

CHAPTER 35. DEFERRED SAVINGS INCENTIVE PLAN

SUBCHAPTER 1. GENERAL PROVISIONS

590:35-1-3. Definitions

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

"Account" means any of the accounts established for a Participant under the Plan, as described in Section 590:35-5-1.

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

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

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

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

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

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

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

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

"Early Retirement Age" means age 55.

"Effective Date" means January 1, 1998.

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

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

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

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

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

"Normal Retirement Age" means age 62.

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

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

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

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

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

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

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

- (A) Employees of the public elementary, secondary, or area vocational school districts;
- (B) Employees of The Oklahoma State System of Higher Education except employees of the Oklahoma State Regents of Higher Education and employees of the governing boards;
- (C) Persons on temporary, student, internship, or other limited-term appointments ~~except for Executive Fellows in the Carl Albert Public Internship Program created in Section 840-3.4 of Title 74 of Oklahoma Statutes;~~
- (D) Persons employed pursuant to ~~Section 1.6a of Title 53 of the Oklahoma Statutes~~ 53 O.S. §1.6a or ~~Section 1806.1 of Title 74 of the Oklahoma Statutes;~~ or 74 O.S. §2241.

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

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

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

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

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

SUBCHAPTER 13. BENEFITS AND DISTRIBUTIONS

590:35-13-6. Designated beneficiary

The Participant shall have the right to file with the ~~Plan Administrator~~ Recordkeeper a beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the Participant's death. The Beneficiary shall have the right to apply to the ~~Plan Administrator~~ Recordkeeper to amend the payment option as previously elected by the Participant.

- (1) The form for this purpose shall be provided by the ~~Plan Administrator~~ Recordkeeper and will have no effect until it is signed, filed with the ~~Plan Administrator~~ Recordkeeper by the Participant or Beneficiary, and accepted by the ~~Plan Administrator~~ Recordkeeper.
- (2) If the Participant dies without having a Beneficiary form on file or is not survived by the designated Beneficiary, the payments shall be made to the beneficiary designated by the Participant pursuant to Section 590:25-9-9.
- (3) The Participant shall have the burden for executing and filing, with the Recordkeeper, a proper beneficiary designation form.
- (4) ~~The Participant accepts and acknowledges that he has the burden for executing and filing, with the Plan Administrator, a proper beneficiary designation form.~~ If the Participant dies without having a Beneficiary form on file or is not survived by the designated Beneficiary under this Plan or the Deferred Compensation Plan, the payments shall be made to the properly appointed fiduciary of the Participant's probate estate. Provided that if a fiduciary has not been appointed by a Court and qualified within one hundred twenty (120) days after the death, the payment may be made to the first of the following:
 - (a) ~~to a surviving spouse;~~
 - (b) ~~second, to a surviving child or children in equal shares;~~
 - (c) ~~third, to a surviving parent or parents.~~ grandchildren in equal shares;
 - (d) surviving parents in equal shares;
 - (e) surviving siblings in equal shares.

SUBCHAPTER 15. LIMITATIONS ON ANNUAL ADDITIONS

590:35-15-2. Definitions

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

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

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

- (C) All forfeitures;
- (D) Amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer; and
- (E) Amounts derived from contributions which are attributable to post-retirement benefits allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer. Subparagraph (ii) of Section 590:35-15-1 shall not apply to any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is treated as an Annual addition. For purposes of this Subchapter, excess amounts reapplied to reduce Employer contributions under Section ~~590:15-3~~ 590:35-15-3 in the Limitation Year shall also be included as an Annual Addition for such Limitation Year.

"Compensation" means:

(A) For purposes of applying the limitation of Code Section 415, a Qualified Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining this Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulation Section 1.62-2(c)), and excluding the following:

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

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

- (i) Regular compensation for services during the Qualified Participant's regular working hours, or compensation for services outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and the compensation would have been paid to the Participant prior to a severance from employment if the Participant had continued employment with the Employer; or
- (ii) payments for unused accrued bona fide sick, vacation or other leave, but only if the Qualified Participant would have been able to use the leave if employment had continued; or
- (iii) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Qualified Participant at the same time if the Participant had continued employment with the Employer and only to the extent that the payment is includible in the Qualified Participant's gross income.

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

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

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

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

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

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

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