

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM

CHAPTER 25. DEFERRED COMPENSATION SUBCHAPTER 1. GENERAL PROVISIONS

590:25-1-3. Definitions

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

"Account" means any of the accounts established for a Participant under the Plan, as described in Section 8 of Subchapter 5 of Chapter 25. The following Accounts may be established for a Participant within the 457(b) Plan:

(A) A Pre-Tax Elective Deferral Subaccount to reflect the Participant's interest in the 457(b) Plan attributable to their Pre-Tax Elective Deferrals;

(B) A Roth Elective Deferral Subaccount to reflect the Participant's interest in the 457(b) Plan attributable to their Roth Elective Deferrals;

(C) A Rollover Contribution Account to reflect the Participant's interest in the 457(b) Plan attributable to their rollover contributions, made pursuant to Section 590:25-9-16. To the extent that Roth Rollover Contributions are made to the Plan, a separate subaccount under the Rollover Account shall be established to hold the Roth Rollover Contributions; and

(D) A Transfer Contribution Account to reflect the Participant's interest in the 457(b) Plan attributable to amounts transferred to the Plan pursuant to 590:25-9-13. To the extent that such transferred amounts constitute amounts from a designated Roth Account, a separate subaccount under the Transfer Contribution Account shall be established to hold such amounts from a designated Roth Account.

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

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

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

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

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

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

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

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

"Disability" means an actual and continuous physical or mental incapacity which causes the

Participant to be retired with a disability retirement under the Participant's retirement plan. **"Emergency withdrawals"** means withdrawals of amounts because of an unforeseeable emergency and are only permitted to the extent reasonably needed to satisfy the emergency need. **"Employee"** means any officer or employee of the executive, legislative, or judicial branches of the Employer who is an active member of a public retirement system of this state, but does not include:

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

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

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

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

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

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

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

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

"Pre-Tax Elective Deferrals" means pre-tax voluntary deferrals made to the Plan pursuant to a Participant's election.

"Qualified Distribution" means a distribution from a Roth Elective Deferral Subaccount after the Participant has satisfied a five-year holding period and has attained age 59½, died, or become disabled within the meaning of Code Section 72(m)(7), in accordance with Code Section 402A(d). Within the meaning of this definition, the five-year holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Elective Deferral under the Plan or to another retirement plan which amount was directly rolled over to the Plan and ends when five consecutive taxable years have been completed.

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

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

"Roth Elective Deferrals" means after-tax voluntary deferrals designated by the

Participant as Roth Elective Deferrals that are being made in lieu of all or a portion of the Pre-Tax Elective Deferrals the Participant is otherwise eligible to make under the Plan.

"Roth Rollover Contribution" means an eligible rollover distribution from another applicable retirement plan in accordance with Code Section 402A(e)(1) only if it is a direct rollover, and only to the extent the rollover is permitted under the rules of Code Sections 402(c) and 402A(c).

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

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

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

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

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

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

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

- (i) Through reimbursement or compensation by insurance or otherwise.
- (ii) By liquidation of the Participant's assets, to the extent the liquidation of these assets would not itself cause severe financial hardship, or
- (iii) By cessation of deferrals under the Plan.

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

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

SUBCHAPTER 3. ELECTION TO DEFER COMPENSATION

590:25-3-1. Election limits

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

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

590:25-3-3. Discontinuation and deferral change

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

SUBCHAPTER 5. ASSETS, CREDITS, ACCOUNTS AND REPORTS

590:25-5-8. Establishment of Accounts

The Plan Administrator shall cause Accounts to be established for each Participant, to reflect such Participant's Deferred Compensation. Each Account shall be subdivided further and separate records shall be maintained showing the manner in which each such Account is invested. Roth Elective Deferrals will be credited and debited to the Roth Elective Deferral Subaccount maintained for each Participant. Separate records also shall be maintained with respect to each such Account showing the amount of Deferred Compensation thereto, distributions therefrom, and the amount of income, expenses, gains and losses attributable thereto. No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to the Roth Elective Deferral Subaccount. All such subaccounts are referred to herein as a Participant's "Account." In general, the interest of each Participant hereunder at any time shall consist of the amount in his Account, as determined under Section 10 of this Subchapter, plus credits (representing the Participant's Deferred Compensation, profits, income, and other increments attributable to such Deferred Compensation) and minus debits (representing the Participant's proportionate share of losses and other decrements or expenses under the Plan and any and all

distributions under the Plan made to or in respect of that Participant). These records shall be maintained by the Plan on a calendar quarter-end basis only and available for a period of three (3) years.

SUBCHAPTER 9. BENEFITS

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

The payment, method of payment and any distribution options shall be available in accordance with the benefit payment elections as set forth on the appropriate distribution request form. If the Participant elects to receive a deferred payout, the date selected for payouts to begin may be changed upon written notice to the Plan Administrator prior to the previously selected payout date subject to any applicable minimum distribution requirements. The method of payment may be changed upon written notice to the Plan Administrator. A Participant electing to commence distribution shall have the opportunity to designate the extent to which the distribution should be taken in whole or in part from Pre-Tax Elective Deferrals or the Participant's other subaccounts, as applicable. In the absence of such designation, the distribution shall be taken pro rata from the subaccounts within the Participant's Account.

590:25-9-15. Taxation

Benefits paid from the Deferred Compensation Plan are subject to the applicable Federal and State withholding rules and apply to all payments except those authorized for transfer to another §457 plan or rollover to an eligible retirement plan. A distribution from a Participant's Roth Elective Deferral Subaccount or Roth In-Plan Rollover Subaccount that is not a Qualified Distribution may be subject to additional taxation and/or penalties. Pursuant to Section 2 of Subchapter 15 of Chapter 25, the Board may withhold amounts necessary to cover federal and state taxes from such payments. Effective January 1, 2002, all payments will be reported on Form 1099-R.

590:25-9-16. Rollovers contributions to the ~~from other plans~~

(a) Eligible Rollover Contributions. ~~Effective January 1, 2002, the plan will accept A Participant who is entitled to receive an eligible rollover contributions and/or direct rollovers of distributions made after December 31, 2001, distribution from an another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan as eligible rollover contributions unless the distributing eligible retirement plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, unless the prior 457 account includes funds previously transferred or rolled-over which require tax accounting or distribution rules that are different from those contained in this Plan.~~

(b) Notwithstanding any other provisions in the Plan to the contrary, effective June 1, 2023, the Plan shall accept Roth Rollover Contributions from a Roth account under an applicable retirement plan in accordance with Code Section 402A(e)(1) only if it is a direct rollover and only to the extent the rollover is permitted under the rules of Code Section

402(c).

(c) Separate Accounts. The Plan shall establish and maintain for the Participant separate accounts for any:

- (1) Eligible rollover contributions or Roth Rollover Contributions paid to the Plan;
- (2) Eligible Roth rollover contributions paid to the Plan from any eligible retirement plan including an eligible governmental plan under Code Section 457(b); and
- (3) Eligible rollover contributions paid to the Plan from an eligible governmental plan under Code Section 457(b).