

CHAPTER 40. DEFINED CONTRIBUTION SYSTEM

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

PART 7. BENEFICIARIES - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN

590:40-5-21. Death without beneficiary

(a) **Participant.** If a Participant dies without filing a beneficiary form with ~~OPERS~~ the Recordkeeper or is not survived by a designated Beneficiary under either the 401(a) plan or the 457(b) plan, the distribution of remaining benefits shall be made to the properly appointed administrator, executor, personal representative, or other fiduciary of the estate of the Participant. If there is no estate, or if no administrator, executor, personal representative, or other fiduciary of estate of the Participant has been appointed by a Court and qualified within one hundred twenty (120) days after death, the distribution of benefits may be ~~made to~~ paid to the first of the following:

- (1) surviving spouse;
- (2) surviving children in equal shares;
- (3) surviving ~~parents~~ grandchildren in equal shares; ~~or~~
- (4) surviving ~~siblings~~ parents in equal shares; ~~or~~
- (5) surviving siblings in equal shares.

(b) **Surviving Beneficiary.** If, after the death of the Participant, a Beneficiary dies without having a beneficiary form on file or is not survived by a designated Beneficiary, the distribution of remaining benefits shall be made to the properly appointed administrator, executor, personal representative, or other fiduciary of the estate of the Beneficiary. If there is no estate of the Beneficiary, the distribution of the Beneficiary's benefits shall be in the same manner as the distribution of the Participant's benefits as set forth in (a) of this Section.

SUBCHAPTER 7. DEFINED CONTRIBUTION 401(A) PLAN

PART 9. BENEFITS AND DISTRIBUTIONS

590:40-7-30. Commencement

(a) **Events initiating benefits.** In the event of a Participant's separation from service as a result of Termination of Service, Normal Retirement, Disability, or death, the Participant shall be entitled to receive a distribution of the vested funds in ~~his or her~~ their Account under the Trust Fund. ~~In the event that~~ If a Participant dies before the entire balance of the Account is distributed, 590:40-7-34 shall apply.

(b) **Electing time for commencing of benefits.** The Participant may elect, on forms prescribed by ~~OPERS~~ the Recordkeeper, the time at which distributions under the Plan are to commence by designating the month and year during which the first distribution is to be made; however, in no event shall payment begin later than the required beginning date, which is the later of the April 1 following the calendar year in which the Participant attains the applicable age of 72 or such other date as may be permitted by the federal Internal Revenue Code Section 401(a)(9)(C)(v), except as provided in 590:40-7-32, or the April 1 of the year following the calendar year in which the Participant terminates. The payment of benefits shall begin no earlier than forty-five (45) days after the occurrence of the event that gives rise to the beginning of the payment of benefits. If the Participant fails to apply for benefits after the required beginning date, the Board shall begin distribution of the Participant's entire interest as required by these rules in the form provided in 590:40-7-35.

(c) **Distribution of rollover contributions.** Rollover contributions as described in 590:40-7-10 are not subject to the requirements for separation of service as described in ~~section paragraph~~ (a) of this section and shall be available for distribution within 30 days of acceptance of a properly completed distribution form as prescribed by ~~OPERS~~ the Recordkeeper.

590:40-7-32. Late retirement

If the Participant continues employment after attaining ~~72 years of the applicable age, or such other date~~ as may be permitted by the federal Internal Revenue Code Section 401(a)(9)(C)(v), all benefits payable under the Plan may be deferred until the Participant retires, terminates employment, or dies. If the Participant is not an active Employee, the payment of benefits must begin no later than April 1 of the calendar year following the calendar year in which the Participant attained the applicable age 72 or such other date as may be permitted by the federal Internal Revenue Code Section 401(a)(9)(C)(v).

590:40-7-34. Death prior to January 1, 2022

(a) This Section shall be effective for Participant deaths prior to January 1, 2022.

(b) **Payment to beneficiary.** If the Participant dies prior to receiving Plan benefits, or the Participant dies while benefits are being paid to the Participant under the Plan and before such benefits have been exhausted, the benefits payable under this Plan shall be paid to the designated Beneficiary of the Participant in accordance with the distribution option selected by the Participant or the Beneficiary.

(c) **Distribution method.** Distributions must be made primarily for the benefit of the Participant (or former Participant). Therefore, distribution which begins prior to the death of a Participant must be in a form such that the total benefit amount will be paid over a period not to exceed the life expectancy of the Participant and a designated Beneficiary. Any amount not distributed to the Participant during ~~his or her~~ their lifetime shall be distributed after the death of the Participant at least as rapidly as under the method of distribution used as of the date of ~~his or her~~ their death. In addition, if the Participant dies prior to the commencement of distributions, the Participant's Account shall be distributed to the Beneficiary, commencing within one year of the ~~employee's~~ Participant's death, over the life of such Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary) but not to exceed ~~15~~ fifteen (15) years; provided however if such Beneficiary is the surviving spouse of the Participant, then

- (1) such distributions shall, in all events, commence no later than December 31 of the calendar year in which the Participant would have attained ~~the applicable age 70 ½ (or such other date as may be permitted under applicable Treasury Regulations)~~ by the federal Internal Revenue Code Section 401(a)(9)(C)(v), and
- (2) benefits payable to such spouse shall be completed during a period not in excess of such spouse's life expectancy. Life expectancies will not be recalculated annually.

590:40-7-37. Minimum distribution requirements

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

(b) **Compliance with Code.** The Plan will make all distributions in accordance with a good faith interpretation of the requirements of Code Section 401(a)(9) and the Treasury Regulations thereunder, as applicable to governmental plans within the meaning of Code Section 414(d), including the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G) and Section 1.401(a)(9)-2 of the ~~proposed~~ Treasury Regulations, or any successor rules or regulations.

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

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

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

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

- (1) If a Participant's benefit is to be distributed over
 - (i) a period not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's designated Beneficiary or
 - (ii) a period not extending beyond the life expectancy of the designated Beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first Distribution Calendar Year must at least equal the quotient obtained by dividing the Participant's benefit by the Applicable Life Expectancy.
- (2) The amount to be distributed each year, beginning with distributions for the first Distribution Calendar Year shall not be less than the quotient obtained by dividing the Participant's benefit by lesser of
 - (i) the Applicable Life Expectancy or
 - (ii) if the Participant's Spouse is not the designated Beneficiary, the applicable divisor determined from the table set forth in ~~Q&A-4 of Section 1.401(a)(9)-2~~ 1.401(a)(9)-6 of the Treasury Regulations. Distributions made after the death of the Participant shall be distributed using the Applicable Life Expectancy in (1) above as the relevant divisor without regard to Treasury Regulations Section ~~1.401(a)(9)-2~~ 1.401(a)(9)-6.
- (3) The minimum distribution required for the Participant's first Distribution Calendar Year must be made on or before the Participant's Required Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, must be made on or before December 31 of that Distribution Calendar Year.

(f) **Insurance company annuity.** If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations thereunder. OPERS or the Board shall assume no liability after distribution if Participant's benefit is distributed in the form of an annuity purchased from an insurance company or converted into an annuity by an insurance company.

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

- (1) "**Applicable Life Expectancy**" means the life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or designated Beneficiary) as of the Participant's (or designated Beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. Life expectancies will not be recalculated annually. If annuity payments commence before the Required

Beginning Date, the applicable calendar year is the year payments commence. If distribution is in the form of an immediate annuity purchased after the Participant's death with the Participant's remaining interest, the applicable calendar year is the year of purchase.

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

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

(4) **"Required Beginning Date"** means the later of the first day of April of the calendar year following the calendar year in which the Participant

~~(+) (i) attains the applicable age 72 or such other date as may be permitted by the federal Internal Revenue Code Section 401(a)(9)(C).~~

~~(v) or~~

~~(-) (ii) retires.~~

590:40-7-39. Death after December 31, 2021

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of ~~his or her~~ their entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained the applicable age seventy and one-half (70 1/2) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70 1/2) after December 31, 2019) as permitted by the federal Internal Revenue Code Section 401(a)(9)(C)(v). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under ~~(4)(B) of this section subsection (4), paragraph (B)~~ shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A) of this section.

(2) If the Participant dies before distributions of his or her Account begins and the Participant has no designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of ~~his or her~~ their Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this section 590:35-13-13.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

(A) the surviving spouse of the Participant;

- (B) a child of the Participant who has not reached the age of majority;
- (C) disabled within the meaning of Code Section 72(m)(7);
- (D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or
- (E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B) ~~above of this section~~ shall cease to be an eligible designated Beneficiary as of the date ~~he or she reaches~~ they reach the age of majority.

SUBCHAPTER 9. DEFINED CONTRIBUTION 457(B) PLAN

PART 1. ELECTION TO DEFER

590:40-9-3. Over Age 50 Catch-up Limits

(a) In addition to the maximum limits under 590:40-9-1, the Plan provides for a special catch-up for all ~~employees~~ Participants who have attained age 50 before the close of the plan year. Such additional contributions shall be in accordance with, and subject to the limitations of Section 414(v) of the Code. Effective January 1, 2025, the adjusted dollar amount under Section 414(v)(2)(E) of the Code shall apply to Participants who will attain age 60 but will not attain age 64 by the end of the calendar year. The applicable dollar amount and the adjusted dollar amount under this paragraph (a) shall be increased by cost-of-living to the extent provided under Section 414(v) of the Code for such calendar year. Such catch-up contributions shall not ~~be taken into account~~ considered for purposes of the provisions of the plan implementing the required limitations of Section 457 of the Code. This catch-up may not be used in the same years the employee is using the election under 590:40-9-2.

(b) Effective January 1, 2026, or such later effective date determined by the Secretary of the Treasury through guidance, with respect to a Participant whose wages within the meaning of Section 3121(a) of the Code from the Employer for the preceding calendar year exceed the limitation under Section 414(v)(7)(A) of the Code, paragraph (a) shall apply only if the Participant elects, or is deemed to have elected, the additional amount of Elective Deferrals to be made as Roth Elective Deferrals. The wage limitation under this paragraph (b) shall be increased by cost-of-living to the extent provided under Section 414(v) of the Code for such calendar year.

PART 7. BENEFITS

590:40-9-38. ~~Rollover contributions to the plan~~ Rollovers and In-Plan Roth Conversions

(a) **Eligible Rollover Contributions.** A Participant or Employee who is entitled to receive an eligible rollover distribution from 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 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).

(d) **In-Plan Roth Conversions.** The following transfers are permitted under the Plan:

- (1) Any amount held in a Pre-Tax Elective Deferral Subaccount is eligible for direct transfer to a Roth Elective Deferral Subaccount even if not otherwise distributable.
- (2) Any amount held in a subaccount of the Participant's Transfer Contribution Account holding pre-tax Transfer Contributions or after-tax Transfer Contributions is eligible for direct transfer to a subaccount of the Participant's Transfer Contribution Account holding Roth Transfer Contributions and earnings even if not otherwise distributable.
- (3) Any amount held in a subaccount of the Participant's Rollover Contribution Account holding pre-tax Rollover Contributions and earnings is eligible for direct transfer to a subaccount of the Participant's Rollover Contribution Account holding Roth Rollover Contributions and earnings.

Any such transfer shall be treated as a qualified rollover contribution, within the meaning of Section 408A(e) of the Code, to such Account.

(e) **Administrative Procedures.** A Participant's election under paragraph (d) of this section shall be subject to the reasonable administrative procedures established by the Board, Section 402A(c)(4) of the Code and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(f) Taxable Amounts. The taxable portion of the Participant's Accounts transferred to a Roth Contribution Account or to a subaccount of the Participant's Roth Rollover Contribution Account holding Roth Rollover Contributions and earnings under paragraph (d) of this section shall be included in the Participant's gross income in the tax year in which the transfer occurs.

590:40-9-44. Death after December 31, 2021

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of ~~his or her~~ their entire account, (regardless of whether any distributions had begun before the Participant's death,) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A) of this section, if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under this item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained the applicable age seventy and one-half (70 ½) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70 ½) after December 31, 2019) as permitted by the federal Internal Revenue Code Section 401(a)(9)(C)(v). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either:

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under ~~paragraph (4)(B), subsection (4), paragraph (B) of this section~~ shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A) of this section.

(2) If the Participant dies before distributions of ~~his or her~~ their Account begins and the Participant has no designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of ~~his or her~~ their Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under ~~this~~ section 590:35-13-13.

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

(A) the surviving spouse of the Participant;

(B) a child of the Participant who has not reached the age of majority;

(C) disabled within the meaning of Code Section 72(m)(7);

(D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or

(E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in paragraph (4)(B) above of this section shall cease to be an eligible designated Beneficiary as of the date ~~he or she reaches~~ they reach the age of majority.

SUBCHAPTER 11. QUALIFIED DOMESTIC RELATIONS ORDERS - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN

590:40-11-7. Death of Participant or alternate payee

(a) Death of Participant. If the Participant predeceases the alternate payee, the Participant's death shall not affect the alternate payee's right to the portion of benefits as set forth in the order.

(b) **Death of alternate payee.** In the event of the alternate payee's death ~~prior to receiving the full amount of benefits assigned under the order and under the benefit option chosen by the alternate payee,~~ the alternate payee's beneficiaries, as designated on the appropriate form, shall receive the remainder of any unpaid benefits under the terms of the order. In the absence of a beneficiary designation, the unpaid benefits shall be paid the alternate payee's estate. If no administrator, executor, personal representative, or other fiduciary of the estate of the alternate payee has been appointed by a Court within one hundred twenty (120) days after death, ~~If there is no estate,~~ the distribution of benefits may be ~~made paid~~ to the first of the following:

- (1) surviving spouse;
- (2) surviving children in equal shares;
- (3) surviving ~~parents~~ grandchildren in equal shares;
- (4) surviving ~~siblings~~ parents in equal shares;
- (5) surviving siblings in equal shares.