

SENATE FLOOR VERSION
February 11, 2013
AS AMENDED

SENATE BILL NO. 1101

By: Barrington of the Senate

and

Armes of the House

**[Oklahoma Firefighters Pension and Retirement System
- Internal Revenue Service ruling - definition -
eligibility - firefighter pensions - benefits -
emergency]**

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

SECTION 1. AMENDATORY 11 O.S. 2011, Section 29-114, is amended to read as follows:

Section 29-114. All firefighters in the state whose fire department provides fire protection services to a participating municipality, as defined in paragraph 9 of Section 49-100.1 of Title 11 of the Oklahoma Statutes, on or after the effective date of this act shall be governmental employees, as described in Internal Revenue Service Revenue ~~Rule 89-49~~ Ruling 1989-49, 1989-1 CB 117, and shall be members of the Oklahoma Firefighters Pension and Retirement System. The Oklahoma Firefighters Pension and Retirement Board shall determine whether a firefighter is a governmental employee as defined in this section.

1 SECTION 2. AMENDATORY 11 O.S. 2011, Section 49-100.1, as
2 amended by Section 1, Chapter 364, O.S.L. 2012 (11 O.S. Supp. 2012,
3 Section 49-100.1), is amended to read as follows:

4 Section 49-100.1. As used in this article:

5 1. "System" means the Oklahoma Firefighters Pension and
6 Retirement System and all predecessor municipal firefighters pension
7 and retirement systems;

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

9 3. "State Board" means the Oklahoma Firefighters Pension and
10 Retirement Board;

11 4. "Local board" means the local firefighters pension and
12 retirement boards;

13 5. "Fund" means the Oklahoma Firefighters Pension and
14 Retirement Fund;

15 6. "Member" means all eligible firefighters of a participating
16 municipality or a fire protection district who perform the essential
17 functions of fire suppression, prevention, and life safety duties in
18 a fire department. The term "member" shall include but not be
19 limited to the person serving as fire chief of any participating
20 municipality, provided that a person serving as fire chief of a
21 participating municipality shall meet the age, agility, physical and
22 other eligibility requirements required by law at the time said
23 person becomes a member of the System. Effective July 1, 1987, a
24 member does not include a "leased employee". The term "leased

1 employee" means any person (other than an employee of the recipient)
2 who pursuant to an agreement between the recipient and any other
3 person ("leasing organization") has performed services for the
4 recipient (or for the recipient and related persons determined in
5 accordance with Section 414(n) (6) of the Internal Revenue Code of
6 1986, as amended) on a substantially full-time basis for a period of
7 at least one year, and such services are performed under primary
8 direction or control by the recipient. Contributions or benefits
9 provided a leased employee by the leasing organization which are
10 attributable to services performed for the recipient employer shall
11 be treated as provided by the recipient employer. A leased employee
12 shall not be considered an employee of the recipient if the
13 requirements of the safe harbor provisions of Section 414(n) (5) of
14 the Internal Revenue Code of 1986, as amended, are satisfied.
15 Effective July 1, 1999, any individual who agrees with the
16 participating municipality that the individual's services are to be
17 performed as a leased employee or an independent contractor shall
18 not be a member regardless of any classification as a common law
19 employee by the Internal Revenue Service or any other governmental
20 agency, or any court of competent jurisdiction;

21 7. "Normal retirement date" means the date at which the member
22 is eligible to receive the unreduced payments of the member's
23 accrued retirement benefit. Such date shall be the first day
24 following the date the member completes twenty (20) years of

1 credited service. If the member's employment continues past the
2 normal retirement date of the member, the actual retirement date of
3 the member shall be the first day following the date the member
4 terminates employment with more than twenty (20) years of credited
5 service;

6 8. "Credited service" means the period of service used to
7 determine the eligibility for and the amount of benefits payable to
8 a member. Credited service shall consist of the period during which
9 the member participated in the System or the predecessor municipal
10 systems as an active employee in an eligible membership
11 classification, plus any service prior to the establishment of the
12 predecessor municipal systems which was credited under the
13 predecessor municipal systems; provided, however, "credited service"
14 for members from a fire protection district shall not begin accruing
15 before July 1, 1982;

16 9. "Participating municipality" means a municipality, county
17 fire department organized pursuant to subsection D of Section 351 of
18 Title 19 of the Oklahoma Statutes, or fire protection district which
19 is making contributions to the System on behalf of its firefighters.
20 All participating municipalities shall appoint a fire chief who
21 shall supervise and administer the fire department;

22 10. "Disability" means the complete inability of the
23 firefighter to perform any and every duty of the firefighter's
24 regular occupation; provided further, that once benefits have been

1 paid for twenty-four (24) months the provisions of Section 49-110 of
2 this title shall apply to the firefighter;

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

5 12. "Eligible employer" means any municipality with a municipal
6 fire department, any county fire department organized pursuant to
7 subsection D of Section 351 of Title 19 of the Oklahoma Statutes
8 with an organized fire department or a any fire protection district
9 with an organized fire department;

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

13 14. "Final average salary" means the average paid gross salary
14 of the firefighter for normally scheduled hours over the highest
15 salaried thirty (30) consecutive months of the last sixty (60)
16 months of credited service. Gross salary shall not include payment
17 for accumulated sick or annual leave upon termination of employment,
18 any uniform allowances or any other compensation for reimbursement
19 of out-of-pocket expenses. Only salary on which the required
20 contributions have been made may be used in computing the final
21 average salary. Effective January 1, 1988, gross salary shall
22 include any amount of elective salary reduction under Section 125 of
23 the Internal Revenue Code of 1986, as amended. Gross salary shall
24 include any amount of elective salary reduction under Section 457 of

1 the Internal Revenue Code of 1986, as amended, and any amount of
2 nonelective salary reduction under Section 414(h) of the Internal
3 Revenue Code of 1986, as amended. Effective July 1, 1998, for
4 purposes of determining a member's compensation, any contribution by
5 the member to reduce the member's regular cash remuneration under
6 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be
7 treated as if the member did not make such an election. Only salary
8 on which required contributions have been made may be used in
9 computing final average salary.

10 In addition to other applicable limitations, and notwithstanding
11 any other provision to the contrary, for plan years beginning on or
12 after July 1, 2002, the annual gross salary of each "Noneligible
13 Member" taken into account under the System shall not exceed the
14 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")
15 annual salary limit. The EGTRRA annual salary limit is Two Hundred
16 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for
17 increases in the cost of living in accordance with Section
18 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
19 annual salary limit in effect for a calendar year applies to any
20 period, not exceeding twelve (12) months, over which salary is
21 determined ("determination period") beginning in such calendar year.
22 If a determination period consists of fewer than twelve (12) months,
23 the EGTRRA salary limit will be multiplied by a fraction, the
24 numerator of which is the number of months in the determination

1 period, and the denominator of which is twelve (12). For purposes
2 of this subsection, a "Noneligible Member" is any member who first
3 became a member during a plan year commencing on or after July 1,
4 1996.

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

9 Effective June 9, 2010, gross salary shall also include gross
10 salary, as described above, for services, but paid by the later of
11 two and one-half (2 1/2) months after a firefighter's severance from
12 employment or the end of the calendar year that includes the date
13 the firefighter terminated employment, if it is a payment that,
14 absent a severance from employment, would have been paid to the
15 firefighter while the firefighter continued in employment with the
16 participating municipality.

17 Effective June 9, 2010, any payments not described above shall
18 not be considered gross salary if paid after severance from
19 employment, even if they are paid by the later of two and one-half
20 (2 1/2) months after the date of severance from employment or the
21 end of the calendar year that includes the date of severance from
22 employment, except payments to an individual who does not currently
23 perform services for the participating municipality by reason of
24 qualified military service within the meaning of Section 414(u)(5)

1 of the Internal Revenue Code of 1986, as amended, to the extent
2 these payments do not exceed the amounts the individual would have
3 received if the individual had continued to perform services for the
4 participating municipality rather than entering qualified military
5 service.

6 Effective June 9, 2010, back pay, within the meaning of Section
7 1.415(c)-2(g)(8) of the Income Tax Regulations, shall be treated as
8 gross salary for the year to which the back pay relates to the
9 extent the back pay represents wages and compensation that would
10 otherwise be included in this definition.

11 Effective for years beginning after December 31, 2008, gross
12 salary shall also include differential wage payments under Section
13 414(u)(12) of the Internal Revenue Code of 1986, as amended;

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

17 16. "Beneficiary" means a member's surviving spouse or any
18 surviving children, including biological and adopted children, at
19 the time of the member's death. The surviving spouse must have been
20 married to the firefighter for the thirty (30) continuous months
21 preceding the firefighter's death provided a surviving spouse of a
22 member who died while in, or as a consequence of, the performance of
23 the member's duty for a participating municipality, shall not be
24 subject to the marriage limitation for survivor benefits. A

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

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

22 18. "Limitation year" means the year used in applying the
23 limitations of Section 415 of the Internal Revenue Code of 1986,
24 which year shall be the calendar year.

1 SECTION 3. AMENDATORY 11 O.S. 2011, Section 49-106.1, is
2 amended to read as follows:

3 Section 49-106.1. A. ~~In lieu of terminating employment and~~
4 ~~accepting a service retirement pension pursuant to Sections 49-101~~
5 ~~and 49-106 of this title, any~~ Any member of the Oklahoma
6 Firefighters Pension and Retirement System serving as an active
7 firefighter in fire department of a participating municipality who
8 has not less than twenty (20) years of creditable service and who is
9 eligible to receive a service retirement pension may elect to
10 participate in the Oklahoma Firefighters Deferred Option Plan and
11 defer the receipts of ~~benefits~~ distributions in accordance with the
12 provisions of this section.

13 B. For purposes of this section, creditable service shall
14 include service credit reciprocally recognized pursuant to Sections
15 49-100.1 through 49-100.8 and Sections 49-101, 49-101.1 and 49-101.2
16 of this title but for eligibility purposes only.

17 C. The duration of participation in the Oklahoma Firefighters
18 Deferred Option Plan for active firefighters shall not exceed five
19 (5) years. Participation in the Oklahoma Firefighters Deferred
20 Option Plan must begin the first day of a month and end on the last
21 day of a month. At the conclusion of a member's participation in
22 the Oklahoma Firefighters Deferred Option Plan, the member shall
23 terminate employment with all participating municipalities as a
24 firefighter, and shall start receiving the member's accrued monthly

1 retirement benefit from the System. Such a member may be reemployed
2 by a participating municipality but only in a position not covered
3 under the System, and receive in-service distributions of such
4 member's accrued monthly retirement benefit from the System.

5 D. When a member begins participation in the Oklahoma
6 Firefighters Deferred Option Plan, the contribution of the member
7 shall cease. The employer contributions shall continue to be paid
8 in accordance with subsection B of Section 49-122 of this title.

9 Employer contributions for members who elect the Oklahoma
10 Firefighters Deferred Option Plan shall be credited equally to the
11 Oklahoma Firefighters Pension and Retirement System and to the
12 member's Oklahoma Firefighters Deferred Option Plan account. The
13 monthly ~~retirement benefits~~ distributions that would have been
14 payable had the member elected to cease employment and receive a
15 service retirement shall be paid into the member's Oklahoma
16 Firefighters Deferred Option Plan account.

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

19 2. A member who participates in this plan shall earn interest
20 at a rate of two percentage points below the rate of return of the
21 investment portfolio of the System, but no less than the actuarial
22 assumed interest rate as certified by the actuary in the yearly
23 evaluation report of the actuary. The interest shall be credited to
24 the individual account balance of the member on an annual basis.

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

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

1 receive his or her portion of the account balance of the member
2 pursuant to subsection F of this section. The surviving spouse,
3 whether or not he or she is a designated recipient of the member,
4 may elect to receive his or her portion of the account balance of
5 the member in the same manner as was applicable to the member.

6 H. In lieu of participating in the Oklahoma Firefighters
7 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of
8 this section, a member may elect to participate in the Oklahoma
9 Firefighters Deferred Option Plan pursuant to this subsection as
10 follows:

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

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

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

22 c. "earlier attained credited service" means the credited
23 service earned by a member as of the back drop
24 date, and

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

15 2. At the termination date, the monthly pension ~~benefit~~
16 distribution shall be determined based on earlier attained credited
17 service and on the final average salary as of the back drop date.
18 The member's individual deferred option account shall be credited
19 with an amount equal to the deferred ~~benefit~~ distribution balance,
20 the member shall terminate employment with all participating
21 municipalities as a firefighter, and shall start receiving the
22 member's accrued monthly retirement benefit from the System. Such a
23 member may be reemployed by a participating municipality but only in
24 a position not covered under the System, and receive in-service

1 distributions of such member's accrued monthly retirement benefit
2 from the System. The provisions of subsections B, C, E, F and G of
3 this section shall apply to this subsection. A member shall not
4 participate in the Oklahoma Firefighters Deferred Option Plan
5 pursuant to this subsection if the member has elected to participate
6 in the Oklahoma Firefighters Deferred Option Plan pursuant to
7 subsections A, B, C, D, E and F of this section.

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

11 1. For purposes of this subsection, the following definitions
12 shall apply:

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

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

21 c. "monthly adjustment amount" means the difference
22 between the monthly pension prior to the back drop
23 election and the adjusted monthly pension due to the
24 back drop election,

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

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

9 2. If a member who has more than twenty (20) years of
10 creditable service and is eligible to receive a service retirement
11 pension dies on or after June 4, 2007, and prior to terminating
12 employment, the member's surviving spouse shall be eligible to elect
13 to receive a benefit determined as if the member had elected to
14 participate in the Oklahoma Firefighters Deferred Option Plan in
15 accordance with subsection H of this section on the day immediately
16 preceding such member's death. Prior to July 1, 2010, the surviving
17 spouse must make any such election within one (1) year from the date
18 of the member's death. Effective July 1, 2010, the surviving spouse
19 must make any such election within ninety (90) days from the date of
20 the member's death. If on or after June 4, 2007, such election is
21 made, the monthly pension such surviving spouse is entitled to
22 receiveshall 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 surviving spouse may only make this election if the member has
2 not previously elected to participate in the Oklahoma Firefighters
3 Deferred Option Plan. For purposes of this election, the surviving
4 spouse must have been married to the firefighter for the thirty (30)
5 continuous months preceding the firefighter's death; provided, the
6 surviving spouse of a member who died while in, or as a consequence
7 of, the performance of the member's duty for a participating
8 municipality shall not be subject to the marriage limitation for
9 this election.

10 3. If a member has more than twenty (20) years of creditable
11 service and is eligible for a retirement for disability monthly
12 pension pursuant to Section 49-109 of this title on or after June 4,
13 2007, such member shall be eligible to elect to receive a benefit
14 determined as if the member had elected to participate in the
15 Oklahoma Firefighters Deferred Option Plan, in accordance with
16 subsection H of this section, on the day immediately preceding the
17 date of the member's disability retirement, provided such election
18 is made within two (2) years from the date of the member's
19 disability retirement. The disability monthly pension such member
20 is receiving, or entitled to receive, shall be adjusted in
21 accordance with the provisions of subsection H of this section to
22 account for the member's participation in the Oklahoma Firefighters
23 Deferred Option Plan. The deferred benefit balance such member is
24 entitled to receive shall be reduced by the back drop pension

1 adjustment amount and increased by the deferred benefit balance
2 adjustment amount. The member may only make a back drop election if
3 the deferred benefit balance after the adjustment described in this
4 paragraph is greater than Zero Dollars (\$0.00). The member may only
5 make this election if the member has not previously elected to
6 participate in the Oklahoma Firefighters Deferred Option Plan.

7 4. If a member has more than twenty (20) years of creditable
8 service and filed a grievance for wrongful termination occurring on
9 or after June 4, 2007, but is not reinstated as an active member,
10 such member shall be eligible to elect to receive a benefit
11 determined as if the member had elected to participate in the
12 Oklahoma Firefighters Deferred Option Plan in accordance with
13 subsection H of this section on the day immediately preceding the
14 date of the member's termination. Such election must be made within
15 two (2) years from the date of the member's termination as an active
16 member and, if the member's case pertaining to the member's
17 termination is on appeal to a court of competent jurisdiction,
18 within such period set by the State Board in its sole discretion.
19 The monthly pension such member is receiving, or entitled to
20 receive, shall be adjusted in accordance with the provisions of
21 subsection H of this section to account for the member's
22 participation in the Oklahoma Firefighters Deferred Option Plan.
23 The deferred benefit balance such member is entitled to receive
24 shall be reduced by the back drop pension adjustment amount and

1 increased by the deferred benefit balance adjustment amount. The
2 member may only make a back drop election if the deferred benefit
3 balance after the adjustment described in this paragraph is greater
4 than Zero Dollars (\$0.00). The member may only make this election
5 if the member has not previously elected to participate in the
6 Oklahoma Firefighters Deferred Option Plan.

7 5. Subparagraphs d and e of paragraph 1 and paragraphs 3 and 4
8 of this subsection are effective June 4, 2007, provided the Internal
9 Revenue Service issues a favorable determination letter for the
10 System which includes the provisions of such subparagraphs and
11 paragraphs without modification or as modified to conform to any
12 changes required by the Internal Revenue Service as part of its
13 determination letter review process. In the event the Internal
14 Revenue Service does not issue such a determination letter which
15 includes the provisions of such subparagraphs or paragraphs without
16 modification or as modified to conform to any changes required by
17 the Internal Revenue Service as part of its determination letter
18 review process, then subparagraphs d and e of paragraph 1 and
19 paragraphs 3 and 4 of this subsection shall be repealed effective
20 June 4, 2007.

21 SECTION 4. AMENDATORY 11 O.S. 2011, Section 49-106.2, as
22 amended by Section 5, Chapter 364, O.S.L. 2012 (11 O.S. Supp. 2012,
23 Section 49-106.2), is amended to read as follows:

24

1 Section 49-106.2. A. For limitation years prior to July 1,
2 2007, the limitations of Section 415 of the Internal Revenue Code of
3 1986, as amended, shall be computed in accordance with the
4 applicable provisions of the System in effect at that time and, to
5 the extent applicable, Revenue Ruling 98-1 and Revenue Ruling 2001-
6 51, except as provided below. Notwithstanding any other provision
7 contained herein to the contrary, the benefits payable to a member
8 from the System provided by employer contributions (including
9 contributions picked up by the employer under Section 414(h) of the
10 Internal Revenue Code of 1986, as amended) shall be subject to the
11 limitations of Section 415 of the Internal Revenue Code of 1986, as
12 amended, in accordance with the provisions of this section. The
13 limitations of this section shall apply in limitation years
14 beginning on or after July 1, 2007, except as otherwise provided
15 below.

16 B. Except as provided below, effective for limitation years
17 ending after December 31, 2001, any accrued retirement benefit
18 payable to a member as an annual benefit as described below shall
19 not exceed One Hundred Sixty Thousand Dollars (\$160,000.00),
20 automatically adjusted under Section 415(d) of the Internal Revenue
21 Code of 1986, as amended, for increases in the cost of living, as
22 prescribed by the Secretary of the Treasury or his or her delegate,
23 effective January 1 of each calendar year and applicable to the
24 limitation year ending with or within such calendar year. The

1 automatic annual adjustment of the dollar limitation in this
2 subsection under Section 415(d) of the Internal Revenue Code of
3 1986, as amended, shall apply to a member who has had a severance
4 from employment.

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

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

23 a. survivor benefits payable to a surviving spouse under
24 a qualified joint and survivor annuity to the extent

1 such benefits would not be payable if the member's
2 benefit were paid in another form,

3 b. benefits that are not directly related to retirement
4 benefits such as a qualified disability benefit,
5 preretirement incidental death benefits, and
6 postretirement medical benefits, or

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

22 3. The determination of the annual benefit shall take into
23 account Social Security supplements described in Section 411(a)(9)
24 of the Internal Revenue Code of 1986, as amended, and benefits

1 transferred from another defined benefit plan, other than transfers
2 of distributable benefits pursuant to Section 1.411(d)-4, Q&A-3(c),
3 of the Income Tax Regulations, but shall disregard benefits
4 attributable to employee contributions or rollover contributions.

5 4. Effective for distributions in plan years beginning after
6 December 31, 2003, the determination of actuarial equivalence of
7 forms of benefit other than a straight life annuity shall be made in
8 accordance with paragraph 5 or paragraph 6 of this subsection.

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

14 a. a nondecreasing annuity (other than a straight life
15 annuity) payable for a period of not less than the
16 life of the member (or, in the case of a qualified
17 preretirement survivor annuity, the life of the
18 surviving spouse), or

19 b. an annuity that decreases during the life of the
20 member merely because of:

21 (1) the death of the survivor annuitant, but only if
22 the reduction is not below fifty percent (50%) of
23 the benefit payable before the death of the
24 survivor annuitant, or

1 (2) the cessation or reduction of Social Security
2 supplements or qualified disability payments as
3 defined in Section 411(a)(9) of the Internal
4 Revenue Code of 1986, as amended.

5 c. Limitation Years Beginning Before July 1, 2007. For
6 limitation years beginning before July 1, 2007, the
7 actuarially equivalent straight life annuity is equal
8 to the annual amount of the straight life annuity
9 commencing at the same annuity starting date that has
10 the same actuarial present value as the member's form
11 of benefit computed using whichever of the following
12 produces the greater annual 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 for adjusting benefits in the same form, and

17 (2) a five percent (5%) interest rate assumption and
18 the applicable mortality table described in
19 Revenue Ruling 2001-62 (or its successor for
20 these purposes, if applicable) for that annuity
21 starting date.

22 d. Limitation Year Beginning On January 1, 2008. For the
23 limitation year beginning on January 1, 2008, the
24

1 actuarially equivalent straight life annuity is equal
2 to the greater of:

3 (1) the annual amount of the straight life annuity,
4 if any, payable to the member under the System
5 commencing at the same annuity starting date as
6 the member's form of benefit, and

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

16 e. Limitation Years Beginning On or After July 1, 2008.

17 For limitation years beginning on or after July 1,
18 2008, 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 within the meaning of
7 Section 417(e)(3)(B) of the Internal Revenue Code
8 of 1986, as amended, as described in Revenue
9 Ruling 2007-67 (and subsequent guidance) for that
10 annuity starting date.

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

18 a. Annuity Starting Date on or after January 1, 2009. If
19 the annuity starting date of the member's form of
20 benefit is in the period beginning on January 1, 2009
21 through June 30, 2009, or in a plan year beginning
22 after June 30, 2009, the actuarially equivalent
23 straight life annuity is equal to the greatest of (1),
24 (2) and (3) below:

1 (1) 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 the
5 interest rate and the mortality table or other
6 tabular factor as set forth in the most recent
7 actuarial valuation referenced in subsection H of
8 Section 49-100.9 of this title prior to September
9 1, 2011, and effective September 1, 2011, in
10 subsection L of this section for adjusting
11 benefits in the same form,

12 (2) the annual amount of the straight life annuity
13 commencing at the same annuity starting date that
14 has the same actuarial present value as the
15 member's form of benefit, computed using a five
16 and one-half percent (5.5%) interest rate
17 assumption and the applicable mortality table
18 within the meaning of Section 417(e) (3) (B) of the
19 Internal Revenue Code of 1986, as amended, as
20 described in Revenue Ruling 2007-67 (and
21 subsequent guidance), and

22 (3) the annual amount of the straight life annuity
23 commencing at the same annuity starting date that
24

1 has the same actuarial present value as the
2 member's form of benefit, computing using:

3 (a) the adjusted first, second, and third
4 segment rates under Section 417(e)(3)(C) and
5 (D) of the Internal Revenue Code of 1986, as
6 amended, applied under rules similar to the
7 rules of Section 430(h)(2)(C) of the
8 Internal Revenue Code of 1986, as amended,
9 for the fourth calendar month preceding the
10 plan year in which falls the annuity
11 starting date for the distribution and the
12 stability period is the successive period of
13 one plan year which contains the annuity
14 starting date for the distribution and for
15 which the applicable interest rate remains
16 constant, or as otherwise provided in the
17 applicable guidance if the first day of the
18 first plan year beginning after December 31,
19 2007, does not coincide with the first day
20 of the applicable stability period, and

21 (b) the applicable mortality table within the
22 meaning of Section 417(e)(3)(B) of the
23 Internal Revenue Code of 1986, as amended,
24

1 as described in Rev. Rul. 2007-67 (and
2 subsequent guidance),

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

4 b. Annuity Starting Date in the Period Beginning on July
5 1, 2008 through December 31, 2008. If the annuity
6 starting date of the member's form of benefit is in
7 the period beginning on July 1, 2008 through December
8 31, 2008, the actuarially equivalent straight life
9 annuity is equal to the greatest of (1), (2) and (3)
10 below:

11 (1) the annual amount of the straight life annuity
12 commencing at the same annuity starting date that
13 has the same actuarial present value as the
14 member's form of benefit, computed using the
15 interest rate and the mortality table or other
16 tabular factor each as set forth in subsection H
17 of Section 49-100.9 of this title for adjusting
18 benefits in the same form,

19 (2) the annual amount of the straight life annuity
20 commencing at the same annuity starting date that
21 has the same actuarial present value as the
22 member's form of benefit, computed using a five
23 and one-half percent (5.5%) interest rate
24 assumption and the applicable mortality table

1 described in Revenue Ruling 2001-62 (or its
2 successor for these purposes, if applicable), and
3 (3) the annual amount of the straight life annuity
4 commencing at the same annuity starting date that
5 has the same actuarial present value as the
6 member's form of benefit, computed using:
7 (a) the adjusted first, second, and third
8 segment rates under Section 417(e)(3)(C) and
9 (D) of the Internal Revenue Code of 1986, as
10 amended, applied under rules similar to the
11 rules of Section 430(h)(2)(C) of the
12 Internal Revenue Code of 1986, as amended,
13 for the fourth calendar month preceding the
14 plan year in which falls the annuity
15 starting date for the distribution and the
16 stability period is the successive period of
17 one plan year which contains the annuity
18 starting date for the distribution and for
19 which the applicable interest rate remains
20 constant, or as otherwise provided in the
21 applicable guidance if the first day of the
22 first plan year beginning after December 31,
23 2007, does not coincide with the first day
24 of the applicable stability period, and

1 (b) the applicable mortality table described in
2 Revenue Ruling 2001-62 (or its successor for
3 these purposes, if applicable),
4 divided by one and five one-hundredths (1.05).

5 c. Annuity Starting Date in Plan Years Beginning in 2006
6 or 2007. If the annuity starting date of the member's
7 form of benefit is in a plan year beginning in 2006 or
8 2007, the actuarially equivalent straight life annuity
9 is equal to the greatest of (1), (2) and (3) below:

10 (1) the annual amount of the straight life annuity
11 commencing at the same annuity starting date that
12 has the same actuarial present value as the
13 member's form of benefit, computed using the
14 interest rate and the mortality table (or other
15 tabular factor) each as set forth in subsection H
16 of Section 49-100.9 of this title for adjusting
17 benefits in the same form,

18 (2) the annual amount of the straight life annuity
19 commencing at the same annuity starting date that
20 has the same actuarial present value as the
21 member's form of benefit, computed using a five
22 and one-half percent (5.5%) interest rate
23 assumption and the applicable mortality table
24

1 described in Revenue Ruling 2001-62 (or its
2 successor for these purposes, if applicable), and
3 (3) the annual amount of the straight life annuity
4 commencing at the same annuity starting date that
5 has the same actuarial present value as the
6 member's form of benefit, computed using:

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

19 (b) the applicable mortality table described in
20 Revenue Ruling 2001-62 (or its successor for
21 these purposes, if applicable),
22 divided by one and five one-hundredths (1.05).

23 d. Annuity Starting Date in Plan Years Beginning in 2004
24 or 2005.

1 (1) If the annuity starting date of the member's form
2 of benefit is in a plan year beginning in 2004 or
3 2005, the actuarially equivalent straight life
4 annuity is equal to the annual amount of the
5 straight life annuity commencing at the same
6 annuity starting date that has the same actuarial
7 present value as the member's form of benefit,
8 computed using whichever of the following
9 produces the greater annual amount:

10 (a) the interest rate and the mortality table or
11 other tabular factor, each as set forth in
12 subsection H of Section 49-100.9 of this
13 title for adjusting benefits in the same
14 form, and

15 (b) a five and one-half percent (5.5%) interest
16 rate assumption and the applicable mortality
17 table described in Revenue Ruling 2001-62
18 (or its successor for these purposes, if
19 applicable).

20 (2) If the annuity starting date of the member's
21 benefit is on or after the first day of the first
22 plan year beginning in 2004 and before December
23 31, 2004, the application of this subparagraph
24 shall not cause the amount payable under the

1 member's form of benefit to be less than the
2 benefit calculated under the System, taking into
3 account the limitations of this section, except
4 that the actuarially equivalent straight life
5 annuity is equal to the annual amount of the
6 straight life annuity commencing at the same
7 annuity starting date that has the same actuarial
8 present value as the member's form of benefit,
9 computed using whichever of the following
10 produces the greatest annual amount:

11 (a) the interest rate and mortality table or
12 other tabular factor, each as set forth in
13 subsection H of Section 49-100.9 of this
14 title for adjusting benefits in the same
15 form,

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

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

6 ii. the applicable mortality table
7 described in Revenue Ruling 2001-62 (or
8 its successor for these purposes, if
9 applicable), and

10 (c) i. the rate of interest on thirty-year
11 Treasury securities as specified by the
12 Commissioner for the lookback month for
13 the stability period specified below.
14 The lookback month applicable to the
15 stability period is the fourth calendar
16 month preceding the first day of the
17 stability period, as specified below.
18 The stability period is the successive
19 period of one plan year which contains
20 the annuity starting date for the
21 distribution and for which the
22 applicable interest rate remains
23 constant (as in effect on the last day
24 of the last plan year beginning before

1 January 1, 2004, under provisions of
2 the System then adopted and in effect),
3 and

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

8 C. If a member has less than ten (10) years of participation in
9 the System and all predecessor municipal firefighter pension and
10 retirement systems, the dollar limitation otherwise applicable under
11 subsection B of this section shall be multiplied by a fraction, the
12 numerator of which is the number of the years of participation, or
13 part thereof, in the System of the member, but never less than one
14 (1), and the denominator of which is ten (10).

15 D. Adjustment of Dollar Limitation for Benefit Commencement
16 Before Sixty-two (62) Years of Age or After Sixty-five (65) Years of
17 Age: Effective for benefits commencing in limitation years ending
18 after December 31, 2001, the dollar limitation under subsection B of
19 this section shall be adjusted if the annuity starting date of the
20 member's benefit is before sixty-two (62) years of age or after
21 sixty-five (65) years of age. If the annuity starting date is
22 before sixty-two (62) years of age, the dollar limitation under
23 subsection B of this section shall be adjusted under paragraph 1 of
24 this subsection, as modified by paragraph 3 of this subsection, but

1 subject to paragraph 4 of this subsection. If the annuity starting
2 date is after sixty-five (65) years of age, the dollar limitation
3 under subsection B of this section shall be adjusted under paragraph
4 2 of this subsection, as modified by paragraph 3 of this subsection.

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

7 a. Limitation Years Beginning Before July 1, 2007. If
8 the annuity starting date for the member's benefit is
9 prior to sixty-two (62) years of age and occurs in a
10 limitation year beginning before July 1, 2007, the
11 dollar limitation for the member's annuity starting
12 date is the annual amount of a benefit payable in the
13 form of a straight life annuity commencing at the
14 member's annuity starting date that is the actuarial
15 equivalent of the dollar limitation under subsection B
16 of this section (adjusted under subsection C of this
17 section for years of participation less than ten (10),
18 if required) with actuarial equivalence computed using
19 whichever of the following produces the smaller annual
20 amount:

- 21 (1) 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 title,
24 or

1 (2) a five percent (5%) interest rate assumption and
2 the applicable mortality table as described in
3 Revenue Ruling 2001-62 (or its successor for
4 these purposes, if applicable).

5 b. Limitation Years Beginning On or After July 1, 2007.

6 (1) System Does Not Have Immediately Commencing
7 Straight Life Annuity Payable at Both Sixty-two
8 (62) Years of Age and the Age of Benefit
9 Commencement.

10 (a) If the annuity starting date for the
11 member's benefit is prior to sixty-two (62)
12 years of age and occurs in the limitation
13 year beginning on January 1, 2008, and the
14 System does not have an immediately
15 commencing straight life annuity payable at
16 both sixty-two (62) years of age and the age
17 of benefit commencement, the dollar
18 limitation for the member's annuity starting
19 date is the annual amount of a benefit
20 payable in the form of a straight life
21 annuity commencing at the member's annuity
22 starting date that is the actuarial
23 equivalent of the dollar limitation under
24 subsection B of this section (adjusted under

1 subsection C of this section for years of
2 participation less than ten (10), if
3 required) with actuarial equivalence
4 computed using a five percent (5%) interest
5 rate assumption and the applicable mortality
6 table for the annuity starting date as
7 described in Revenue Ruling 2001-62 (or its
8 successor for these purposes, if applicable)
9 (and expressing the member's age based on
10 completed calendar months as of the annuity
11 starting date).

12 (b) If the annuity starting date for the
13 member's benefit is prior to sixty-two (62)
14 years of age and occurs in a limitation year
15 beginning on or after January 1, 2009, and
16 the System does not have an immediately
17 commencing straight life annuity payable at
18 both sixty-two (62) years of age and the age
19 of benefit commencement, the dollar
20 limitation for the member's annuity starting
21 date is the annual amount of a benefit
22 payable in the form of a straight life
23 annuity commencing at the member's annuity
24 starting date that is the actuarial

1 equivalent of the dollar limitation under
2 subsection B of this section (adjusted under
3 subsection C of this section for years of
4 participation less than ten (10), if
5 required) with actuarial equivalence
6 computed using a five percent (5%) interest
7 rate assumption and the applicable mortality
8 table within the meaning of Section
9 417(e) (3) (B) of the Internal Revenue Code of
10 1986, as amended, as described in Revenue
11 Ruling 2007-67 (and subsequent guidance)
12 (and expressing the member's age based on
13 completed calendar months as of the annuity
14 starting date).

- 15 (2) System Has Immediately Commencing Straight Life
16 Annuity Payable at Both Sixty-two (62) Years of
17 Age and the Age of Benefit Commencement. If the
18 annuity starting date for the member's benefit is
19 prior to sixty-two (62) years of age and occurs
20 in a limitation year beginning on or after July
21 1, 2007, and the System has an immediately
22 commencing straight life annuity payable at both
23 sixty-two (62) years of age and the age of
24 benefit commencement, the dollar limitation for

1 the member's annuity starting date is the lesser
2 of the limitation determined under division (1)
3 of subparagraph b of this paragraph and the
4 dollar limitation under subsection B of this
5 section (adjusted under subsection C of this
6 section for years of participation less than ten
7 (10), if required) multiplied by the ratio of the
8 annual amount of the immediately commencing
9 straight life annuity under the System at the
10 member's annuity starting date to the annual
11 amount of the immediately commencing straight
12 life annuity under the System at sixty-two (62)
13 years of age, both determined without applying
14 the limitations of this section.

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

- 17 a. Limitation Years Beginning Before July 1, 2007. If
18 the annuity starting date for the member's benefit is
19 after sixty-five (65) years of age and occurs in a
20 limitation year beginning before July 1, 2007, the
21 dollar limitation for the member's annuity starting
22 date is the annual amount of a benefit payable in the
23 form of a straight life annuity commencing at the
24 member's annuity starting date that is the actuarial

1 equivalent of the dollar limitation under subsection B
2 of this section (adjusted under subsection C of this
3 section for years of participation less than ten (10),
4 if required) with actuarial equivalence computed using
5 whichever of the following produces the smaller annual
6 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 or

11 (2) a five percent (5%) interest rate assumption and
12 the applicable mortality table as described in
13 Revenue Ruling 2001-62 (or its successor for
14 these purposes, if applicable).

15 b. Limitation Years Beginning On or After July 1, 2007.

16 (1) System Does Not Have Immediately Commencing
17 Straight Life Annuity Payable at Both Sixty-five
18 (65) Years of Age and the Age of Benefit
19 Commencement.

20 (a) If the annuity starting date for the
21 member's benefit is after sixty-five (65)
22 years of age and occurs in the limitation
23 year beginning on January 1, 2008, and the
24 System does not have an immediately

1 commencing straight life annuity payable at
2 both sixty-five (65) years of age and the
3 age of benefit commencement, the dollar
4 limitation at the member's annuity starting
5 date is the annual amount of a benefit
6 payable in the form of a straight life
7 annuity commencing at the member's annuity
8 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
13 required) with actuarial equivalence
14 computed using a five percent (5%) interest
15 rate assumption and the applicable mortality
16 table for the annuity starting date as
17 described in Revenue Ruling 2001-62 (or its
18 successor for these purposes, if applicable)
19 (and expressing the member's age based on
20 completed calendar months as of the annuity
21 starting date).

22 (b) If the annuity starting date for the
23 member's benefit is after sixty-five (65)
24 years of age and occurs in a limitation year

1 beginning on or after January 1, 2009, and
2 the System does not have an immediately
3 commencing straight life annuity payable at
4 both sixty-five (65) years of age and the
5 age of benefit commencement, the dollar
6 limitation at the member's annuity starting
7 date is the annual amount of a benefit
8 payable in the form of a straight life
9 annuity commencing at the member's annuity
10 starting date that is the actuarial
11 equivalent of the dollar limitation under
12 subsection B of this section (adjusted under
13 subsection C of this section for years of
14 participation less than ten (10), if
15 required) with actuarial equivalence
16 computed using a five percent (5%) interest
17 rate assumption and the applicable mortality
18 table within the meaning of Section
19 417(e) (3) (B) of the Internal Revenue Code of
20 1986, as amended, as described in Revenue
21 Ruling 2007-67 (and subsequent guidance)
22 (and expressing the member's age based on
23 completed calendar months as of the annuity
24 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~~ July
6 1, 2012, if a member purchases service credit under ~~Sections 49-~~
7 ~~117.2 and 49-117.3 of this title~~ the System, which qualifies as
8 "permissive service credit" pursuant to Section 415(n) of the
9 Internal Revenue Code of 1986, as amended, the limitations of
10 Section 415 of the Internal Revenue Code of 1986, as amended, may be
11 met by either:

- 12 1. Treating the accrued benefit derived from such contributions
13 as an annual benefit under subsection B of this section; or
- 14 2. Treating all such contributions as annual additions for
15 purposes of Section 415(c) of the Internal Revenue Code of 1986, as
16 amended.

17 I. ~~Effective for years beginning after December 31, 1997~~ July
18 1, 2012, if a member repays to the System any amounts ~~received~~
19 refunded from the System because of the member's prior termination
20 ~~pursuant to~~ or any other amount which qualifies as a repayment under
21 Section 49-117.1 415(k) (3) of this title the Internal Revenue Code
22 of 1986, such repayment shall not be taken into account for purposes
23 of Section 415 of the Internal Revenue Code of 1986, as amended,
24

1 pursuant to Section 415(k)(3) of the Internal Revenue Code of 1986,
2 as amended.

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

6 K. The State Board is hereby authorized to revoke the special
7 election previously made on June 21, 1991, under Section 415(b)(10)
8 of the Internal Revenue Code of 1986, as amended.

9 L. Effective September 1, 2011, the interest rate and mortality
10 assumptions for the System used to determine the actuarial
11 equivalence of a member's form of benefit shall be set by the State
12 Board in a manner that precludes employer discretion, shall be based
13 upon recommendations from independent professional advisors and
14 shall be published annually in the actuarial valuation.

15 SECTION 5. AMENDATORY 11 O.S. 2011, Section 49-106.5, is
16 amended to read as follows:

17 Section 49-106.5. A. A member who is an eligible retired
18 public safety officer and who wishes to have direct payments made
19 toward the member's qualified health insurance premiums from the
20 member's monthly disability benefit or monthly pension payment must
21 make a written election in accordance with Section 402(1) of the
22 Internal Revenue Code of 1986, as amended, on the form provided by
23 the Oklahoma Firefighters Pension and Retirement System, as follows:
24

1 1. The election must be made after the member separates from
2 service as a public safety officer with the member's participating
3 municipality;

4 2. The election shall only apply to distributions from the
5 System after December 31, 2006, and to amounts not yet distributed
6 to the eligible retired public safety officer;

7 3. Direct payments for an eligible retired public safety
8 officer's qualified health insurance premiums can only be made from
9 the member's monthly disability benefit or monthly pension payment
10 from the System and cannot be made from the Deferred Option Plan;
11 and

12 4. The aggregate amount of the exclusion from an eligible
13 retired public safety officer's gross income is Three Thousand
14 Dollars (\$3,000.00) per calendar year.

15 B. As used in this section:

16 1. "Public safety officer" means a member serving a public
17 agency in an official capacity, with or without compensation, as a
18 law enforcement officer, firefighter, chaplain, or as a member of a
19 rescue squad or ambulance crew;

20 2. "Eligible retired public safety officer" means a member who,
21 by reason of disability or attainment of normal retirement date or
22 age, is separated from service as a public safety officer with the
23 member's participating municipality; and

24

1 3. "Qualified health insurance premiums" ~~means~~ effective July
2 1, 2012, are premiums for coverage for the eligible retired public
3 safety officer, the eligible retired public safety officer's spouse,
4 and dependents, as defined in Section 152 of the Internal Revenue
5 Code of 1986, as amended, by an accident or health ~~insurance~~ plan or
6 a qualified long-term care insurance contract, as defined in Section
7 7702B(b) of the Internal Revenue Code of 1986, as amended. The
8 health plan does not have to be sponsored by the eligible retired
9 public safety officer's former participating municipality.

10 C. The Oklahoma Firefighters Pension and Retirement Board shall
11 promulgate such rules as are necessary to implement the provisions
12 of this section.

13 SECTION 6. It being immediately necessary for the preservation
14 of the public peace, health and safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

17 COMMITTEE REPORT BY: COMMITTEE ON PENSIONS
18 February 11, 2013 - DO PASS AS AMENDED
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