

## CHAPTER 40. DEFINED CONTRIBUTION SYSTEM

### SUBCHAPTER 1. GENERAL PROVISIONS. APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN

#### 590:40-1-3. Definitions

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

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

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

**"Account"** or **"Accounts"** means any of the accounts established for a Participant under the Plans, as described in 74 O.S. Supp. 2014, §935.6, 590:40-7-1 and 590:40-9-10. 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 590:40-9-38. 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 590:40-9-35. 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.

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

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

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

**"Compensation"** means:

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

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

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

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

(i) **"Salary"** means a predetermined or fixed amount of cash remuneration that is made payable by the participating employer to the employee in exchange for services

rendered personally by the Employee for the Employer but excluding any type of overtime payments paid to an Employee for service rendered in excess of full-time;

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

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

- (i) any longevity payments made to Employees based upon a standardized plan which recognizes length of service to the Employer,
- (ii) pay differential which is paid to Employees in return for special or hazardous shifts or in return for additional training or duties,
- (iii) amounts deducted from the Employee's paycheck for retirement and deferred compensation contributions,
- (iv) pre-tax cafeteria purchases which are not funded by the Employer or the employee's benefit allowance,
- (v) performance, skill, or mission critical based pay adjustments.

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

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

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

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

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

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

**"Disability"** or **"Disabled"** means a Participant who is unable to engage in any substantial gainful

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

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

**"Employee"** means:

(A) Any person who first becomes employed by any participating employer in OPERS, as defined by paragraph (25) of Section 902 of Title 74 of the Oklahoma Statutes, on or after November 1, 2015. Employee shall also include any statewide elected official or legislator whose first service as an elected official occurs on or after November 1, 2015. Employee shall not include:

- (i) Employees who are initially employed in the positions described in divisions (i), (ii), and (iii) of subparagraph (d) of paragraph (24) of Section 902 of Title 74 of the Oklahoma Statutes;
- (ii) County elected officials, or any employee of a county, county hospital, city or town, conservation district, circuit engineering district, and any public or private trust in which a county, city or town participates and is the primary beneficiary; and
- (iii) District attorneys, assistant district attorneys, or other employees of the district attorney's office.

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

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

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

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

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

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

**"OPERS"** means the Oklahoma Public Employees Retirement System.

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

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

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

**"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 59 ½, 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 of Trustees to perform recordkeeping, administrative, and investment services to the DC System.

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

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

**"Trust Fund(s)"** means the funds established under the Trusts created in Subchapters 7 and 9 of this Chapter, with the Board of Trustees as trustee, and held by the Board in accordance with these Plans and Trusts, to which deposits and contributions under these Plans and Trusts will be made and out of which benefits under these Plans and Trusts will be provided.

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

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

## **SUBCHAPTER 5. ELIGIBILITY AND PARTICIPATION. APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN**

### **PART 3. CONTRIBUTIONS. APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN**

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

(a) **Additional contributions; deposit of funds.** Participants may contribute additional ~~voluntary deferrals~~ Pre-Tax Elective Deferrals and Roth Elective Deferrals, above the 4.5% required contribution rate. All deferrals above the mandatory 4.5% contribution rate shall be considered voluntary deferrals. Participants may contribute 7% of compensation and it shall be matched by the Employer. Participants may contribute more than 7% of compensation, but any such amount over 7% shall not be eligible for Employer matching amounts. All voluntary deferrals shall be subject to the maximum deferral limits allowed under the Code and as set forth in Subchapter 9 of this Chapter. Voluntary deferrals shall be paid and remitted in the same manner as the mandatory contributions. All voluntary deferrals are intended to meet the requirements of Code Sections 457(b). All voluntary deferrals over the 4.5% mandatory contribution shall be placed by OPERS in the 457(b) plan as set forth by the Board of Trustees and in accordance with Subchapter 9 of this Chapter.

(b) **Change in deferral rate.**

(1) A Participant may change the voluntary ~~contribution~~ deferral rate once per month by giving notice to OPERS of such change. Any request for a change in the amount of the voluntary ~~contribution~~ deferral rate and any change in the corresponding Employer matching amount shall become effective the month after the notice is received and the change is approved by OPERS.

(2) A Participant may change the deferral amount designated as Pre-Tax Elective Deferrals or Roth Elective Deferrals once per month by giving notice to OPERS of such change. Any request for a change in the amount designated as Pre-Tax Elective Deferrals or Roth Elective Deferrals shall become effective the month after the notice is received and the change is approved by OPERS.

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

(d) **Default treatment of deferrals.** Unless otherwise designated by the Participant, any voluntary deferrals under the Plan shall be treated as Pre-Tax Elective Deferrals.

(e) **Roth Elective Deferrals.** Roth Elective Deferrals will be credited and debited to the Roth Elective Deferral Subaccount maintained for each Participant. OPERS will maintain a separate record of the amount of Roth Elective Deferrals in each Roth Elective Deferral Subaccount. No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to the Roth Elective Deferral Subaccount.

## SUBCHAPTER 9. DEFINED CONTRIBUTION 457(B) PLAN PART 7. BENEFITS

### **590:40-9-33. Payment and distribution options**

(a) The payment, method of payment, and any distribution options shall be available under the benefit payment elections 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 OPERS prior to the previously selected payout date subject to any minimum distribution requirements. The method of payment may be changed upon written notice to OPERS.

(b) 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.

### **590:40-9-37. Taxation**

Benefits paid from the Plan are subject to the applicable federal and state withholding tax rules and apply to all payments except those authorized for transfer to another Code Section 457 plan or rollover to an eligible retirement plan. A distribution from a Participant's Roth Elective Deferral Subaccount that is not a Qualified Distribution may be subject to additional taxation and/or penalties. Pursuant to 590:40-9-51, the Board may withhold amounts necessary to cover federal and state taxes from such payments. All payments will be reported on Internal Revenue Service Form 1099-R.

### **590:40-9-38. Rollovers ~~contributions to the from other Plans~~**

(a) Eligible Rollover Contributions. ~~The Plan will accept~~ A Participant or Employee who is entitled to receive an eligible rollover ~~contributions and/or direct rollovers~~ of 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 account ~~plan~~ under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or

~~agency or instrumentality of a state or political subdivision of a state, unless the prior Code Section 457 account~~ includes funds previously transferred or rolled-over which require tax accounting or distribution rules that are different from those contained in this Plan.

(b) Roth Rollover Contribution. 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).