries which would exceed the de minimis amount. This de minimis amount may be used in any plan or account managed or administered by the Board.
(c) In any circumstance involving a payment to be made by the System which represents employee contributions in the amount of $500.00 or less, where the member is deceased and has not named a beneficiary, the beneficiary is deceased or where the beneficiary cannot be located, the System may pay to any person claiming such amount on behalf of the member's estate, solely at the discretion of the System. This provision shall be applicable only after the System has made reasonable efforts to locate a named beneficiary and has been unable to do so. This amount of $500.00 or less is determined to be de minimis and reasonable in order to permit the System to make payments which would otherwise remain with the System due to the inability to locate a beneficiary or the cost to probate the member's estate. This de minimis amount may be used in any Plan or account managed or administered by the Board.
[**Source:** Added at 16 Ok Reg 2010, eff 6-11-99; Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 28 Ok Reg 664, eff 5-12-11]

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

Any member employed at the George Nigh Rehabilitation Institute who elected to retain membership in the Oklahoma Public Employees Retirement System pursuant to 74 O.S. 99 Supp. Section 913.7 shall continue to be an OPERS eligible employee for all purposes. George Nigh Rehabilitation Institute shall be designated and considered an OPERS participating employer for these eligible employees only. The University of Oklahoma and the OU Health Sciences Center shall not be considered as a participating employer for any purpose and shall not be designated as such.
[**Source:** Added at 17 Ok Reg 893, eff 2-10-00 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

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

Any member employed by the Medical Technology and Research Authority of Oklahoma on June 30, 2001, who elected to retain membership in the Oklahoma Public Employees Retirement System pursuant to 74 O.S. Section 7068 shall continue to be an OPERS eligible employee for all purposes. OU Health Sciences Center shall be designated and considered an OPERS participating employer for these eligible employees only. The University of Oklahoma and/or the Health Sciences Center shall not be considered as participating employers for any other purpose.
[**Source:** Added at 19 Ok Reg 741, eff 12-20-01 (emergency); Added at 19 Ok Reg 1477, eff 5-28-02]

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

[**Source:** Added at 20 Ok Reg 319, eff 1-1-03 through 4-14-03 (emergency)[1]; Added at 20 Ok Reg 2809, eff 6-19-03 (emergency)[2]; Added as 590:10-5-8 at 21 Ok Reg 1759, eff 6-11-04]

EDITOR'S NOTE: *[1]This emergency action was terminated upon the Governor's disapproval of a proposed permanent rule that was intended to supersede the emergency rule. Upon disapproval of a proposed permanent rule intended to supersede an emergency rule, the emergency rule is considered terminated [see 75 O.S., § 303.2]. Therefore, upon disapproval of the proposed permanent rule on 4-14-03, Section 590:10-1-14 was no longer effective, and remained as such until the next emergency action took effect on 6-19-03.*
EDITOR'S NOTE: *[2]This emergency rule was superseded on 6-11-04 by a permanent rule added at a different number (590:10-5-8).*

590:10-1-15. Hazardous Duty Members

Hazardous Duty Members are considered to be those members who participate in hazardous duty employment with a participating employer and who are authorized by law to participate in a special benefit structure within the System, wherein the Hazardous Duty Member makes a higher employee contribution than regular employee members and is eligible for specified retirement benefits after 20 years of service as a Hazardous Duty Member. Hazardous Duty Member shall also include any Post-Hazardous Duty Member who continues to make the higher required contributions following a promotion on or after July 1, 2004, to a non-hazardous duty position within the Department of Corrections as provided in Subchapter 8 of these rules.
[**Source:** Added at 20 Ok Reg 1750, eff 6-12-03; Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

590:10-1-16. Facsimile copies; electronic signatures

An original document containing a member's, joint annuitant's or beneficiary's signature is generally required on all System forms, applications or requests for confidential information except as provided herein or in 590:10-1-3. Retirement notice forms, beneficiary designation forms, Step-Up election forms, and any form which requires a notarized signature, must always be provided as original signed documents. Electronic signatures may be accepted if the System provides for means of electronic submission with an electronic signature. At the sole discretion of the System, a facsimile copy of certain types of other documents may be accepted if the copies are clear, legible and sufficient for imaging purposes. In some instances, these other documents may be accepted by facsimile only if followed by later delivery of an original document. The decision to accept facsimile copies shall be made on a case-by-case basis upon request of the member, joint annuitant or beneficiary. It is the member, joint annuitant or beneficiary's responsibility to verify that the System has received the facsimile copy and that it is legible and acceptable to the System. This rule is applicable to any plan or account managed or administered by the Board.
[**Source:** Added at 21 Ok Reg 1759, eff 6-11-04; Amended at 32 Ok Reg 2176, eff 9-11-15]

590:10-1-17. Offset and recovery

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

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

590:10-1-18. Release of records

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

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

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

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

(1) Member's name - OPERS, URSJJ and SoonerSave computer records maintain only first and middle initials, and not the full name.

(2) Member's age - In order to protect our members from potential identity theft, only the current age of the member expressed in whole years shall be provided in response to a general request for the age of a member.

(3) Amount of contributions paid in - Contribution statements will show only employee contributions into OPERS and URSJJ. Employer contributions for individual employees are not complete. In response to a general request for a member's "contributions", only the employee contributions will be provided. If a specific request for employer contributions is made, we will provide a copy of the incomplete record with an explanation of the time period covered. For the SoonerSave accounts, the deferral amounts into the 457 Plan are not "contributions" and will not be disclosed. The employer contributions and the transfer of contributions to the Savings Incentive Plan will be provided if specifically requested, however, the amount of interest or earnings will not be released as it is not a "contribution". All account balances for the SoonerSave plans which reflect investment earnings will not be released.

(4) Benefits being paid - This information is available only for retired members of OPERS and URSJJ who are currently receiving benefits. SoonerSave does not pay "benefits", therefore, payments from the plan including any distribution amounts, hardship distributions or distribution schedules will not be released.

(5) Amount of credited service - This information may not be available for OPERS or URSJJ members who are active and have never had a benefit estimate completed. Therefore, general requests for credited service will be provided on retired or vested members only, and specific requests for credited service for active members will be provided only if the information exists in the file. Credited service is not relevant to or contained in the SoonerSave plans' records and cannot be provided.

(6) Any documents verifying credited service or benefits - This information will be provided only if specifically requested for OPERS and URSJJ. The decision whether a document is used to verify credited service or benefits is discretionary and any release of these documents will be approved by the Executive Director on a case-by-case basis. The documents must have all confidential information redacted prior to being released. SoonerSave accounts do not contain information on either credited service or benefits, therefore, documents will not be released from the SoonerSave files.

(e) Information that is released must always have all Social Security numbers, home addresses and all telephone, pager or cell phone numbers redacted from any records or documents released, pursuant to 74 O.S. § 840-2.11. This will be done by removing or covering the confidential information to ensure that the information cannot be seen from either side of the page.

(f) Certain information contained in a member's file will remain confidential and will not be released without the member's permission. Examples of such information are:

(1) Change of address records
(2) Insurance information or documents
(3) Any health care information
(4) Any educational records
(5) Tax records
(6) Payroll deductions and withholdings
(7) Medical documents of any kind
(8) Copies of driver's license
(9) Social Security numbers or copies of cards
(10) Copies of birth certificates, death certificates or baptism documents
(11) Copies of military records
(12) Any bank account or banking information
(13) Copies of passports or other forms of identification
(14) Any unemployment information
(15) Any worker's compensation information

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

[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

590:10-1-19. Mailing lists

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

[**Source:** Added at 22 Ok Reg 351, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

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

590:10-1-21. Department of Public Safety Chief of Administration

A person appointed to the position of Chief of Administration of the Department of Public Safety, pursuant to 47 O.S. Supp. 2018, Section 2-104, shall be eligible to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Law Enforcement Retirement System or the OPERS-administered systems shall be made in writing within thirty (30) days from such appointment and is irrevocable.

590:10-1-22. Retired members-State Department of Education

A retired member of the Oklahoma Teachers Retirement System who becomes employed by the State Department of Education for the first time on or after November 1, 2019, shall have the option to remain a member of the Oklahoma Teachers Retirement System subject to any applicable post retirement limitations placed on retired members returning to work, or to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Teachers Retirement System or the OPERS-administered systems shall be made in writing within thirty (30) days from the initial date of hire with the State Department of Education and is irrevocable.

Subchapter 2 - Definitions

Section 590:10-2-1 General Definitions
Section 590:10-2-2 Normal retirement age

590:10-2-1. General Definitions

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

"Participating employer" as defined in Section 902(25) of Title 74 of the Oklahoma Statutes means an eligible employer who has agreed to make contributions to the System on behalf of its employees provided such employer is the State, a political subdivision of the State, or an agency or instrumentality of the State. Participating employer shall not include any employer which is not permitted to participate in a qualified governmental pension plan as defined in Internal Revenue Code Section 414(d), 26 U.S.C. §414(d).
[**Source:** Added at 26 Ok Reg 768, eff 3-4-09 (emergency); Added at 27 Ok Reg 1032, eff 5-13-10]

590:10-2-2. Normal retirement age
(a) In addition to any other vesting provided under state law, and except as provided in 51 O.S. §24.1, a member's normal retirement benefit is nonforfeitable upon the attainment of the following normal retirement ages and the completion of the specified years of service:
(1) For a member who is a state, county, and local agency employee, joining before November 1, 2011, age sixty-two (62), with a minimum of six (6) years of full-time-equivalent employment if actively employed by a participating employer on their 62nd birthday, otherwise a member must have eight (8) years of service.
(2) For a member who is a state, county, and local agency employee, joining on or after November 1, 2011, age sixty-five (65), with a minimum of six (6) years of full-time-equivalent employment if actively employed by a participating employer on their 65th birthday, otherwise a member must have eight (8) years of service.
(3) For a member who is a legislative session employee, joining before November 1, 2011, age sixty-two (62), with a minimum of three (3) or more years of full-time-equivalent employment if actively employed by a participating employer on their 62nd birthday, otherwise a legislative session employee must have four (4) years of service.
(4) For a member who is a legislative session employee, joining on or after November 1, 2011, age sixty-five (65), with a minimum of three (3) or more years of full-time-equivalent employment if actively employed by a participating employer on their 65th birthday, otherwise a legislative session employee must have four (4) years of service.
(5) For an elected official elected or appointed before November 1, 2011, age sixty (60) with a minimum of six (6) years of participating service.
(6) For an elected official elected or appointed on or after November 1, 2011, age sixty-five (65) with a minimum of eight (8) years of participating service, or age sixty-two (62) with a minimum of ten (10) years of participating service.
(b) A member is also vested in full retirement benefits under the following conditions:
(1) Except as otherwise provided in this subsection, for a member who is a state employee (including a legislative session employee), county employee, and local agency employee, joining before July 1, 1992, when the sum of the member's age and years of credited service equals or exceeds 80 (Rule of 80), and for any person who became a member after June 30 1992, when the sum of the member's age and years of credited service equals or exceeds 90 (Rule of 90). For a member joining on and after November 1, 2011, the Rule of 90 is only applicable if the member has reached age 60.
(2) Notwithstanding (b)(1) above, for an elected official elected or appointed before November 1, 2011, the Rule of 80 is applicable.
(3) Notwithstanding (b)(1) above, for an elected official elected or appointed on or after November 1, 2011, the Rule of 80 is not applicable.

(c) A hazardous duty employee is treated as a state, county, or local employee for purposes of this section. In addition, a hazardous duty employee is also vested in a full retirement benefit upon the completion of twenty (20) years of service.
[**Source:** Added at 30 Ok Reg 550, eff 5-11-13]

Subchapter 3 - Credited Service

Section 590:10-3-1 Creditable prior service dates
Section 590:10-3-2 Oklahoma school districts
Section 590:10-3-3 Optional members prior service [Revoked]
Section 590:10-3-4 Purchase Limits [Revoked]
Section 590:10-3-5 Teachers' system credit
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Section 590:10-3-9 Purchase price payments
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590:10-3-1. Creditable prior service dates

In accordance with the provisions of 74 O.S. 1981, § 913, as amended, reference to creditable prior service, the period of employment in State agencies preceding the establishment of their retirement programs has been determined to be:
(1) Wildlife Commission prior to November 1, 1964.
(2) Employment Security Commission prior to August 1, 1960.
(3) Highway Patrol prior to May 16, 1947.
(4) Teachers' Retirement System prior to July 1, 1943.
(5) Tourism and Recreation Department employees made eligible for retirement administratively, effective March, 1969, shall be given credit for prior service for all service performed up to that date.

590:10-3-2. Oklahoma school districts

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

590:10-3-3. Optional members prior service [REVOKED]
[**Source:** Revoked at 12 Ok Reg 3237, eff 7-27-95]

590:10-3-4. Purchase Limits [REVOKED]
[**Source:** Revoked at 12 Ok Reg 3237, eff 7-27-95]

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

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

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

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

(1) Members obtain full-time-equivalent employment in two ways:

(A) actual employment with a participating employer of the System, while participating and paying contributions to the System; and/or

(B) making certain types of purchases of service credit which represent actual employment with a participating employer of the System.

(2) Each hour for which retirement contributions are paid shall credit the member with one (1) hour of full-time-equivalent employment. One hundred seventy-three (173) hours shall constitute one month of full-time-equivalent employment

(3) Examples of service and/or employment which do not constitute full-time-equivalent employment include, but are not limited to: overtime, leave without pay, unused sick leave, bonus years, temporary or seasonal employment, prior service or military service granted free of charge, purchased military service credit other than purchases pursuant to the Uniformed Services Employment and Reemployment Rights Act, service purchased from another retirement system including transported service except as provided in Sections 590:10-11-4 and 590:10-11-13, and purchased incentive, severance or termination credit.

(4) Examples of service and/or employment which do constitute full-time-equivalent employment include, but are not limited to: purchased prior service, repayment of withdrawn contributions, purchase of elected service, purchased temporary total disability credit, purchases pursuant to the Uniformed Services Employment and Reemployment Rights Act, and delinquent service paid for by the employer.

(b) For purposes of determining the full-time-equivalent employment for elected officials, if the elected official is in office and participating for fifteen (15) days or more in either the first or last month in such office, the full month will be credited as service for such official. If an elected official resigns from office effective on a day other than the last day of the month, then such elected official shall not receive credit for a full month, but only those hours of full-time-equivalent employment service for that month.

(c) Elected officials who elect to participate within ninety (90) days after taking office, and those elected officials who fail to file an election within the ninety-day period and are automatically enrolled in the System, shall be deemed to begin service in the System on the date the elected official takes office. The elected official and the employer shall be responsible for the necessary contributions and any applicable delinquent service cost to cover such time period.

[**Source:** Amended at 17 Ok Reg 3178, eff 7-27-00; Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 23 Ok Reg 1482, eff 5-25-06; Amended at 25 Ok Reg 1001, eff 5-11-08; Amended at 28 Ok Reg 664, eff 5-12-11; Amended at 36 Ok Reg 1944, eff 9-13-19]

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

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

590:10-3-8. Actuarial cost for purchases; delinquent service cost

(a) **Actuarial Costs.** Effective January 1, 1991, all purchases of service credit, including incentive credit pursuant to 74 O.S. §913.5, or employer error costs pursuant to 74 O.S. §917(7), shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions utilized in the actuarial valuation report for the Fiscal Year ending June 30 of the prior year.

(2) The actuarial value shall be based upon the member's age, salary and contribution level at the time of purchase, together with the earliest age for retirement with maximum benefits and actuarially assumed salary at the time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of determining this actuarial cost, the member's exact age in months shall be used in the calculation.

(4) For purposes of determining this actuarial cost, the mortality tables shall be formulated as a unisex table assuming a 50% male and a 50% female population, based upon the actuarial assumptions in paragraph (1) of this section.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, his salary shall be averaged based upon the most current month's payroll information.

(6) In the event that the actuarial cost is less than the contributions that would have been required by law, the member and/or the employer shall pay the actual contributions cost.

(b) **Delinquent service costs.** The cost for purchases of delinquent service credit for service of one (1) month or less which is based on employer error and which is one (1) or more years past due shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum. If delinquent service of one (1) year or less is identified and paid for within one (1) year from the beginning service date, the cost will be calculated at employer and employee contributions only. The cost for delinquent service credit for service of more than one (1) month and which is over one (1) year past due shall be calculated at actuarial cost. The cost for any delinquent service credit for a retiree returning to work shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum. If an employee is no longer a participating member of the System and payment of delinquent service will not result in a change of the employee's eligibility for retirement or eligibility for any other purposes and will not change the number of years of service, the cost for delinquent service shall be calculated at contributions plus ten percent (10%) simple interest per annum. When the employer is responsible for the cost of delinquent service based on employer error pursuant to 74 O.S. § 917(7), the employer shall provide records documenting the salary, hours and contribution level of such member during the time period for which the delinquent service is to be billed. If the employer is unable to locate or otherwise provide the required records within a reasonable time as determined by the System, the System may use the available payroll records nearest the time of such delinquency for that member.

(c) **Remittance errors.** In the event a participating employer timely remits contributions for an individual member which are determined to be insufficient as a result of being based on an incorrect contribution rate or incorrectly-reported compensation, the employer shall be notified

and pay the amount of the insufficiency plus ten percent (10%) simple interest per annum. The provisions of this paragraph shall not be applicable to employer remittances not received in a timely manner and which are subject to the provisions of paragraphs (a) and (b) of this section and 74 O.S. §920B.

(d) **Service Purchases.** Purchases of service credit are irrevocable, except when the purchase is determined by the System to not be authorized by statute or rule. Purchases of service credit shall be in whole months only. Except as otherwise provided by statute or rule, purchases of service credit can only be made by a member who is actively participating and who is not a retiree returning to work for a participating employer under 74 O.S. § 914 (E). Provided, a retiree returning to work may be permitted to purchase service pursuant to 74 O.S.§ 913 (A)(8).

[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99; Amended at 28 Ok Reg 664, eff 5-12-11; Amended at 29 Ok Reg 498, eff 5-11-12; Amended at 31 Ok Reg 2314, eff 9-12-14; Amended at 32 Ok Reg 2176, eff 9-11-15; Amended at 36 Ok Reg 1944, eff 9-13-19]

590:10-3-9. Purchase price payments

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

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

(2) The installment payment schedule provided for in this section must be in monthly or bi-weekly increments. The minimum total monthly payment is $25.00. The minimum bi-weekly payment is $12.50. The member shall be responsible for maintaining the payment schedule. The payment due date will be based on the payroll schedule set by the member's employer. An installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in subsection (4) of this section.

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

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

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective retirement date of the member. If any member or beneficiary elects to pay the balance during the 6 month period provided for in Subsection (4) of this Section, no benefits will be payable until the completion of said 6 month period, or receipt of a signed waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

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

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

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

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

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

(1) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code;

(2) an annuity contract described in section 403(b) of the Internal Revenue Code;

(3) an eligible plan under section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or

(4) a participant rollover contribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over.

(d) Any payments permitted and authorized by this section or by the statutes governing the System which are elected by a member in lieu of installment payments shall be made no later than the month prior to the effective retirement date of the member.

[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99; Amended at 18 Ok Reg 9, eff 10-3-00 through 7-14-01 (emergency); Amended at 18 Ok Reg 3258, eff 7-26-01; Amended at 19 Ok Reg 741, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1477, eff 5-28-02; Amended at 25 Ok Reg 1001, eff 5-11-08; Amended at 26 Ok Reg 952, eff 4-25-09; Amended at 31 Ok Reg 2314, eff 9-12-14; Amended at 36 Ok Reg 1944, eff 9-13-19]

590:10-3-10. Incentive credit

(a) Pursuant to 74 O.S. §913(b) certain eligible members of the System may purchase up to two (2) full years of incentive credit at actuarial value. Incentive credit may be used as participating service or addition to age.

(b) Those eligible to purchase incentive credit include the following:

(1) Employees who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age;

(2) members who have accumulated at least 78 points toward the Rule of 80, and/or members who have accumulated at least 88 points towards the Rule of 90;

(3) elected officials who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age; and

(4) Hazardous Duty Members who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age, or to qualify for the Rule of 80 or 90. Hazardous Duty Members are not eligible to purchase incentive credit to qualify for retirement pursuant to the twenty (20) years of full-time-equivalent employment requirement.

(c) Incentive credit cannot be used as full time equivalent employment. Members must have at least four (4) years of the required six (6) years of full time equivalent employment in order to be eligible for this purchase and must accrue six (6) years of full time equivalent employment prior to retirement.

(d) Members must be active and participating at the time of purchase or at the time of the transfer pursuant to subsection (f) of this section.

(e) This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

(f) Eligible members purchasing incentive credit pursuant to this section may transfer a participating service purchase to an addition to age purchase or an addition to age purchase to a participating service purchase. This transfer applies to purchases already made by an eligible member or to purchases currently being made through installment payments pursuant to 590:10-3-9. Full or partial installment payments made pursuant to this section shall not be refundable under any circumstances. Transferring an incentive purchase to another incentive purchase pursuant to this paragraph may not result in an equal transfer.

[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 21 Ok Reg 1759, eff 6-11-04; Amended at 24 Ok Reg 1135, eff 5-11-07; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12; Amended at 31 Ok Reg 2314, eff 9-12-14]

590:10-3-11. Termination credit

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

(b) Following official notice from a participating employer of an approved reduction-in-force on or after July 1, 1998, and of those employees subject to the reduction-in-force, the System will communicate detailed instructions about the purchase of termination credit to those members affected.
(c) Purchase of termination credit allows an eligible member to constructively participate as if still employed by a participating employer until reaching eligibility for a normal retirement date as defined in 74 O.S. §902(24). The purchase of termination credit represents the amount of service which would have accrued through the member's normal retirement date had they not been terminated due to a reduction-in-force and will allow an eligible member to preserve the same normal retirement date as he or she would have had if the member's position had not been terminated by a reduction-in-force.
(d) Members must have at least six (6) years of full-time equivalent employment with a participating employer in order to be eligible to purchase termination credit.
(e) Members who are within three (3) years of achieving eligibility for a normal retirement date based on age as set forth in 74 O.S. §902(24), or who have accumulated at least 74 points toward the Rule of 80 or 84 points toward the Rule of 90 (those members who are within six (6) years of achieving eligibility for normal retirement under the 80/90 point provisions), are eligible to purchase termination credit if they are subject to a reduction-in-force.
(f) Members cannot purchase both termination credit and incentive credit.
(g) Members may purchase termination credit not to exceed the amount of years and months required to reach normal retirement. The maximum amount of termination credit which may be purchased is three (3) years of service.
(h) The cost to purchase termination credit will be an amount equal to the employee and employer contributions which would have been paid to the System based upon the last full month of compensation.
(i) To purchase termination credit, the member must file a written election of intent within six (6) months from the date the member is terminated. Payment in full must be received by the System within sixty (60) days of the filing of the election to purchase.
(j) Failure to make payment in full by the due date, returning to employment with a participating employer or retirement by the member or surviving spouse at any time prior to the normal retirement date will void the purchase of termination credit. The System will return the purchase price tendered.
[**Source:** Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

590:10-3-12. Military service credit
(a) Any member who joined the System on or before June 30, 2000, can receive up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. If eligible, a retired member shall receive an increase in his or her monthly benefit as a result of the addition of the

military service credit effective with the month following the receipt of the documents and approval by the System.

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

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

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

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

(f) Retired members who are not credited with military service prior to or at the time of retirement may make application for the credit at any time. After approval by the System, the military service credit will be added to the member's record and increased retirement benefits, if any, as a result of the addition of the military service credit, shall begin with the first month following said approval. Retroactive payments will not be made under any circumstances. This subsection only applies to members whose initial membership in the System began on or before June 30, 2000.

(g) Members who served in the Armed Forces of the United States during a war or combat military operation other than World War I, World War II, the Korean War, the Vietnam War or the Gulf War as provided in Section 902 (23) of Title 74 of the Oklahoma Statutes, may be eligible to purchase or receive military service credit for the period of time that he or she actually served in an area of responsibility for a war or combat military operation which lasted for a period of at least ninety (90) days. It is the responsibility of the member to provide sufficient documentation to support his or her eligibility for this credit as requested by the System, including, but not limited to, documents showing specific service areas and times.

(h) The provisions for granting or purchasing military service credit shall be in addition to any contributions, benefits and service credit with respect to qualified military service in accordance with Section 414 (u) of the Internal Revenue Code of 1986.
[**Source:** Added at 21 Ok Reg 1759, eff 6-11-04; Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05]

590:10-3-13. Credit for involuntary furlough
(a) **Office of Personnel Management approved furloughs.** A leave of absence as a result of an involuntary furlough established by the Office of Personnel Management under OPM Rule 530:10-15-48 *Involuntary leave without pay (furlough),* or as it may be amended, may be credited as participating service. It is the responsibility of the employer to provide a copy of the furlough plan approved by the Administrator of the Office of Personnel Management.
(b) **District Attorneys Council approved furloughs.** The employees of a district attorney may receive participating service credit for a leave of absence due to an involuntary furlough after July 1, 2004, provided the furlough was conducted in substantial compliance with OPM Rule 530:10-15-48 *Involuntary leave without pay (furlough),* or as it may be amended. It is the responsibility of the district attorney to provide a copy of the furlough plan approved by the District Attorneys Council. The approved furlough plan must include a certification from the Council that the plan was in substantial compliance with the OPM rule.
(c) **Legislative or Supreme Court approved furloughs.** A leave of absence as a result of an involuntary furlough of legislative employees pursuant to a furlough plan adopted by the President Pro Tempore of the Senate or the Speaker of the House of Representatives as authorized by 74 O.S. §840-5.1, and involuntary furloughs of court employees authorized by the Oklahoma Supreme Court may be credited as participating service. It shall be the responsibility of the employer to provide a copy of the adopted furlough plan.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 28 Ok Reg 95, eff 9-17-10 (emergency); Amended at 28 Ok Reg 664, eff 5-12-11]

590:10-3-14. Elected official service credit
(a) **First elected service on or after August 22, 2008.** Any member of the System before August 22, 2008, who is first elected or appointed on or after August 22, 2008, but prior to November 1, 2011, and who retires as an elected official with at least six (6) years in elected office, may count all of his or her non-elected service which occurred prior to the elected service, if any, as if it were elected service. The applicable contribution rate selected by the elected official shall apply and the calculation of the benefit shall be made in accordance with the provisions of 74 O.S. §913.4. However, in no event shall the retirement benefits be more than one hundred percent (100%) of his or her highest contiguous twelve (12) months of compensation earned as an elected official or as a non-elected member.
(b) **Joining System on or after August 22, 2008.** Any member who first joins the System on or after August 22, 2008, and who is first elected or appointed prior to November 1, 2011, shall have elected and non-elected service separately calculated as follows:
(1) All non-elected credited service will be calculated at the applicable factor multiplied by the member's final average compensation and multiplied by the non-elected years.
(2) All elected service will be multiplied by the appropriate computation factor corresponding to the contribution rate selected by the member as an elected official. The salary used for the

benefit formula for elected service shall be the elected official's single highest annual compensation as an elected official.
(3) The calculations provided for in paragraphs (1) and (2) of this subsection (b) will then be added together to determine the total benefit for such member. Under no circumstances shall the elected official be entitled to apply the contribution rate and the corresponding computation factor selected pursuant to 74 O.S. §913.4(A) or the compensation received as an elected official to the computation of any non-elected service.
(4) Fractional year computations made under this section shall be calculated in accordance with 590:10-7-9.
(c) **Elected service prior to August 22, 2008.** The amendments to 74 O.S. §913.4(C)(3) and (4) in Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008, did not amend or affect the calculation of service credit for any elected official who was a member of this System and who served as an elected official prior to August 22, 2008.
(d) **Effective date.** The authorizing legislation for determining elected official service credit provided by subsections (a) through (c) of this section is Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008. The emergency clause in SB 1641 failed thereby making the effective date of the legislation ninety (90) days following sine die adjournment, or August 22, 2008.
(e) **First elected on or after November 1, 2011.** Pursuant to 74 O.S. §913.4(A)(5) and §913.4(B), as amended in Enrolled Senate Bill 794 of the 1st Regular Session of the 53rdLegislature (2011), Section 2, Chapter 206, O.S.L. 2011, any member of the System joining prior to or on or after November 1, 2011, and who is first elected or appointed on or after November 1, 2011, shall have the contribution rate specified in 74 O.S. §919.1(1)(a) and the amount of the benefit for all elected and non-elected service credit shall be based on the provisions of 74 O.S. §915(A)(1), and §915(A)(2) if applicable, including the calculation of final average compensation pursuant to 74 O.S. §902(18).
[**Source:** Added at 26 Ok Reg 120, eff 9-18-08; Added at 26 Ok Reg 952, eff 4-25-09; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12; Amended at 31 Ok Reg 2314, eff 9-12-14]

Subchapter 5 - Contributions and Compensation

Section 590:10-5-1 Maximum level
Section 590:10-5-2 Initial opportunity to elect
Section 590:10-5-3 Required contributions
Section 590:10-5-4 Refund election [Revoked]
Section 590:10-5-5 Effective date of election [Revoked]
Section 590:10-5-6 Member responsibility [Revoked]
Section 590:10-5-7 Statutory compensation contributions
Section 590:10-5-8 Compensation for retirement purposes
Section 590:10-5-9 Changes to contribution rates; deadline for notifying System

590:10-5-1. Maximum level
(a) For service prior to July 1, 1994, members may elect to have a maximum compensation level for retirement purposes of up to Forty Thousand Dollars ($40,000.00) per annum. For

service after July 1, 1994, contributions are required on all allowable compensation up to the maximum compensation level set by Statute.
(b) Effective with respect to plan years beginning on and after July 1, 1996, and before July 1, 2002, the annual compensation of a plan member which exceeds One Hundred Fifty Thousand Dollars ($150,000.00) (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of computing employee and employer contributions to or benefits due from the retirement system. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age 19 before the close of the year.
(c) Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member which exceeds Two Hundred Thousand Dollars ($200,000.00) (as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code) may not be taken into account in determining benefits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive 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 annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.
(d) As used in this section, the term "eligible member" means a person who first became a member of the retirement system prior to the plan year beginning after December 31, 1995. Pursuant to Section 13212(d)(3)(A) of the Omnibus Budget Reconciliation Act of 1993, and the regulations issued under that section, eligible members are not subject to the limits of Section 401(a)(17) of the Internal Revenue Code, and the maximum compensation used in computing employee and employer contributions to or benefits due from the retirement system for eligible members shall be the maximum amount allowed by the retirement system to be so used on July 1, 1993. The limits referenced in subsections (b) and (c) above apply only to years beginning after December 31, 1995, and only to individuals who first become plan members in plan years beginning on and after July 1, 1996.
[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 19 Ok Reg 741, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1477, eff 5-28-02; Amended at 27 Ok Reg 1032, eff 5-13-10]

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

Initial opportunity to increase annual maximum compensation level for service prior to July 1, 1994, is as follows:
(1) The date of a member's initial opportunity to make the election to increase his or her maximum annual compensation level to $40,000 (including longevity) shall be July 20,1987 if

the member's annual compensation (12 months of salary plus longevity) exceeded $25,000 on July 20, 1987.
(2) If a member's annual compensation (including longevity) did not exceed $25,000 on July 20,1987, the date of the member's initial opportunity to make the election to increase his or her maximum annual compensation level shall be the member's date of reclassification or pay raise which results in an annual (12 months of salary plus longevity) compensation which exceeds $25,000.
(3) If a member receives a retroactive reclassification or pay raise which results in an annual compensation (12 months of salary plus longevity) which exceeds $25,000, the initial opportunity to make the election to increase his or her maximum compensation shall be the date to which the reclassification and pay raise is retroactively paid.
(4) The member's longevity date shall be the date of a member's initial opportunity to make the election to increase his or her annual compensation level if only the longevity payment caused the member's annual compensation to exceed $25,000.
(5) For a member who is a local government employee, the date of the initial opportunity to elect to increase the maximum annual compensation shall be the date of the governing body's approval of the member's reclassification or pay raise which results in an annual compensation (12 months of salary plus longevity) which exceeds $25,000.
(6) A timely election is an election that was completed by filing the appropriate forms and completing the payment of all contributions required within three (3) years of the member's initial opportunity to make said election. For active members whose initial opportunity to make the election was on or after July 1,1991, but no later than June 30, 1994, a timely election must be completed by filing the appropriate forms and completing the payment of all contributions required no later than February 1, 1995. For all active members who fail to make a timely election as provided in this Section, the election may be made at anytime prior to the member's retirement, provided the member pays all contributions required plus interest in the amount of seven and one-half percent (7 1/2%) compounded annually. Any election to increase the maximum compensation level for service prior to July 1, 1994, which is filed and/or completed on or after February 2, 1995, is not considered a timely election. Any election filed and/or completed on or after July 1, 1994 by any member whose initial opportunity to make the election was prior to July 1, 1991, is not considered a timely election.
(7) Members who have stopped the payment plan before completing all required contributions for any reason prior to July 1, 1998, will not be treated as having made a timely election. Members who were making payments of the required contributions and whose payments ceased by operation of law on July 1, 1998 will be treated as having made a timely election without regard to not completing the payment of the entire amount of required contributions.
[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99]

590:10-5-3. Required contributions

Prior to July 1, 1998, a member who chose to increase his or her maximum annual compensation level for service prior to July 1, 1994 must have paid the required statutory contributions on all compensation received each year above $25,000 up to the maximum $40,000, plus interest in the amount of seven and one-half percent (7 1/2%) compounded annually. Said interest accrues from the date of the members initial opportunity to make the

election. The election is not considered complete until all required contributions and interest have been paid, unless terminated by operation of law.
[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99]

590:10-5-4. Refund election [REVOKED]
[**Source:** Revoked at 12 Ok Reg 3237, eff 7-27-95]

590:10-5-5. Effective date of election [REVOKED]
[**Source:** Revoked at 12 Ok Reg 3237, eff 7-27-95]

590:10-5-6. Member responsibility [REVOKED]
[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Revoked at 16 Ok Reg 610, eff 12-2-98 (emergency); Revoked at 16 Ok Reg 2010, eff 6-11-99]

590:10-5-7. Statutory compensation contributions
(a) All currently appointed members of the Oklahoma Tax Commission on July 1, 2000, may make an election to contribute on the highest statutory salary for his or her position. This irrevocable election shall be made in writing and must be received by the System no later than September 28, 2000. This election to make additional contributions is binding upon all future appointments to the same Tax Commission office. The required contributions shall be made beginning with the first of the month following the filing of the election or the first of the month following the month in which the statutory salary is constitutionally limited, whichever is later.
(b) New members appointed to the Oklahoma Tax Commission after July 1, 2000, shall make an election to contribute on the highest statutory salary for his or her position within 90 days of taking such office. This election shall be effective upon the constitutional limitation of his or her salary at some later time during his or her appointment to the Oklahoma Tax Commission. This election to make additional contributions is binding upon all future appointments to the same Tax Commission office.
(c) Upon making the election provided in subsection (a) or (b) of this section, the employer and the employee contributions statutorily required for the System shall be remitted utilizing the normal payroll process. In the event the payroll process is unable to withhold and remit the contributions for the statutory salary amount, it shall be the responsibility of the Oklahoma Tax Commission to develop a process to withhold or receive the appropriate employee contribution and then to remit the appropriate employee and employer contributions for the statutory salary amount directly to the System.
(d) Upon making the election provided in subsection (a) of this section, a member of the Oklahoma Tax Commission whose salary is constitutionally limited on July 1, 2000, may also elect to use the highest salary allowed by law for the position to which the member was appointed which occurred prior to the election. To complete the election, the member must pay all employee contributions which would have been made since the time his or her salary became constitutionally limited, subject to any statutory salary caps under the Plan. This irrevocable election shall be made in writing and must be received by th e System no later than September 28, 2000. Payment of all contributions due, plus an amount equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings, must be remitted to the System by both the employer and the employee no later than December 31, 2000. Such payments

do not qualify as "pre-tax" contributions under the "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.
[**Source:** Added at 18 Ok Reg 9, eff 10-3-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

590:10-5-8. Compensation for retirement purposes
(a) Compensation for retirement purposes, as determined by the Board of Trustees, shall be limited to salary and wages as follows:
(1) "Salary" means a predetermined or fixed amount of cash remuneration that is made payable by the participating employer to the employee in exchange for services rendered personally by the employee for the participating employer but excluding any type of overtime payments paid to an employee for service rendered in excess of full-time;
(2) "Wages" means cash remuneration, dependent upon the hours of work, that is made payable by the participating employer to the employee in exchange for services rendered personally by the employee for the participating employer excluding any type of overtime payments paid to an employee for service rendered in excess of full-time.
(b) Subject to the limitations contained elsewhere in the retirement act or in these rules, salary and wages include, by way of example and not by limitation, the following:
(1) any longevity payments made to employees based upon a standardized plan which recognizes length of service to the employer,
(2) pay differential which is paid to employees in return for special or hazardous shifts or in return for additional training or duties,
(3) amounts deducted from the employee's paycheck for retirement and deferred compensation contributions,
(4) pre-tax cafeteria purchases which are not funded by the employer or the employee's benefit allowance,
(5) performance, skill, or mission critical based pay adjustments.
(c) Any payments made by an employer to an employee which do not meet the definition of salary or wages as set forth in subsection (a) of this rule are not to be considered compensation for retirement purposes, including but not limited to the following:
(1) payments which are for reimbursement for expenses incurred by the employee,
(2) payments for maintenance or allowances, including, but not limited to, uniform allowances, clothing allowances, or housing allowances,
(3) any payments or amounts made available to an employee for insurance benefits or benefits allowances, including any amounts paid directly to the employee,
(4) illegal payments made to an employee by an employer,
(5) payments made in error to an employee,
(6) payments made by the employer for services rendered by the employee, which services are not part of the employee's job duties and responsibilities of his or her job position with the participating employer,
(7) payments in the form of tips or commissions paid to an employee in the course of his or her employment,
(8) payments made to other than the employee by the participating employer which are not deducted from the employee's paycheck,
(9) workers compensation benefit payments,

(10) any payments made by a participating employer to a non-employee, such as compensation to Board or Commission members,
(11) payments made in anticipation of employment, such as signing bonuses,
(12) any payments which are excluded from retirement compensation by law.
(d) The provisions of this rule shall be effective for all compensation paid for service by an employee to the employer on or after July 1, 2003. It shall be the responsibility of the employer to ensure that the appropriate retirement contributions are deducted or paid correctly and in accordance with this rule.
(e) The compensation of each member as set forth above shall be used for calculating the monthly retirement compensation for each retiring member. Provided, however, the calculation shall include the compensation prior to July 1, 2003, for which retirement contributions were withheld in determining the final average compensation, if applicable, for the highest three (3) years of the last ten (10) years of service.
[**Source:** Added as 590:10-1-14 at 20 Ok Reg 2809, eff 6-19-03 (emergency); Added at 21 Ok Reg 1759, eff 6-11-04]

590:10-5-9. Changes to contribution rates; deadline for notifying System

Any county, county hospital, city or town, conservation district, circuit engineering district or any public or private trust in which a county, city or town participates and is the primary beneficiary, which is a participating employer and which is permitted pursuant to 74 O.S. §920A to modify the amount of contributions paid by the employer and employee shall make such modification and notify the System no later than June 30 of each year for a July 1 effective date. Any contribution modification adopted, approved or received after June 30 shall not be effective until July 1 of the following fiscal year.
[**Source:** Added at 30 Ok Reg 550, eff 5-11-13]

Subchapter 7 - Retirement Benefits

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

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

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

590:10-7-2. Involuntary furlough

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

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

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

(a) The three (3) highest annual longevity payments will be added into the sum of three years of salary (thirty-six months) used in computing the final average compensation for members whose first participating service occurs before July 1, 2013. The five (5) highest annual longevity payments will be added into the sum of five years of salary (sixty months) used in computing the final average compensation for members whose first participating service occurs on or after July 1, 2013. If a retiring member is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payments will be used only in the amount actually paid and if it is one of the three highest longevity payments for members whose first participating service occurs before July 1, 2013, or one of the five highest longevity payments for members whose first participating service occurs on or after July 1, 2013. The final average salary shall not be reduced if the annual longevity payment causes any one month's salary to exceed the maximum monthly compensation level, provided the annual salary including longevity does not exceed the maximum compensation level.

(b) Other lump-sum annual payments that are included as compensation for retirement purposes shall be averaged over the previous twelve (12) months of salary immediately preceding the month of payment for use in computing the final average compensation. These lump-sum payments include those which are paid on an annual basis at the discretion of the employer such as performance or skill based pay adjustments.
[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99; Amended at 20 Ok Reg 319, eff 1-1-03 (emergency); Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 31 Ok Reg 53, eff 8-28-13 (emergency); Amended at 31 Ok Reg 2314, eff 9-12-14]

590:10-7-4. Early retirement factor

The monthly benefit to be paid under early retirement shall be based on the actual age in years and months the retirement member has attained on the date retirement benefits are to begin. The reduction factor is based on a level interpolation, between ages 55 and 62 for members whose first participating service occurs before November 1, 2011, and between ages 60 and 65 for members whose first participating service occurs on or after November 1, 2011.
[**Source:** Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

590:10-7-5. Selecting an option

(a) The member may choose to receive the maximum benefit or receive benefits under any one of the retirement Options provided in 74 O.S. § 918.
(1) The type of retirement benefit selected by the member and/or the member's spouse, if applicable, cannot be changed under any circumstances on or after the effective date of retirement, except as provided in this Section.
(2) In the event of the death of the named joint annuitant after the member's retirement date, the member shall provide the System with a copy of the joint annuitant's death certificate as notice of said death. The member's benefit will "pop-up" to reflect the amount of benefit the member would be entitled to absent the selection of an option. The "pop-up" increase becomes effective the first day of the month following the death of the joint annuitant, provided the member has given notice of said death. If the death of the joint annuitant occurred prior to June 30, 1994, the benefit increase may become effective with the July 1994 benefit payment, provided the member has given notice of said death. Retrospective benefits will not be paid for any month prior to July 1994 and are limited to a maximum of six (6) months. The "pop-up" increase is limited to members retiring with an Option A or Option B.
(b) A member choosing Option C provided in 74 O.S. § 918 shall be subject to the following provisions:
(1) In the event of the death of the retired member within the ten-year certain period under Option C, and there are no living designated beneficiaries, the person responsible for the estate of the deceased retired member shall be given the option for the estate to receive monthly benefits for the remainder of the ten-year period, or receive the present value of the remaining benefit payments in a one-time, lump-sum distribution.
(2) In the event the retired member predeceases a designated beneficiary within the ten-year certain period, and the designated beneficiary dies after the beneficiary has begun to receive benefits, the person responsible for the estate of the beneficiary shall be given the option for the

beneficiary's estate to receive monthly benefits for the remainder of the ten-year period, or receive the present value of the remaining benefit payments in a one-time, lump-sum distribution.
(3) For purposes of this subsection:
(A) "person responsible for the estate" means the personal representative, executor or administrator of the estate as determined by a court of competent jurisdiction, or in the case of a probate waiver as permitted by 74 O.S. § 916.1, the appropriate claiming heir; and
(B) "present value of the remaining benefit payments" means the lump-sum distribution shall be discounted using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the election is made pursuant to this subsection.
(4) The following shall be provided by the person responsible for the estate before any benefits will be paid:
(A) taxpayer identification number (TIN) for the estate, if applicable;
(B) legal documents naming the personal representative, executor or administrator of the estate, or in the case of a probate waiver, the appropriate documents as set forth in 74 O.S. § 916.1;
(C) copy of the death certificate for the member or beneficiary; and
(D) statement in writing from the person responsible for the estate selecting either the monthly or lump-sum payout method.
[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 24 Ok Reg 47, eff 8-24-06 (emergency); Amended at 24 Ok Reg 1135, eff 5-11-07]

590:10-7-6. Failure to submit documents; benefit estimates
(a) If all of a retired member's required documents have not been received by the fifteenth day of the month in which the first retirement benefit payment is to be issued, the System will withhold payment of any benefit until all required documents have been received. If all the required documents are not received within six (6) months after the requested retirement date, the retirement shall be cancelled and no retroactive benefits shall be paid. In the event the retirement is cancelled pursuant to this section, the member shall be required to reapply for a new retirement date which shall be considered as having met the sixty (60) day notice requirement.
(b) In order to receive a benefit estimate, a member shall provide all the required documents necessary for the System to calculate the benefit estimate. No benefit estimate shall be processed until such documents have been received. The System shall determine which documents are necessary to calculate a benefit estimate.
[**Source:** Amended at 21 Ok Reg 1759, eff 6-11-04; Amended at 22 Ok Reg 1354, eff 5-26-05; Amended at 31 Ok Reg 2314, eff 9-12-14]

590:10-7-7. Allowable adjustments
Any adjustments made to the retirement benefit due to credit given for unused sick leave, longevity payment or delinquent service shall be retroactive to the effective date of retirement.
[**Source:** Amended at 25 Ok Reg 1001, eff 5-11-08]

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

(a) For members or annuitants retiring prior to July 1, 2001, a Retirant or annuitant may authorize the Oklahoma Public Employees Retirement System to deposit their monthly retirement benefit directly to a checking or savings account in a bank, Credit Union and/or Savings and Loan by electronic fund transfer or by paper check. Application for direct deposit will only be accepted on properly completed forms provided by OPERS. Prior to June 30, 2001, the direct deposit may be discontinued at any time upon thirty (30) days' written notice by the member, annuitant or OPERS. After July 1, 2001, if the electronic fund transfer creates an undue hardship on the retiree, the direct deposit may be discontinued only if the member or annuitant makes application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the member or annuitant. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.
(b) Effective July 1, 2001, newly retired members or annuitants shall be required to receive monthly benefit payments via electronic fund transfers to a banking or financial institution designated by the member. The retiree or annuitant and receiving institution must complete the form prescribed for this purpose by OPERS. In the event the electronic fund transfer creates an undue hardship on the retiree or annuitant, the member or annuitant may make application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the member or annuitant. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.
(c) A retired member or annuitant who is receiving benefits from the System may authorize deductions from his or her monthly benefit for certain eligible products or association dues, provided the benefit amount is sufficient to allow the entire deduction considering any previously existing deductions. No partial deductions are permitted. The System will not be responsible for any errors in the deductions and no adjustments for incorrect deductions will be permitted in subsequent months. The System will only recognize instructions received through the eligible product vendor or association, and not directly from the member or annuitant. The allowance of benefit deductions does not under any circumstances constitute an endorsement for any particular product or association.
(1) The only products that are eligible for deduction are those products which are currently offered to active state employees through the Employees Benefits Council and which are offered to state retirees as a group. Any vendor offering such a product must present proof of participation by at least five hundred (500) state retirees, in such form or manner as may be required by the System, prior to any deductions being authorized.
(2) The only associations that are eligible for deduction for membership dues are the Oklahoma Public Employees Association and/or any other Statewide associations that are limited to state employees and have at least one thousand (1000) dues-paying members, either retired or active. Certification from the Administrator of the Office of Personnel Management that an association is eligible for payroll deductions for active state employees is required prior to that association being eligible for dues deductions pursuant to this rule.
[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 18 Ok Reg 3258, eff 7-26-01; Amended at 19 Ok Reg 741, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1477, eff 5-28-02]

590:10-7-9. Fractional year computations

(a) **Rounding of fractional year.** Pursuant to 74 O.S. §913(C), a fractional year of six (6) months or more shall be considered as one (1) year and less than six (6) months shall be disregarded. This round-up provision may be used one time for credited service of a member to establish the benefit of the member. This rule is necessary to prevent the gain or loss of service credit to a member. In no event shall the rounding up provisions apply if it would result in any member receiving an additional year or years that the member would not otherwise be entitled to receive.

(b) **Rounding for members joining on or after November 1, 2012.** Notwithstanding the provisions of subsection (a) of this section, for members who join the System on or after November 1, 2012, rounding of fractional years shall not be permitted. The number of years of credited service shall be based on the actual years and months of credited service without rounding up or down. Unused sick leave, as provided for in 74 O.S. §913(B)(7)(a), shall be credited at the same rate but not used to round up to another year. Any additional months of unused sick leave credit shall be added to other service credit without any rounding.

(c) **Correctional and probation and parole officers.** Pursuant to 74 O.S. §915(A), the computation of retirement benefits of Department of Corrections Correctional and Probation and Parole Officers is 2.25% for certain credit prior to July 1, 1990, and 2.5% for certain credit after July 1, 1990, and 2% for all other credit.

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

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

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

(e) **Elected officials.**

(1) If first elected or appointed prior to November 1, 2011, elected officials who do not participate in an elected status for at least six (6) full years will receive retirement benefits on the years and months of elected service instead of full years. The benefit shall be calculated using the computation factor corresponding to the contribution rate the official paid during those years and months of elected service and on the highest annual salary earned as an elected official. Non-elected service credit will be calculated using the applicable computation factor. The elected and non-elected service shall be added to determine the total credited service. If this total results in a fractional year of six (6) months or more, it shall be considered as one year, and less than six (6) months shall be disregarded. The years and months of elected service shall then be deducted from the total credited service and the remaining balance of service shall be calculated using the applicable non-elected service computation factor.

(2) If first elected or appointed on or after November 1, 2011, elected officials who do not participate in an elected status for at least eight (8) full years will receive retirement benefits on the years and months of elected service instead of full years. The contribution rate for such officials shall be as specified in 74 O.S. §919.1(1)(a) and the amount of the benefit shall be based on the provisions of 74 O.S. §915(A)(1).

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

(g) **Rounding for elected officials joining System on or after November 1, 2011.** Elected officials who are first elected or appointed on or after November 1, 2011, rounding of fractional years shall not be permitted. The number of years of credited service shall be based on the actual years and months of credited service without rounding up or down.

[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99; Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 25 Ok Reg 1001, eff 5-11-08; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12; Amended at 30 Ok Reg 550, eff 5-11-13]

590:10-7-10. Final benefit

The retirement benefit payable for the month of death of a member, joint annuitant or survivor shall be payable to said member, joint annuitant, or surviving spouse. In the event the final benefit is returned to the System or is not otherwise paid, the benefit shall be paid to the member's named beneficiary. If there is no named beneficiary or estate, the final monthly benefit payment shall be paid to the first of the following:

(1) surviving spouse;
(2) surviving children in equal shares;
(3) surviving parents in equal shares;
(4) surviving siblings in equal shares;
(5) member's estate.

[**Source:** Amended at 16 Ok Reg 610, eff 12-2-98 (emergency); Amended at 16 Ok Reg 2010, eff 6-11-99; Amended at 22 Ok Reg 126, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1354, eff 5-26-05; Amended at 31 Ok Reg 53, eff 8-28-13 (emergency); Amended at 31 Ok Reg 2314, eff 9-12-14]

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

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

(b) For all persons who become members of the System on or after July 1, 1995, the minimum final average compensation shall be determined by the number of years of credited service they have at the time of retirement. For those members with twenty (20) or more years of credited service, they shall have benefits calculated using a final average compensation of not less than Thirteen Thousand Eight Hundred Dollars ($13,800.00). For those members with fifteen (15) to

nineteen (19) years of credited service, they shall have benefits calculated using a final average compensation of Six Thousand Nine Hundred Dollars ($6,900.00). For those members with less than fifteen (15) years of credited service, there shall be no minimum final average compensation.
[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96]

590:10-7-12. Unpaid leave

Any period of unpaid leave approved and authorized by the employer, shall not constitute a break in service for retirement purposes; however service credit shall not accrue during any such periods of unpaid leave. This section applies to any unpaid leave status, including but not limited to family medical leave, worker's compensation leave, or military leave.
[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95]

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

(a) It is the responsibility of all members to file a notice of retirement form with the System at least sixty (60) days but not more than one hundred eighty (180) days prior to the member's requested effective retirement date. Any member who has previously filed an application for vested benefit form or who has been identified by the System as eligible to receive a retirement benefit due to reaching the age requiring mandatory distribution will be considered to have met the sixty (60) day notice requirement; however, it is the responsibility of any such vested or other member to file a retirement form selecting the type of benefit to be paid prior to the member's requested retirement date. All retirement forms shall be prescribed, produced and approved by the System in order to constitute proper notice and retirement selection.
(b) The sixty (60) day notice requirement can be waived by application to the Executive Director. The application for waiver must state the reason for the request and the decision to grant the waiver is up to the Executive Director. Upon request of the member, the Board may review at its next regular meeting any denial of a waiver by the Executive Director. Members are presumed to be familiar with the plan provisions and aware of the notice requirement and the Executive Director will grant the waiver only for good cause shown. Good cause is generally shown in cases of an unforeseen hardship, such as illness of the member or a member's family or a reduction in force, layoff of employment, or other unexpected change in job status. Good cause is also generally shown in cases of error or delay on the part of the employer and the error or delay is due to no fault of the member.
(c) No retirement benefits are payable until the System verifies that the member has been removed from the payroll; therefore, the initial retirement benefit payment to new retirees shall be made at the end of the month following the month of retirement. Two benefit payments will be made at that time representing the month of retirement and the current month. Following this initial verification period, retirement benefits will be payable each month on the last day of that month.
(d) No retirement benefits shall be payable until the System receives a properly completed retirement form requesting such benefits. Unless otherwise specifically provided by law or by these rules, no benefits shall be payable retroactively for any time period prior to receiving the member's properly completed retirement form regardless of when the member may have become eligible for such benefits. The requested retirement date of the member shall be made in accordance with the requirements of this section.

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

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

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

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

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

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

(e) For members whose first participating service occurs before July 1, 2013, only the salary received during the last ten (10) years of participation in the System shall be considered in the actual calculation of the final average compensation for permanent part-time members. Out of these ten (10) years, the System will use the 36 monthly entries of salary at the highest hourly rates received by the member. The gross salaries for each of the 36 months shall be added together. The number of hours of work reported for each of these 36 months shall be added together. The total salary will be divided by the total number of hours reported, multiplied by 6,240 hours plus the three (3) highest eligible longevity payments (if any), and divided by three (3) to arrive at the final average compensation.

(f) For members whose first participating service occurs on or after July 1, 2013, only the salary received during the last ten (10) years of participation in the System shall be considered in the actual calculation of the final average compensation for permanent part-time members. Out of these ten (10) years, the System will use the 60 monthly entries of salary at the highest hourly rates received by the member. The gross salaries for each of the 60 months shall be added together. The number of hours of work reported for each of these 60 months shall be added together. The total salary will be divided by the total number of hours reported, multiplied by 10,400 hours plus the five (5) highest eligible longevity payments (if any), and divided by five (5) to arrive at the final average compensation.

[**Source:** Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99; Amended at 31 Ok Reg 53, eff 8-28-13 (emergency); Amended at 31 Ok Reg 2314, eff 9-12-14]

590:10-7-14.1. Seasonal or temporary employment; calculation of 1,000 hours

(a) **Definition.** Seasonal or temporary employment shall mean employment that is limited in term, where the employee is only expected to remain in the position for a certain period of time. The employment can be seasonal or until the specific job or duty is completed. Employees who are hired in a job or position, that is non-seasonal with full-time work load and undefined duration or that requires more than 1,000 hours per year, whether designated as seasonal, temporary, probationary, provisional, or some other label, must be enrolled and participate in the System on the date of the hire and not at the end of a temporary, probationary, provisional, or some other labeled period. Employees hired purely for seasonal or temporary duties are excluded from participation in the System pursuant to 74 O.S. §902(14).
(b) **Failure to enroll employees.** Participating employers who fail to enroll employees when required by law shall be subject to the provisions of 74 O.S. §917(7) and any other provision of law which may be applicable.
(c) **Calculation of 1,000 hours.** In determining the eligibility of an employee in relation to the requirement of at least 1,000 hours of employment per year pursuant to 74 O.S. §902(14), the System shall calculate the hours using a rolling year or a rolling 12 consecutive months. If an employee has at least 1,000 hours of work during any consecutive 12 month period, the employee shall meet the hours of work eligibility requirement. The determination or calculation of 1,000 hours shall not be based on a calendar year, fiscal year, or from the date of employment.
[**Source:** Added at 30 Ok Reg 550, eff 5-11-13]

590:10-7-15. [2] **Post-retirement employment - calculation of benefits and service**

A year of post-retirement service shall be determined as 2076 hours of participation. All retired members who have post-retirement service with a participating employer and are eligible for an additional monthly benefit on or after January 1, 2000, pursuant to 74 O.S. § 914(E) shall have the additional benefit calculated using the actual hours worked and reported and the actual compensation reported for which contributions have been paid for each 2076 hour period. Each 2076 hour period shall be calculated separately and benefits added each January 1 as appropriate. All applicable option and early retirement reductions selected by the member at the time of retirement shall be applied to the additional benefit. Contributions received on such service shall be credited for the fiscal year in which the hours were actually worked.
(b) The initial addition of post-retirement benefits shall be made effective with the January, 2000 benefit payment. The additional benefits shall be cumulative and paid for the initial period to the extent OPERS can identify and verify post-retirement participation. Post-retirement employment for which the retired member has previously been granted additional benefits or for which a refund of contributions has been made will not be included.
(c) The addition of post-retirement benefits shall be available to retired members who remain members on or after July 1, 1999. Joint Annuitant benefits shall be increased only if the member would have otherwise been eligible for the increase in benefits.
(d) For those retired members who have returned to employment with a participating employer and waived receipt of their monthly retirement benefit pursuant to 74 O.S. § 914(E), retirement benefits will be recalculated only upon termination of employment after completion of thirty-six (36) consecutive months of full-time-equivalent employment, as that term is defined under 590:10-3-6 of these rules.
[**Source:** Added at 17 Ok Reg 608, eff 12-2-99 through 7-14-00 (emergency)[1]; Added at 17 Ok Reg 3178, eff 7-27-00; Amended at 20 Ok Reg 1750, eff 6-12-03; Amended at 21 Ok Reg 1759,

eff 6-11-04; Amended at 25 Ok Reg 1001, eff 5-11-08; Amended at 32 Ok Reg 2176, eff 9-11-15]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-00 (after the 7-14-00 expiration of the emergency action), the text of Section 590:10-7-15 was no longer effective, and remained as such until added again by permanent action on 7-27-00.*

EDITOR'S NOTE: *[2]On 12-28-00, a different rule called "Rollovers" was added by emergency rulemaking at this number (590:10-7-15), creating a duplication in numbering. The number was later changed to 590:10-7-16 in permanent rulemaking.*

590:10-7-16. Rollovers

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

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

(c) "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 Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than Two Hundred Dollars ($200.00) during the year. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(d) Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(1) To an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(2) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(3) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code.

(e) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(1) An individual retirement account described in Section 408(a) of the Internal Revenue Code;
(2) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
(3) an annuity plan described in Section 403(a) of the Internal Revenue Code;
(4) a qualified trust described in Section 401(a) of the Internal Revenue Code;
(5) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;
(6) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system; or
(7) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.
(f) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purposes of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
(g) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.
[**Source:** Added as 590:10-7-15 at 18 Ok Reg 548[1]; eff 12-28-00 through 7-14-01[2]; Added at 18 Ok Reg 3258, eff 7-26-01; Amended at 22 Ok Reg 2679, eff 6-7-05 (emergency); Amended at 23 Ok Reg 1482, eff 5-25-06; Amended at 24 Ok Reg 1135, eff 5-11-07; Amended at 27 Ok Reg 1032, eff 5-13-10; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]
EDITOR'S NOTE: *[1]This rule was first added by emergency action using a different number (590:10-7-15), which created a duplication in numbering. The rule was later added at (590:10-7-16) by permanent action. See also Editor's Note [2] below.*
EDITOR'S NOTE: *[2]This emergency rule expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new section, the section is no longer effective. Therefore, on 7-15-01 (after the 7-14-01 expiration of this emergency action), the emergency rule called "Rollovers" and numbered as 590:10-7-15 was no longer effective, and remained as such until added by permanent action at this number (590:10-7-16) on 7-26-01.*

590:10-7-17. Disability certification after early retirement
(a) Effective January 1, 2004, a member who incurred a disability which would qualify that member for disability retirement benefits pursuant to subsection B. of Section 915 of Title 74 of the Oklahoma Statutes and who elected early retirement pending the receipt of the disability certification may elect to receive disability retirement in lieu of the previously selected early retirement. In order to be eligible for this election, the disability must have been incurred on or after July 1, 1999, and the member must meet all statutory requirements for disability retirement. The member's effective retirement date will not change, however, the member shall be entitled to

receive the difference, if any, in the amount of the early benefit and the disability benefit as of the date the member would have been eligible for the disability benefit.
(b) The only retirement options available for disability retirement pursuant to subsection B. of Section 915 of Title 74 of the Oklahoma Statutes are a maximum benefit with no survivor options and Option A, with married members being required to elect to retire under Option A unless the member's spouse consents in writing to waive the survivor benefit and permit the member to receive the maximum benefit. A member who chooses to change his or her retirement from early to disability must maintain the survivor option selections originally chosen under early retirement to the extent permitted under the disability plan provisions and pursuant to this rule. The joint annuitant named at the time of early retirement cannot be changed.
(1) If the member, and the member's spouse if applicable, elected to receive the maximum retirement benefit with no survivor option at early retirement, the disability benefit will be paid as a maximum retirement benefit with no survivor option. Spouse consent for maximum benefits obtained at early retirement is effective for the disability retirement and no additional spouse consent is required.
(2) If the member, and the member's spouse if applicable, selected a retirement Option A at early retirement, the disability benefit will be paid as an Option A with the same named joint annuitant.
(3) If the member, and the member's spouse if applicable, selected a retirement Option B at early retirement, the disability benefit will be paid as an Option A with the same named joint annuitant under disability retirement. The member's named joint annuitant will be notified of the change to disability retirement under an Option A and of the reduction in the survivor benefit amount.
(4) If the member, and the member's spouse if applicable, selected a retirement Option C at early retirement, the disability benefit will be paid as a maximum retirement benefit with no survivor option. Since the member retains the right to change the named beneficiary for the Option C benefits and therefore the named beneficiary obtains no property rights, the spouse consent for Option C obtained at early retirement is effective for the maximum disability retirement and no additional spouse consent is required, however, the member's named beneficiary for Option C will be notified of the change to maximum disability retirement with no survivor benefit.
(c) In the event of the death of the named joint annuitant, the benefit shall only be paid as a maximum non-survivor benefit and no other person shall be substituted as joint annuitant. The member shall not be permitted to change the option or joint annuitant selection in the event of a divorce and/or remarriage after the effective date of the member's early retirement.
[**Source:** Added at 21 Ok Reg 1759, eff 6-11-04]

590:10-7-18. Post-retirement employment - eligibility
(a) **Retiree subject to restrictions.** Returning to work for a participating employer may affect the retirement benefit of a retiree. A retiree returning to work for a participating employer is subject to various state and federal restrictions, including, but not limited to, the requirements set forth in 74 O.S. §914 and certain Internal Revenue Service regulations.
(b) **Bona fide termination of employment.** Prior to the payment of any retirement benefit to a member, the participating employer shall certify in writing to the System that the member has terminated employment. Termination of employment shall be governed by guidelines and regulations set forth by the Internal Revenue Service, and shall generally mean the member must

have experienced a bona fide separation, severance or termination of employment or service in which the employer and employee relationship is completely severed. Changing from full-time to part-time employment with the same participating employer does not qualify as a bona fide termination.

(c) **Returning to work for former employer.** A retiree may not be rehired in any capacity by the retiree's same participating employer for a period of one (1) year after the retiree ended his or her employment with such same participating employer. A retiree may not enter into an employment contract of any kind, including through a third party, with the same participating employer for a period of one (1) year after ending his or her employment with such same participating employer. The provisions of this subsection shall not apply if the retiree waives his or her benefit as provided under 74 O.S. §914(E)(2).

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

(e) **Independent contractors.**

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

(A) the degree of the right to control or supervise the work of the individual;

(B) payment of self-employment taxes;

(C) whether any benefits or leave time are paid;

(D) the nature and length of the contract;

(E) whether the work is part of the regular business of the employer, and;

(F) the right of either party to terminate the relationship without liability.

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

[**Source:** Added at 25 Ok Reg 1001, eff 5-11-08; Amended at 26 Ok Reg 120, eff 9-18-08 (emergency); Amended at 26 Ok Reg 952, eff 4-25-09; Amended at 28 Ok Reg 95, eff 9-17-10 (emergency); Amended at 28 Ok Reg 664, eff 5-12-11]

590:10-7-19. Required minimum distributions

(a) The retirement system will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The retirement system is subject to the following provisions:

(1) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in 74 O.S. §901 et seq.
(2) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.
(3) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
(4) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:
(A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death (or, if the designated beneficiary is the member's surviving spouse, beginning no later than the date on which the member would have attained age 70 1/2), or
(B) distributed within five (5) years of the member's death.
(5) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.
(6) The death and disability benefits provided by the retirement system are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent (25%) of the cost for all of the members' benefits received from the retirement system.
(b) Notwithstanding the other provisions of this rule or the provisions of Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.
(c) The retirement system shall make reasonable efforts to locate missing members, survivors and beneficiaries in order to comply with the required minimum distribution provisions of Section 401(a)(9). Reasonable efforts may include using any contact information the retirement system may have available for a member or any type of locator service.
[**Source:** Added at 27 Ok Reg 1032, eff 5-13-10; Amended at 28 Ok Reg 664, eff 5-12-11]

590:10-7-20. Actuarial assumptions

Effective as of July 1, 1989, the System will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board of Trustees by resolution. Such benefits will not be subject to employer discretion. The resolutions adopted by the Board of Trustees for this purpose are incorporated as part of the plan document.
[**Source:** Added at 27 Ok Reg 1032, eff 5-13-10]

590:10-7-21. Reemployed veterans; compliance with Code Section 414(u)

Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.
[**Source:** Added at 27 Ok Reg 1032, eff 5-13-10]

590:10-7-22. Federal qualified military service rights
(a) **Additional benefits if provided by Plan.** Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would otherwise provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.
(b) **Differential wage payments.** 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.
[**Source:** Added at 27 Ok Reg 1032, eff 5-13-10; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

590:10-7-23. Compliance with Section 415 limitations on contributions and benefits
(a) **General provisions.** Notwithstanding any other provisions of the retirement system to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.
(b) **Participation in other qualified plans: Aggregation of limits.**
(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.
(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.
(c) **Basic 415(b) limitation.**
(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a

member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.
(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.
(d) **Adjustments to basic 415(b) limitation for form of benefit.** If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.
(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:
(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (that is, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):
(A) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or
(B) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent (5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or
(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (that is, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):
(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
(B) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the

applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(C) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period))) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) **Benefits not taken into account for 415(b) limitation.** For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) that portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) **Other adjustments in 415(b) limitation.**

(1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a One Hundred Sixty Thousand Dollar ($160,000.00) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in paragraph (1) of this subsection shall not apply.

(3) The reductions provided for in paragraph (1) of this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) **Less than ten (10) years of service adjustment for 415(b) limitations.** The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under subsection (c) of this section multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below ten percent (10%). The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(h) **Ten Thousand Dollar ($10,000.00) limit.** Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified

defined benefit pension plans to which the member's employer contributes, do not exceed Ten Thousand Dollars ($10,000.00) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

(i) **Effect of COLA without a lump sum component on 415(b) testing.** Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

(1) A member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost-of-living adjustments under Title 74 O.S. §901 et seq;

(2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost-of-living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost-of-living increases under Title 74 O.S. §901 et seq, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(j) **Effect of COLA with a lump sum component on 415(b) testing.** On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost-of-living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(k) **Section 415(c) limitations on contributions and other additions.** After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of Forty Thousand Dollars ($40,000.00) (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or one hundred percent (100%) of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under

Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2 1/2 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued.

(C) Any payments not described in subparagraph (B) of this paragraph are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) 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 Section 414(u)(1) of the Internal Revenue Code) 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 (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(E) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(l) **Service purchases under Section 415(n).**

(1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(A) The requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(B) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(2) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this paragraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(3) For purposes of this section the term "permissive service credit" means service credit:

(A) Recognized by the system for purposes of calculating a member's benefit under the system,

(B) which such member has not received under the system, and

(C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subparagraph (B) of this paragraph, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(4) The system will fail to meet the requirements of this section if:

(A) More than five (5) years of nonqualified service credit are taken into account for purposes of this paragraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five (5) years of participation under the system.

(5) For purposes of paragraph (4) of this subsection, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(A) Service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (A) of this paragraph) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(C) service as an employee of an association of employees who are described in subparagraph (A) of this paragraph, or

(D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

(6) In the case of service described in subparagraphs (A), (B), or (C) of this paragraph, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.
(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):
(A) The limitations of paragraph (4) of this subsection will not apply in determining whether the transfer is for the purchase of permissive service credit, and
(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.
(8) For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the system before January 1, 1998.
(m) **Modification of contributions for 415(c) and 415(n) purposes.** Notwithstanding any other provision of law to the contrary, the system may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:
(1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.
(2) If payment pursuant to paragraph (1) of this subsection will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.
(n) **Repayments of cashouts.** Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.
(o) **Reduction of benefits priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.
[**Source:** Added at 27 Ok Reg 1032, eff 5-13-10]

Subchapter 8 - Department of Corrections Benefits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hazardous Duty Members and Post-Hazardous Duty Members who are employed by the Department of Corrections shall pay the higher contribution rate set forth in Title 74 O. S. Section 919.1 (1)(c) and (d) for a maximum of twenty (20) full years. If the Hazardous Duty Members and Post-Hazardous Duty Members remain employed by the Department of Corrections after twenty (20) full years of payment of the higher contribution rate, the required employee contribution rate shall be as provided in 919.1 (1) (a) and (b).
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

In addition to a normal retirement date as defined in 74 O.S. §902(24), Post-Hazardous Duty Members who are employed by the Department of Corrections at the time of retirement are eligible to retire after completion of at least twenty (20) years of full-time-equivalent employment as provided in 590:10-3-6 of these rules; provided, the required higher contribution for Hazardous Duty Members is paid or the member was employed, pursuant to 74 O.S. §915(A)(8), as a correctional officer or probation and parole officer at the Department of Corrections.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

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

It is the responsibility of the Department of Corrections to ensure that the correct employee contributions are withheld for all employees. It is also the responsibility of the Department of Corrections to provide any necessary documentation to confirm eligibility of any current or former employee for benefits under this Subchapter.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

Subchapter 9 - Survivors and Beneficiaries

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

590:10-9-1. Survivors' benefits

(a) If an active or retired elected official with a minimum of six (6) years of participating service, who was first elected or appointed before November 1, 2011, or an active or retired elected official with a minimum of eight (8) years of participating service who was first elected or appointed on or after November 1, 2011, dies, the surviving spouse is eligible to receive one half (1/2) of the elected official's benefit provided the elected official had met the service requirements for retirement. If a retired elected member selected an Option to apply to his/her service, the joint annuitant receives the Option benefit instead of the one half (1/2) benefit to the spouse.

(b) At the death of a member who is eligible to retire pursuant to law but is not actually retired, or is eligible to vest or had elected a vested benefit, the surviving spouse shall be entitled to receive the appropriate Option benefit as provided by law beginning at the date the deceased member would have become eligible to receive such benefits had the member survived. The System may withhold benefits to the surviving spouse until the necessary documentation is received and verified. The benefits payable shall accrue from the first day of the month following the death of the member if the deceased member met the requirements for an early or normal retirement.
[**Source:** Amended at 12 Ok Reg 3237, eff 7-27-95; Amended at 24 Ok Reg 1135, eff 5-11-07; Amended at 29 Ok Reg 49, eff 9-28-11 (emergency); Amended at 29 Ok Reg 498, eff 5-11-12]

590:10-9-2. Death benefit payment
(a) **Payment of benefit.** The four thousand dollars ($4,000) death benefit, available for any retired member who died on or after July 20, 1987, shall be payable to the beneficiary listed by the member or to the member's estate. This beneficiary designation is not affected by any designation of joint-annuitant, deferred compensation beneficiary or insurance beneficiary, unless otherwise specifically designated in writing by member. For any retired member who died on or after July 1, 1999, the death benefit amount shall be five thousand dollars ($5,000).
(b) **Assignment of benefit.** The beneficiary, or if none the member's estate or the heirs of the member in the case of a probate waiver, may assign the death benefit to a person licensed as a funeral director or to a lawfully recognized business entity licensed as required by law to provide funeral services for the deceased member.
[**Source:** Amended at 17 Ok Reg 608, eff 12-2-99 through 7-14-00 (emergency)[1]; Amended at 17 Ok Reg 3178, eff 7-27-00; Amended at 28 Ok Reg 95, eff 9-17-10 (emergency); Amended at 28 Ok Reg 664, eff 5-12-11]
EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 7-15-00 (after the 7-14-00 expiration of the emergency action), the text of Section 590:10-9-2 reverted back to the permanent text that was effective prior to enactment of the emergency action on 12-2-99, as was last published in the 1996 Edition of the OAC, and remained as such until amended by permanent action on 7-27-00.*

590:10-9-3. Divorced spouse beneficiaries
All designations of beneficiaries to a divorced spouse of accumulated employee contributions or the death benefit will be void, unless the divorced spouse has been named after the divorce decree is rendered or if the divorce decree specifies the divorced spouse is entitled to receive the benefits. The System shall void such designation of beneficiary only upon receipt of the divorce decree. The System is not responsible for any payments made in good faith without notice of divorce. The provisions of this rule are applicable for any Plan or account managed or administered by the Board.
[Source: Amended at 20 Ok Reg 1750, eff 6-12-03]

590:10-9-4. Probate waivers
(a) In the event a member dies, leaving no living beneficiary or having designated his Estate as beneficiary, the System may require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. This requirement

may be waived for payments in an amount of Twenty Five Thousand Dollars ($25,000) or less upon presentation of the member's valid Last Will and Testament, trust documents or affidavit that a will does not exist, an Affidavit of Heirship naming all heirs to the member's estate, a Hold-Harmless Agreement signed by all heirs, a corroborating affidavit from someone other than an heir who is familiar with the deceased member, and proof of payment of all last debts of the member. These documents shall comply with the provisions of 74 O.S. §916.1. If there is any question as to the validity of any document herein required, the judicial appointment shall not be waived.

(b) If the System is paying a benefit or unpaid contributions under this rule, the payment shall be paid to the first of the following:

(1) surviving spouse;
(2) surviving children in equal shares;
(3) surviving parents in equal shares;
(4) surviving siblings in equal shares;
(5) member's estate.

[**Source:** Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96; Amended at 19 Ok Reg 741, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1477, eff 5-28-02; Amended at 31 Ok Reg 53, eff 8-28-13 (emergency); Amended at 31 Ok Reg 2314, eff 9-12-14; Amended at 34 Ok Reg 1897, eff 9-11-17]

Subchapter 10 Department of Corrections Death in Performance of Duty Benefits

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

590:10-10-1. Eligibility for Benefit

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

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

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

Killed in the performance of duty means an employee's death as a direct result of an action, whether felonious or accidental, occurring as a direct result of performing his or her assigned work-related functions for the Department of Corrections. Work-related function means action

that the employee is authorized or obligated to perform by law, rule, regulation, or condition of employment or service, which is performed while on paid duty with the Department of Corrections.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

Mortally wounded means a personal injury where death occurs within one (1) year as a direct and proximate result of an injury which would have qualified for death benefits as provided in this Subchapter. Direct and proximate result means that the injury sustained in the performance of duty is the primary and substantial factor in the resulting death.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

590:10-10-4. Exclusions

No benefits shall be paid under this subchapter:
(1) if the death was caused by the intentional misconduct of the employee or if the employee intended to bring about his or her death;
(2) if the death is an accidental death as a result of travel to and from work;
(3) if the employee was intoxicated with a blood alcohol level of .10 or greater at the time of death or injury;
(4) if the employee was under the influence of illegal drugs or improperly used prescription drugs at the time of death or injury; or
(5) if death is the natural death of the employee or death is the primary result of a disease or medical condition.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

590:10-10-5. Surviving Spouse Benefit

The Surviving Spouse of an employee killed or mortally wounded in the performance of his or her duties with the Department of Corrections shall receive benefits as provided in Title 74 O.S. Section 916.3. Surviving Spouse means a person who was legally married to the employee at the time of the employee's death. The burden of proof regarding establishing and proving the existence of the marriage shall rest with the person claiming Surviving Spouse status.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

of benefits from any such retirement system shall be presumed to constitute such an election. The Surviving Spouse must certify annually that he or she is not receiving any type of survivor benefits from another state retirement system.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

590:10-10-7. Surviving Child Benefit
(a) A total monthly benefit amount as set by statute shall be paid where an employee of the Department of Corrections is killed or mortally wounded in the performance of his or her duty and leaves one or more Surviving Children. This benefit is paid in addition to the Surviving Spouse benefit.
(b) Surviving Child means a minor child under the age of eighteen (18) years or a child between the ages of eighteen (18) and twenty-two (22) who is attending school. Surviving Child further means a child who is the natural or legally adopted child of the deceased employee.
(c) Any child of any age who is or has been married is considered emancipated and is not considered to be a Surviving Child for purposes of payment of this benefit.
(d) Attending school means enrolled in and regularly attending on a full-time basis an accredited public or private secondary school or institution of higher education. Proof of attending school shall be provided by the person receiving the benefit at the beginning of each semester as well as a copy of grades received at the end of each semester. If there is more than one Surviving Child, proof of school attendance shall not be required unless that child is the sole basis for payment of the benefit or the sole basis for payment of a part of the benefit if the benefit is divided as provided in subsection (e) below. If the Surviving Child drops classes and becomes a part-time student or withdraws from the school or institution of higher education, then benefits shall cease the last day of the month in which the child becomes a part-time student or withdraws. It is the responsibility of both the Surviving Child and the person receiving the benefit payment to provide the proof of attendance and to notify the System of any change in student or marital status of the child.
(e) In the event that there is more than one Surviving Child and the children are in the care and custody of different individuals, the benefit shall be divided pro-rata for each child.
(f) The burden of proof of the relationship of the child to the deceased employee and to the person claiming payment shall be upon the person claiming entitlement to the payment. If a guardian has been named for a Surviving Child, the guardian shall be entitled to receive the benefit payment. A certified copy of the Order must be provided to the System. A Surviving Spouse who is the natural parent of the Surviving Child shall be presumed to have care and custody of said child unless the System receives a claim containing information to the contrary.
(g) Benefits terminate the last day of the month in which the last Surviving Child becomes twenty-two (22) or becomes ineligible for benefits under this Subchapter. Any benefits paid on behalf of an ineligible Surviving Child must be repaid to the System immediately.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

590:10-10-8. Filing for Surviving Spouse and Surviving Child Benefits
(a) Claims for Surviving Spouse and/or Surviving Child benefits should be made as soon as possible following the employee's date of death. Benefits shall be payable beginning with the month following the employee's date of death, however, benefit payments will not commence

until all required documentation has been furnished and a final determination has been made by the System. Required documentation to be provided by the claimant include, but are not limited to, a completed application for benefits, a copy of the employee's death certificate, a copy of the public record of marriage and copies of birth certificates for Surviving Children.
(b) It is the responsibility of the Department of Corrections to assist the Surviving Spouse or the person with the care and custody of a Surviving Child with the completion of all necessary forms. It is also the responsibility of the Department of Corrections to provide any necessary documentation to confirm eligibility of any person for benefits under this Subchapter. Required documentation to be provided by the Department of Corrections include, but are not limited to, a completed report of death form which shall include a notarized statement from the deceased employer's supervisor describing in detail the duties being performed by the employee at the time and the circumstances under which death occurred, all workers' compensation claim information in the possession of the employer, a certified copy of the autopsy report, and any medical records in the possession of the employer.
(c) In addition to the information supplied by the claimant and the employer, the System may require a medical statement from a treating physician which includes a detailed analysis of the cause of death and the circumstances surrounding the death.
(d) Where the System feels that it is necessary or appropriate, it may, at its own expense, have the medical and other records reviewed and evaluated by an independent physician of its own choosing. The System may also use the services of law enforcement agencies or may contract for a licensed investigator for any situations that it deems necessary or appropriate.
(e) The System shall make a determination on all claims for benefits under this Subchapter within ninety (90) days following receipt of all required documentation and reviews and shall notify the employer and the claimant in writing.
[**Source:** Added at 22 Ok Reg 126, eff 10-6-04 (emergency); Added at 22 Ok Reg 1354, eff 5-26-05]

Subchapter 11 - Transported and State Portable Service Credit

Section 590:10-11-1 Transported service credit
Section 590:10-11-2 Election to transport
Section 590:10-11-3 Member's entry date
Section 590:10-11-4 Use of transported service
Section 590:10-11-5 Former members reinstated
Section 590:10-11-6 Completion of election
Section 590:10-11-7 Funds transfer
Section 590:10-11-8 Previous transfers or purchases
Section 590:10-11-9 State portable service credit
Section 590:10-11-10 Eligibility to transfer portable service
Section 590:10-11-11 Election to transfer portable service
Section 590:10-11-12 Member's entry date after transfer
Section 590:10-11-13 Use of transferred state portable service
Section 590:10-11-14 Completion of transfer election
Section 590:10-11-15 Funds transfer for portable service
Section 590:10-11-16 Previous transfers, purchases or transports

590:10-11-1. Transported service credit

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

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

590:10-11-2. Election to transport

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

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

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

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

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

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

Transported service cannot be used to satisfy the full-time-equivalent employment with a participating employer service requirement. However, in any case where such full-time-equivalent service was transported to the Teachers' Retirement System and is later transported back to OPERS, such service may be deemed to satisfy the full-time-equivalent employment requirement. Transported service may be used to determine eligibility for retirement or vesting purposes and to determine the amount and type of retirement benefit.

[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 28 Ok Reg 664, eff 5-12-11]

590:10-11-5. Former members reinstated

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

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

590:10-11-6. Completion of election

Any person making an election to transport service must sign a final election option form after having been given notice of the certified service credit to be transported, the amount of funds eligible for transfer from the appropriate retirement system, any amounts required to be

paid by the member or former member, and the method of payment selected. The final election form must be submitted within sixty (60) days of this notice or the election shall be deemed canceled. The election to transport is not complete until the final election form is submitted and full remittance of any amounts required to be paid by the member.
[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 12 Ok Reg 3660, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3327, eff 7-25-96]

590:10-11-7. Funds transfer

No retirement funds shall be transferred or accepted for transported service until receipt of the signed final election form. The amount of funds transferred by OPERS shall be based upon the service credit accepted by Teachers' Retirement System.
[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95; Amended at 32 Ok Reg 2176, eff 9-11-15]

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

Service credit from Teachers' Retirement System previously transferred or purchased shall not be refunded or cancelled due to this statutory amendment. Service credit from OPERS which was previously transferred or withdrawn and purchased in Teachers' is not eligible for reinstatement.
[**Source:** Added at 12 Ok Reg 3237, eff 7-27-95]

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

All service that is credited to a member pursuant to 74 O.S. Section 913 (H.) or transferred out of OPERS pursuant to 70 O.S. Section 17-116.2 (Q.) shall be called state portable service. Such transferred portable service shall be governed by those statutory provisions and the rules contained in this subchapter.
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

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

Only those members whose last participation in Teachers' Retirement System was with one of the employers named in 74 O.S. Section 913 (H.)(1) are eligible for this transfer. Teachers' shall certify the last service the member has on the election form.
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

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

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

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

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

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

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

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

Transferred state portable service cannot be used to satisfy the full-time-equivalent employment with a participating employer service requirement. However, in any case where such full-time-equivalent service was transferred to the Teachers' Retirement System and is later transferred back to OPERS, such service may be deemed to satisfy the full-time-equivalent employment requirement. Portable service may be used to determine eligibility for retirement or vesting purposes and to determine the amount and type of retirement benefit.

[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01; Amended at 28 Ok Reg 664, eff 5-12-11]

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

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

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

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

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

[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01; Amended at 32 Ok Reg 2176, eff 9-11-15]

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

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

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

Subchapter 13 - Excess Contributions

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

590:10-13-1. Purpose and intent

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

(1) With respect to the transfer of certain Excess Contributions and Earnings from the System to the Incentive Plan, the Board intends to comply in all respects with the tax qualification requirements for governmental plans applicable to such refunds or transfers as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto ("Tax qualification requirements").

(2) The procedures in this Subchapter will not be implemented until the Board has received a favorable private letter ruling from the Internal Revenue Service that the transfers described in this Subchapter satisfy the tax qualification requirements.

(3) Only voluntary member contributions will be transferred to or for eligible members.

(4) In administering this Subchapter, the Board will comply with the legislative intent as contained in the Transfer Legislation.

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

590:10-13-2. Definitions

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

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

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

"Eligible Member" means a member of the System who was an active participating employee on July 1, 1998, and whose compensation for services exceeded Twenty-five Thousand Dollars ($25,000) per annum prior to July 1, 1994, and who, prior to July 1, 1998, had voluntarily elected to pay retirement contributions on the maximum compensation level pursuant to statutes

in effect at that time, provided such retirement contributions remain on deposit with the System as of the date of the transfer.
"Excess Contributions" means the contributions made by an Eligible Member on compensation in excess of Twenty-five Thousand Dollars ($25,000) per annum prior to June 30, 1994, that remain on deposit with the System as of the date of the transfer, and includes both Pre-tax Excess Contributions and Post-tax Excess Contributions.
"Incentive Plan" means the Oklahoma State Employees Deferred Savings Incentive Plan.
"Pre-tax Excess Contributions" means the Excess Contributions which were picked up by the employer under the provisions of Code Section 414(h)(2).
"Post-tax Excess Contributions" means the Excess Contributions which were employee contributions and which were not picked up by the employer under the provisions of Code Section 414(h)(2).
"Private Letter Ruling" means the private letter ruling issued by the Internal Revenue Service to the Board.
"System" means the Oklahoma Public Employees Retirement System.
"Transfer Legislation" means Enrolled Senate Bill 295, as it amends Section 910.5 of Title 74 of the Oklahoma Statutes.
[**Source:** Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99; Amended at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3178, eff 7-27-00]

590:10-13-3. Post-tax excess contributions [REVOKED]
[**Source:** Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99; Revoked at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Revoked at 17 Ok Reg 3178, eff 7-27-00]

590:10-13-4. Transfer of excess contributions
Within ninety (90) days from the receipt of a favorable Private Letter Ruling with respect to the Transfer Legislation, the Board will implement the following procedures for the transfer of Excess Contributions:
(1) The Board shall cause to be sent a notice of transfer to each Eligible Member who has Excess Contributions. The notice of transfer will contain the following:
(A) The amount of the Excess Contributions to be transferred;
(B) The amount of Earnings to be transferred;
(C) The effective date of the transfer, which must be at least ninety (90) days from the date of mailing of the notice of transfer;
(D) A description of the appropriate tax treatment of the transfer, as prescribed by the Private Letter Ruling;
(E) A statement that the amount will be credited to the Eligible Member in the Incentive Plan and will not trigger an employer contribution to that Plan;
(F) For Eligible Members who are not state employees or otherwise a participant in the Incentive Plan, a statement that the Eligible Member is only permitted to participate in the Incentive Plan to the extent of the Excess Contributions and will not be eligible to make additional contributions to the Incentive Plan;
(G) An enrollment form to be completed by those Eligible Members who are not state employees or otherwise a participant in the Incentive Plan;

(H) A statement which indicates the investment vehicle chosen by the Board for the initial investment of the transfer amounts and the date the transfer amount will be available for participant directed investment.
(2) In the event an Eligible Member disputes the amount of transfer as set forth in the Notice, the Eligible Member shall provide a written objection to the Board within 30 days of the date of the Notice of Transfer. The objection shall set forth the basis for the objection, including the specific error and the amount the Eligible Member believes is correct. The Board shall respond to the complaint within 30 days. If the Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.
(3) The Board will direct that the Excess Contributions and Earnings are transferred to the Incentive Plan as stated in the notice of transfer.
[**Source:** Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99; Amended at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3178, eff 7-27-00]

590:10-13-5. Tax treatment of excess contributions
(a) To the extent permitted by the Private Letter Ruling, the Excess Contributions and Earnings that are transferred to the Incentive Plan will not be considered as an annual addition to the Incentive Plan for purposes of Code Section 415(c).
(b) To the extent required by the Private Letter Ruling, the Board will report the Excess Contributions and Earnings that are transferred to the Incentive Plan on 1099-Rs for the year of the transfer. The entire amount will be reported as non-taxable.
(c) To the extent permitted by the Private Letter Ruling, all Post-tax Excess Contributions transferred will be identified in the Incentive Plan and on 1099-Rs as the Eligible Member's tax basis.
[**Source:** Added at 16 Ok Reg 610, eff 12-2-98 (emergency); Added at 16 Ok Reg 2010, eff 6-11-99; Amended at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3178, eff 7-27-00]

590:10-13-6. Calculation of Earnings
(a) Earnings shall be calculated at the actuarial assumed annual earnings of the System of seven and one-half percent (7 ½%), which shall be compounded at least annually until the date of transfer.
(b) Earnings shall be computed on the principal Excess Contribution for the first compounding period and then added to the principal Excess Contribution. For the second compounding period, the Earnings are computed on the principal Excess Contribution plus the Earnings from the first compounding period, and so on, until the date of transfer.
(c) Earnings shall be calculated on the principal Excess Contribution beginning with the month the contribution was deposited with the System under the normal payroll system. Any withdrawal and repayment of Excess Contributions prior to July 1, 1998, shall have Earnings calculated only from the time of repayment of the withdrawal. Earnings shall not accrue or be calculated from the initial Excess Contribution date nor will Earnings accrue for any period of time prior to the repayment of the Excess Contributions.
(d) If any amount of Excess Contributions was paid pursuant to the installment payment program provided in 590:10-3-9, Earnings shall not accrue nor be calculated on any Excess Contributions until the purchase was completed and the installment payments were transferred to

the Eligible Member's ledgers. By way of example, if the Eligible Member elected to amortize the payment of Excess Contributions over a sixty-month period, the Earnings do not accrue until the month following completion of the sixty-month period.
[**Source:** Added at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

590:10-13-7. Residual transfer
(a) The initial transfer of Excess Contributions and Earnings shall include all Eligible Members who did not object to the transfer amount. If an Eligible Member objects to the transfer amount and said objection is not resolved by the date of transfer, the Excess Contributions shall not be included in the initial transfer. The Board shall provide for a residual transfer date to occur at least one year following the initial transfer date.
(b) A member of the System who has Excess Contributions in the Plan but was not identified or included in the initial transfer must notify the System within one year of date of the initial transfer to request the transfer of the Excess Contributions and Earnings. The final transfer of all Excess Contributions shall occur at the time of the residual transfer at least one year following the initial transfer date.
[**Source:** Added at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

590:10-13-8. Deceased Eligible Members
If the Excess Contributions of a deceased Eligible Member remain in the Member's account in the System at the time of transfer, the Excess Contributions and Earnings shall be transferred to the Incentive Plan in the same manner as if the Eligible Member were not deceased. Once transferred to the Incentive Plan, distribution shall be governed by the Incentive Plan provisions as provided in 590:35-13-5 and 590:35-13-6. For purposes of a deceased retired Eligible Member, the Excess Contributions shall be considered on deposit if no accumulated employee contributions have been disbursed to a beneficiary.
[**Source:** Added at 17 Ok Reg 194, eff 9-29-99 through 7-14-00 (emergency); Added at 17 Ok Reg 3178, eff 7-27-00]

Subchapter 15 - Limited Retirement Benefit

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

590:10-15-1. Purpose and intent
By adoption of the rules set out in this Subchapter, the Board represents that:
(1) With respect to the payment of the limited retirement benefits, the Board intends to comply in all respects with the tax qualification requirements for governmental plans applicable to such

benefit payments as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto ("Tax qualification requirements").
(2) In administering this Subchapter, the Board will comply with the legislative intent as contained in the Limited Benefit Legislation.
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

590:10-15-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:
"Determination Letter" means the favorable determination letter issued by the Internal Revenue Service to the Board on October 10, 2000, and received by the System on October 30, 2000, applicable to continued qualification of the plan in its present form.
"Excess Contributions" means the contributions and payments actually made by a Limited Eligible Member on compensation in excess of Twenty-five Thousand Dollars ($25,000) per annum prior to June 30, 1994, that remain on deposit with the System as of the date of the receipt of retirement benefits, and includes both pre-tax Excess Contributions and post-tax Excess Contributions.
"Limited Benefit" means an additional benefit amount to be paid in addition to the Limited Eligible Member's Regular Retirement Benefit, for only so long as the Regular Retirement Benefit is payable, in the amount of $200 per month or the amount of Excess Contributions actually paid, whichever is less, until the total amount of Excess Contributions made by that Eligible Member has been paid.
"Limited Benefit Legislation" means Enrolled Senate Bill 386, enacted in 1999, as it amends Section 910.5 of Title 74 of the Oklahoma Statutes.
"Limited Eligible Member" means a member of the System who was vested or eligible to vest on July 1, 1998, but who was not active and participating nor retired, and whose compensation for services exceeded Twenty-five Thousand Dollars ($25,000) per annum prior to July 1, 1994, and who, prior to July 1, 1998, had voluntarily elected to pay retirement contributions on the maximum compensation level pursuant to statutes in effect at that time, provided such retirement contributions remain on deposit with the System.
"Maximum Limited Benefit" means the amount equal to the total Excess Contributions made by that Limited Eligible Member which has been paid to the Limited Eligible Member in monthly payments or any lesser amount of Limited Benefits which have been paid in the event the normal retirement benefit of the Eligible Member ceases due to death or forfeiture.
"Regular Retirement Benefit" means the monthly retirement benefit that the Limited Eligible Member has elected to receive and includes normal, early and disability retirements, excluding retroactive lump-sum disability payments.
"System" means the Oklahoma Public Employees Retirement System.
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

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

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

(1) The Board shall cause to be sent a letter of eligibility to each Limited Eligible Member who has Excess Contributions and who is already receiving a Regular Retirement Benefit from the System as of December 31, 2000. The letter of eligibility will contain the following:
(A) The amount of the Excess Contributions determined by the System;
(B) The amount and duration of the Limited Benefit payments;
(C) The effective date of the first Limited Benefit payment, which must be at least ninety (90) days from the date of mailing of the letter of eligibility;
(D) A description of the appropriate tax treatment of the Limited Benefit.
(2) In the event a Limited Eligible Member disputes the amount of Excess Contributions determined by the System as set forth in the letter of eligibility, the Limited Eligible Member shall provide a written objection to the Board within 30 days of the date of the letter of eligibility. The objection shall set forth the basis for the objection, including the specific error and the amount the Limited Eligible Member believes is correct. The Board shall respond to the objection within 30 days. If the Limited Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.
(3) The Board will direct that the Limited Benefit be paid to the Eligible Member as stated in the letter of eligibility.
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

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

Within ninety (90) days after the effective date of this rule, the Board will implement the following procedures for the payment of the Limited Benefit:
(1) The Board shall cause to be sent a letter of eligibility to each Limited Eligible Member who had not previously been provided a letter of eligibility. The letter of eligibility will contain the following:
(A) The amount of the Excess Contributions determined by the System;
(B) The amount and duration of the Limited Benefit payments;
(C) A description of the expected effective date of the first Limited Benefit payment to coincide with the payment of the third Regular Retirement Benefit;
(D) A description of the appropriate tax treatment of the Limited Benefit.
(2) In the event a Limited Eligible Member disputes the amount of Excess Contributions determined by the System as set forth in the letter of eligibility, the Limited Eligible Member shall provide a written objection to the Board within 30 days of the date of the letter of eligibility. The objection shall set forth the basis for the objection, including the specific error and the amount the Limited Eligible Member believes is correct. The Board shall respond to the objection within 30 days. If the Limited Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.
(3) The Board will direct that the Limited Benefit be paid to the Limited Eligible Member as stated in the letter of eligibility provided that the Limited Eligible Member begins to receive a Regular Retirement Benefit.
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

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

The Board will report the Limited Benefit payments on 1099-Rs for each year in which payments are made. The entire amount of Limited Benefit payments shall be reported as taxable. The Limited Eligible Member's tax basis shall not be affected by these payments.
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

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

A Limited Eligible Member who has Excess Contributions in the Plan but was not identified by the System or was not sent a letter of eligibility for the initial or subsequent Limited Benefit payments is responsible to notify the System of his or her eligibility and to request the payment of the Limited Benefit. For any omitted Limited Eligible Member who requests Limited Benefit payments, the Board shall determine eligibility and implement the notice procedures as provided in Sections 3 and 4 of this Subchapter and Chapter of these Rules for such omitted Limited Eligible Members. The Limited Benefit shall be paid only on a prospective basis.
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

590:10-15-7. Limited benefit amount

The Limited Benefit shall be paid in an amount not to exceed $200 per month. The Limited Benefit shall not be subject to cost-of-living adjustments or other similar benefit increases. It shall be payable monthly so long as Limited Eligible Member is receiving a Regular Retirement Benefit until the Limited Eligible Member has received the Maximum Limited Benefit amount. As a result, the final Limited Benefit may be in an amount less than $200.
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

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

In the event of the death of a Limited Eligible Member prior to payment of the Maximum Limited Benefit amount, the remaining Limited Benefit shall be payable only if monthly retirement benefits continue to be paid to a joint annuitant under Options A or B or a beneficiary under Option C. The Limited Benefit payment shall be paid to such joint annuitant or beneficiary in the same manner as if the Limited Eligible Member were not deceased, only so long as he or she continues to receive monthly retirement benefits. The Limited Benefit payments shall not count against the contribution amounts payable to a beneficiary pursuant to Title 74 O.S. Section 917 (4).
[**Source:** Added at 18 Ok Reg 548, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3258, eff 7-26-01]

Subchapter 17 - Step-Up Election and Benefits

Section 590:10-17-1 Step-Up
Section 590:10-17-2 Eligibility for Step-Up
Section 590:10-17-3 Irrevocable election of Step-Up
Section 590:10-17-4 Step-Up effective date
Section 590:10-17-5 Step-Up contributions
Section 590:10-17-6 Termination, withdrawal and repayment of Step-Up

Section 590:10-17-7 Step-Up participating service calculations
Section 590:10-17-8 Step-Up and post-retirement employment
Section 590:10-17-9 Step-Up decision
Section 590:10-17-10 Step-up benefits not eligible for Excess Benefit Plan

590:10-17-1. Step-Up

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

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

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

All state, county and local government employees who are active participants, including retired members who have returned to work, are eligible to make the Step-Up election, with the exception of hazardous duty employees as provided in 590:10-1-15 of these rules (such as correctional officers, probation and parole officers, fugitive apprehension agents and Military Department firefighters) and elected officials elected or appointed before November 1, 2011. Elected officials who are first elected or appointed on or after November 1, 2011, shall be eligible to make the Step-Up election.

[**Source:** Added at 21 Ok Reg 1759, eff 6-11-04; Amended at 30 Ok Reg 550, eff 5-11-13]

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

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

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

[**Source:** Added at 21 Ok Reg 1759, eff 6-11-04; Amended at 34 Ok Reg 1897, eff 9-11-17]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

590:10-17-10. Step-up benefits not eligible for Excess Benefit Plan

Participating members in the Step-Up shall not be permitted to participate in the Excess Benefit Plan as set forth in 590:10-21-1 et seq. adopted pursuant to 74 O.S. §915.1 and which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, to the extent any excess benefit, as defined in 590:10-21-2, is attributable to the Step-Up election.

[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

Subchapter 19 - Medicare Gap Benefit Option

Section 590:10-19-1 Purpose and intent
Section 590:10-19-2 Definitions
Section 590:10-19-3 Medicare Gap Benefit option
Section 590:10-19-4 Irrevocable election of Medicare Gap Benefit option
Section 590:10-19-5 Medicare Gap Benefit
Section 590:10-19-6 Eligible Members
Section 590:10-19-7 Eligibility exclusions
Section 590:10-19-8 Calculation of the Medicare Gap Benefit
Section 590:10-19-9 Medicare Gap Benefit Inapplicable for joint annuitants
Section 590:10-19-10 Pop-up of the Medicare Gap Benefit
Section 590:10-19-11 Minimum benefit amount
Section 590:10-19-12 Calculation of Cost-of-Living Adjustments
Section 590:10-19-13 Medicare Gap benefits and post-retirement employment
Section 590:10-19-14 Payments to an alternate payee under a QDRO

590:10-19-1. Purpose and intent

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

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

590:10-19-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:
"Board" means the Board of Trustees for the Oklahoma Public Employees Retirement System.
"Eligible Member" means a member of the System who retires on or after the Option Effective Date and who is not Medicare-eligible at the time of retirement, except as otherwise provided in this Subchapter.
"Medicare Gap Benefit" means an adjusted retirement benefit which is greater than the member's Regular Retirement Benefit for months of payments prior to and including the month the member becomes Medicare-eligible and an actuarially reduced benefit which is less than the member's Regular Retirement Benefit for months of payments after becoming Medicare-eligible and for the remaining lifetime of the member.
"Medicare Gap Benefit Election" means an irrevocable election made by an Eligible Member prior to his or her effective date of retirement to receive the alternative benefit option payable pursuant to this Subchapter.
"Medicare-eligible" means age 65 or older, or such other age at which a member becomes eligible for Medicare benefits under federal law in effect at the time a member applies for an OPERS retirement benefit. For purposes of this Subchapter, age is calculated as of the first day of the month of birth. For example, a member born September 15, 1940, is considered to be 65 and Medicare-eligible on or after September 1, 2005.
"Minimum Medicare Gap Benefit" means a gross monthly benefit payment of $200.00 per month after all applicable actuarial reductions for either the Pre-Medicare benefit or the Post Medicare benefit.
"Option Effective Date" means May 1, 2006, which is the date when the System made the Medicare Gap Benefit option available to Eligible Members.
"Post Medicare Benefit" means the actuarially reduced monthly benefit payment for all months of retirement after the member becomes Medicare-eligible.
"Pre-Medicare Benefit" means the increased monthly benefit payment for all months of retirement prior to and including the month the member becomes Medicare-eligible.
"Pre-Medicare Increase" means the amount added to the Regular Retirement Benefit to equal the Pre-Medicare Benefit.
"Regular Retirement Benefit" means the monthly retirement benefit that the Eligible Member would receive absent the Medicare Gap Benefit Election, which includes the actuarial adjustments as a result of the member's election of early retirement and/or survivor benefit options. It does not include amounts refunded of additional contributions paid to a member in the form of a limited retirement benefit under 74 O.S. § 910.5.
"System" or "OPERS" means the Oklahoma Public Employees Retirement System.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07; Amended at 25 Ok Reg 46, eff 8-16-07 (emergency); Amended at 25 Ok Reg 1001, eff 5-11-08]

590:10-19-3. Medicare Gap Benefit option
(a) An alternate retirement benefit option is available to members of the Oklahoma Public Employees Retirement System provided an election form is properly completed and filed with the System after the Option Effective Date and prior to the member's effective retirement date. This alternate benefit option shall be called the Medicare Gap Benefit option. The Medicare Gap Benefit option is intended to permit certain members of the System to elect to receive an increased retirement benefit amount to help cover the cost of the health insurance premiums prior

to the time that the member becomes Medicare-eligible, however, the Medicare Gap Benefit may not equal or cover the entire cost of the member's actual health insurance premiums.
(b) As a result of the passage of Section 2 of Enrolled Senate Bill 1112 from the 1st Session of the 51st Oklahoma Legislature (2007), members electing the Medicare Gap Benefit Option with a retirement effective date on or after July 1, 2007, shall have the Medicare Gap Benefit determined in accordance with these rules.
(c) Despite any provision to the contrary, all members who made the Medicare Gap Benefit Election with a retirement effective date from May 1, 2006, the Option Effective Date, through June 30, 2007, Medicare Gap Benefit means an adjusted retirement benefit which is greater than the member's Regular Retirement Benefit beginning with the first retirement benefit payment through December of the year the member becomes Medicare-eligible. Beginning in January of the year following such year that the member becomes Medicare-eligible, the retirement benefit will be actuarially reduced making the member's benefit less than the Regular Retirement Benefit for the remaining lifetime of the member.
(d) Any member who has previously filed an application for vested benefits or any other non-active vested member who is considered to have met the sixty (60) day notice requirement for filing his or her retirement application may be permitted to file the election form provided by this section after the member's effective retirement date. However, this filing shall only be permitted if the System determines the member was unable to timely make such election prior to the effective retirement date. In no event shall the filing of this election form be permitted less than fifteen (15) days prior to the first benefit payment to the member. Any election form received and approved by the System within this fifteen-day period shall result in the retirement date of the member being moved to the next month.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 25 Ok Reg 46, eff 8-16-07 (emergency); Amended at 25 Ok Reg 1001, eff 5-11-08; Amended at 26 Ok Reg 952, eff 4-25-09]

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

The Medicare Gap Benefit option election is an irrevocable election. This election shall not be changed under any circumstances on or after the effective date of the member's retirement.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

590:10-19-5. Medicare Gap Benefit

(a) The formula for the Pre-Medicare Increase is not an individualized actuarial calculation. The formula shall be based upon the difference between the average of the non-Medicare Supplement premiums and average of the Medicare Supplement premiums for all health insurance plans offered by the Oklahoma State and Education Employees Group Insurance Board to inactive or retired OPERS members. The formula shall use the average premium amounts for the member only and shall include as an offset the amount of the health insurance subsidy payment made by the System. The Pre-Medicare Increase to a retiree's benefit prior to becoming eligible for Medicare, will not always equal the additional cost of the retiree's health insurance.
(b) The Pre-Medicare Increase shall be reviewed and adopted by the Board prior to January 1 of each year to ensure that the formula is based upon new health insurance data.
(c) The Post Medicare Benefit is calculated using actuarially determined factors to reduce the benefit of the retiree thereby ensuring an actuarially neutral cost to the System.

(d) The Board shall adopt the appropriate actuarial tables to ensure the neutral actuarial cost to the System.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

590:10-19-6. Eligible Members

Only Eligible Members may elect the Medicare Gap Benefit option. Any member who has retired prior to the Option Effective Date of the Medicare Gap Benefit option is not eligible to make this election or change the type of retirement benefit previously selected. The Medicare Gap Benefit shall be paid only on a prospective basis.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

590:10-19-7. Eligibility exclusions

Eligible Member specifically excludes any member who receives retirement benefit payments for any months prior to the Option Effective Date, any member who is retiring under Disability Retirement, and any member electing an Option C. Surviving spouses are not eligible to elect the Medicare Gap Benefit option.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

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

(a) The mortality tables used in the calculation of the Medicare Gap Benefit shall be the same tables adopted by the Board for other OPERS calculations.
(b) The Pre-Medicare and Post Medicare Benefit payment amounts shall be calculated at the time of retirement and shall not be re-calculated after the member's effective retirement date except to correct errors or as specifically provided in these rules.
(c) The formula for the Pre-Medicare Increase is applied after the calculation of the Eligible Member's Regular Retirement Benefit which includes any required actuarial reductions made for early retirement or selection of Option A or B and shall be applied based upon the age of the member at time of retirement.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 24 Ok Reg 1135, eff 5-11-07]

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

(a) The Medicare Gap Benefit does not apply to the benefit amount of a joint annuitant or surviving spouse of a member when the member dies prior to his or her effective retirement date.
(b) Following the death of the member after retirement and election of the Medicare Gap Benefit option, the survivor benefit payments to a named joint annuitant under an Option A or to the surviving spouse of a deceased elected official shall be one-half or 50% of the Regular Retirement Benefit plus any necessary adjustments for COLA's.
(c) Following the death of the member after retirement and election of the Medicare Gap Benefit option, the survivor benefit payments to a named joint annuitant under an Option B shall be 100% of the Regular Retirement Benefit plus any necessary adjustments for COLA's.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05]

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

In the event of the death of the named joint annuitant after the member's retirement date and election of the Medicare Gap Benefit option, the member shall provide the System with a copy of the joint annuitant's death certificate as notice of said death. The member's benefit will "pop-

up" to reflect the amount of the original unreduced benefit the member would have been entitled to for both the Pre-Medicare and Post Medicare Benefit payments absent the selection of an Option A or B. The "pop-up" increase becomes effective the first day of the month following the death of the joint annuitant, provided the member has given notice of said death. Retrospective "pop-up" benefits are limited to a maximum of six (6) months.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05]

590:10-19-11. Minimum benefit amount

An Eligible Member may not elect the Medicare Gap Benefit option if the calculation of either the Pre-Medicare or Post Medicare Benefit amounts would result in a gross benefit payment amount of less than $200.00 per month calculated at the time of retirement.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05]

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

Unless otherwise specified by law, any cost-of-living adjustments to a member's Medicare Gap Benefit shall be calculated based upon the benefit the member is actually receiving at the time of the adjustment. Upon becoming Medicare-eligible, the Post Medicare benefit amounts shall be adjusted to receive the appropriate percentage equivalent of the cost-of-living adjustments granted during the Pre-Medicare Benefit payment period.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

(b) A retired member who returns to work with an OPERS participating employer and who has elected a Medicare Gap Benefit option is not eligible to waive receipt of their monthly retirement benefit pursuant to 74 O.S. Section 914 (E) or to have retirement benefits recalculated upon termination of employment after completion of thirty-six (36) consecutive months of full-time-equivalent employment.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05]

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

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

(b) All qualified domestic relations orders filed with the System after the effective date of these rules shall include a provision requiring that the award will only be made for members electing a Medicare Gap Benefit if the member's Pre-Medicare and/or Post Medicare Benefit amounts are sufficient to make the required payment to the alternate payee under the QDRO and result in a payment amount to the member of at least One Hundred Dollars ($100.00) per month.
[**Source:** Added at 22 Ok Reg 1354, eff 5-26-05; Amended at 23 Ok Reg 1482, eff 5-25-06]

Subchapter 21 - Excess Benefit Plan and Trust

Section 590:10-21-1 Establishment and purpose
Section 590:10-21-2 Definitions
Section 590:10-21-3 Construction
Section 590:10-21-4 Participation
Section 590:10-21-5 Payment of benefits
Section 590:10-21-6 Contributions and funding
Section 590:10-21-7 Trust fund
Section 590:10-21-8 Administration
Section 590:10-21-9 Plan amendments
Section 590:10-21-10 Nonassignability and exemption from taxation and execution
Section 590:10-21-11 Federal and state taxes
Section 590:10-21-12 Investment
Section 590:10-21-13 Conflicts and limitation of rights

590:10-21-1. Establishment and purpose

(a) **Establishment.** The "Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust" is hereby established effective as of November 1, 2010, pursuant to Code Section 415, 74 O.S. §915.1, and the Excess Benefit Plan and Trust document which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, and as adopted by the Board of Trustees.

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

[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-2. Definitions

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

"Administrator" means the System.

"Beneficiary" means any person named by a member to receive any benefits as provided by 74 O.S. §§901 et seq. If there is no beneficiary living at the time of member employee's death, the member's estate shall be the beneficiary.

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

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

"Excess Benefit" means the benefit determined in accordance with 590:10-21-5(a) and Section 4.01 of the Excess Benefit Plan document.

"Excess Benefit Fund" means the trust fund established by the Board pursuant to Article VI of the Excess Benefit Plan document, pursuant to the provisions of 74 O.S. §915.1, and as set forth in 590:10-21-7.
"Excess Benefit Plan" means the "Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust" established pursuant to Code Section 415 and 74 O.S. §915.1.
"OPERS Plan" refers to the retirement plan administered by the Oklahoma Public Employees Retirement System. The OPERS Plan document consists of the applicable Oklahoma statutes and rules and regulations.
"Participant" means a Retiree or Beneficiary who is entitled to benefits under the Excess Benefit Plan.
"Participating Employer" means an eligible employer who has agreed to make contributions to the System on behalf of its employees, provided such employer is the State, a political subdivision of the State, or an agency or instrumentality of the State. No employer which is not permitted to participate in a qualified governmental pension plan as defined in Code Section 414(d) shall be permitted to participate in the Excess Benefit Plan.
"Plan Year" means the calendar year for the purpose of this Excess Benefit Plan.
"Retiree" means a member who has retired under the System.
"Retirement Benefit" means a monthly income with benefits accruing from the first day of the month coinciding with installments by the Plan, whether payable for a temporary period or following retirement and ending on the last day of the month in which death occurs throughout the future life of a Retired Member or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to 74 O.S. §§901 et seq. or as otherwise allowed to be paid at the discretion of the Board, without regard to any limitations on such retirement income or benefit under Code Section 415(b).
"Retirement Fund" means the reserves of the System.
"State" means the State of Oklahoma.
"System" means the Oklahoma Public Employees Retirement System.
"Trustees" means the members of the Board.
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-3. Construction

Whenever any actuarial present value or actuarial equivalency is to be determined under the Excess Benefit Plan to establish a benefit, it shall be based on such reasonable actuarial assumptions as may be approved in the sole discretion of the Board, and shall be determined in a uniform manner for all similarly situated Participants.
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-4. Participation

All Retirees and Beneficiaries of the System are required to participate in the Excess Benefit Plan if their Retirement Benefit from the System for a Plan Year is limited during the applicable Calendar Year by Code Section 415(b). The Board shall determine for each Plan Year which Retirees and Beneficiaries are required to participate in the Excess Benefit Plan. Participation in the Excess Benefit Plan shall commence each Plan Year once a Retiree or Beneficiary has an Excess Benefit in that Plan Year as determined by the Calendar Year Code Section 415 limits.

Participation in the Excess Benefit Plan shall cease for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or if all benefit obligations under the Excess Benefit Plan to the Retiree or Beneficiary have been satisfied.
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-5. Payment of benefits
(a) **Benefit amount.** A Participant in the Excess Benefit Plan shall receive a benefit in an amount equal to the amount of Retirement Benefit that would have been payable to, or with respect to, a Participant by the System that could not be paid because of the application of the limitations on such Retirement Benefit under Code Section 415(b). Provided, however, that the Excess Benefit Plan will not pay any Excess Benefit which results from the 2.5% step-up election pursuant to 74 O.S. §919.1(1)(e). An Excess Benefit under the Excess Benefit Plan shall be paid only if and to the extent the Participant is receiving a Retirement Benefit from the System.
(b) **No election to defer.** No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Excess Benefit Plan.
(c) **Time for Payment.** Each Plan Year, the Excess Benefit to which a Participant is entitled under the Excess Benefit Plan shall be paid from the Excess Benefit Fund commencing during or with the month in which all monthly payments of the Retirement Benefit (as limited by Code Section 415(b)) under the System have been paid, and such Excess Benefit shall be paid from that month to the end of the Calendar Year falling within the applicable Plan Year.
(d) **Form of Benefit.** The form of the Excess Benefit shall be the same form as the Participant's Retirement Benefit.
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-6. Contributions and funding
(a) **Funding.** The Excess Benefit Plan shall be, and remain, unfunded, and the rights, if any, of any person to any benefits hereunder shall be those specified herein. The Excess Benefit Plan constitutes a mere unsecured promise by the Participating Employers, on whose behalf the Retirement Benefit and Excess Benefits are paid to the Participant, to make benefit payments in the future.
(b) **Contributions.** The Administrator shall determine the amount necessary to pay the Excess Benefit under the Excess Benefit Plan for each Plan Year for each Employer. The required contribution for all participating employers shall be the aggregate of the Excess Benefits payable to all Participants of all participating employers for such Plan Year plus an amount determined by the Board to be a necessary and reasonable expense of administering the Excess Benefit Plan. The amount determined to be necessary to pay the Excess Benefit of a Participant and administrative expenses of the Excess Benefit Plan shall be withheld from contributions to the System before being credited to the Retirement Fund and deposited into the Excess Benefit Fund established under Article VI of the Excess Benefit Plan document and 590:10-21-7. Participating Employer contributions shall be made at a time or times determined by the Board, but shall be made no less frequently than annually. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Excess Benefit Fund, shall be first

used to pay the administrative expenses of the Excess Benefit Plan, then shall be deposited to the Excess Benefit Fund and used to fund Excess Benefits of Participants in future Plan Years.
(c) **Contributions not to be credited to OPERS Plan.** Under no circumstances will Employer contributions to fund the Excess Benefits under the Plan be credited to the OPERS Plan. The amounts determined to be necessary to provide the Excess Benefit under the Excess Benefit Plan for each Participant shall be accounted for separately. However, such separate accounting shall not be deemed to set aside such amounts for the benefit of a Participant. Benefits under the Excess Benefit Plan shall be paid from the Excess Benefit Fund.
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-7. Trust fund
(a) Establishment of Excess Benefit Fund. A trust fund, referred to as the Excess Benefit Fund, is established as a valid trust under the law of the State, which is separate from the Retirement Fund, to hold contributions of the Participating Employers. Contributions to the Excess Benefit Fund shall be held separate and apart from the funds comprising the Retirement Fund and shall not be commingled with assets thereof. The Board shall prescribe a detailed accounting system for the Excess Benefit Fund, which shall allocate the expenses of the Excess Benefit Plan to the Excess Benefit Fund.
(b) **Excess Benefit Fund Purpose.** The Excess Benefit Fund is maintained solely for the purpose of providing Excess Benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m).
(c) **Excess Benefit Fund Assets.** All assets held by such Excess Benefit Fund to assist in meeting the Participating Employers' obligations under the Excess Benefit Plan, including all amounts of Participating Employers' contributions made pursuant to the Excess Benefit Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, shall be, and remain, the general, unpledged, unrestricted assets of the Excess Benefit Fund. The Excess Benefit Fund shall be held separate and apart from other funds of the Employers and shall be used exclusively for the uses and purposes of Participants and general creditors as set forth herein. Participants shall have no preferred claim on, or any beneficial interest in, any assets of the Excess Benefit Fund. Any assets held by the Excess Benefit Fund shall be subject to the claims of the contributing Employer's general creditors under federal and state law in the event of insolvency, to the extent of the affected Employer's undistributed contributions, if any.
(d) **Grantor Trust.** The Excess Benefit Fund is intended to be a grantor trust, of which the contributing Participating Employers are the grantors, within the meaning of Code Sections 671 through 679 and shall be construed accordingly. This provision shall not be construed to create an irrevocable trust of any kind.
(e) **Excess Benefit Fund Income.** Income accruing to the Excess Benefit Fund in respect of the Excess Benefit Plan shall constitute income derived from the exercise of an essential governmental function upon which the Excess Benefit Fund shall be exempt from tax under Code Section 115, as well as Code Section 415(m)(1).
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-8. Administration

(a) **Administrative Authority.** The Board shall have the authority to control and manage the operation and administration of the Excess Benefit Plan. The Board and the Administrator shall have the same rights, duties and responsibilities respecting the Excess Benefit Plan as the Board and the Administrator have with respect to the OPERS Plan pursuant to 74 O.S. §§909, 909.1 and 909.2, unless modified by Code Section 415 and its implementing regulations, or 74 O.S. §915.1.

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

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

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

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

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

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

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

(d) **Payment of benefits and erroneous payments.** The Board, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the Participant to receive the payment. Any benefit payment that according to the terms of the Excess Benefit Plan and the benefits provided hereunder should not have been made may be recovered as provided in 74 O.S. §924.

[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-9. Plan amendments

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

[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-10. Nonassignability and exemption from taxation and execution

The interests of Participants under this Excess Benefit Plan are hereby exempt from any state, county, municipal or local tax, and shall not be subject to execution, garnishment, attachment, or any other process of law whatsoever, and shall be unassignable, to the extent and except as otherwise provided by 74 O.S. §§923 and 924.
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-11. Federal and state taxes

The Board, the Participating Employers, and the Administrator do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Excess Benefit Plan.
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-12. Investment

The Board may hold such portion of the Excess Benefit Plan uninvested as the Board deems advisable for making distributions under the Excess Benefit Plan, or may invest assets of the Excess Benefit Plan pending the Excess Benefit payments. The Board shall not purchase an annuity contract with the assets of the Excess Benefit Fund.
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]

590:10-21-13. Conflicts and limitation of rights

(a) **Conflicts.** In resolving any conflict between provisions of the Excess Benefit Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Excess Benefit Plan, the interpretation that (i) causes the Excess Benefit Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Excess Benefit Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Excess Benefit Plan to comply with all applicable requirements of the Code, and (iii) causes the Excess Benefit Plan to comply with the System Plan and all applicable Oklahoma statutes and rules, shall prevail over any different interpretation.
(b) **Limitation of rights.** Neither the establishment nor maintenance of the Excess Benefit Plan, nor any amendment thereof nor any act or omission under the Excess Benefit Plan (or resulting from the operation of the Excess Benefit Plan) shall be construed as:
(1) conferring upon any Participant or any other person a right or claim against the Board, Trustees, Participating Employers, or Administrator, if any, except to the extent that such right or claim shall be specifically expressed and provided in the Excess Benefit Plan;
(2) creating any responsibility or liability of the Participating Employers for the validity or effect of the Excess Benefit Plan;
(3) a contract between the Participating Employers and any Participant or other person; or
(4) being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Participating Employers or any Participant or other person to continue or terminate the employment relationship at any time.
[**Source:** Added at 28 Ok Reg 95, eff 9-17-10 (emergency); Added at 28 Ok Reg 664, eff 5-12-11]