

1 ENGROSSED SENATE  
2 BILL NO. 2130

By: Barrington of the Senate

3 and

4 Armes of the House

5  
6  
7 [ retirement - Oklahoma Firefighters Pension and  
8 Retirement System - modifying definition - make  
9 irrevocable election - specifying certain election  
10 - survivor benefits -

11 emergency ]

12

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 11 O.S. 2001, Section 49-100.1, as  
15 last amended by Section 1, Chapter 128, O.S.L. 2003 (11 O.S. Supp.  
16 2009, Section 49-100.1), is amended to read as follows:

17 Section 49-100.1 As used in this article:

18 1. "System" means the Oklahoma Firefighters Pension and  
19 Retirement System and all predecessor municipal firefighters pension  
20 and retirement systems;

21 2. "Article" means Article 49 of this title;

22 3. "State Board" means the Oklahoma Firefighters Pension and  
23 Retirement Board;

24

1       4. "Local board" means the local firefighters pension and  
2 retirement boards;

3       5. "Fund" means the Oklahoma Firefighters Pension and  
4 Retirement Fund;

5       6. "Member" means all eligible firefighters of a participating  
6 municipality or a fire protection district who perform the essential  
7 functions of fire suppression, prevention, and life safety duties in  
8 a fire department. The term "member" shall include but not be  
9 limited to the person serving as fire chief of any participating  
10 municipality, provided that a person serving as fire chief of a  
11 participating municipality shall meet the age, agility, physical and  
12 other eligibility requirements required by law at the time said  
13 person becomes a member of the System. Effective July 1, 1987, a  
14 member does not include a "leased employee". The term "leased  
15 employee" means any person (other than an employee of the recipient)  
16 who pursuant to an agreement between the recipient and any other  
17 person ("leasing organization") has performed services for the  
18 recipient (or for the recipient and related persons determined in  
19 accordance with Section 414(n)(6) of the Internal Revenue Code of  
20 1986, as amended) on a substantially full-time basis for a period of  
21 at least one year, and such services are performed under primary  
22 direction or control by the recipient. Contributions or benefits  
23 provided a leased employee by the leasing organization which are  
24 attributable to services performed for the recipient employer shall

1 be treated as provided by the recipient employer. A leased employee  
2 shall not be considered an employee of the recipient if the  
3 requirements of the safe harbor provisions of Section 414(n)(5) of  
4 the Internal Revenue Code of 1986, as amended, are satisfied.

5 Effective July 1, 1999, any individual who agrees with the  
6 participating municipality that the individual's services are to be  
7 performed as a leased employee or an independent contractor shall  
8 not be a member regardless of any classification as a common law  
9 employee by the Internal Revenue Service or any other governmental  
10 agency, or any court of competent jurisdiction;

11 7. "Normal retirement date" means the date at which the member  
12 is eligible to receive the unreduced payments of the member's  
13 accrued retirement benefit. Such date shall be the first day  
14 following the date the member completes twenty (20) years of  
15 credited service. If the member's employment continues past the  
16 normal retirement date of the member, the actual retirement date of  
17 the member shall be the first day following the date the member  
18 terminates employment with more than twenty (20) years of credited  
19 service;

20 8. "Credited service" means the period of service used to  
21 determine the eligibility for and the amount of benefits payable to  
22 a member. Credited service shall consist of the period during which  
23 the member participated in the System or the predecessor municipal  
24 systems as an active employee in an eligible membership

1 classification, plus any service prior to the establishment of the  
2 predecessor municipal systems which was credited under the  
3 predecessor municipal systems; provided, however, "credited service"  
4 for members from a fire protection district shall not begin accruing  
5 before July 1, 1982;

6 9. "Participating municipality" means a municipality, county  
7 fire department organized pursuant to subsection D of Section 351 of  
8 Title 19 of the Oklahoma Statutes, or fire protection district which  
9 is making contributions to the System on behalf of its firefighters;

10 10. "Disability" means the complete inability of the  
11 firefighter to perform any and every duty of ~~his~~ the firefighter's  
12 regular occupation; provided further, that once benefits have been  
13 paid for twenty-four (24) months the provisions of Section 49-110 of  
14 this title shall apply to the firefighter;

15 11. "Executive Director" means the managing officer of the  
16 System employed by the State Board;

17 12. "Eligible employer" means any municipality with a municipal  
18 fire department or a fire protection district with an organized fire  
19 department;

20 13. "Entry date" means the date as of which an eligible  
21 employer joins the System. The first entry date pursuant to this  
22 article shall be January 1, 1981;

23 14. "Final average salary" means the average paid gross salary  
24 of the firefighter for normally scheduled hours over the highest

1 salaried thirty (30) consecutive months of the last sixty (60)  
2 months of credited service. Gross salary shall not include payment  
3 for accumulated sick or annual leave upon termination of employment,  
4 any uniform allowances or any other compensation for reimbursement  
5 of out-of-pocket expenses. Only salary on which the required  
6 contributions have been made may be used in computing the final  
7 average salary. Effective January 1, 1988, gross salary shall  
8 include any amount of elective salary reduction under Section 125 of  
9 the Internal Revenue Code of 1986, as amended. Gross salary shall  
10 include any amount of elective salary reduction under Section 457 of  
11 the Internal Revenue Code of 1986, as amended, and any amount of  
12 nonelective salary reduction under Section 414(h) of the Internal  
13 Revenue Code of 1986, as amended. Effective July 1, 1998, for  
14 purposes of determining a member's compensation, any contribution by  
15 the member to reduce ~~his~~ the member's regular cash remuneration  
16 under 132(f)(4) of the Internal Revenue Code of 1986, as amended,  
17 shall be treated as if the member did not make such an election.  
18 Only salary on which required contributions have been made may be  
19 used in computing final average salary.

20 In addition to other applicable limitations, and notwithstanding  
21 any other provision to the contrary, for plan years beginning on or  
22 after July 1, 2002, the annual gross salary of each "Noneligible  
23 Member" taken into account under the System shall not exceed the  
24 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")

1 annual salary limit. The EGTRRA annual salary limit is Two Hundred  
2 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for  
3 increases in the cost of living in accordance with Section  
4 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The  
5 annual salary limit in effect for a calendar year applies to any  
6 period, not exceeding twelve (12) months, over which salary is  
7 determined ("determination period") beginning in such calendar year.  
8 If a determination period consists of fewer than twelve (12) months,  
9 the EGTRRA salary limit will be multiplied by a fraction, the  
10 numerator of which is the number of months in the determination  
11 period, and the denominator of which is twelve (12). For purposes  
12 of this subsection, a "Noneligible Member" is any member who first  
13 became a member during a plan year commencing on or after July 1,  
14 1996.

15 For plan years beginning on or after July 1, 2002, any reference  
16 to the annual salary limit under Section 401(a)(17) of the Internal  
17 Revenue Code of 1986, as amended, shall mean the EGTRRA salary limit  
18 set forth in this subsection.

19 Effective January 1, 2008, gross salary shall also include gross  
20 salary, as described above, but paid by the later of two and one-  
21 half (2 1/2) months after a firefighter's severance from employment  
22 or the end of the plan year that includes the date the firefighter  
23 terminated employment, if it is a payment that, absent a severance  
24 from employment, would have been paid to the firefighter while the

1 firefighter continued in employment with the participating  
2 municipality.

3 Effective January 1, 2008, any payments not described in this  
4 paragraph shall not be considered gross salary if paid after  
5 severance from employment, even if they are paid by the later of two  
6 and one-half (2 1/2) months after the date of severance from  
7 employment or the end of the plan year that includes the date of  
8 severance from employment.

9 Effective January 1, 2008, back pay, within the meaning of  
10 Section 1.415(c)-2(g)(8) of the Income Tax Regulations, shall be  
11 treated as gross salary for the plan year to which the back pay  
12 relates to the extent the back pay represents wages and compensation  
13 that would otherwise be included in this definition.

14 Effective for years beginning after December 31, 2008, gross  
15 salary shall also include differential wage payments under Section  
16 414(u)(12) of the Internal Revenue Code of 1986, as amended;

17 15. "Accrued retirement benefit" means two and one-half percent  
18 (2 1/2%) of the firefighter's final average salary multiplied by the  
19 member's years of credited service not to exceed thirty (30) years;

20 16. "Beneficiary" means a member's surviving spouse or any  
21 surviving children, including biological and adopted children, at  
22 the time of the member's death. The surviving spouse must have been  
23 married to the firefighter for the thirty (30) continuous months  
24 preceding the firefighter's death provided a surviving spouse of a

1 member who died while in, or as a consequence of, the performance of  
2 the member's duty for a participating municipality, shall not be  
3 subject to the marriage limitation for survivor benefits. A  
4 surviving child of a member shall be a beneficiary until reaching  
5 eighteen (18) years of age or twenty-two (22) years of age if the  
6 child is enrolled full time and regularly attending a public or  
7 private school or any institution of higher education. Any child  
8 adopted by a member after the member's retirement shall be a  
9 beneficiary only if the child is adopted by the member for the  
10 thirty (30) continuous months preceding the member's death. Any  
11 child who is adopted by a member after the member's retirement and  
12 such member dies accidentally or as a consequence of the performance  
13 of the member's duty as a firefighter shall not be subject to the  
14 thirty-month adoption requirement. This definition of beneficiary  
15 shall be in addition to any other requirement set forth in this  
16 article;

17 17. "Accumulated contributions" means the sum of all  
18 contributions made by a member to the System and includes both  
19 contributions deducted from the compensation of a member and  
20 contributions of a member picked up and paid by the participating  
21 municipality of the member. Accumulated contributions shall not  
22 include any interest on the contributions of the member, interest on  
23 any amount contributed by the municipality or state and any amount  
24 contributed by the municipality or state; and

1 18. "Limitation year" means the year used in applying the  
2 limitations of Section 415 of the Internal Revenue Code of 1986,  
3 which year shall be the calendar year.

4 SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-106.1, as  
5 last amended by Section 1, Chapter 177, O.S.L. 2008 (11 O.S. Supp.  
6 2009, Section 49-106.1), is amended to read as follows:

7 Section 49-106.1 A. In lieu of terminating employment and  
8 accepting a service retirement pension pursuant to Sections 49-101  
9 and 49-106 of this title, any member of the Oklahoma Firefighters  
10 Pension and Retirement System who has not less than twenty (20)  
11 years of creditable service and who is eligible to receive a service  
12 retirement pension may ~~elect~~ make an irrevocable election to  
13 participate in the Oklahoma Firefighters Deferred Option Plan and  
14 defer the receipts of benefits in accordance with the provisions of  
15 this section.

16 B. For purposes of this section, creditable service shall  
17 include service credit reciprocally recognized pursuant to Sections  
18 49-100.1 through 49-100.8 and Sections 49-101, 49-101.1 and 49-101.2  
19 of this title but for eligibility purposes only.

20 C. The duration of participation in the Oklahoma Firefighters  
21 Deferred Option Plan for active firefighters shall not exceed five  
22 (5) years. Participation in the Oklahoma Firefighters Deferred  
23 Option Plan must begin the first day of a month and end on the last  
24 day of a month. At the conclusion of a member's participation in

1 the Oklahoma Firefighters Deferred Option Plan, the member shall  
2 terminate employment with all participating municipalities as a  
3 firefighter, and shall start receiving the member's accrued monthly  
4 retirement benefit from the System. Such a member may be reemployed  
5 by a participating municipality but only in a position not covered  
6 under the System, and receive in-service distributions of such  
7 member's accrued monthly retirement benefit from the System.

8 D. When a member begins participation in the Oklahoma  
9 Firefighters Deferred Option Plan, the contribution of the member  
10 shall cease. The employer contributions shall continue to be paid  
11 in accordance with subsection B of Section 49-122 of this title.  
12 Employer contributions for members who elect the Oklahoma  
13 Firefighters Deferred Option Plan shall be credited equally to the  
14 Oklahoma Firefighters Pension and Retirement System and to the  
15 member's Oklahoma Firefighters Deferred Option Plan account. The  
16 monthly retirement benefits that would have been payable had the  
17 member elected to cease employment and receive a service retirement  
18 shall be paid into the member's Oklahoma Firefighters Deferred  
19 Option Plan account.

20 E. 1. A member who participates in this plan shall be eligible  
21 to receive cost of living increases.

22 2. A member who participates in this plan shall earn interest  
23 at a rate of two percentage points below the rate of return of the  
24 investment portfolio of the System, but no less than the actuarial

1 assumed interest rate as certified by the actuary in the yearly  
2 evaluation report of the actuary. The interest shall be credited to  
3 the individual account balance of the member on an annual basis.

4 F. A member in the plan shall receive, at the option of the  
5 member, a lump sum payment from the account equal to the payments to  
6 the account or an annuity based upon the account of the member or  
7 may elect any other method of payment if approved by the Board of  
8 Trustees. If a member becomes so physically or mentally disabled  
9 while in, or in consequence of, the performance of his or her duty  
10 as to prevent the effective performance of his or her duties that  
11 the State Board approves an in line of duty disability pension, the  
12 payment from the account shall be an in line of duty disability  
13 payment. Notwithstanding any other provision contained herein to  
14 the contrary, commencement of distributions under the Oklahoma  
15 Firefighters Deferred Option Plan shall be no later than the time as  
16 set forth in subsection B of Section 49-106 of this title.

17 G. If a member dies while maintaining an account balance in the  
18 plan the System shall pay to the designated recipient or recipients  
19 of the member, or if there is no designated recipient or if the  
20 designated recipient predeceases the member, to the spouse of the  
21 member, or if there is no spouse or if the spouse predeceases the  
22 member, to the estate of the member a lump sum payment equal to the  
23 account balance of the member. If such member was receiving, or  
24 eligible to receive, an in line of duty disability pension at the

1 time of his or her death, payment of the account balance shall be an  
2 in line of duty disability payment. If a designated recipient is  
3 the surviving spouse of the member, the surviving spouse shall  
4 receive his or her portion of the account balance of the member  
5 pursuant to subsection F of this section. The surviving spouse,  
6 whether or not he or she is a designated recipient of the member,  
7 may elect to receive his or her portion of the account balance of  
8 the member in the same manner as was applicable to the member.

9 H. In lieu of participating in the Oklahoma Firefighters  
10 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of  
11 this section, a member may ~~elect~~ make an irrevocable election to  
12 participate in the Oklahoma Firefighters Deferred Option Plan  
13 pursuant to this subsection as follows:

14 1. For purposes of this subsection and subsection I of this  
15 section, the following definitions shall apply:

16 a. "back drop date" means the member's normal retirement  
17 date or the date five (5) years before the member  
18 elects to participate in the Oklahoma Firefighters  
19 Deferred Option Plan, whichever date is later,

20 b. "termination date" means the date the member elects to  
21 participate in the Oklahoma Firefighters Deferred  
22 Option Plan pursuant to this subsection, and the date  
23 the member terminates employment with all  
24 participating municipalities as an active firefighter,

1 c. "earlier attained credited service" means the credited  
2 service earned by a member as of the back drop date,  
3 and

4 d. "deferred benefit balance" means all monthly  
5 retirement benefits that would have been payable had  
6 the member elected to cease employment on the back  
7 drop date and receive a service retirement from the  
8 back drop date to the termination date, all the  
9 member's contributions and one-half (1/2) of the  
10 employer contributions from the back drop date to the  
11 termination date, with interest based on how the  
12 benefit would have accumulated on a compound annual  
13 basis as if the member had participated in the  
14 Oklahoma Firefighters Deferred Option Plan pursuant to  
15 subsections A, B, C, D, E and F of this section from  
16 the back drop date to the termination date; and

17 2. At the termination date, the monthly pension benefit shall  
18 be determined based on earlier attained credited service and on the  
19 final average salary as of the back drop date. The member's  
20 individual deferred option account shall be credited with an amount  
21 equal to the deferred benefit balance, the member shall terminate  
22 employment with all participating municipalities as a firefighter,  
23 and shall start receiving the member's accrued monthly retirement  
24 benefit from the System. Such a member may be reemployed by a

1 participating municipality but only in a position not covered under  
2 the System, and receive in-service distributions of such member's  
3 accrued monthly retirement benefit from the System. The provisions  
4 of subsections B, C, E, F and G of this section shall apply to this  
5 subsection. A member shall not participate in the Oklahoma  
6 Firefighters Deferred Option Plan pursuant to this subsection if the  
7 member has elected to participate in the Oklahoma Firefighters  
8 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of  
9 this section.

10 I. Certain surviving spouses and members shall be eligible to  
11 participate in the Oklahoma Firefighters Deferred Option Plan  
12 pursuant to subsection H of this section and this subsection.

13 1. For purposes of this subsection, the following definitions  
14 shall apply:

15 a. "back drop election date" means the date the surviving  
16 spouse or member elects to commence participation in  
17 the Oklahoma Firefighters Deferred Option Plan  
18 pursuant to subsection H of this section and this  
19 subsection,

20 b. "interest" means the actuarial assumed interest rate  
21 as certified by the actuary in the yearly evaluation  
22 report of the actuary, and

23 c. "monthly adjustment amount" means the difference  
24 between the monthly pension prior to the back drop

1 election and the adjusted monthly pension due to the  
2 back drop election,

3 ~~d. "back drop pension adjustment amount" means the sum of~~  
4 ~~all the monthly adjustment amounts adjusted for~~  
5 ~~interest from the pension commencement date to the~~  
6 ~~back drop election date, and~~

7 ~~e. "deferred benefit balance adjustment amount" means the~~  
8 ~~interest on the deferred benefit balance from the~~  
9 ~~pension commencement date to the back drop election~~  
10 ~~date.~~

11 2. If a member who has more than twenty (20) years of  
12 creditable service and is eligible to receive a service retirement  
13 pension dies on or after ~~the effective date of this act~~ June 4,  
14 2007, and prior to terminating employment, the member's surviving  
15 spouse shall be eligible to elect to receive a benefit determined as  
16 if the member had elected to participate in the Oklahoma  
17 Firefighters Deferred Option Plan in accordance with subsection H of  
18 this section on the day immediately preceding such member's death.  
19 The surviving spouse must make any such election within one (1) year  
20 from the date of the member's death. If such election is made, the  
21 monthly pension such surviving spouse is ~~receiving, or is~~ entitled  
22 to receive, shall be adjusted in accordance with the provisions of  
23 subsection H of this section to account for the member's  
24 participation in the Oklahoma Firefighters Deferred Option Plan.

1 ~~The deferred benefit balance such surviving spouse is entitled to~~  
2 ~~receive shall be reduced by the back drop pension adjustment amount~~  
3 ~~and increased by the deferred benefit balance adjustment amount.~~

4 ~~The surviving spouse may only make a back drop election if the~~  
5 ~~deferred benefit balance after the adjustment described in this~~  
6 ~~paragraph is greater than Zero Dollars (\$0.00). The surviving~~  
7 spouse may only make this election if the member has not previously  
8 elected to participate in the Oklahoma Firefighters Deferred Option  
9 Plan. For purposes of this election, the surviving spouse must have  
10 been married to the firefighter for the thirty (30) continuous  
11 months preceding the firefighter's death; provided, the surviving  
12 spouse of a member who died while in, or as a consequence of, the  
13 performance of the member's duty for a participating municipality  
14 shall not be subject to the marriage limitation for this election.

15 3. If a member has more than twenty (20) years of creditable  
16 service and is eligible for a retirement for disability monthly  
17 pension pursuant to Section 49-109 of this title on or after ~~the~~  
18 ~~effective date of this act~~ June 4, 2007, such member shall be  
19 eligible to elect to receive a benefit determined as if the member  
20 had elected to participate in the Oklahoma Firefighters Deferred  
21 Option Plan, in accordance with subsection H of this section, on the  
22 day immediately preceding the date of the member's disability  
23 retirement, provided such election is made within two (2) years from  
24 the date of the member's disability retirement. The disability

1 monthly pension such member is ~~receiving, or~~ entitled to receive,  
2 shall be adjusted in accordance with the provisions of subsection H  
3 of this section to account for the member's participation in the  
4 Oklahoma Firefighters Deferred Option Plan. ~~The deferred benefit~~  
5 ~~balance such member is entitled to receive shall be reduced by the~~  
6 ~~back drop pension adjustment amount and increased by the deferred~~  
7 ~~benefit balance adjustment amount. The member may only make a back~~  
8 ~~drop election if the deferred benefit balance after the adjustment~~  
9 ~~described in this paragraph is greater than Zero Dollars (\$0.00).~~  
10 The member may only make this election if the member has not  
11 previously elected to participate in the Oklahoma Firefighters  
12 Deferred Option Plan, and prior to commencing his or her monthly  
13 disability pension.

14 4. If a member has more than twenty (20) years of creditable  
15 service and filed a grievance for wrongful termination occurring on  
16 or after ~~the effective date of this act~~ June 4, 2007, but is not  
17 reinstated as an active member, such member shall be eligible to  
18 elect to receive a benefit determined as if the member had elected  
19 to participate in the Oklahoma Firefighters Deferred Option Plan in  
20 accordance with subsection H of this section on the day immediately  
21 preceding the date of the member's termination. Such election must  
22 be made within two (2) years from the date of the member's  
23 termination as an active member and, if the member's case pertaining  
24 to the member's termination is on appeal to a court of competent

1 jurisdiction, within such period set by the State Board in its sole  
2 discretion. The monthly pension such member is ~~receiving, or~~  
3 entitled to receive, shall be adjusted in accordance with the  
4 provisions of subsection H of this section to account for the  
5 member's participation in the Oklahoma Firefighters Deferred Option  
6 Plan. ~~The deferred benefit balance such member is entitled to~~  
7 ~~receive shall be reduced by the back drop pension adjustment amount~~  
8 ~~and increased by the deferred benefit balance adjustment amount.~~  
9 ~~The member may only make a back drop election if the deferred~~  
10 ~~benefit balance after the adjustment described in this paragraph is~~  
11 ~~greater than Zero Dollars (\$0.00).~~ The member may only make this  
12 election if the member has not previously elected to participate in  
13 the Oklahoma Firefighters Deferred Option Plan, and prior to  
14 commencing his or her monthly pension or monthly disability pension.

15 SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-106.2, as  
16 last amended by Section 2, Chapter 177, O.S.L. 2008 (11 O.S. Supp.  
17 2009, Section 49-106.2), is amended to read as follows:

18 Section 49-106.2 A. For limitation years prior to July 1,  
19 2007, the limitations of Section 415 of the Internal Revenue Code of  
20 1986, as amended, shall be computed in accordance with the  
21 applicable provisions of the System in effect at that time and, to  
22 the extent applicable, Revenue Ruling 98-1 and Revenue Ruling 2001-  
23 51, except as provided below. Notwithstanding any other provision  
24 contained herein to the contrary, the benefits payable to a member

1 from the System provided by employer contributions (including  
2 contributions picked up by the employer under Section 414(h) of the  
3 Internal Revenue Code of 1986, as amended) shall be subject to the  
4 limitations of Section 415 of the Internal Revenue Code of 1986, as  
5 amended, in accordance with the provisions of this section. The  
6 limitations of this section shall apply in limitation years  
7 beginning on or after July 1, 2007, except as otherwise provided  
8 below.

9 B. Except as provided below, effective for limitation years  
10 ending after December 31, 2001, any accrued retirement benefit  
11 payable to a member as an annual benefit as described below shall  
12 not exceed One Hundred Sixty Thousand Dollars (\$160,000.00),  
13 automatically adjusted under Section 415(d) of the Internal Revenue  
14 Code of 1986, as amended, for increases in the cost of living, as  
15 prescribed by the Secretary of the Treasury or his or her delegate,  
16 effective January 1 of each calendar year and applicable to the  
17 limitation year ending with or within such calendar year. The  
18 automatic annual adjustment of the dollar limitation in this  
19 subsection under Section 415(d) of the Internal Revenue Code of  
20 1986, as amended, shall apply to a member who has had a separation  
21 from employment.

22 1. The member's annual benefit is a benefit that is payable  
23 annually in the form of a straight life annuity. Except as provided  
24 below, where a benefit is payable in a form other than a straight

1 life annuity, the benefit shall be adjusted to an actuarially  
2 equivalent straight life annuity that begins at the same time as  
3 such other form of benefit and is payable on the first day of each  
4 month, before applying the limitations of this section. For a  
5 member who has or will have distributions commencing at more than  
6 one annuity starting date, the annual benefit shall be determined as  
7 of each such annuity starting date (and shall satisfy the  
8 limitations of this section as of each such date), actuarially  
9 adjusting for past and future distributions of benefits commencing  
10 at the other annuity starting dates. For this purpose, the  
11 determination of whether a new starting date has occurred shall be  
12 made without regard to Section 1.401(a)-20, Q&A 10(d), and with  
13 regard to Section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax  
14 Regulations.

15 2. No actuarial adjustment to the benefit shall be made for:

- 16 a. survivor benefits payable to a surviving spouse under  
17 a qualified joint and survivor annuity to the extent  
18 such benefits would not be payable if the member's  
19 benefit were paid in another form,
- 20 b. benefits that are not directly related to retirement  
21 benefits such as a qualified disability benefit,  
22 preretirement incidental death benefits, and  
23 postretirement medical benefits, or

1           c.    the inclusion in the form of a benefit of an automatic  
2                benefit increase feature, provided, the form of  
3                benefit is not subject to Section 417(e)(3) of the  
4                Internal Revenue Code of 1986, as amended, and would  
5                otherwise satisfy the limitations of this section, and  
6                the System provides that the amount payable under the  
7                form of benefit in any limitation year shall not  
8                exceed the limits of this section applicable at the  
9                annuity starting date, as increased in subsequent  
10              years pursuant to Section 415(d) of the Internal  
11              Revenue Code of 1986, as amended. For this purpose,  
12              an automatic benefit increase feature is included in a  
13              form of benefit if the form of benefit provides for  
14              automatic, periodic increases to the benefits paid in  
15              that form.

16           3.   The determination of the annual benefit shall take into  
17   account Social Security supplements described in Section 411(a)(9)  
18   of the Internal Revenue Code of 1986, as amended, and benefits  
19   transferred from another defined benefit plan, other than transfers  
20   of distributable benefits pursuant to Section 1.411(d)-4, Q&A-3(c),  
21   of the Income Tax Regulations, but shall disregard benefits  
22   attributable to employee contributions or rollover contributions.

23           4.   Effective for distributions in plan years beginning after  
24   December 31, 2003, the determination of actuarial equivalence of

1 forms of benefit other than a straight life annuity shall be made in  
2 accordance with paragraph 5 or paragraph 6 of this subsection.

3 5. Benefit Forms Not Subject to Section 417(e)(3) of the  
4 Internal Revenue Code of 1986, as amended: The straight life  
5 annuity that is actuarially equivalent to the member's form of  
6 benefit shall be determined under this paragraph if the form of the  
7 member's benefit is either:

8 a. a nondecreasing annuity (other than a straight life  
9 annuity) payable for a period of not less than the  
10 life of the member (or, in the case of a qualified  
11 preretirement survivor annuity, the life of the  
12 surviving spouse), or

13 b. an annuity that decreases during the life of the  
14 member merely because of:

15 (1) the death of the survivor annuitant, but only if  
16 the reduction is not below fifty percent (50%) of  
17 the benefit payable before the death of the  
18 survivor annuitant, or

19 (2) the cessation or reduction of Social Security  
20 supplements or qualified disability payments as  
21 defined in Section ~~401~~ 411(a)-(11)(9) of the  
22 Internal Revenue Code of 1986, as amended.

23 c. Limitation ~~Year~~ Years Beginning Before July 1, 2007.

24 For limitation years beginning before July 1, 2007,

1 the actuarially equivalent straight life annuity is  
2 equal to the annual amount of the straight life  
3 annuity commencing at the same annuity starting date  
4 that has the same actuarial present value as the  
5 member's form of benefit computed using whichever of  
6 the following produces the greater annual amount:

- 7 (1) the interest rate and the mortality table or  
8 other tabular factor, each as set forth in  
9 subsection H of Section 49-100.9 of this title  
10 for adjusting benefits in the same form, and  
11 (2) a five percent (5%) interest rate assumption and  
12 the applicable mortality table described in  
13 Revenue Ruling 2001-62 (or its successor for  
14 these purposes, if applicable) for that annuity  
15 starting date, or

16 d. Limitation Years Beginning On or After July 1, 2007.  
17 For limitation years beginning on or after July 1,  
18 2007, the actuarially equivalent straight life annuity  
19 is equal to the greater of:

- 20 (1) the annual amount of the straight life annuity,  
21 if any, payable to the member under the System  
22 commencing at the same annuity starting date as  
23 the member's form of benefit, and  
24

1           (2) the annual amount of the straight life annuity  
2           commencing at the same annuity starting date that  
3           has the same actuarial present value as the  
4           member's form of benefit, computed using a five  
5           percent (5%) interest rate assumption and the  
6           applicable mortality table described in Revenue  
7           Ruling 2001-62 for that annuity starting date.

8           6. Benefit Forms Subject to Section 417 (e) (3) of the Internal  
9 Revenue Code of 1986, as amended: The straight life annuity that is  
10 actuarially equivalent to the member's form of benefit shall be  
11 determined under this paragraph 6 if the form of the member's  
12 benefit is other than a benefit form described in paragraph 5 of  
13 this subsection. In this case, the actuarially equivalent straight  
14 life annuity shall be determined as follows:

15           a. Annuity Starting Date in Plan Years Beginning After  
16           ~~2005~~ December 31, 2007 (Plan Years beginning on or  
17           after July 1, 2008). If the annuity starting date of  
18           the member's form of benefit is in a plan year  
19           beginning after ~~2005~~ December 31, 2007, the  
20           actuarially equivalent straight life annuity is equal  
21           to the greatest of (1), (2) or (3) below:

22           (1) the annual amount of the straight life annuity  
23           commencing at the same annuity starting date that  
24           has the same actuarial present value as the

1 member's form of benefit, computed using the  
2 interest rate and the mortality table or other  
3 tabular factor each as set forth in subsection H  
4 of Section 49-100.9 of this title for adjusting  
5 benefits in the same form,

6 (2) the annual amount of the straight life annuity  
7 commencing at the same annuity starting date that  
8 has the same actuarial present value as the  
9 member's form of benefit, computed using a five  
10 and one-half percent (5.5%) interest rate  
11 assumption and the applicable mortality table  
12 described in Revenue Ruling 2001-62 (or its  
13 successor for these purposes, if applicable), and

14 (3) the annual amount of the straight life annuity  
15 commencing at the same annuity starting date that  
16 has the same actuarial present value as the  
17 member's form of benefit, computed using:

18 (a) the adjusted first, second, and third  
19 segment rates under Section 417(e)(3)(C) and  
20 (D) of the Internal Revenue Code of 1986, as  
21 amended, applied under rules similar to the  
22 rules of Section 430(h)(2)(C) of the  
23 Internal Revenue Code of 1986, as amended,  
24 for the fourth calendar month preceding the

1           plan year in which falls the annuity  
2           starting date for the distribution and the  
3           stability period is the successive period of  
4           one plan year which contains the annuity  
5           starting date for the distribution and for  
6           which the applicable interest rate remains  
7           constant, or as otherwise provided in the  
8           applicable guidance if the first day of the  
9           first plan year beginning after December 31,  
10           2007, does not coincide with the first day  
11           of the applicable stability period, and

12           (b) the applicable mortality table described in  
13           Revenue Ruling 2001-62 (or its successor for  
14           these purposes, if applicable), divided by  
15           one and five one-hundredths (1.05).

16           b. Annuity Starting Date in Plan Years Beginning in 2006  
17           or 2007. If the annuity starting date of the member's  
18           form of benefit is in a plan year beginning in 2006 or  
19           2007, the actuarially equivalent straight life annuity  
20           is equal to the greatest of (1), (2) or (3) below:

21           (1) the annual amount of the straight life annuity  
22           commencing at the same annuity starting date that  
23           has the same actuarial present value as the  
24           member's form of benefit, computed using the

1           interest rate and the mortality table (or other  
2           tabular factor) each as set forth in subsection H  
3           of Section 49-100.9 of this title for adjusting  
4           benefits in the same form,

5           (2) the annual amount of the straight life annuity  
6           commencing at the same annuity starting date that  
7           has the same actuarial present value as the  
8           member's form of benefit, computed using a five  
9           and one-half percent (5.5%) interest rate  
10           assumption and the applicable mortality table  
11           described in Revenue Ruling 2001-62 (or its  
12           successor for these purposes, if applicable), and

13           (3) the annual amount of the straight life annuity  
14           commencing at the same annuity starting date that  
15           has the same actuarial present value as the  
16           member's form of benefit, computed using:

17           (a) the rate of interest on thirty-year Treasury  
18           securities as specified by the Commissioner  
19           for the lookback month for the stability  
20           period specified below. The lookback month  
21           applicable to the stability period is the  
22           fourth calendar month preceding the first  
23           day of the stability period, as specified  
24           below. The stability period is the

1 successive period of one plan year which  
2 contains the annuity starting date for the  
3 distribution and for which the applicable  
4 interest rate remains constant, and

5 (b) the applicable mortality table described in  
6 Revenue Ruling 2001-62 (or its successor for  
7 these purposes, if applicable),

8 divided by one and five one-hundredths (1.05).

9 ~~b.~~

10 c. Annuity Starting Date in Plan Years Beginning in 2004  
11 or 2005.

12 (1) If the annuity starting date of the member's form  
13 of benefit is in a plan year beginning in 2004 or  
14 2005, the actuarially equivalent straight life  
15 annuity is equal to the annual amount of the  
16 straight life annuity commencing at the same  
17 annuity starting date that has the same actuarial  
18 present value as the member's form of benefit,  
19 computed using whichever of the following  
20 produces the greater annual amount:

21 (a) the interest rate and the mortality table or  
22 other tabular factor, each as set forth in  
23 subsection H of Section 49-100.9 of this  
24

1 title for adjusting benefits in the same  
2 form, and

3 (b) a five and one-half percent (5.5%) interest  
4 rate assumption and the applicable mortality  
5 table described in Revenue Ruling 2001-62  
6 (or its successor for these purposes, if  
7 applicable).

8 (2) If the annuity starting date of the member's  
9 benefit is on or after the first day of the first  
10 plan year beginning in 2004 and before December  
11 31, 2004, the application of this subparagraph b  
12 shall not cause the amount payable under the  
13 member's form of benefit to be less than the  
14 benefit calculated under the System, taking into  
15 account the limitations of this section, except  
16 that the actuarially equivalent straight life  
17 annuity is equal to the annual amount of the  
18 straight life annuity commencing at the same  
19 annuity starting date that has the same actuarial  
20 present value as the member's form of benefit,  
21 computed using whichever of the following  
22 produces the greatest annual amount:

23 (a) the interest rate and mortality table or  
24 other tabular factor, each as set forth in

1 subsection H of Section 49-100.9 of this  
2 title for adjusting benefits in the same  
3 form,

4 (b) i. the rate of interest on thirty-year  
5 Treasury securities as specified by the  
6 Commissioner for the lookback month for  
7 the stability period specified below.  
8 The lookback month applicable to the  
9 stability period is the fourth calendar  
10 month preceding the first day of the  
11 stability period, as specified below.  
12 The stability period is the successive  
13 period of one plan year which contains  
14 the annuity starting date for the  
15 distribution and for which the  
16 applicable interest rate remains  
17 constant, and

18 ii. the applicable mortality table  
19 described in Revenue Ruling 2001-62 (or  
20 its successor for these purposes, if  
21 applicable), and

22 (c) i. the rate of interest on thirty-year  
23 Treasury securities as specified by the  
24 Commissioner for the lookback month for

1 the stability period specified below.

2 The lookback month applicable to the  
3 stability period is the fourth calendar  
4 month preceding the first day of the  
5 stability period, as specified below.

6 The stability period is the successive  
7 period of one plan year which contains  
8 the annuity starting date for the  
9 distribution and for which the  
10 applicable interest rate remains  
11 constant (as in effect on the last day  
12 of the last plan year beginning before  
13 January 1, 2004, under provisions of  
14 the System then adopted and in effect),  
15 and

- 16 ii. the applicable mortality table  
17 described in Revenue Ruling 2001-62 (or  
18 its successor for these purposes, if  
19 applicable).

20 C. If a member has less than ten (10) years of participation in  
21 the System and all predecessor municipal firefighter pension and  
22 retirement systems, the dollar limitation otherwise applicable under  
23 subsection B of this section shall be multiplied by a fraction, the  
24 numerator of which is the number of the years of participation in

1 the System of the member, but never less than one (1), and the  
2 denominator of which is ten (10).

3 D. Adjustment of Dollar Limitation for Benefit Commencement

4 Before Sixty-two (62) Years of Age or After Sixty-five (65) Years of  
5 Age: Effective for benefits commencing in limitation years ending  
6 after December 31, 2001, the dollar limitation under subsection B of  
7 this section shall be adjusted if the annuity starting date of the  
8 member's benefit is before sixty-two (62) years of age or after  
9 sixty-five (65) years of age. If the annuity starting date is  
10 before sixty-two (62) years of age, the dollar limitation under  
11 subsection B of this section shall be adjusted under paragraph 1 of  
12 this subsection, as modified by paragraph 3 of this subsection, but  
13 subject to paragraph 4 of this subsection. If the annuity starting  
14 date is after sixty-five (65) years of age, the dollar limitation  
15 under subsection B of this section shall be adjusted under paragraph  
16 2 of this subsection, as modified by paragraph 3 of this subsection.

17 1. Adjustment of Defined Benefit Dollar Limitation for Benefit  
18 Commencement Before Sixty-two (62) Years of Age:

19 a. Limitation Years Beginning Before July 1, 2007. If  
20 the annuity starting date for the member's benefit is  
21 prior to sixty-two (62) years of age and occurs in a  
22 limitation year beginning before July 1, 2007, the  
23 dollar limitation for the member's annuity starting  
24 date is the annual amount of a benefit payable in the

1 form of a straight life annuity commencing at the  
2 member's annuity starting date that is the actuarial  
3 equivalent of the dollar limitation under subsection B  
4 of this section (adjusted under subsection C of this  
5 section for years of participation less than ten (10),  
6 if required) with actuarial equivalence computed using  
7 whichever of the following produces the smaller annual  
8 amount:

- 9 (1) the interest rate and the mortality table or  
10 other tabular factor, each as set forth in  
11 subsection H of Section 49-100.9 of this title,  
12 or  
13 (2) a five percent (5%) interest rate assumption and  
14 the applicable mortality table as described in  
15 Revenue Ruling 2001-62 (or its successor for  
16 these purposes, if applicable).

17 b. Limitation Years Beginning On Or After July 1, 2007.

- 18 (1) System Does Not Have Immediately Commencing  
19 Straight Life Annuity Payable at Both Sixty-two  
20 (62) Years of Age and the Age of Benefit  
21 Commencement. If the annuity starting date for  
22 the member's benefit is prior to sixty-two (62)  
23 years of age and occurs in a limitation year  
24 beginning on or after July 1, 2007, and the

1 System does not have an immediately commencing  
2 straight life annuity payable at both sixty-two  
3 (62) years of age and the age of benefit  
4 commencement, the dollar limitation for the  
5 member's annuity starting date is the annual  
6 amount of a benefit payable in the form of a  
7 straight life annuity commencing at the member's  
8 annuity starting date that is the actuarial  
9 equivalent of the dollar limitation under  
10 subsection B of this section (adjusted under  
11 subsection C of this section for years of  
12 participation less than ten (10), if required)  
13 with actuarial equivalence computed using a five  
14 percent (5%) interest rate assumption and the  
15 applicable mortality table for the annuity  
16 starting date as described in Revenue Ruling  
17 2001-62 (or its successor for these purposes, if  
18 applicable) (and expressing the member's age  
19 based on completed calendar months as of the  
20 annuity starting date).

- 21 (2) System Has Immediately Commencing Straight Life  
22 Annuity Payable at Both Sixty-two (62) Years of  
23 Age and the Age of Benefit Commencement. If the  
24 annuity starting date for the member's benefit is

1 prior to sixty-two (62) years of age and occurs  
2 in a limitation year beginning on or after July  
3 1, 2007, and the System has an immediately  
4 commencing straight life annuity payable at both  
5 sixty-two (62) years of age and the age of  
6 benefit commencement, the dollar limitation for  
7 the member's annuity starting date is the lesser  
8 of the limitation determined under division (1)  
9 of ~~this~~ subparagraph b of this paragraph and the  
10 dollar limitation under subsection B of this  
11 section (adjusted under subsection C of this  
12 section for years of participation less than ten  
13 (10), if required) multiplied by the ratio of the  
14 annual amount of the immediately commencing  
15 straight life annuity under the System at the  
16 member's annuity starting date to the annual  
17 amount of the immediately commencing straight  
18 life annuity under the System at sixty-two (62)  
19 years of age, both determined without applying  
20 the ~~limitation~~ limitations of this section.

21 2. Adjustment of Defined Benefit Dollar Limitation for Benefit  
22 Commencement After Sixty-five (65) Years of Age:

- 23 a. Limitation Years Beginning Before July 1, 2007. If  
24 the annuity starting date for the member's benefit is

1 after sixty-five (65) years of age and occurs in a  
2 limitation year beginning before July 1, 2007, the  
3 dollar limitation for the member's annuity starting  
4 date is the annual amount of a benefit payable in the  
5 form of a straight life annuity commencing at the  
6 member's annuity starting date that is the actuarial  
7 equivalent of the dollar limitation under subsection B  
8 of this section (adjusted under subsection C of this  
9 section for years of participation less than ten (10),  
10 if required) with actuarial equivalence computed using  
11 whichever of the following produces the smaller annual  
12 amount:

- 13 (1) the interest rate and the mortality table or  
14 other tabular factor, each as set forth in  
15 subsection H of Section 49-100.9 of this title,  
16 or  
17 (2) a five percent (5%) interest rate assumption and  
18 the applicable mortality table as described in  
19 Revenue Ruling 2001-62 (or its successor for  
20 these purposes, if applicable).

21 b. Limitation Years Beginning On Or After July 1, 2007.

- 22 (1) System Does Not Have Immediately Commencing  
23 Straight Life Annuity Payable at Both Sixty-five  
24 (65) Years of Age and the Age of Benefit

1 Commencement. If the annuity starting date for  
2 the member's benefit is after sixty-five (65)  
3 years of age and occurs in a limitation year  
4 beginning on or after July 1, 2007, and the  
5 System does not have an immediately commencing  
6 straight life annuity payable at both sixty-five  
7 (65) years of age and the age of benefit  
8 commencement, the dollar limitation at the  
9 member's annuity starting date is the annual  
10 amount of a benefit payable in the form of a  
11 straight life annuity commencing at the member's  
12 annuity starting date that is the actuarial  
13 equivalent of the dollar limitation under  
14 subsection B of this section (adjusted under  
15 subsection C of this section for years of  
16 participation less than ten (10), if required)  
17 with actuarial equivalence computed using a five  
18 percent (5%) interest rate assumption and the  
19 applicable mortality table for the annuity  
20 starting date as described in Revenue Ruling  
21 2001-62 (or its successor for these purposes, if  
22 applicable) (and expressing the member's age  
23 based on completed calendar months as of the  
24 annuity starting date).

1           (2) System Has Immediately Commencing Straight Life  
2           Annuity Payable at Both Sixty-five (65) Years of  
3           Age and Age of Benefit Commencement. If the  
4           annuity starting date for the member's benefit is  
5           after sixty-five (65) years of age and occurs in  
6           a limitation year beginning on or after July 1,  
7           2007, and the System has an immediately  
8           commencing straight life annuity payable at both  
9           sixty-five (65) years of age and the age of  
10          benefit commencement, the dollar limitation at  
11          the member's annuity starting date is the lesser  
12          of the limitation determined under division (1)  
13          of subparagraph b of this paragraph and the  
14          dollar limitation under subsection B of this  
15          section (adjusted under subsection C of this  
16          section for years of participation less than ten  
17          (10), if required) multiplied by the ratio of the  
18          annual amount of the adjusted immediately  
19          commencing straight life annuity under the System  
20          at the member's annuity starting date to the  
21          annual amount of the adjusted immediately  
22          commencing straight life annuity under the System  
23          at sixty-five (65) years of age, both determined  
24          without applying the limitations of this section.

1 For this purpose, the adjusted immediately  
2 commencing straight life annuity under the System  
3 at the member's annuity starting date is the  
4 annual amount of such annuity payable to the  
5 member, computed disregarding the member's  
6 accruals after sixty-five (65) years of age but  
7 including actuarial adjustments even if those  
8 actuarial adjustments are used to offset  
9 accruals; and the adjusted immediately commencing  
10 straight life annuity under the System at sixty-  
11 five (65) years of age is the annual amount of  
12 such annuity that would be payable under the  
13 System to a hypothetical member who is sixty-five  
14 (65) years of age and has the same accrued  
15 benefit as the member.

16 3. Notwithstanding the other requirements of this subsection,  
17 no adjustment shall be made to the dollar limitation under  
18 subsection B of this section to reflect the probability of a  
19 member's death between the annuity starting date and sixty-two (62)  
20 years of age, or between sixty-five (65) years of age and the  
21 annuity starting date, as applicable, if benefits are not forfeited  
22 upon the death of the member prior to the annuity starting date. To  
23 the extent benefits are forfeited upon death before the annuity  
24 starting date, such an adjustment shall be made. For this purpose,

1 no forfeiture shall be treated as occurring upon the member's death  
2 if the System does not charge members for providing a qualified  
3 preretirement survivor annuity, as defined in Section 417(c) of the  
4 Internal Revenue Code of 1986, as amended, upon the member's death.

5 4. Notwithstanding any other provision to the contrary, for  
6 limitation years beginning on or after January 1, 1997, if payment  
7 begins before the member reaches sixty-two (62) years of age, the  
8 reductions in the limitations in this subsection shall not apply to  
9 a member who is a "qualified participant" as defined in Section  
10 415(b)(2)(H) of the Internal Revenue Code of 1986, as amended.

11 E. Minimum Benefit Permitted: Notwithstanding anything else in  
12 this section to the contrary, the benefit otherwise accrued or  
13 payable to a member under this System shall be deemed not to exceed  
14 the maximum permissible benefit if:

15 1. The retirement benefits payable for a limitation year under  
16 any form of benefit with respect to such member under this System  
17 and under all other defined benefit plans (without regard to whether  
18 a plan has been terminated) ever maintained by a participating  
19 municipality do not exceed Ten Thousand Dollars (\$10,000.00)  
20 multiplied by a fraction:

21 a. the numerator of which is the member's number of  
22 credited years (or part thereof, but not less than one  
23 (1) year) of service (not to exceed ten (10) years)  
24 with the participating municipality, and

1           b.     the denominator of which is ten (10); and

2           2.     The participating municipality (or a predecessor employer)  
3 has not at any time maintained a defined contribution plan in which  
4 the member participated (for this purpose, mandatory employee  
5 contributions under a defined benefit plan, individual medical  
6 accounts under Section 401(h) of the Internal Revenue Code of 1986,  
7 as amended, and accounts for postretirement medical benefits  
8 established under Section 419A(d)(1) of the Internal Revenue Code of  
9 1986, as amended, are not considered a separate defined contribution  
10 plan).

11          F.     In no event shall the maximum annual accrued retirement  
12 benefit of a member allowable under this section be less than the  
13 annual amount of such accrued retirement benefit, including early  
14 pension and qualified joint and survivor annuity amounts, duly  
15 accrued by the member as of the last day of the limitation year  
16 beginning in 1982, or as of the last day of the limitation year  
17 beginning in 1986, whichever is greater, disregarding any plan  
18 changes or cost-of-living adjustments occurring after July 1, 1982,  
19 as to the 1982 accrued amount, and May 5, 1986, as to the 1986  
20 accrued amount.

21          G.     For limitation years beginning on or after January 1, 1995,  
22 subsection C of this section, paragraph 1 of subsection D of this  
23 section, and the proration provided under subparagraphs a and b of  
24 paragraph 1 of subsection E of this section, shall not apply to a

1 benefit paid under the System as a result of the member becoming  
2 disabled by reason of personal injuries or sickness, or amounts  
3 received by the beneficiaries, survivors or estate of the member as  
4 a result of the death of the member.

5 H. Effective for years beginning after December 31, 1997, if a  
6 member purchases service under Sections 49-117.2 and 49-117.3 of  
7 this title, which qualifies as "permissive service credit" pursuant  
8 to Section 415(n) of the Internal Revenue Code of 1986, as amended,  
9 the limitations of Section 415 of the Internal Revenue Code of 1986,  
10 as amended, may be met by either:

11 1. Treating the accrued benefit derived from such contributions  
12 as an annual benefit under subsection B of this section; or

13 2. Treating all such contributions as annual additions for  
14 purposes of Section 415(c) of the Internal Revenue Code of 1986, as  
15 amended.

16 I. Effective for years beginning after December 31, 1997, if a  
17 member repays to the System any amounts received because of the  
18 member's prior termination pursuant to Section 49-117.1 of this  
19 title, such repayment shall not be taken into account for purposes  
20 of Section 415 of the Internal Revenue Code of 1986, as amended,  
21 pursuant to Section 415(k)(3) of the Internal Revenue Code of 1986,  
22 as amended.

23

24

1 J. For distributions made in limitation years beginning on or  
2 after January 1, 2000, the combined limit of repealed Section 415(e)  
3 of the Internal Revenue Code of 1986, as amended, shall not apply.

4 K. The State Board is hereby authorized to revoke the special  
5 election previously made on June 21, 1991, under Internal Revenue  
6 Code Section 415(b)(10).

7 SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-106.3, as  
8 last amended by Section 3, Chapter 177, O.S.L. 2008 (11 O.S. Supp.  
9 2009, Section 49-106.3), is amended to read as follows:

10 Section 49-106.3 A. For distributions made on or after January  
11 1, 1993, and notwithstanding any provision of the System to the  
12 contrary that would otherwise limit a Distributee's election  
13 hereunder, a Distributee, including a nonspouse designated  
14 beneficiary, to the extent permitted under paragraph 3 of subsection  
15 B of this section, may elect, at the time and in the manner  
16 prescribed by the State Board, to have any portion of an Eligible  
17 Rollover Distribution paid directly to ~~an~~:

18 1. An Eligible Retirement Plan, or  
19 2. Effective for distributions after December 31, 2007, a Roth  
20 IRA described in Section 408A of the Internal Revenue Code of 1986,  
21 as amended, subject to any limitations described in Section 408A(c)  
22 of the Internal Revenue Code of 1986, as amended specified by the  
23 Distributee in a Direct Rollover.  
24

1 B. For purposes of this section, the following definitions  
2 shall apply:

3 1. "Eligible Rollover Distribution" means any distribution of  
4 all or any portion of the balance to the credit of the Distributee,  
5 except that an Eligible Rollover Distribution does not include any  
6 distribution that is one of a series of substantially equal periodic  
7 payments (not less frequently than annually) made for the life (or  
8 life expectancy) of the Distributee or the joint lives (or life  
9 expectancies) of the Distributee and the Distributee's designated  
10 beneficiary, or for a specified period of ten (10) years or more;  
11 any distribution to the extent such distribution is required under  
12 Section 401(a)(9) of the Internal Revenue Code of 1986, as amended;  
13 and the portion of any distribution that is not includable in gross  
14 income. Effective January 1, 2002, a portion of a distribution  
15 shall not fail to be an Eligible Rollover Distribution merely  
16 because the portion consists of after-tax member contributions which  
17 are not includable in gross income. However, such portion may be  
18 ~~paid~~ transferred only:

19 (a) from January 1, 2002, through December 31, 2006, ~~to:~~

- 20 (1) to an individual retirement account or annuity  
21 described in Section 408(a) or (b) of the  
22 Internal Revenue Code of 1986, as amended, or  
23 (2) in a direct trustee-to-trustee transfer, to a  
24 qualified trust which is a part of a defined

1                    contribution plan ~~described in Section 401(a) or~~  
2                    ~~403(a) of the Internal Revenue Code of 1986, as~~  
3                    ~~amended, and which~~ that agrees to separately  
4                    account for amounts so transferred, including  
5                    separately accounting for the portion of such  
6                    distribution which is includable in gross income  
7                    and the portion of such distribution which is not  
8                    so includable, and

9                    (b) on or after January 1, 2007, ~~to:~~

10                    (1) to an individual retirement account or annuity  
11                    described in Section 408(a) or (b) of the  
12                    Internal Revenue Code of 1986, as amended, or

13                    (2) in a direct trustee-to-trustee transfer, to a  
14                    qualified trust ~~described in Section 401(a) or~~  
15                    ~~403(a) of the Internal Revenue Code of 1986, as~~  
16                    ~~amended,~~ or an annuity contract described in  
17                    Section 403(b) of the Internal Revenue Code of  
18                    1986, as amended, ~~and~~ if such trust or annuity  
19                    contract provides for separate accounting for  
20                    amounts so transferred (and earnings thereon),  
21                    including separately accounting for the portion  
22                    of such distribution which is includable in gross  
23                    income and the portion of such distribution which  
24                    is not so includable, ~~and~~

1           Effective for distributions after December 31, 2007,  
2           such after-tax portion may also be transferred to  
3           a Roth IRA described in Section 408A of the  
4           Internal Revenue Code of 1986, as amended,  
5           subject to any limitations described in Section  
6           408A(c) of the Internal Revenue Code of 1986, as  
7           amended, that agrees to separately account for  
8           amounts so transferred, including separately  
9           accounting for the portion of such distribution  
10           which is includible in gross income and the  
11           portion of such distribution which is not so  
12           includible.

13           2. "Eligible Retirement Plan" means an individual retirement  
14 account described in Section 408(a) of the Internal Revenue Code of  
15 1986, as amended, an individual retirement annuity described in  
16 Section 408(b) of the Internal Revenue Code of 1986, as amended, an  
17 annuity plan described in Section 403(a) of the Internal Revenue  
18 Code of 1986, as amended, or a qualified trust described in Section  
19 401(a) of the Internal Revenue Code of 1986, as amended, that  
20 accepts the Distributee's Eligible Rollover Distribution. Effective  
21 January 1, 2002, an Eligible Retirement Plan shall also mean an  
22 annuity contract described in Section 403(b) of the Internal Revenue  
23 Code of 1986, as amended, and an eligible plan under Section 457(b)  
24 of the Internal Revenue Code of 1986, as amended, which is

1 maintained by a state, political subdivision of a state, or any  
2 agency or instrumentality of a state or political subdivision of a  
3 state and which agrees to separately account for amounts transferred  
4 into such plan from the System;

5 3. "Distributee" means a member whether or not the member is an  
6 active firefighter. In addition, effective June 7, 1993, the  
7 member's surviving spouse and the member's spouse or former spouse  
8 who is an alternate payee under a qualified domestic order, as  
9 provided in subsection B of Section 49-126 of this title, are  
10 Distributees with regard to the interest of the spouse or former  
11 spouse. Effective for distributions after December 31, 2006, a  
12 Distributee also includes the member's nonspouse designated  
13 beneficiary, pursuant to Section 401(a)(9)(E) of the Internal  
14 Revenue Code of 1986, as amended. ~~In the case of a nonspouse~~  
15 ~~beneficiary, the~~ who may only elect a Direct Rollover ~~may be made~~  
16 only (to the extent such Distributee does not receive a lump sum  
17 payment) to an individual retirement account or annuity (other than  
18 an endowment contract) described in Section 408(a) or (b) of the  
19 Internal Revenue Code of 1986, as amended, (IRA), that is  
20 established on behalf of such designated beneficiary and that will  
21 be treated as an inherited IRA pursuant to the provisions of Section  
22 402(c)(11) of the Internal Revenue Code of 1986, as amended. Also,  
23 in this case, the determination of any required minimum distribution  
24 under Section 401(a)(9) of the Internal Revenue Code of 1986, as

1 amended, that is ineligible for rollover shall be made in accordance  
2 with Notice 2007-7, Q&A 17 and 18, ~~Announcement~~ 2007-5 Internal  
3 Revenue Bulletin 395. The required minimum distribution rules of  
4 Section 401(a)(9)(B) (other than clause iv thereof) of the Internal  
5 Revenue Code of 1986, as amended, apply to the transferee IRA; and

6 4. "Direct Rollover" means a payment by the System to the  
7 Eligible Retirement Plan specified by the Distributee or, effective  
8 for distributions on or after January 1, 2008, to a Roth IRA under  
9 Section 408A of the Internal Revenue Code of 1986, as amended, as  
10 specified by the Distributee, assuming the Distributee otherwise  
11 meets the Roth IRA requirements.

12 C. At least thirty (30) days before and, effective January 1,  
13 2007, not more than one hundred eighty (180) days before the date of  
14 distribution, the Distributee must be provided with a notice of  
15 rights which satisfies Section 402(f) of the Internal Revenue Code  
16 of 1986, as amended, as to rollover options and tax effects. Such  
17 distribution may commence less than thirty (30) days after the  
18 notice is given, provided that:

19 1. The State Board clearly informs the Distributee (other than  
20 a nonspouse designated beneficiary prior to January 1, 2010) that  
21 the Distributee has a right to a period of at least thirty (30) days  
22 after receiving the notice to consider the decision of whether or  
23 not to elect a distribution; and

1        2. The Distributee, after receiving the notice, affirmatively  
2 elects a distribution.

3        D. Prior to January 1, 2010, a distribution with respect to a  
4 nonspouse designated beneficiary shall be made in accordance with  
5 Notice 2007-7, Q&A 15, 2007-5 Internal Revenue Bulletin 395.  
6 Effective January 1, 2010, a distribution with respect to a  
7 nonspouse designated beneficiary shall be subject to Sections  
8 401(a)(31), 402(f) and 3405(c) of the Internal Revenue Code of 1986,  
9 as amended.

10        SECTION 5.        AMENDATORY        Section 3, Chapter 345, O.S.L.  
11 2007 (11 O.S. Supp. 2009, Section 49-106.4), is amended to read as  
12 follows:

13        Section 106.4 A. An individual who has been designated,  
14 pursuant to Section 401(a)(9)(E) of the Internal Revenue Code of  
15 1986, as amended, as the beneficiary of a deceased member and who is  
16 not the surviving spouse of the member, may elect, in accordance  
17 with Section 402(c)(11) of the Internal Revenue Code of 1986, as  
18 amended, and at the time and in the manner prescribed by the  
19 Oklahoma Firefighters Pension and Retirement Board, to have a direct  
20 trustee-to-trustee transfer of any portion of such beneficiary's  
21 lump-sum distribution from the Oklahoma Firefighters Pension and  
22 Retirement System after December 31, 2006, made to an individual  
23 retirement account or individual retirement annuity (other than an  
24 endowment contract) described in Section 408(a) or (b) of the

1 Internal Revenue Code of 1986, as amended (IRA), that is established  
2 on behalf of such designated individual. If such transfer is made  
3 then:

4 1. The transfer is treated as an eligible rollover distribution  
5 for purposes of Section 402(c)(11) of the Internal Revenue Code of  
6 1986, as amended;

7 2. The transferee IRA is treated as an inherited individual  
8 retirement account or an inherited individual retirement annuity  
9 (within the meaning of Section 408(d)(3)(C) of the Internal Revenue  
10 Code of 1986, as amended) and must be titled in the name of the  
11 deceased member, for the benefit of the beneficiary; and

12 3. The required minimum distribution rules of Section  
13 401(a)(9)(B) (other than clause iv thereof) of the Internal Revenue  
14 Code of 1986, as amended, apply to the transferee IRA.

15 B. A trust maintained for the benefit of one or more designated  
16 beneficiaries shall be treated in the same manner as a ~~trust~~  
17 designated beneficiary.

18 C. The Oklahoma Firefighters Pension and Retirement Board shall  
19 promulgate such rules as are necessary to implement the provisions  
20 of this section.

21 SECTION 6. AMENDATORY 11 O.S. 2001, Section 49-122, is  
22 amended to read as follows:

23 Section 49-122. A. Each municipality having a paid member of a  
24 fire department shall deduct monthly from the salary of each member

1 of the fire department of such municipality an amount equal to eight  
2 percent (8%) of the actual paid gross salary of each member of the  
3 fire department. The deduction shall be considered the minimum  
4 deduction. At the option of the municipality, the municipality may  
5 pay all or any part of the member's required contribution. ~~The~~  
6 ~~members of a fire department, by a majority vote of its paid~~  
7 ~~members, may vote to increase the amount of the deduction.~~ The  
8 treasurer of each municipality shall deduct the authorized  
9 deductions from the salary of each paid member of the fire  
10 department. The treasurer of the municipality shall deposit within  
11 ten (10) days from each ending payroll date in the System the amount  
12 deducted from the salary of each member of the fire department.  
13 Amounts deducted from the salary of a member and not paid to the  
14 System after thirty (30) days from each ending payroll date shall be  
15 subject to a monthly late charge of one and one-half percent (1  
16 1/2%) of the unpaid balance to be paid by the municipality to the  
17 System.

18 Each municipality shall pick up under the provisions of Section  
19 414(h) (2) of the Internal Revenue Code of 1986, as amended, and pay  
20 the contribution which the member is required by law to make to the  
21 System for all compensation earned after December 31, 1988.

22 Although the contributions so picked up are designated as member  
23 contributions, such contributions shall be treated as contributions  
24 being paid by the municipality in lieu of contributions by the

1 member in determining tax treatment under the Internal Revenue Code  
2 of 1986 and such picked up contributions shall not be includable in  
3 the gross income of the member until such amounts are distributed or  
4 made available to the member or the beneficiary of the member. The  
5 member, by the terms of this system, shall not have any option to  
6 choose to receive the contributions so picked up directly and the  
7 picked up contributions must be paid by the municipality to the  
8 System.

9 Member contributions which are picked up shall be treated in the  
10 same manner and to the same extent as member contributions made  
11 prior to the date on which member contributions were picked up by  
12 the municipality. Member contributions so picked up shall be  
13 included in salary for purposes of the System.

14 The municipality shall pay the member contributions from the  
15 same source of funds used in paying salary to the member, by  
16 effecting an equal cash reduction in gross salary of the member, or  
17 by an offset against future salary increases, or by a combination of  
18 reduction in gross salary and offset against future salary  
19 increases.

20 The treasurer of each municipality shall deduct the picked up  
21 contributions from the salary of each paid member of the fire  
22 department. The treasurer of the municipality shall deposit monthly  
23 in the System the amount picked up from the salary of each member of  
24 the fire department.

1 B. Each municipality having a paid member of a fire department  
2 shall deposit monthly with the State Board an amount equal to the  
3 following:

4 1. Prior to July 1, 1991, ten percent (10%) of the total actual  
5 paid gross salaries of the members of the fire department;

6 2. Beginning July 1, 1991 through June 30, 1992, ten and one-  
7 half percent (10 1/2%) of the total actual paid gross salaries of  
8 the members of the fire department;

9 3. Beginning July 1, 1992 through June 30, 1993, eleven percent  
10 (11%) of the total actual paid gross salaries of the members of the  
11 fire department;

12 4. Beginning July 1, 1993 through June 30, 1994, eleven and  
13 one-half percent (11 1/2%) of the total actual paid gross salaries  
14 of the members of the fire department;

15 5. Beginning July 1, 1994 through June 30, 1995, twelve percent  
16 (12%) of the total actual paid gross salaries of the members of the  
17 fire department;

18 6. Beginning July 1, 1995 through June 30, 1996, twelve and  
19 one-half percent (12 1/2%) of the total actual paid gross salaries  
20 of the members of the fire department; and

21 7. Beginning July 1, 1996, thirteen percent (13%) of the total  
22 actual paid gross salaries of the members of the fire department.  
23  
24

1 C. Each county or municipality having a volunteer member of a  
2 fire department shall deposit yearly with the State Board Sixty  
3 Dollars (\$60.00) for each volunteer member of the department.

4 Provided, the above-mentioned volunteer county or municipal  
5 contributions shall be reevaluated by the next scheduled actuarial  
6 study and the amounts adjusted so that in a nine-year period of  
7 time, the amounts would reflect the actuarial recommendations at  
8 that time. Any county or municipality with an income of less than  
9 Twenty-five Thousand Dollars (\$25,000.00) to its general fund during  
10 a fiscal year shall be exempt from the provisions of this  
11 subsection.

12 Any municipality that fails to comply with the provisions of  
13 this section shall not be entitled to its proportionate share of the  
14 Motor Fuel Excise Tax which is received through the Oklahoma Tax  
15 Commission. Any county or municipality may exceed the amount of  
16 contribution required by this section.

17 The provisions of this section shall supercede any city charter  
18 provision in direct conflict with this section.

19 SECTION 7. AMENDATORY 11 O.S. 2001, Section 49-126, as  
20 last amended by Section 5, Chapter 356, O.S.L. 2007 (11 O.S. Supp.  
21 2009, Section 49-126), is amended to read as follows:

22 Section 49-126. A. Except as otherwise provided by this  
23 section, no portion of said pension shall, either before or after  
24 its order of distribution by the State Board to such disabled

1 members of said fire department, or the surviving spouse, alternate  
2 payee as defined in subsection B of this section, or guardian of  
3 such minor child or children, to the deceased or retired member of  
4 such department, be held, seized, taken, subjected to or detained or  
5 levied on by virtue of any attachment, execution, injunction, writ  
6 interlocutory or other order or decree, or any process or proceeding  
7 whatever, issued out of or by any court of this state for the  
8 payment or satisfaction, in whole or in part, of any debt, damages,  
9 claim, demand or judgment against such member, or his or her  
10 surviving spouse, alternate payee, or the guardian of said minor  
11 child or children of any deceased member, nor shall said fund or any  
12 claim thereto be directly or indirectly assigned and any attempt to  
13 assign or transfer the same shall be void; but the funds shall be  
14 held, kept, secured and distributed for the purpose of pensioning  
15 the persons named in this article, and for no other purpose  
16 whatever. Notwithstanding the foregoing, effective August 5, 1997,  
17 the State Board may approve any offset of a member's benefit to pay  
18 a judgment or settlement against a member for a crime involving the  
19 System, for a breach of the member's fiduciary duty to the System,  
20 or for funds or monies incorrectly paid to a member or beneficiary  
21 by mistake, provided such offset is in accordance with the  
22 requirements of Section 401(a)(13) of the Internal Revenue Code of  
23 1986, as amended.

1 B. 1. The provisions of subsection A of this section shall not  
2 apply to a qualified domestic order as provided pursuant to this  
3 subsection.

4 2. The term "qualified domestic order" means an order issued by  
5 a district court of this state pursuant to the domestic relation  
6 laws of this state which relates to the provision of marital  
7 property rights to an alternate payee and which creates or  
8 recognizes the existence of the right of an alternate payee and  
9 assigns to an alternate payee the right to receive a portion of the  
10 benefits payable with respect to a member of the System.

11 3. The term "alternate payee" means any spouse, former spouse,  
12 minor or disabled child or children, or other dependent of the  
13 member who is recognized by a domestic relations order as having a  
14 right to receive benefits payable with respect to a member of the  
15 System.

16 4. For purposes of the payment of marital property, to qualify  
17 as an alternate payee, a spouse or former spouse must have been  
18 married to the related member for a period of not less than thirty  
19 (30) continuous months immediately preceding the commencement of the  
20 proceedings from which the qualified domestic order issues.

21 5. A qualified domestic order is valid and binding on the State  
22 Board and the related member only if it meets the requirements of  
23 this subsection.

24 6. A qualified domestic order shall clearly specify:

- a. the name and last-known mailing address (if any) of the member and the name and mailing address of the alternate payee covered by the order,
- b. the amount or percentage of the member's benefits to be paid by the System to the alternate payee,
- c. the number of payments or period to which such order applies,
- d. the characterization of the benefit as to marital property rights or child support, and
- e. each plan to which such order applies.

7. A qualified domestic order meets the requirements of this subsection only if such order:

- a. does not require the System to provide any type or form of benefit, or any option not otherwise provided under state law as relates to the System,
- b. does not require the System to provide increased benefits, and
- c. does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic order or an order recognized by the System as a valid order prior to ~~the effective date of this act~~ June 7, 1993.

1       8. A qualified domestic order shall not require payment of  
2 benefits to an alternate payee prior to the actual retirement date  
3 of the related member.

4       9. The alternate payee shall have a right to receive benefits  
5 payable to a member of the System under the Oklahoma Firefighters  
6 Deferred Option plan provided for pursuant to Section 49-106.1 of  
7 this title, but only to the extent such benefits have been credited  
8 or paid into the member's Oklahoma Firefighters Deferred Option Plan  
9 account during the term of the marriage.

10       10. The obligation of the System to pay an alternate payee  
11 pursuant to a qualified domestic order shall cease upon the earlier  
12 of the death of the related member or the death of the alternate  
13 payee. Upon the death of the alternate payee, the assignment to the  
14 alternate payee of the right to receive a portion of the benefits  
15 payable with respect to the member shall cease and the payments of  
16 benefits to the member shall be reinstated.

17       11. This subsection shall not be subject to the provisions of  
18 the Employee Retirement Income Security Act of 1974 (ERISA), 29  
19 U.S.C.A. Section 1001, et seq., as amended from time to time, or  
20 rules and regulations promulgated thereunder, and court cases  
21 interpreting said act.

22       12. The Oklahoma Firefighters Pension and Retirement Board  
23 shall promulgate such rules as are necessary to implement the  
24 provisions of this subsection.

1       13. An alternate payee who has acquired beneficiary rights  
2 pursuant to a valid qualified domestic order must fully comply with  
3 all provisions of the rules promulgated by the State Board pursuant  
4 to this subsection in order to continue receiving his or her  
5 benefit.

6       C. The provisions of subsection A of this section shall not  
7 apply to a Child Support Enforcement Division order for a support  
8 arrearage pursuant to Section 240.23 of Title 56 of the Oklahoma  
9 Statutes and current child support payments made pursuant to a valid  
10 court order.

11       D. The provisions of subsection A of this section shall not  
12 apply to a federal tax levy made pursuant to Section 6331 of the  
13 Internal Revenue Code of 1986, as amended, and the collection by the  
14 United States on a judgment resulting from an unpaid tax assessment.

15       E. The provisions of subsection A of this section shall not  
16 apply in the case of an overpayment to a member or other payee.  
17 Such overpayment may be corrected through a return of the  
18 overpayment, or an adjustment of future payments, or a combination  
19 of these two methods, as approved by the State Board. The term  
20 "other payee" shall include, but not be limited to, alternate payees  
21 as defined in subsection B of this section, beneficiaries,  
22 designated recipients, and other individuals eligible to receive  
23 benefits pursuant to Section 49-113 of this title.

1 SECTION 8. AMENDATORY 11 O.S. 2001, Section 49-138, as  
2 last amended by Section 4, Chapter 203, O.S.L. 2005 (11 O.S. Supp.  
3 2009, Section 49-138), is amended to read as follows:

4 Section 49-138. A. Any member of a regularly constituted fire  
5 department of any municipality who is now serving or may hereafter  
6 serve in the Armed Forces of the United States whether such service  
7 is voluntary or involuntary, who shall have been a member of such  
8 fire department at the time of entering such service, shall be  
9 entitled to have the whole of the time of such service applied under  
10 the provisions of Section 49-106 of this title, so far as the same  
11 applies to a service pension; provided further, that the  
12 municipality shall continue its payment into said pension fund, to  
13 the same force and effect as though the member were in the actual  
14 service of such fire department; provided, that any person who is  
15 eligible for such service but who shall have volunteered for  
16 military or naval service for a period not to exceed five (5) years  
17 shall likewise be entitled to all of the benefits of Sections 49-138  
18 through 49-142 of this title for the full period of such service or  
19 enlistment; provided further, that only one such period of voluntary  
20 service shall be considered hereunder. If such person shall  
21 reenlist, unless ~~he is~~ required to do so by law, ~~he~~ such person  
22 shall not thereafter be entitled to the provisions of this  
23 subsection. The provisions of this subsection shall not apply where  
24 any such person dies during the period of said service or

1 enlistment, and shall not entitle the surviving spouse or children  
2 to any benefits, and shall not apply to any member who shall have  
3 served on active duty (including initial active duty) for training  
4 purposes only and/or inactive duty training.

5       B. Effective February 1, 1997, credited service received  
6 pursuant to this section or credited service for wartime military  
7 service received as otherwise provided by law shall be used in  
8 determining the member's retirement benefit but shall not be used in  
9 determining years of service for retirement, vesting purposes or  
10 eligibility for participation in the Oklahoma Firefighters Deferred  
11 Option Plan. For a member of the System hired on or after July 1,  
12 2003, if the military service credit authorized by this section is  
13 used to compute the retirement benefit of the member and the member  
14 retires from the System, such military service credit shall not be  
15 used to compute the retirement benefit in any other retirement  
16 system created pursuant to the Oklahoma Statutes and the member may  
17 receive credit for such service only in the retirement system from  
18 which the member first retires.

19       C. A member who retires or elects to participate in the  
20 Oklahoma Firefighters Deferred Option Plan on or after July 1, 1998,  
21 shall be entitled to prior service credit, not to exceed five (5)  
22 years, for those periods of military service on active duty prior to  
23 membership in the Oklahoma Firefighters Pension and Retirement  
24 System.

1 For purposes of this subsection, "military service" means  
2 service in the Armed Forces of the United States by honorably  
3 discharged persons during the following time periods, as reflected  
4 on such person's Defense Department Form 214, as follows:

5 1. During the following periods, including the beginning and  
6 ending dates, and only for the periods served, from:

7 a. April 6, 1917, to November 11, 1918, commonly referred  
8 to as World War I,

9 b. September 16, 1940, to December 7, 1941, for members  
10 of the 45th Division,

11 c. December 7, 1941, to December 31, 1946, commonly  
12 referred to as World War II,

13 d. June 27, 1950, to January 31, 1955, commonly referred  
14 to as the Korean Conflict or the Korean War,

15 e. February 28, 1961, to May 7, 1975, commonly referred  
16 to as the Vietnam era, except that:

17 (1) for the period from February 28, 1961, to August  
18 4, 1964, military service shall only include  
19 service in the Republic of Vietnam during that  
20 period, and

21 (2) for purposes of determining eligibility for  
22 education and training benefits, such period  
23 shall end on December 31, 1976, or  
24

1 f. August 1, 1990, to December 31, 1991, commonly  
2 referred to as the Gulf War, the Persian Gulf War, or  
3 Operation Desert Storm, but excluding any person who  
4 served on active duty for training only, unless  
5 discharged from such active duty for a service-  
6 connected disability;

7 2. During a period of war or combat military operation other  
8 than a conflict, war or era listed in paragraph 1 of this  
9 subsection, beginning on the date of Congressional authorization,  
10 Congressional resolution, or Executive Order of the President of the  
11 United States, for the use of the Armed Forces of the United States  
12 in a war or combat military operation, if such war or combat  
13 military operation lasted for a period of ninety (90) days or more,  
14 for a person who served, and only for the period served, in the area  
15 of responsibility of the war or combat military operation, but  
16 excluding a person who served on active duty for training only,  
17 unless discharged from such active duty for a service-connected  
18 disability, and provided that the burden of proof of military  
19 service during this period shall be with the member, who must  
20 present appropriate documentation establishing such service.

21 D. An eligible member pursuant to subsection C of this section  
22 shall include only those persons who shall have served during the  
23 times or in the areas prescribed in subsection C of this section,  
24 and only if such person provides appropriate documentation in such

1 time and manner as required by the System to establish such military  
2 service prescribed in this section, or for service pursuant to  
3 division (1) of subparagraph e of paragraph 1 of subsection C of  
4 this section, those persons who were awarded service medals, as  
5 authorized by the United States Department of Defense as reflected  
6 in the veteran's Defense Department Form 214, related to the Vietnam  
7 Conflict for service prior to August 5, 1964. The provisions of  
8 subsection C of this section shall include military retirees, whose  
9 retirement was based only on active service, that have been rated as  
10 having twenty percent (20%) or greater service-connected disability  
11 by the Veterans Administration or the Armed Forces of the United  
12 States. The provisions of subsection C of this section shall not  
13 apply to any person who shall have served on active duty for  
14 training purposes only unless discharged from active duty for a  
15 service-connected disability.

16 E. Notwithstanding any provision herein to the contrary,  
17 ~~contributions~~

18 1. Contributions, benefits and service credit with respect to  
19 qualified military service shall be provided in accordance with  
20 Section 414(u) of the Internal Revenue Code of 1986, as amended,  
21 which is in accordance with the Uniformed Services Employment and  
22 Reemployment Rights Act of 1994, (USERRA) as amended.—The  
23 ~~municipality's contributions to the System for a member covered by~~

24

1 ~~USERRA are due when such a member makes up his or her contributions~~  
2 ~~that were missed due to his or her qualified military service;~~

3 2. Effective January 1, 2007, if any member dies while  
4 performing qualified military service (as defined in Section 414(u)  
5 of the Internal Revenue Code of 1986, as amended), the survivors of  
6 the member are entitled to any additional benefits (other than  
7 benefits accruals relating to the period of qualified military  
8 service) provided under the System had the member resumed and then  
9 terminated employment on account of death.

10 F. Members or beneficiaries shall make application to the  
11 System for credited service related to wartime military service.  
12 Interest on additional benefits related to wartime military service  
13 owed by the System to a retired member or beneficiary as provided by  
14 law shall cease accruing one (1) year after the effective date the  
15 additional benefits are payable by the System or July 1, 2000,  
16 whichever is later, if the member has not applied to the System for  
17 credited service related to such wartime military service.

18 SECTION 9. It being immediately necessary for the preservation  
19 of the public peace, health and safety, an emergency is hereby  
20 declared to exist, by reason whereof this act shall take effect and  
21 be in full force from and after its passage and approval.

