

CHAPTER 40. DEFINED CONTRIBUTION SYSTEM

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; and deposit of funds.** Participants may contribute additional 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~~ ~~subchapter~~ 9 of this ~~Chapter~~ ~~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~~ ~~Section~~ 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~~ ~~subchapter~~ 9 of this ~~Chapter~~ ~~chapter~~.

(b) Change in deferral rate.

(1) A Participant may change the voluntary deferral rate ~~once per month~~ by giving authenticated notice to OPERS of such change. Any request for a change in the amount of the voluntary 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~~ will take effect as soon as administratively possible but no later than the month after the notice is received.

(2) A Participant may change the deferral amount designated as Pre-Tax Elective Deferrals or Roth Elective Deferrals ~~once per month~~ by giving authenticated 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~~ will take effect as soon as administratively possible but no later than the month after the notice is received.

(c) **Notice.** Any notice required under this ~~Section~~ ~~section~~ means communication on ~~approved forms approved by OPERS or the Recordkeeper~~, through the Recordkeeper's 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~~ The Recordkeeper 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

590:40-9-34. Emergency withdrawals

(a) For purposes of this ~~Section~~ ~~section~~, "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. 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:

(1) Through reimbursement or compensation by insurance or otherwise;;

(2) By liquidation of the Participant's assets, to the extent the liquidation of these assets would not itself cause severe financial hardship;; or

(3) By cessation of deferrals under the Plan. Foreseeable personal expenditures which may normally be subject to a budget, 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., shall not constitute an unforeseeable emergency.

(b) Notwithstanding any other provisions of this ~~Subchapter~~ ~~subchapter~~, if an unforeseeable emergency or financial hardship occurs and is beyond the control of the Participant, ~~at the~~ Participant may request ~~OPERS~~ the Recordkeeper to pay benefits to ~~him or her~~ them immediately. If the application and justification for payment is approved by ~~OPERS~~ the Recordkeeper, payment will be processed by the Recordkeeper within ten (10) business days ~~upon authorization from the Plan~~. Benefits to be paid shall be limited strictly to that amount needed to meet the emergency situation constituting financial hardship. Any remaining benefits shall be paid in accordance

with this Subchapter. Two (2) or more emergency withdrawals paid from Participant's Account under this Subchapter will result in cancellation of that Participant's voluntary deferrals into the Plan for a period of not less than six (6) months following payment of the second emergency withdrawal. For purposes of this Section, any emergency withdrawals since the Participant's initial enrollment into the Plan will be considered when applying this Section except that no cancellation will occur until the Participant has had a subsequent emergency withdrawal. The Participant will be responsible for re-establishing a voluntary deferral amount upon completion of the six-month cancellation period.

590:40-9-38. 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, provided such rollover meets the requirements of Code Sections 402(c)(4), 403(a)(4), or 408(d)(3), or any other applicable section of the Code or regulations, 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. The Plan shall accept eligible rollover contributions, whether as a direct rollover or as a Participant rollover contribution of an eligible pre-tax distribution, from the following types of plans:

- (1) A qualified plan described in Code Sections 401(a) or 403(a);
- (2) An annuity contract described in Code Section 403(b);
- (3) An eligible plan under Code Section 457(b) 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; and
- (4) An individual retirement account or annuity described in Code Sections 408(a) or 408(b), but only if the distribution is eligible to be rolled over and would otherwise be includable in gross income.

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

- (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.

(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, Code 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.