

**CHAPTER 15. UNIFORM RETIREMENT SYSTEM
FOR JUSTICES AND JUDGES**

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[Authority: 20 O.S., §§ 1101 et seq.]

[Source: Codified 12-27-91]

SUBCHAPTER 1. GENERAL PROVISIONS

Section

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[Source: Codified 5-25-06]

590:15-1-1. Purpose; defined benefit plan

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(a) The rules of this Chapter have been adopted to establish policies and procedures for implementing and administering the Uniform Retirement System for Justices and Judges. The Board of Trustees of the Oklahoma Public Employees Retirement System shall be responsible for the general oversight of the Judicial System and shall generally manage the two Systems in the same manner, except where the statutes or rules specifically provide otherwise.

(b) The Judicial System is established as a qualified defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable Treasury regulations and other guidance.

[Source: Amended at 22 Ok Reg 131, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05; Amended at 27 OK Reg 1040, eff 5-13-10]

590:15-1-2. Administration

(a) **Administration of Plan.** The Oklahoma Public Employees Retirement System shall administer the Uniform Retirement System for Justices and Judges, in accordance with the provisions outlined in 20 O.S. §§ 1101 et seq., and will coordinate with the Administrative Director of the Courts in the administration of the Uniform Retirement System for Justices and Judges.

(b) **Remittance of contributions.** The Administrative Director of the Courts shall remit all required court and employee contributions on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. The Administrative Director of the Courts will be assessed a late charge of 1.5% for any contributions remitted later than thirty (30) days following the due date. The late charge will be calculated on the unpaid balance and will compound monthly until paid.

(c) **Allocation of expenses.** The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Uniform Retirement System for Justices and Judges, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the USRJJ, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

[Source: Amended at 22 Ok Reg 131, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05; Amended at 29 Ok Reg 504, eff 5-11-12]

590:15-1-3. Withholding

The Executive Director shall be responsible for withholding Federal and State income taxes from benefits paid by the Uniform Retirement System for Justices and Judges, unless election is made to make an estimated tax payment directly to the IRS and the Oklahoma Tax Commission. Alternatives are available to retirants for withholding purposes.

590:15-1-4. Average monthly salary and maximum compensation

(a) **Retiring prior to June 30, 2004.** For any Justice or Judge retiring prior to June 30, 2004, average monthly salary shall be computed averaging the last thirty-six (36) consecutive months of salary received as an active Justice or Judge. Partial months will be included in the average.

(b) **Retiring after June 30, 2004.** For any Justice or Judge retiring after June 30, 2004, average monthly salary shall be calculated as follows:

(1) The highest thirty-six (36) months of salary, excluding longevity payments, received as a Justice or Judge will be determined and totaled;

(2) If applicable, the three (3) highest annual longevity payments upon which retirement contributions have been paid will be added to the sum of the highest thirty-six (36) months of salary. If a Justice or Judge is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payment will be used only in the amount actually paid for which contributions are withheld and if it is one of the three (3) highest longevity payments;

(3) Average monthly salary will be determined by adding the total of the highest thirty-six (36) months of salary to the highest three (3) longevity payments if applicable, and dividing by thirty-six (36). This calculation is illustrated by the following formula:
Total of Thirty-six Months of Highest Salaries + Three Highest Longevity Payments ÷ 36
= Average Monthly Salary;

(c) **Multiplier; benefit limit.** The monthly benefit amount shall be determined by multiplying four percent (4%) of the average monthly salary by the total number of years of credited service, provided the monthly benefit may not exceed one hundred percent (100%) of the average monthly salary calculated in subsection (b) of this rule.

(d) **Prior reported compensation.** Except for errors in contribution or service, any amounts of compensation reported to the System as salary prior to June 30, 2004, and for which retirement contributions were paid may be used in the calculations provided in this rule.

(e) **Limits from July 1, 1996 to June 30, 2002.** Effective with respect to plan years beginning on and after July 1, 1996, and before July 1, 2002, the annual compensation of a plan member which exceeds One Hundred Fifty Thousand Dollars (\$150,000.00) (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of computing employee and employer contributions to or benefits due from the retirement system. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age 19 before the close of the year.

(f) **Limits from July 1, 2002.** Effective with respect to plan years beginning on or after July 1, 2002, the annual compensation of a plan member which exceeds Two Hundred Thousand Dollars (\$200,000.00) (as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code) may not be taken into account in determining benefits or contributions due for any plan year. "Annual compensation" means compensation during the plan year or such other consecutive 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 annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(g) **Definitions.** As used in this section, the term "eligible member" means a person who first became a member of the retirement system prior to the plan year beginning after December 31, 1995. Pursuant to Section 13212(d)(3)(A) of Omnibus Budget Reconciliation Act of 1993, and the regulations issued under that section, eligible members are not subject to the limits of Section 401(a)(17) of the Internal Revenue Code, and the maximum compensation used in computing employee and employer contributions to or benefits due from the retirement system for eligible members shall be the maximum amount allowed by the retirement system to be so used on July 1, 1993. The limits referenced in subsections (e) and (f) above apply only to years beginning after December 31, 1995, and only to individuals who first become plan members in plan years beginning on and after July 1, 1996.

[Source: Amended at 12 Ok Reg 3245, eff 7-27-95; Amended at 12 Ok Reg 3664, eff 9-1-95 through 7-14-96 (emergency); Amended at 13 Ok Reg 3331, eff 7-25-96; Amended at 19 Ok Reg 744, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1479, eff 5-28-02; Amended at 22 Ok Reg 131, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05; Amended at 27 Ok Reg 1040, eff 5-13-10]

590:15-1-5. Final benefit and Death benefit

(a) The retirement benefit payable for the month of death of a member or survivor shall be payable to said member or survivor, whichever is applicable. In the event the final benefit is returned to the System or is not otherwise paid, said benefit will be paid to the member's estate or survivor's estate, whichever is applicable.

(b) The four thousand dollars (\$4,000) death benefit available for any retired member who dies on or after July 20, 1987, shall be payable to the beneficiary listed by the member or to the member's estate. This beneficiary designation is not affected by any designation of joint-annuitant, deferred compensation beneficiary or insurance beneficiary, unless otherwise specifically designated in writing by member. For any retired member who died on or after July 1, 1999, the death benefit amount shall be five thousand dollars (\$5,000).

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[Source: Amended at 12 Ok Reg 3245, eff 7-27-95; Amended at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3183, eff 7-27-00; Amended at 22 Ok Reg 131, eff 10-6-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05; Amended at 23 Ok Reg 1485, eff 5-25-06]

590:15-1-6. Revoking survivor benefits [REVOKED]

[Source: Amended at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3183, eff 7-27-00; Revoked at 23 Ok Reg 1485, eff 5-25-06]

590:15-1-7. Refund of survivor contributions [REVOKED]

[Source: Revoked at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Revoked at 17 Ok Reg 3183, eff 7-27-00]

590:15-1-8. Re-entry after revocation [REVOKED]

[Source: Revoked at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Revoked at 17 Ok Reg 3183, eff 7-27-00]

590:15-1-9. Actuarial cost for purchases

Effective January 1, 1991, all purchases of service credit pursuant to 20 O.S. §1103G., shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

- (1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions utilized in the actuarial valuation report for the Fiscal Year ending June 30 of the prior year.
- (2) The actuarial value shall be based upon the member's age, salary and contribution level at the time of purchase, together with the earliest age for retirement with maximum benefits and actuarially assumed salary at the time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.
- (3) For purposes of determining this actuarial cost, the member's age shall be rounded up or down to the nearest birthday.
- (4) For purposes of determining this actuarial cost, the mortality tables shall be formulated as a unisex table assuming a 50% male and a 50% female population, based upon the actuarial assumptions in subsection (1) of this Section.
- (5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, his salary shall be averaged based upon the most current months payroll information.
- (6) In the event that the actuarial cost is less than the contributions that would have been required by law, the member and/or the employer shall pay the actual contributions cost.

[Source: Amended at 12 Ok Reg 3245, eff 7-27-95]

590:15-1-10. Purchase price payments

(a) An active member of the System may elect the payment of the actuarial purchase price, the repayment of a previous withdrawal, or any other purchase or repayment permitted and authorized by the statutes governing the System, to be amortized in monthly installments to the extent allowed by law.

(1) A payment schedule may be established allowing the member to make monthly payments through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to the System. Payments remitted by an employer for its employees must be kept separate from employer's regular retirement contributions or any other payments to the System including Deferred Compensation. Such payments do not qualify as "pre-tax" contributions under "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.

(2) The installment payment schedule provided for in this section must be in monthly increments not to exceed sixty (60) months. The minimum total monthly payment is \$25.00. The member shall be responsible for maintaining the payment schedule. The payment due date will be based on the payroll schedule set by the member's employer. An installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in subsection (4) of this section.

(3) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the payment schedule is commenced.

(4) Except as provided in subsection (8) of this section, if the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or the beneficiary of the member will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated for only the principal amount paid and rounded to the last full month paid for. No refunds will be paid to the member.

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective retirement date of the member. If any member or beneficiary elects to pay the balance during the six (6) month period provided for in Subsection (4) of this Section, no benefits will be payable until the completion of said six (6) month period, or receipt of a signed waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

(6) Payments may be made directly to the System by the member or beneficiary if the member is in an unpaid leave status, if the payroll is not sufficient to handle the entire

payment, in the event of payroll error where employer fails to withhold the proper amount or during the six (6) month period referred to in subsection (4) of this Section.

(7) Except as provided in subsection (8) of this section, if the purchase is terminated for any reason, the purchase cannot be made at anytime in the future, following the six (6) month option referred to in Subsection (4) of this Section. By failing to complete this purchase, the member or beneficiary forfeits the right to the purchase at any other time.

(8) If the installment payment for the repayment of a previous withdrawal is terminated for any reason, the member, upon returning to employment and meeting the eligibility requirements for membership, may pay the remaining principal balance at any time prior to the month of the effective retirement date. The total due shall be the unpaid principal balance, plus interest pursuant to 20 O.S. § 1103C, calculated from the date of the last installment payment received and paid in a one-time lump sum amount.

(b) Effective January 1, 2002, in lieu of installment payments, an active member may elect to make the payment of the actuarial purchase price, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee to trustee transfer from a 457 deferred compensation plan or a 403(b) tax sheltered annuity program.

(c) Effective January 1, 2002, in lieu of installment payments or a direct transfer, an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by a rollover. The payment may be made by participant rollover contributions and/or direct rollovers of eligible rollover distributions made after December 31, 2001, from the following:

- (1) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code;
- (2) an annuity contract described in section 403(b) of the Internal Revenue Code;
- (3) an eligible plan under section 457(b) of the Internal Revenue Code 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; or
- (4) a participant rollover contribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled.

[Source: Added at 12 Ok Reg 3245, eff 7-27-95; Amended at 17 Ok Reg 609, eff 12-2-99 through 7-14-00 (emergency); Amended at 17 Ok Reg 3183, eff 7-27-00; Amended at 19 Ok Reg 744, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1479, eff 5-28-02; Amended at 25 Ok Reg 1006, eff 5-11-08; Amended at 26 Ok Reg 956, eff 4-25-09]

590:15-1-11. Maximum benefits

(a) **General provisions.** Notwithstanding any other provisions of the System to the contrary, the member contributions paid to and retirement benefits paid from the Plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415(b) of the Internal Revenue Code for a qualified pension plan.

(b) **Participation in other qualified plans: Aggregation of limits.**

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

(c) **Basic 415(b) limitation.**

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) **Adjustments to basic 415(b) limitation for form of benefit.** If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (that is, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

- (B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent (5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or
- (3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (that is, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):
- (A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
- (B) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or
- (C) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period))) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue

Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) **Benefits not taken into account for 415(b) limitation.** For purposes of this section, the following benefits shall not be taken into account in applying these limits:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) that portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- (3) any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) **Other adjustments in 415(b) limitation.**

(1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a One Hundred Sixty Thousand Dollar (\$160,000.00) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in paragraph (1) of this subsection shall not apply.

(3) The reductions provided for in paragraph (1) of this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) **Less than ten (10) years of service adjustment for 415(b) limitations.** The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under subsection (c) of this section multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below ten percent (10%). The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(h) **Ten Thousand Dollar (\$10,000.00) limit.** Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed Ten Thousand Dollars (\$10,000.00) for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

(i) **Effect of COLA without a lump sum component on 415(b) testing.** Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

- (1) A member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost-of-living adjustments;

(2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost-of-living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost-of-living increases, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(j) **Effect of COLA with a lump sum component on 415(b) testing.** On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost-of-living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(k) **Section 415(c) limitations on contributions and other additions.** After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of Forty Thousand Dollars (\$40,000.00) (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or one hundred percent (100%) of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2 1/2

months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

- (i) The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
- (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued.

(C) Any payments not described in subparagraph (B) of this paragraph are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) 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 Section 414(u)(1) of the Internal Revenue Code) 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 (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(E) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(1) **Service purchases under Section 415(n).**

(1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

- (A) The requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or
 - (B) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.
- (2) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this paragraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.
- (3) For purposes of this section the term "permissive service credit" means service credit:
 - (A) Recognized by the system for purposes of calculating a member's benefit under the system,
 - (B) which such member has not received under the system, and
 - (C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subparagraph (B) of this paragraph, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.
- (4) The system will fail to meet the requirements of this section if:
 - (A) more than five (5) years of nonqualified service credit are taken into account for purposes of this paragraph, or
 - (B) any nonqualified service credit is taken into account under this paragraph before the member has at least five (5) years of participation under the system.
- (5) For purposes of paragraph (4) of this subsection, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
 - (A) Service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code),
 - (B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (A) of this paragraph) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

- (C) service as an employee of an association of employees who are described in subparagraph (A) of this paragraph, or
- (D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.
- (6) In the case of service described in subparagraphs (A), (B), or (C) of paragraph (5) of this subsection, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.
- (7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):
 - (A) The limitations of paragraph (4) of this subsection will not apply in determining whether the transfer is for the purchase of permissive service credit, and
 - (B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.
- (8) For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the system before January 1, 1998.
- (m) **Modification of contributions for 415(c) and 415(n) purposes.** Notwithstanding any other provision of law to the contrary, the system may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:
 - (1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.
 - (2) If payment pursuant to paragraph (1) of this subsection will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.
- (n) **Repayments of cashouts.** Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.
- (o) **Reduction of benefits priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member

participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

[Source: Added at 18 Ok Reg 551, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3264, eff 7-26-01; Amended at 27 Ok Reg 1040, eff 5-13-10]

590:15-1-12. Rollovers

(a) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at a time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than Two Hundred Dollars (\$200.00) during the year. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(c) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(1) To an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(2) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

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- (3) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code.
- (d) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:
 - (1) An individual retirement account described in Section 408(a) of the Internal Revenue Code,
 - (2) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code,
 - (3) an annuity plan described in Section 403(a) of the Internal Revenue Code,
 - (4) a qualified trust described in Section 401(a) of the Internal Revenue Code,
 - (5) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code,
 - (6) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or
 - (7) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.
- (e) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
- (f) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

[Source: Added at 18 Ok Reg 551, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3264, eff 7-26-01; Amended at 27 Ok Reg 1040, eff 5-13-10; Amended at 29 Ok Reg 504, eff 5-11-12]

590:15-1-13. Survivor distributions

If a member dies after the distribution of the member's benefits has begun, the remaining portion of the member's interest will be distributed at least as rapidly as under the method of distribution being used for the member as of the date of the member's death.

[Source: Added at 18 Ok Reg 551, eff 12-28-00 through 7-14-01 (emergency); Added at 18 Ok Reg 3264, eff 7-26-01]

590:15-1-14. Direct deposit

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(a) For members or survivors retiring prior to July 1, 2001, a Retirant or survivor may authorize the Uniform Retirement System for Justices and Judges to deposit their monthly retirement benefit directly to a checking or savings account in a bank, Credit Union and/or Savings and Loan by electronic fund transfer or by paper check. Application for direct deposit will only be accepted on properly completed forms provided by URSJJ. Prior to June 30, 2001, the direct deposit may be discontinued at any time upon thirty (30) days' written notice by the member, survivor or URSJJ. After July 1, 2001, if the electronic fund transfer creates an undue hardship on the retiree or survivor, the direct deposit may be discontinued only if the member or survivor makes application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the member or survivor. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.

(b) Effective July 1, 2001, newly retired members or survivors shall be required to receive monthly benefit payments via electronic fund transfers to a banking or financial institution designated by the member or survivor. The retiree or survivor and receiving institution must complete the form prescribed for this purpose by URSJJ. In the event the electronic fund transfer creates an undue hardship on the retiree or survivor, the member or survivor may make application to the Executive Director to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the member or survivor. The Executive Director, at his or her sole discretion, may also waive this requirement when it is necessary in the best interest of the System to do so.

[Source: Added at 18 Ok Reg 3264, eff. 7-26-01; Amended at 19 Ok Reg 744, eff 12-20-01 (emergency); Amended at 19 Ok Reg 1479, eff 5-28-02]

590:15-1-15. Salary for retirement purposes [REVOKED]

[Source: Added at 20 Ok Reg 2867, eff 8-4-03 (emergency); Revoked at 21 Ok Reg 38, eff 9-17-03 (emergency)]

590:15-1-16. Longevity and other annual lump-sum payments [REVOKED]

[Source: Added at 20 Ok Reg 2559, eff 07-11-03; Revoked at 20 Ok Reg 2810, eff 6-19-03 (emergency); Revoked at 21 Ok Reg 1759, eff 6-11-04]

590:15-1-17. Military service credit

(a) Any active member who joined the System on or before June 30, 2000, can receive up to five (5) years of prior military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service.

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(b) Any active member who joined the System on or after July 1, 2000, can purchase up to five (5) years of prior military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. The member must make payment in the amount determined by the Board pursuant to Section 1103G of Title 74 of the Oklahoma Statutes and 590:15-1-9. This purchase may be amortized over sixty (60) months as provided for in 590:15-1-10.

(c) Military service credit will be credited or purchased in full months only. The initial month of military service will be accepted only if the service began on or before the 15th day of the month. The final month of military service will be accepted only if the service was completed on or after the 16th day of the month.

(d) Members who joined the System on or after July 1, 2003, can make the purchase set forth in paragraph (b) of this rule only if the member has not received credit for the same period of military service for retirement from another retirement system created pursuant to the Oklahoma Statutes. For such members, the military credit shall be granted or purchased in the retirement system from which the member retires first. In the event such a member fails to disclose a previous grant or purchase of military credit, the purchase will be voided, his or her service credit will be adjusted to remove the military service credit and only the purchase price shall be returned to the member.

(e) It is the responsibility of the member wishing to receive or purchase military service credit to complete the application provided by the System for this purpose and to provide all documentation necessary to support the application. Military service will not be credited until all required documentation is provided by the member to the System, the System has approved the grant or purchase and any required payments are made.

(f) Retired members who are not credited with military service prior to or at the time of retirement may make application for the credit at any time. After approval by the System, the military service credit will be added to the member's record and increased retirement benefits, if any, as a result of the addition of the military service credit, shall begin with the first month following said approval. Retroactive payments will not be made under any circumstances.

(g) Members who served in the Armed Forces of the United States during a war or combat military operation other than World War I, World War II, the Korean War, the Vietnam War or the Gulf War as provided in Section 902 (23) of Title 74 of the Oklahoma Statutes, may be eligible to purchase or receive military service credit for the period of time that he or she actually served in an area of responsibility for a war or combat military operation which lasted for a period of at least ninety (90) days. It is the responsibility of the member to provide sufficient documentation to support his or her eligibility for this credit as requested by the System, including, but not limited to, documents showing specific service areas and times.

(h) The provisions for granting or purchasing military service credit shall be in addition to any contributions, benefits and service credit with respect to qualified military service in accordance with Section 414 (u) of the Internal Revenue Code of 1986.

[Source: Added at 21 Ok Reg 1759, eff 6-11-04; Amended at 22 Ok Reg 131, eff 10-06-04 (emergency); Amended at 22 Ok Reg 1363, eff 5-26-05]

590:15-1-18. Federal qualified military service rights

(a) **Additional benefits if provided by Plan.** Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would otherwise provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) **Differential wage payments.** Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

[Source: Added at 27 Ok Reg 1040, eff 5-13-10; Amended at 29 Ok Reg 505, eff 5-11-12]

590:15-1-19. Actuarial assumptions

Effective as of July 1, 1989, the Board will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board of Trustees by resolution. Such benefits will not be subject to employer discretion. The resolutions adopted by the Board of Trustees for this purpose are incorporated as part of the plan document.

[Source: Added at 27 Ok Reg 1040, eff 5-13-10]

590:15-1-20. Employee contributions vested; forfeiture

(a) **Vesting of contributions.** A plan member shall be one hundred percent (100%) vested in his or her accumulated contributions at all times in compliance with Section 401(a)(7) of the Internal Revenue Code.

(b) **Forfeitures under Internal Revenue Code.** In conformity with section 401(a)(8) of the Internal Revenue Code, any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

[Source: Added at 27 Ok Reg 1040, eff 5-13-10]

590:15-1-21. Required minimum distributions

(a) The retirement system will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in

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effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The retirement system is subject to the following provisions:

- (1) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in 20 O.S. §1101 et seq.
- (2) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.
- (3) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
- (4) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:
 - (A) Distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death (or, if the designated beneficiary is the member's surviving spouse, beginning no later than the date on which the member would have attained age 70 1/2), or
 - (B) distributed within five (5) years of the member's death.
- (5) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.
- (6) The death and disability benefits provided by the retirement system are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent (25%) of the cost for all of the members' benefits received from the retirement system.
- (b) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.
- (c) The retirement system shall make reasonable efforts to locate missing members, survivors and beneficiaries in order to comply with the required minimum distribution provisions of Section 401(a)(9). Reasonable efforts may include using any contact information the retirement system may have available for a member or any type of locator service.

[Source: Added at 27 Ok Reg 1040, eff 5-13-10; Amended at 28 Ok Reg 672, eff 5-12-11]

590:15-1-22. Health insurance contribution

- (a) The Oklahoma Public Employees Retirement System as administrator of the Uniform Retirement System for Justices and Judges shall contribute the amount required by law towards the cost of health insurance coverage under the State and Education Employees Group Insurance Plan or other eligible group insurance plans only for retired members who actually receive a monthly retirement benefit for that month. This contribution shall not be made for beneficiaries, survivors or directly to the retired member.
- (b) For eligible group health insurance plans other than the State and Education Employees Group Insurance Plan, the System will contribute the amount required by law after the group insurance plan has made application to the System and completed any necessary and required forms and/or agreements. The group insurance plan must be in compliance with Oklahoma law and offer insurance to all of the covered participating employer's employees, former employees who are vested and former employees who retired from that covered employer. The insurance plan shall provide a certification monthly detailing each covered retired member in the form and manner required by the System. The subsidy shall be paid in arrears for each eligible retired member.
- (c) Pursuant to the federal Internal Revenue Code Section 401(h) and Treasury Regulation §1.401-14, the Retirement Medical Benefit Fund shall be maintained as a sub-account of the State Judicial Retirement Fund. From the Retirement Medical Benefit Fund, OPERS shall remit the amount specified in 74 O.S. Section 1316.2 for health insurance premiums.
- (d) All contributions to the Retirement Medical Benefit Fund shall be reasonable and ascertainable.
- (e) Contributions to the Retirement Medical Benefit Fund must be subordinate to the contributions to the State Judicial Retirement Fund for retirement benefits. At no time shall the aggregate actual contributions to the Retirement Medical Benefit Fund (when added to actual contributions for life insurance protection under the plan, if any) be in excess of twenty-five percent (25%) of the total aggregate actual contributions made to the State Judicial Retirement Fund (not including contributions to fund past service credits). The Board shall annually determine whether the twenty-five (25%) test has been met. If at any time the Retirement Medical Benefit Fund contributions (plus any life insurance contributions) would exceed the twenty-five percent (25%) test, the excess amount of contributions shall be transferred to the State Judicial Retirement Fund for retirement benefits.
- (f) Forfeitures in the Retirement Medical Benefit Fund shall not be allocated to individual accounts under the fund, but shall be used for account expenses.
- (g) At no time prior to the satisfaction of all liabilities under the Retirement Medical Benefit Fund or termination of the fund shall any assets in the fund be used for, or diverted to, any purpose other than the providing of payment of the URSJJ's portion of the monthly retiree health insurance premium benefit described by Title 74 O.S. Section 1316.2 and the payment of administrative expenses. Assets in the Retirement Medical Benefit Fund may not be used for retirement or disability benefits or any other purposes for which other assets held in the State Judicial Retirement Fund are used.
- (h) The provisions of section 401(h)(5) of the Internal Revenue Code of 1986, as amended from time to time, shall apply upon the satisfaction of all liabilities under law and the State Judicial Retirement Fund.

[Source: Added at 30 Ok Reg 553, eff 5-11-13]

590:15-1-23. Normal retirement age

(a) In addition to any other vesting provided under state law, and except as provided in 51 O.S. Section 24.1, a member's normal retirement benefit is nonforfeitable upon the attainment of the following normal retirement ages and the completion of the specified years of service:

(1) For a judge whose initial service as a member began prior to January 1, 2012, age sixty-five (65) upon completion of at least eight (8) years of service, or age sixty (60) upon completion of at least ten (10) years of service.

(2) For a judge whose initial service as a member began on or after January 1, 2012, age sixty-seven (67) upon the completion of at least eight (8) years of service, or age sixty-two (62) upon completion of at least ten (10) years of service.

(b) A member joining before January 1, 2012, is also vested in full retirement benefits upon when the sum of the member's age and years of credited service equals or exceeds 80 (Rule of 80). This provision is not applicable to those members joining on or after January 1, 2012.

[Source: Added at 30 Ok Reg 553, eff 5-11-13]

SUBCHAPTER 3. EXCESS CONTRIBUTIONS

Section

590:15-3-1. Purpose and intent

590:15-3-2. Definitions

590:15-3-3. Transfer of excess contributions

590:15-3-4. Limitations on transfer of excess contributions

590:15-3-5. Initial and residual transfers

590:15-3-6. Deceased Eligible Members

[Source: Codified 5-25-06]

590:15-3-1. Purpose and intent

By adoption of the rules set out in this Subchapter, the Board represents that:

(1) With respect to the transfer of certain Excess Contributions which represent the additional three percent (3%) spousal contributions from the System to the Incentive Plan, the Board intends to comply in all respects with the tax qualification requirements for governmental plans applicable to such refunds or transfers as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto ("Tax qualification requirements").

(2) The procedures in this Subchapter will not be implemented until the Board has received a favorable private letter ruling from the Internal Revenue Service that the transfers described in this Subchapter satisfy the tax qualification requirements.

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- (3) In administering this Subchapter, the Board will comply with the legislative intent as contained in the Transfer Legislation.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

590:15-3-2. Definitions

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

"Board" means the Board of Trustees of the Oklahoma Public Employees Retirement System which administers the Uniform Retirement System for Justices and Judges.

"Code" means the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto.

"Eligible Member" means a member of the System who was an active participating justice or judge and a single unmarried individual on September 1, 2005, and who, prior to September 1, 2005, made the additional three percent (3%) spousal contributions pursuant to statutes in effect at that time, provided such additional spousal contributions have not been previously refunded by the System.

"Excess Contributions" means the additional three percent (3%) spousal contributions for a survivor benefit made by an Eligible Member while the member was married, but who is unmarried on September 1, 2005, and which contributions remain on deposit with the System as of the date of the transfer, and includes both Pre-tax Excess Contributions and Post-tax Excess Contributions.

"Incentive Plan" means the Oklahoma State Employees Deferred Savings Incentive Plan, which is a qualified plan under Code Section 401(a).

"Post-tax Excess Contributions" means the Excess Contributions which were employee contributions and which were not picked up by the employer under the provisions of Code Section 414(h)(2).

"Pre-tax Excess Contributions" means the Excess Contributions which were picked up by the employer under the provisions of Code Section 414(h)(2).

"Private Letter Ruling" means the private letter ruling issued by the Internal Revenue Service to the Board.

"System" means the Uniform Retirement System for Justices and Judges.

"Transfer Legislation" means Enrolled House Bill 1858 of the 1st Session of the 50th Legislature, as it amends Section 1102A of Title 20 of the Oklahoma Statutes.

[Source: Added at 23 Ok Reg 107, eff 10-2-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

590:15-3-3. Transfer of excess contributions

On or about September 1, 2005, the Board will implement the following procedures for the transfer of the excess contributions:

- (1) The Board shall cause to be sent an Application for Transfer of Excess Contributions to each member that appears to be an Eligible Member. The Application for Transfer of Excess Contributions will contain the following:
 - (A) An election to transfer the excess contributions or to waive the transfer and retain the option to elect at retirement a survivor benefit;
 - (B) A statement that by making the election to transfer the excess contributions, an Eligible Member forfeits any rights to future survivor benefits of any kind from the System;
 - (C) The amount of the contributions to be transferred;
 - (D) A statement that the Application for Transfer of Excess Contributions must be received by the System on or before December 1, 2005;
 - (E) A statement that failure to sign and return the Application for Transfer of Excess Contributions results in the Eligible Member waiving the option to make the transfer and such waiver is irrevocable; and
 - (F) A statement that the election to transfer the excess contributions shall not take effect until the Board receives official written notice that this distribution satisfies the tax qualification requirements for governmental plans applicable to such transfers as specified in the Internal Revenue Code.
- (2) In the event an Eligible Member disputes the amount of transfer as set forth in the Application for Transfer of Excess Contributions, the Eligible Member shall provide a written objection to the Board within 30 days of the date the Application for Transfer of Excess Contributions was mailed to the Eligible Member. The objection shall set forth the basis for the objection, including the specific error and the amount the Eligible Member believes is correct. The Board shall respond to the complaint within 30 days of receipt. If the Eligible Member is aggrieved by the decision, the exclusive remedy is through the administrative hearing procedures as provided in 590:1-1-6.
- (3) The Board will direct that the Excess Contributions are transferred to the Incentive Plan or maintained in the System as stated in the Application for Transfer of Excess Contributions.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

590:15-3-4. Limitations on transfer of excess contributions

- (a) The Pre-tax Excess Contributions that are transferred to the Incentive Plan may not exceed the limitations on annual additions imposed by Code Section 415(c).
- (b) The Post-tax Excess Contributions that are transferred to the Incentive Plan have already been tested against the limitations imposed by Code Section 415(c) as mandatory employee contributions to a defined benefit plan and therefore will not be tested again.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

590:15-3-5. Initial and residual transfers

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(a) The initial transfer of Excess Contributions shall include all Eligible Members who elected to transfer their Excess Contributions and who did not object to the transfer amount. If an Eligible Member objects to the transfer amount and the objection is not resolved by the date of the initial transfer, the Excess Contributions shall not be included in the initial transfer. The Board shall provide for a residual transfer date to occur at least one year following the initial transfer date.

(b) An Eligible Member of the System who has Excess Contributions in the Plan but was not identified or included in the initial transfer must notify the System within one year of date of the initial transfer to request the transfer of the Excess Contributions as part of the residual transfer. The final transfer of all Excess Contributions shall occur at the time of the residual transfer at least one year following the initial transfer date.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

590:15-3-6. Deceased Eligible Members

In order for the election for transfer to be effective, an Eligible Member must be living at the time the Board receives official written notice from the Internal Revenue Service that this distribution satisfies the tax qualification requirements for governmental plans applicable to such transfers as specified in the Internal Revenue Code. If an Eligible Member dies after the Board receives such official written notice, but before the actual transfer, the Excess Contributions shall be transferred to the Incentive Plan in the same manner as if the Eligible Member were not deceased. Once transferred to the Incentive Plan, distribution shall be governed by the Incentive Plan provisions as provided in 590:35-13-5 and 590:35-13-6. If an Eligible Member dies prior to the Board receiving such official written notice, the Eligible Member's election shall be deemed invalid and shall not be accepted by the System.

[Source: Added at 23 Ok Reg 107, eff 10-3-05 (emergency); Added at 23 Ok Reg 1485, eff 5-25-06]

SUBCHAPTER 5. EXCESS BENEFIT PLAN AND TRUST

Section

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590:15-5-1. Establishment and purpose

(a) **Establishment.** The "Uniform Retirement System for Justices and Judges Excess Benefit Plan and Trust" is hereby established effective as of November 1, 2010, pursuant to Code Section 415, 20 O.S. §1104.1, and the Excess Benefit Plan and Trust document which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, and as adopted by the Board of Trustees.

(b) **Purpose.** The purpose of this Excess Benefit Plan is solely to provide the part of a Participant's Retirement Benefit that would otherwise have been payable by the System except for the limitations of Code Section 415(b). This Excess Benefit Plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Code Section 415(m)(3) and shall be interpreted and construed consistently with such intent. This Excess Benefit Plan is an "exempt governmental deferred compensation plan" described in Code Section 3121(v)(3). Code Sections 83, 402(b), 457(a), and 457(f)(1) shall not apply to this Excess Benefit Plan.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-2. Definitions

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

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

"**Beneficiary**" means any person named by a member to receive any benefits as provided by 20 O.S. §§1101 et seq. If there is no beneficiary living at time of member employee's death, the member's estate shall be the beneficiary.

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

"**Code**" means the Internal Revenue Code of 1986, as amended, as applicable to a governmental plan, or corresponding provisions of any subsequent federal income tax law.

"**Employer**" means the State of Oklahoma, which has agreed to make contributions to the URSJJ Plan on behalf of its employees.

"**Excess Benefit**" means the benefit determined in accordance with 590:15-5-5(a) and Section 4.01 of the Excess Benefit Plan document.

"**Excess Benefit Fund**" means the trust fund established by the Board pursuant to Article VI of the Excess Benefit Plan document, pursuant to the provisions of 20 O.S. §1104.1, and as set forth in 590:15-5-7.

"**Excess Benefit Plan**" means the "Uniform Retirement System for Justices and Judges Excess Benefit Plan and Trust" established pursuant to Code Section 415 and 20 O.S. §1104.1.

"**Participant**" means a Retiree or Beneficiary who is entitled to benefits under the Excess Benefit Plan.

"**Plan Year**" means the calendar year for the purpose of this Excess Benefit Plan.

"**Retiree**" means a member who has retired under the URSJJ Plan.

"Retirement Benefit" means a monthly income with benefits accruing from the first day of the month coinciding with installments by the URSJJ Plan, whether payable for a temporary period or following retirement and ending on the last day of the month in which death occurs throughout the future life of a Retired Member or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to 20 O.S. §§1101 et seq. or as otherwise allowed to be paid at the discretion of the Board, without regard to any limitations on such retirement income or benefit under Code Section 415(b).

"Retirement Fund" means the reserves of the URSJJ Plan.

"State" means the State of Oklahoma.

"Trustees" means the members of the Board.

"URSJJ Plan" means the retirement plan administered by the Oklahoma Public Employees Retirement System. The URSJJ Plan document consists of the applicable Oklahoma statutes and rules and regulations.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-3. Construction

Whenever any actuarial present value or actuarial equivalency is to be determined under the Excess Benefit Plan to establish a benefit, it shall be based on such reasonable actuarial assumptions as may be approved in the sole discretion of the Board, and shall be determined in a uniform manner for all similarly situated Participants.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-4. Participation

All Retirees and Beneficiaries of the URSJJ Plan are required to participate in the Excess Benefit Plan if their Retirement Benefit from the URSJJ Plan for a Plan Year is limited during the applicable Calendar Year by Code Section 415(b). The Board shall determine for each Plan Year which Retirees and Beneficiaries are required to participate in the Excess Benefit Plan. Participation in the Excess Benefit Plan shall commence each Plan Year once a Retiree or Beneficiary has an Excess Benefit in that Plan Year as determined by the Calendar Year Code Section 415 limits. Participation in the Excess Benefit Plan shall cease for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or if all benefit obligations under the Excess Benefit Plan to the Retiree or Beneficiary have been satisfied.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-5. Payment of benefits

(a) **Benefit amount.** A Participant in the Excess Benefit Plan shall receive a benefit in an amount equal to the amount of Retirement Benefit that would have been payable to, or with respect to, a Participant by the URSJJ Plan that could not be paid because of the application of

the limitations on such Retirement Benefit under Code Section 415(b). An Excess Benefit under the Excess Benefit Plan shall be paid only if and to the extent the Participant is receiving a Retirement Benefit from the URSJJ Plan.

(b) **No election to defer.** No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Excess Benefit Plan.

(c) **Time for Payment.** Each Plan Year, the Excess Benefit to which a Participant is entitled under the Excess Benefit Plan shall be paid from the Excess Benefit Fund commencing during or with the month in which all monthly payments of the Retirement Benefit (as limited by Code Section 415(b)) under the URSJJ Plan have been paid, and such Excess Benefit shall be paid from that month to the end of the Calendar Year falling within the applicable Plan Year.

(d) **Form of Benefit.** The form of the Excess Benefit shall be the same form as the Participant's Retirement Benefit.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-6. Contributions and funding

(a) **Funding.** The Excess Benefit Plan shall be, and remain, unfunded, and the rights, if any, of any person to any benefits hereunder shall be those specified herein. The Excess Benefit Plan constitutes a mere unsecured promise by the Employer, on whose behalf the Retirement Benefit and Excess Benefits are paid to the Participant, to make benefit payments in the future.

(b) **Contributions.** The Administrator shall determine the amount necessary to pay the Excess Benefit under the Excess Benefit Plan for each Plan Year for the Employer. The required contribution for the Employer shall be the aggregate of the Excess Benefits payable to all Participants of the Employer for such Plan Year plus an amount determined by the Board to be a necessary and reasonable expense of administering the Excess Benefit Plan. The amount determined to be necessary to pay the Excess Benefit of a Participant and administrative expenses of the Excess Benefit Plan shall be withheld from contributions to the URSJJ Plan before being credited to the Retirement Fund and deposited into the Excess Benefit Fund established under Article VI of the Excess Benefit Plan document and 590:15-5-7. Employer contributions shall be made at a time or times determined by the Board, but shall be made no less frequently than annually. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Excess Benefit Fund, shall be first used to pay the administrative expenses of the Excess Benefit Plan, then shall be deposited to the Excess Benefit Fund and used to fund Excess Benefits of Participants in future Plan Years.

(c) **Contributions not to be credited to OPERS Plan.** Under no circumstances will Employer contributions to fund the Excess Benefits under the Plan be credited to the URSJJ Plan. The amounts determined to be necessary to provide the Excess Benefit under the Excess Benefit Plan for each Participant shall be accounted for separately. However, such separate accounting shall not be deemed to set aside such amounts for the benefit of a Participant. Benefits under the Excess Benefit Plan shall be paid from the Excess Benefit Fund.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-7. Trust fund

- (a) **Establishment of Excess Benefit Fund.** A trust fund, referred to as the Excess Benefit Fund, is established as a valid trust under the law of the State, which is separate from the Retirement Fund, to hold contributions of the Employer. Contributions to the Excess Benefit Fund shall be held separate and apart from the funds comprising the Retirement Fund and shall not be commingled with assets thereof. The Board shall prescribe a detailed accounting system for the Excess Benefit Fund, which shall allocate the expenses of the Excess Benefit Plan to the Excess Benefit Fund.
- (b) **Excess Benefit Fund Purpose.** The Excess Benefit Fund is maintained solely for the purpose of providing Excess Benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m).
- (c) **Excess Benefit Fund Assets.** All assets held by such Excess Benefit Fund to assist in meeting the Employer's obligations under the Excess Benefit Plan, including all amounts of Employer's contributions made pursuant to the Excess Benefit Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, shall be, and remain, the general, unpledged, unrestricted assets of the Excess Benefit Fund. The Excess Benefit Fund shall be held separate and apart from other funds of the Employer and shall be used exclusively for the uses and purposes of Participants and general creditors as set forth herein. Participants shall have no preferred claim on, or any beneficial interest in, any assets of the Excess Benefit Fund. Any assets held by the Excess Benefit Fund shall be subject to the claims of the contributing Employer's general creditors under federal and state law in the event of insolvency, to the extent of the affected Employer's undistributed contributions, if any.
- (d) **Grantor Trust.** The Excess Benefit Fund is intended to be a grantor trust, of which the contributing Employer is the grantor, within the meaning of Code Sections 671 through 679 and shall be construed accordingly. This provision shall not be construed to create an irrevocable trust of any kind.
- (e) **Excess Benefit Fund Income.** Income accruing to the Excess Benefit Fund in respect of the Excess Benefit Plan shall constitute income derived from the exercise of an essential governmental function upon which the Excess Benefit Fund shall be exempt from tax under Code Section 115, as well as Code Section 415(m)(1).

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-8. Administration

- (a) **Administrative Authority.** The Board shall have the authority to control and manage the operation and administration of the Excess Benefit Plan. The Board and the Administrator shall have the same rights, duties and responsibilities respecting the Excess Benefit Plan as the Board and the Administrator have with respect to the URSJJ Plan pursuant to 20 O.S. §1108, unless modified by Code Section 415 and its implementing regulations, or 20 O.S. §1104.1.
- (b) **Powers of the Board.** The Board shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Board:

- (1) to establish procedures with respect to administration of the Excess Benefit Plan not inconsistent with the Excess Benefit Plan and the Code, and to amend or rescind such procedures;
 - (2) to determine, consistent with the Excess Benefit Plan, the URSJJ Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Excess Benefit Plan and eligibility for distribution of benefits from the Excess Benefit Plan, and the status of any person claiming benefits under the Excess Benefit Plan;
 - (3) pursuant to Article IV of the Excess Benefit Plan document, to make payments from the Excess Benefit Fund to Participants;
 - (4) to contract with a third party to perform designated administrative services under this Excess Benefit Plan;
 - (5) subject to and consistent with the Code, to construe and interpret the Excess Benefit Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Excess Benefit Plan with respect to same.
- (c) **Action by the Board.** Any action by the Board that is supported by competent, material, and substantial evidence and that is not found to be an abuse of discretion shall be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board shall be the sole and final judge of such expediency.
- (d) **Payment of benefits and erroneous payments.** The Board, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the Participant to receive the payment. Any benefit payment that according to the terms of the Excess Benefit Plan and the benefits provided hereunder should not have been made may be recovered as provided in 20 O.S. §1111.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-9. Plan amendments

The Board from time to time may amend, suspend, or terminate any or all of the provisions of this Excess Benefit Plan as may be necessary to comply with Code Section 415(m) and to maintain the Excess Benefit Plan's or the System's qualified status under the Code.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-10. Nonassignability and exemption from taxation and execution

The interests of Participants under this Excess Benefit Plan are hereby exempt from any state, county, municipal or local tax, and shall not be subject to execution, garnishment, attachment, or any other process of law whatsoever, and shall be unassignable, to the extent and except as otherwise provided by 20 O.S. §1111.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-11. Federal and state taxes

The Board, the Participating Employers, and the Administrator do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Excess Benefit Plan.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-12. Investment

The Board may hold such portion of the Excess Benefit Plan uninvested as the Board deems advisable for making distributions under the Excess Benefit Plan, or may invest assets of the Excess Benefit Plan pending the Excess Benefit payments. The Board shall not purchase an annuity contract with the assets of the Excess Benefit Fund.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]

590:15-5-13. Conflicts and limitation of rights

(a) **Conflicts.** In resolving any conflict between provisions of the Excess Benefit Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Excess Benefit Plan, the interpretation that (i) causes the Excess Benefit Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Excess Benefit Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Excess Benefit Plan to comply with all applicable requirements of the Code, and (iii) causes the Excess Benefit Plan to comply with the System Plan and all applicable Oklahoma statutes and rules, shall prevail over any different interpretation.

(b) **Limitation of rights.** Neither the establishment nor maintenance of the Excess Benefit Plan, nor any amendment thereof nor any act or omission under the Excess Benefit Plan (or resulting from the operation of the Excess Benefit Plan) shall be construed as:

- (1) conferring upon any Participant or any other person a right or claim against the Board, Trustees, Employer or Administrator, if any, except to the extent that such right or claim shall be specifically expressed and provided in the Excess Benefit Plan;
- (2) creating any responsibility or liability of the Employer for the validity or effect of the Excess Benefit Plan;
- (3) a contract between the Employer and any Participant or other person; or
- (4) being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Participant or other person to continue or terminate the employment relationship at any time.

[Source: Added at 28 Ok Reg 100, eff 9-17-10 (emergency); Added at 28 Ok Reg 672, eff 5-12-11]