

STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED

SENATE BILL 2130

By: Barrington of the Senate

and

Armes of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to retirement; amending 11 O.S. 2001, Sections 49-100.1, as last amended by Section 1, Chapter 128, O.S.L. 2003, 49-106.1, as last amended by Section 1, Chapter 177, O.S.L. 2008, 49-106.2, as last amended by Section 2, Chapter 177, O.S.L. 2008, 49-106.3, as last amended by Section 3, Chapter 177, O.S.L. 2008, Section 3, Chapter 345, O.S.L. 2007, 49-111, 49-122, 49-126, as last amended by Section 5, Chapter 356, O.S.L. 2007 and 49-138, as last amended by Section 4, Chapter 203, O.S.L. 2005, (11 O.S. Supp. 2009, Sections 49-100.1, 49-106.1, 49-106.2, 49-106.3, 49-106.4, 49-122, 49-126 and 49-138), which relate to the Oklahoma Firefighters Pension and Retirement System; making language gender neutral; modifying definition; specifying when certain distributions under certain plan shall commence; clarifying certain date; specifying when certain election is made; specifying when certain provisions are effective; specifying how certain limitations are to be computed; updating statutory citation; allowing successor rulings to be used for certain purposes; modifying the computation of certain annuities; modifying procedures relating to certain distributions; modifying definition; specifying how certain distributions are to be made; clarifying requirements for certain accounts or annuities; modifying treatment of certain trust; specifying that certain salary received shall be deemed to be part of the member's actual paid gross salary; eliminating

1 the option for certain vote; providing procedures for
2 the correction of an overpayment to member or other
3 payee; allowing certain survivors to be entitled to
4 certain additional benefits; amending 47 O.S. 2001,
5 Section 2-305, as last amended by Section 9, Chapter
6 169, O.S.L. 2009 (47 O.S. Supp. 2009, Section 2-305),
7 which relates to the Oklahoma Law Enforcement
8 Retirement System; eliminating mandatory retirement
9 age; and declaring an emergency.

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

11 SECTION 1. AMENDATORY 11 O.S. 2001, Section 49-100.1, as
12 last amended by Section 1, Chapter 128, O.S.L. 2003 (11 O.S. Supp.
13 2009, Section 49-100.1), is amended to read as follows:

14 Section 49-100.1 As used in this article:

15 1. "System" means the Oklahoma Firefighters Pension and
16 Retirement System and all predecessor municipal firefighters pension
17 and retirement systems;

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

19 3. "State Board" means the Oklahoma Firefighters Pension and
20 Retirement Board;

21 4. "Local board" means the local firefighters pension and
22 retirement boards;

23 5. "Fund" means the Oklahoma Firefighters Pension and
24 Retirement Fund;

6. "Member" means all eligible firefighters of a participating
municipality or a fire protection district who perform the essential

1 functions of fire suppression, prevention, and life safety duties in
2 a fire department. The term "member" shall include but not be
3 limited to the person serving as fire chief of any participating
4 municipality, provided that a person serving as fire chief of a
5 participating municipality shall meet the age, agility, physical and
6 other eligibility requirements required by law at the time said
7 person becomes a member of the System. Effective July 1, 1987, a
8 member does not include a "leased employee". The term "leased
9 employee" means any person (other than an employee of the recipient)
10 who pursuant to an agreement between the recipient and any other
11 person ("leasing organization") has performed services for the
12 recipient (or for the recipient and related persons determined in
13 accordance with Section 414(n)(6) of the Internal Revenue Code of
14 1986, as amended) on a substantially full-time basis for a period of
15 at least one year, and such services are performed under primary
16 direction or control by the recipient. Contributions or benefits
17 provided a leased employee by the leasing organization which are
18 attributable to services performed for the recipient employer shall
19 be treated as provided by the recipient employer. A leased employee
20 shall not be considered an employee of the recipient if the
21 requirements of the safe harbor provisions of Section 414(n)(5) of
22 the Internal Revenue Code of 1986, as amended, are satisfied.
23 Effective July 1, 1999, any individual who agrees with the
24 participating municipality that the individual's services are to be

1 performed as a leased employee or an independent contractor shall
2 not be a member regardless of any classification as a common law
3 employee by the Internal Revenue Service or any other governmental
4 agency, or any court of competent jurisdiction;

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

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

24

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

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

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

12 12. "Eligible employer" means any municipality with a municipal
13 fire department or a fire protection district with an organized fire
14 department;

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

18 14. "Final average salary" means the average paid gross salary
19 of the firefighter for normally scheduled hours over the highest
20 salaried thirty (30) consecutive months of the last sixty (60)
21 months of credited service. Gross salary shall not include payment
22 for accumulated sick or annual leave upon termination of employment,
23 any uniform allowances or any other compensation for reimbursement
24 of out-of-pocket expenses. Only salary on which the required

1 contributions have been made may be used in computing the final
2 average salary. Effective January 1, 1988, gross salary shall
3 include any amount of elective salary reduction under Section 125 of
4 the Internal Revenue Code of 1986, as amended. Gross salary shall
5 include any amount of elective salary reduction under Section 457 of
6 the Internal Revenue Code of 1986, as amended, and any amount of
7 nonelective salary reduction under Section 414(h) of the Internal
8 Revenue Code of 1986, as amended. Effective July 1, 1998, for
9 purposes of determining a member's compensation, any contribution by
10 the member to reduce ~~his~~ the member's regular cash remuneration
11 under 132(f)(4) of the Internal Revenue Code of 1986, as amended,
12 shall be treated as if the member did not make such an election.
13 Only salary on which required contributions have been made may be
14 used in computing final average salary.

15 In addition to other applicable limitations, and notwithstanding
16 any other provision to the contrary, for plan years beginning on or
17 after July 1, 2002, the annual gross salary of each "Noneligible
18 Member" taken into account under the System shall not exceed the
19 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")
20 annual salary limit. The EGTRRA annual salary limit is Two Hundred
21 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for
22 increases in the cost of living in accordance with Section
23 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
24 annual salary limit in effect for a calendar year applies to any

1 period, not exceeding twelve (12) months, over which salary is
2 determined ("determination period") beginning in such calendar year.
3 If a determination period consists of fewer than twelve (12) months,
4 the EGTRRA salary limit will be multiplied by a fraction, the
5 numerator of which is the number of months in the determination
6 period, and the denominator of which is twelve (12). For purposes
7 of this subsection, a "Noneligible Member" is any member who first
8 became a member during a plan year commencing on or after July 1,
9 1996.

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

14 Effective January 1, 2008, gross salary shall also include gross
15 salary, as described above, for services, but paid by the later of
16 two and one-half (2 1/2) months after a firefighter's severance from
17 employment or the end of the calendar year that includes the date
18 the firefighter terminated employment, if it is a payment that,
19 absent a severance from employment, would have been paid to the
20 firefighter while the firefighter continued in employment with the
21 participating municipality.

22 Effective January 1, 2008, any payments not described above
23 shall not be considered gross salary if paid after severance from
24 employment, even if they are paid by the later of two and one-half

1 (2 1/2) months after the date of severance from employment or the
2 end of the calendar year that includes the date of severance from
3 employment, except payments to an individual who does not currently
4 perform services for the participating municipality by reason of
5 qualified military service within the meaning of Section 414(u) (5)
6 of the Internal Revenue Code of 1986, as amended, to the extent
7 these payments do not exceed the amounts the individual would have
8 received if the individual had continued to perform services for the
9 participating municipality rather than entering qualified military
10 service.

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

16 Effective for years beginning after December 31, 2008, gross
17 salary shall also include differential wage payments under Section
18 414(u) (12) of the Internal Revenue Code of 1986, as amended;

19 15. "Accrued retirement benefit" means two and one-half percent
20 (2 1/2%) of the firefighter's final average salary multiplied by the
21 member's years of credited service not to exceed thirty (30) years;

22 16. "Beneficiary" means a member's surviving spouse or any
23 surviving children, including biological and adopted children, at
24 the time of the member's death. The surviving spouse must have been

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

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

1 any amount contributed by the municipality or state and any amount
2 contributed by the municipality or state; and

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

6 SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-106.1, as
7 last amended by Section 1, Chapter 177, O.S.L. 2008 (11 O.S. Supp.
8 2009, Section 49-106.1), is amended to read as follows:

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

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

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

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

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

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

23 2. A member who participates in this plan shall earn interest
24 at a rate of two percentage points below the rate of return of the

1 investment portfolio of the System, but no less than the actuarial
2 assumed interest rate as certified by the actuary in the yearly
3 evaluation report of the actuary. The interest shall be credited to
4 the individual account balance of the member on an annual basis.

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

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

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

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

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

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

21 b. "termination date" means the date the member elects to
22 participate in the Oklahoma Firefighters Deferred
23 Option Plan pursuant to this subsection, and the date
24

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

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

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

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

15 1. For purposes of this subsection, the following definitions
16 shall apply:

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

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

1 c. "monthly adjustment amount" means the difference
2 between the monthly pension prior to the back drop
3 election and the adjusted monthly pension due to the
4 back drop election,

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

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

13 2. If a member who has more than twenty (20) years of
14 creditable service and is eligible to receive a service retirement
15 pension dies on or after ~~the effective date of this act~~ June 4,
16 2007, and prior to terminating employment, the member's surviving
17 spouse shall be eligible to elect to receive a benefit determined as
18 if the member had elected to participate in the Oklahoma
19 Firefighters Deferred Option Plan in accordance with subsection H of
20 this section on the day immediately preceding such member's death.
21 ~~The~~ Prior to July 1, 2010, the surviving spouse must make any such
22 election within one (1) year from the date of the member's death.
23 ~~If~~ Effective July 1, 2010, the surviving spouse must make any such
24 election within ninety (90) days from the date of the member's

1 death. If on or after June 4, 2007, such election is made, the
2 monthly pension such surviving spouse is ~~receiving, or is~~ entitled
3 to receive, shall be adjusted in accordance with the provisions of
4 subsection H of this section to account for the member's
5 participation in the Oklahoma Firefighters Deferred Option Plan.
6 ~~The deferred benefit balance such surviving spouse 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 surviving spouse may only make a back drop election if the~~
10 ~~deferred benefit balance after the adjustment described in this~~
11 ~~paragraph is greater than Zero Dollars (\$0.00).~~ The surviving
12 spouse may only make this election if the member has not previously
13 elected to participate in the Oklahoma Firefighters Deferred Option
14 Plan. For purposes of this election, the surviving spouse must have
15 been married to the firefighter for the thirty (30) continuous
16 months preceding the firefighter's death; provided, the surviving
17 spouse of a member who died while in, or as a consequence of, the
18 performance of the member's duty for a participating municipality
19 shall not be subject to the marriage limitation for this election.

20 3. If a member has more than twenty (20) years of creditable
21 service and is eligible for a retirement for disability monthly
22 pension pursuant to Section 49-109 of this title on or after ~~the~~
23 ~~effective date of this act~~ June 4, 2007, such member shall be
24 eligible to elect to receive a benefit determined as if the member

1 had elected to participate in the Oklahoma Firefighters Deferred
2 Option Plan, in accordance with subsection H of this section, on the
3 day immediately preceding the date of the member's disability
4 retirement, provided such election is made within two (2) years from
5 the date of the member's disability retirement. The disability
6 monthly pension such member is receiving, or entitled to receive,
7 shall be adjusted in accordance with the provisions of subsection H
8 of this section to account for the member's participation in the
9 Oklahoma Firefighters Deferred Option Plan. The deferred benefit
10 balance such member is entitled to receive shall be reduced by the
11 back drop pension adjustment amount and increased by the deferred
12 benefit balance adjustment amount. The member may only make a back
13 drop election if the deferred benefit balance after the adjustment
14 described in this paragraph is greater than Zero Dollars (\$0.00).
15 The member may only make this election if the member has not
16 previously elected to participate in the Oklahoma Firefighters
17 Deferred Option Plan.

18 4. If a member has more than twenty (20) years of creditable
19 service and filed a grievance for wrongful termination occurring on
20 or after ~~the effective date of this act~~ June 4, 2007, but is not
21 reinstated as an active member, such member shall be eligible to
22 elect to receive a benefit determined as if the member had elected
23 to participate in the Oklahoma Firefighters Deferred Option Plan in
24 accordance with subsection H of this section on the day immediately

1 preceding the date of the member's termination. Such election must
2 be made within two (2) years from the date of the member's
3 termination as an active member and, if the member's case pertaining
4 to the member's termination is on appeal to a court of competent
5 jurisdiction, within such period set by the State Board in its sole
6 discretion. The monthly pension such member is receiving, or
7 entitled to receive, shall be adjusted in accordance with the
8 provisions of subsection H of this section to account for the
9 member's participation in the Oklahoma Firefighters Deferred Option
10 Plan. The deferred benefit balance such member is entitled to
11 receive shall be reduced by the back drop pension adjustment amount
12 and increased by the deferred benefit balance adjustment amount.
13 The member may only make a back drop election if the deferred
14 benefit balance after the adjustment described in this paragraph is
15 greater than Zero Dollars (\$0.00). The member may only make this
16 election if the member has not previously elected to participate in
17 the Oklahoma Firefighters Deferred Option Plan.

18 5. Subparagraphs d and e of paragraph 1 and paragraphs 3 and 4
19 of this subsection are effective June 4, 2007, provided the Internal
20 Revenue Service issues a favorable determination letter for the
21 System which includes the provisions of such subparagraphs and
22 paragraphs without modification or as modified to conform to any
23 changes required by the Internal Revenue Service as part of its
24 determination letter review process. In the event the Internal

1 Revenue Service does not issue such a determination letter which
2 includes the provisions of such subparagraphs or paragraphs without
3 modification or as modified to conform to any changes required by
4 the Internal Revenue Service as part of its determination letter
5 review process, then subparagraphs d and e of paragraph 1 and
6 paragraphs 3 and 4 of this subsection shall be repealed effective
7 June 4, 2007.

8 SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-106.2, as
9 last amended by Section 2, Chapter 177, O.S.L. 2008 (11 O.S. Supp.
10 2009, Section 49-106.2), is amended to read as follows:

11 Section 49-106.2 A. For limitation years prior to July 1,
12 2007, the limitations of Section 415 of the Internal Revenue Code of
13 1986, as amended, shall be computed in accordance with the
14 applicable provisions of the System in effect at that time and, to
15 the extent applicable, Revenue Ruling 98-1 and Revenue Ruling 2001-
16 51, except as provided below. Notwithstanding any other provision
17 contained herein to the contrary, the benefits payable to a member
18 from the System provided by employer contributions (including
19 contributions picked up by the employer under Section 414(h) of the
20 Internal Revenue Code of 1986, as amended) shall be subject to the
21 limitations of Section 415 of the Internal Revenue Code of 1986, as
22 amended, in accordance with the provisions of this section. The
23 limitations of this section shall apply in limitation years
24

1 beginning on or after July 1, 2007, except as otherwise provided
2 below.

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

16 1. The member's annual benefit is a benefit that is payable
17 annually in the form of a straight life annuity. Except as provided
18 below, where a benefit is payable in a form other than a straight
19 life annuity, the benefit shall be adjusted to an actuarially
20 equivalent straight life annuity that begins at the same time as
21 such other form of benefit and is payable on the first day of each
22 month, before applying the limitations of this section. For a
23 member who has or will have distributions commencing at more than
24 one annuity starting date, the annual benefit shall be determined as

1 of each such annuity starting date (and shall satisfy the
2 limitations of this section as of each such date), actuarially
3 adjusting for past and future distributions of benefits commencing
4 at the other annuity starting dates. For this purpose, the
5 determination of whether a new starting date has occurred shall be
6 made without regard to Section 1.401(a)-20, Q&A 10(d), and with
7 regard to Section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax
8 Regulations.

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

- 10 a. survivor benefits payable to a surviving spouse under
11 a qualified joint and survivor annuity to the extent
12 such benefits would not be payable if the member's
13 benefit were paid in another form,
- 14 b. benefits that are not directly related to retirement
15 benefits such as a qualified disability benefit,
16 preretirement incidental death benefits, and
17 postretirement medical benefits, or
- 18 c. the inclusion in the form of a benefit of an automatic
19 benefit increase feature, provided, the form of
20 benefit is not subject to Section 417(e)(3) of the
21 Internal Revenue Code of 1986, as amended, and would
22 otherwise satisfy the limitations of this section, and
23 the System provides that the amount payable under the
24 form of benefit in any limitation year shall not

1 exceed the limits of this section applicable at the
2 annuity starting date, as increased in subsequent
3 years pursuant to Section 415(d) of the Internal
4 Revenue Code of 1986, as amended. For this purpose,
5 an automatic benefit increase feature is included in a
6 form of benefit if the form of benefit provides for
7 automatic, periodic increases to the benefits paid in
8 that form.

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

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

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

- 1 a. a nondecreasing annuity (other than a straight life
2 annuity) payable for a period of not less than the
3 life of the member (or, in the case of a qualified
4 preretirement survivor annuity, the life of the
5 surviving spouse), or
- 6 b. an annuity that decreases during the life of the
7 member merely because of:
- 8 (1) the death of the survivor annuitant, but only if
9 the reduction is not below fifty percent (50%) of
10 the benefit payable before the death of the
11 survivor annuitant, or
- 12 (2) the cessation or reduction of Social Security
13 supplements or qualified disability payments as
14 defined in Section ~~401~~ 411(a)-(11)(9) of the
15 Internal Revenue Code of 1986, as amended.
- 16 c. Limitation ~~Year~~ Years Beginning Before July 1, 2007.
17 For limitation years beginning before July 1, 2007,
18 the actuarially equivalent straight life annuity is
19 equal to the annual amount of the straight life
20 annuity commencing at the same annuity starting date
21 that has the same actuarial present value as the
22 member's form of benefit computed using whichever of
23 the following produces the greater annual amount:
24

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

10 d. Limitation Years Beginning On or After July 1, 2007.

11 For limitation years beginning on or after July 1,
12 2007, the actuarially equivalent straight life annuity
13 is equal to the greater of:

- 14 (1) the annual amount of the straight life annuity,
15 if any, payable to the member under the System
16 commencing at the same annuity starting date as
17 the member's form of benefit, and
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 percent (5%) interest rate assumption and the
23 applicable mortality table described in Revenue
24 Ruling 2001-62 (or its successor for these

1 purposes, if applicable) for that annuity
2 starting date.

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

10 a. Annuity Starting Date in Plan Years Beginning After
11 ~~2005~~ December 31, 2007 (Plan Years beginning on or
12 after July 1, 2008). If the annuity starting date of
13 the member's form of benefit is in a plan year
14 beginning after ~~2005~~ December 31, 2007, the
15 actuarially equivalent straight life annuity is equal
16 to the greatest of (1), (2) or (3) below:

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

- 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 and one-half percent (5.5%) interest rate
6 assumption and the applicable mortality table
7 described in Revenue Ruling 2001-62 (or its
8 successor for these purposes, if applicable), and
- 9 (3) the annual amount of the straight life annuity
10 commencing at the same annuity starting date that
11 has the same actuarial present value as the
12 member's form of benefit, computed using:
- 13 (a) the adjusted first, second, and third
14 segment rates under Section 417(e) (3) (C) and
15 (D) of the Internal Revenue Code of 1986, as
16 amended, applied under rules similar to the
17 rules of Section 430(h) (2) (C) of the
18 Internal Revenue Code of 1986, as amended,
19 for the fourth calendar month preceding the
20 plan year in which falls the annuity
21 starting date for the distribution and the
22 stability period is the successive period of
23 one plan year which contains the annuity
24 starting date for the distribution and for

1 which the applicable interest rate remains
2 constant, or as otherwise provided in the
3 applicable guidance if the first day of the
4 first plan year beginning after December 31,
5 2007, does not coincide with the first day
6 of the applicable stability period, and

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

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

11 b. Annuity Starting Date in Plan Years Beginning in 2006
12 or 2007. If the annuity starting date of the member's
13 form of benefit is in a plan year beginning in 2006 or
14 2007, the actuarially equivalent straight life annuity
15 is equal to the greatest of (1), (2) or (3) below:

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

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

9 (3) the annual amount of the straight life annuity
10 commencing at the same annuity starting date that
11 has the same actuarial present value as the
12 member's form of benefit, computed using:

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

6 c. Annuity Starting Date in Plan Years Beginning in 2004
7 or 2005.

8 (1) If the annuity starting date of the member's form
9 of benefit is in a plan year beginning in 2004 or
10 2005, the actuarially equivalent straight life
11 annuity is equal to the annual amount of the
12 straight life annuity commencing at the same
13 annuity starting date that has the same actuarial
14 present value as the member's form of benefit,
15 computed using whichever of the following
16 produces the greater annual amount:

17 (a) the interest rate and the mortality table or
18 other tabular factor, each as set forth in
19 subsection H of Section 49-100.9 of this
20 title for adjusting benefits in the same
21 form, and

22 (b) a five and one-half percent (5.5%) interest
23 rate assumption and the applicable mortality
24 table described in Revenue Ruling 2001-62

1 Commissioner for the lookback month for
2 the stability period specified below.

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

7 The stability period is the successive
8 period of one plan year which contains
9 the annuity starting date for the
10 distribution and for which the
11 applicable interest rate remains
12 constant, and

13 ii. the applicable mortality table
14 described in Revenue Ruling 2001-62 (or
15 its successor for these purposes, if
16 applicable), and

17 (c) i. the rate of interest on thirty-year
18 Treasury securities as specified by the
19 Commissioner for the lookback month for
20 the stability period specified below.

21 The lookback month applicable to the
22 stability period is the fourth calendar
23 month preceding the first day of the
24 stability period, as specified below.

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

- 11 ii. the applicable mortality table
12 described in Revenue Ruling 2001-62 (or
13 its successor for these purposes, if
14 applicable).

15 C. If a member has less than ten (10) years of participation in
16 the System and all predecessor municipal firefighter pension and
17 retirement systems, the dollar limitation otherwise applicable under
18 subsection B of this section shall be multiplied by a fraction, the
19 numerator of which is the number of the years of participation in
20 the System of the member, but never less than one (1), and the
21 denominator of which is ten (10).

22 D. Adjustment of Dollar Limitation for Benefit Commencement
23 Before Sixty-two (62) Years of Age or After Sixty-five (65) Years of
24 Age: Effective for benefits commencing in limitation years ending

1 after December 31, 2001, the dollar limitation under subsection B of
2 this section shall be adjusted if the annuity starting date of the
3 member's benefit is before sixty-two (62) years of age or after
4 sixty-five (65) years of age. If the annuity starting date is
5 before sixty-two (62) years of age, the dollar limitation under
6 subsection B of this section shall be adjusted under paragraph 1 of
7 this subsection, as modified by paragraph 3 of this subsection, but
8 subject to paragraph 4 of this subsection. If the annuity starting
9 date is after sixty-five (65) years of age, the dollar limitation
10 under subsection B of this section shall be adjusted under paragraph
11 2 of this subsection, as modified by paragraph 3 of this subsection.

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

14 a. Limitation Years Beginning Before July 1, 2007. If
15 the annuity starting date for the member's benefit is
16 prior to sixty-two (62) years of age and occurs in a
17 limitation year beginning before July 1, 2007, the
18 dollar limitation for the member's annuity starting
19 date is the annual amount of a benefit payable in the
20 form of a straight life annuity commencing at the
21 member's annuity starting date that is the actuarial
22 equivalent of the dollar limitation under subsection B
23 of this section (adjusted under subsection C of this
24 section for years of participation less than ten (10),

1 if required) with actuarial equivalence computed using
2 whichever of the following produces the smaller annual
3 amount:

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

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

- 13 (1) System Does Not Have Immediately Commencing
14 Straight Life Annuity Payable at Both Sixty-two
15 (62) Years of Age and the Age of Benefit
16 Commencement. If the annuity starting date for
17 the member's benefit is prior to sixty-two (62)
18 years of age and occurs in a limitation year
19 beginning on or after July 1, 2007, and the
20 System does not have an immediately commencing
21 straight life annuity payable at both sixty-two
22 (62) years of age and the age of benefit
23 commencement, the dollar limitation for the
24 member's annuity starting date is the annual

1 amount of a benefit payable in the form of a
2 straight life annuity commencing at the member's
3 annuity starting date that is the actuarial
4 equivalent of the dollar limitation under
5 subsection B of this section (adjusted under
6 subsection C of this section for years of
7 participation less than ten (10), if required)
8 with actuarial equivalence computed using a five
9 percent (5%) interest rate assumption and the
10 applicable mortality table for the annuity
11 starting date as described in Revenue Ruling
12 2001-62 (or its successor for these purposes, if
13 applicable) (and expressing the member's age
14 based on completed calendar months as of the
15 annuity starting date).

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

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

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

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

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

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

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

- 17 (1) System Does Not Have Immediately Commencing
18 Straight Life Annuity Payable at Both Sixty-five
19 (65) Years of Age and the Age of Benefit
20 Commencement. If the annuity starting date for
21 the member's benefit is after sixty-five (65)
22 years of age and occurs in a limitation year
23 beginning on or after July 1, 2007, and the
24 System does not have an immediately commencing

1 straight life annuity payable at both sixty-five
2 (65) years of age and the age of benefit
3 commencement, the dollar limitation at the
4 member's annuity starting date is the annual
5 amount of a benefit payable in the form of a
6 straight life annuity commencing at the member's
7 annuity starting date that is the actuarial
8 equivalent of the dollar limitation under
9 subsection B of this section (adjusted under
10 subsection C of this section for years of
11 participation less than ten (10), if required)
12 with actuarial equivalence computed using a five
13 percent (5%) interest rate assumption and the
14 applicable mortality table for the annuity
15 starting date as described in Revenue Ruling
16 2001-62 (or its successor for these purposes, if
17 applicable) (and expressing the member's age
18 based on completed calendar months as of the
19 annuity starting date).

- 20 (2) System Has Immediately Commencing Straight Life
21 Annuity Payable at Both Sixty-five (65) Years of
22 Age and Age of Benefit Commencement. If the
23 annuity starting date for the member's benefit is
24 after sixty-five (65) years of age and occurs in

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

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

11 3. Notwithstanding the other requirements of this subsection,
12 no adjustment shall be made to the dollar limitation under
13 subsection B of this section to reflect the probability of a
14 member's death between the annuity starting date and sixty-two (62)
15 years of age, or between sixty-five (65) years of age and the
16 annuity starting date, as applicable, if benefits are not forfeited
17 upon the death of the member prior to the annuity starting date. To
18 the extent benefits are forfeited upon death before the annuity
19 starting date, such an adjustment shall be made. For this purpose,
20 no forfeiture shall be treated as occurring upon the member's death
21 if the System does not charge members for providing a qualified
22 preretirement survivor annuity, as defined in Section 417(c) of the
23 Internal Revenue Code of 1986, as amended, upon the member's death.

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

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

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

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

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

22 2. The participating municipality (or a predecessor employer)
23 has not at any time maintained a defined contribution plan in which
24 the member participated (for this purpose, mandatory employee

1 contributions under a defined benefit plan, individual medical
2 accounts under Section 401(h) of the Internal Revenue Code of 1986,
3 as amended, and accounts for postretirement medical benefits
4 established under Section 419A(d)(1) of the Internal Revenue Code of
5 1986, as amended, are not considered a separate defined contribution
6 plan).

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

17 G. For limitation years beginning on or after January 1, 1995,
18 subsection C of this section, paragraph 1 of subsection D of this
19 section, and the proration provided under subparagraphs a and b of
20 paragraph 1 of subsection E of this section, shall not apply to a
21 benefit paid under the System as a result of the member becoming
22 disabled by reason of personal injuries or sickness, or amounts
23 received by the beneficiaries, survivors or estate of the member as
24 a result of the death of the member.

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

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

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

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

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

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

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

4 Section 49-106.3 A. For distributions made on or after January
5 1, 1993, and notwithstanding any provision of the System to the
6 contrary that would otherwise limit a Distributee's election
7 hereunder, a Distributee, including a nonspouse designated
8 beneficiary, to the extent permitted under paragraph 3 of subsection
9 B of this section, may elect, at the time and in the manner
10 prescribed by the State Board, to have any portion of an Eligible
11 Rollover Distribution paid, as specified by the Distributee in a
12 Direct Rollover, directly to ~~an~~:

13 1. An Eligible Retirement Plan ~~specified by the Distributee in~~
14 ~~a Direct Rollover;~~ or

15 2. Effective for distributions after December 31, 2007, a Roth
16 IRA described in Section 408A of the Internal Revenue Code of 1986,
17 as amended, subject to any limitations described in Section 408A(c)
18 of the Internal Revenue Code of 1986, as amended.

19 B. For purposes of this section, the following definitions
20 shall apply:

21 1. "Eligible Rollover Distribution" means any distribution of
22 all or any portion of the balance to the credit of the Distributee,
23 except that an Eligible Rollover Distribution does not include any
24 distribution that is one of a series of substantially equal periodic

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

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

14 (1) to an individual retirement account or annuity
15 described in Section 408(a) or (b) of the

16 Internal Revenue Code of 1986, as amended, or

17 (2) in a direct trustee-to-trustee transfer, to a

18 qualified trust which is a part of a defined

19 contribution plan ~~described in Section 401(a) or~~

20 ~~403(a) of the Internal Revenue Code of 1986, as~~

21 ~~amended, and which~~ that agrees to separately

22 account for amounts so transferred, including

23 separately accounting for the portion of such

24 distribution which is includable in gross income

1 and the portion of such distribution which is not
2 so includable, and

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

4 (1) to an individual retirement account or annuity
5 described in Section 408(a) or (b) of the

6 Internal Revenue Code of 1986, as amended, or

7 (2) in a direct trustee-to-trustee transfer, to a

8 ~~qualified trust described in Section 401(a) or~~

9 ~~403(a) of the Internal Revenue Code of 1986, as~~

10 ~~amended,~~ or an annuity contract described in

11 Section 403(b) of the Internal Revenue Code of

12 1986, as amended, ~~and~~ if such trust or annuity

13 contract provides for separate accounting for

14 amounts so transferred (and earnings thereon),

15 including separately accounting for the portion

16 of such distribution which is includable in gross

17 income and the portion of such distribution which

18 is not so includable.

19 Effective for distributions after December 31, 2007,

20 such after-tax portion may also be transferred to a

21 Roth IRA described in Section 408A of the Internal

22 Revenue Code of 1986, as amended, subject to any

23 limitations described in Section 408A(c) of the

24 Internal Revenue Code of 1986, as amended, that agrees

1 to separately account for amounts so transferred,
2 including separately accounting for the portion of
3 such distribution which is includable in gross income
4 and the portion of such distribution which is not so
5 includable;

6 2. "Eligible Retirement Plan" means an individual retirement
7 account described in Section 408(a) of the Internal Revenue Code of
8 1986, as amended, an individual retirement annuity described in
9 Section 408(b) of the Internal Revenue Code of 1986, as amended, an
10 annuity plan described in Section 403(a) of the Internal Revenue
11 Code of 1986, as amended, or a qualified trust described in Section
12 401(a) of the Internal Revenue Code of 1986, as amended, that
13 accepts the Distributee's Eligible Rollover Distribution. Effective
14 January 1, 2002, an Eligible Retirement Plan shall also mean an
15 annuity contract described in Section 403(b) of the Internal Revenue
16 Code of 1986, as amended, and an eligible plan under Section 457(b)
17 of the Internal Revenue Code of 1986, as amended, which is
18 maintained by a state, political subdivision of a state, or any
19 agency or instrumentality of a state or political subdivision of a
20 state and which agrees to separately account for amounts transferred
21 into such plan from the System;

22 3. "Distributee" means a member whether or not the member is an
23 active firefighter. In addition, effective June 7, 1993, the
24 member's surviving spouse and the member's spouse or former spouse

1 who is an alternate payee under a qualified domestic order, as
2 provided in subsection B of Section 49-126 of this title, are
3 Distributees with regard to the interest of the spouse or former
4 spouse. Effective for distributions after December 31, 2006, a
5 Distributee also includes the member's nonspouse designated
6 beneficiary, pursuant to Section 401(a)(9)(E) of the Internal
7 Revenue Code of 1986, as amended. ~~In the case of a nonspouse~~
8 ~~beneficiary, the, who may only elect a Direct Rollover may be made~~
9 only (to the extent such Distributee does not receive a lump sum
10 payment) to an individual retirement account or annuity (other than
11 an endowment contract) described in Section 408(a) or (b) of the
12 Internal Revenue Code of 1986, as amended, (IRA), that is
13 established on behalf of such designated beneficiary and that will
14 be treated as an inherited IRA pursuant to the provisions of Section
15 402(c)(11) of the Internal Revenue Code of 1986, as amended. Also,
16 in this case, the determination of any required minimum distribution
17 under Section 401(a)(9) of the Internal Revenue Code of 1986, as
18 amended, that is ineligible for rollover shall be made in accordance
19 with Notice 2007-7, Q&A 17 and 18, ~~Announcement~~ 2007-5 Internal
20 Revenue Bulletin 395. The required minimum distribution rules of
21 Section 401(a)(9)(B) (other than clause iv thereof) of the Internal
22 Revenue Code of 1986, as amended, apply to the transferee IRA; and
23 4. "Direct Rollover" means a payment by the System to the
24 Eligible Retirement Plan specified by the Distributee or, effective

1 for distributions on or after January 1, 2008, to a Roth IRA under
2 Section 408A of the Internal Revenue Code of 1986, as amended, as
3 specified by the Distributee, assuming the Distributee otherwise
4 meets the Roth IRA requirements.

5 C. At least thirty (30) days before and, effective January 1,
6 2007, not more than one hundred eighty (180) days before the date of
7 distribution, the Distributee (other than a nonspouse designated
8 beneficiary prior to January 1, 2010) must be provided with a notice
9 of rights which satisfies Section 402(f) of the Internal Revenue
10 Code of 1986, as amended, as to rollover options and tax effects.
11 Such distribution may commence less than thirty (30) days after the
12 notice is given, provided that:

13 1. The State Board clearly informs the Distributee that the
14 Distributee has a right to a period of at least thirty (30) days
15 after receiving the notice to consider the decision of whether or
16 not to elect a distribution; and

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

19 D. Prior to January 1, 2010, a distribution with respect to a
20 nonspouse designated beneficiary shall be made in accordance with
21 Notice 2007-7, Q&A 15, 2007-5 Internal Revenue Bulletin 395.
22 Effective January 1, 2010, a distribution with respect to a
23 nonspouse designated beneficiary shall be subject to Sections
24

1 401(a)(31), 402(f) and 3405(c) of the Internal Revenue Code of 1986,
2 as amended.

3 SECTION 5. AMENDATORY Section 3, Chapter 345, O.S.L.
4 2007 (11 O.S. Supp. 2009, Section 49-106.4), is amended to read as
5 follows:

6 Section 49-106.4 A. An individual who has been designated,
7 pursuant to Section 401(a)(9)(E) of the Internal Revenue Code of
8 1986, as amended, as the beneficiary of a deceased member and who is
9 not the surviving spouse of the member, may elect, in accordance
10 with Section 402(c)(11) of the Internal Revenue Code of 1986, as
11 amended, and at the time and in the manner prescribed by the
12 Oklahoma Firefighters Pension and Retirement Board, to have a direct
13 trustee-to-trustee transfer of any portion of such beneficiary's
14 lump-sum distribution from the Oklahoma Firefighters Pension and
15 Retirement System after December 31, 2006, made to an individual
16 retirement account or individual retirement annuity (other than an
17 endowment contract) described in Section 408(a) or (b) of the
18 Internal Revenue Code of 1986, as amended (IRA), that is established
19 on behalf of such designated individual. If such transfer is made
20 then:

21 1. The transfer is treated as an eligible rollover distribution
22 for purposes of Section 402(c)(11) of the Internal Revenue Code of
23 1986, as amended;

24

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

6 3. The required minimum distribution rules of Section
7 401(a)(9)(B) (other than clause iv thereof) of the Internal Revenue
8 Code of 1986, as amended, apply to the transferee IRA.

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

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

15 SECTION 6. AMENDATORY 11 O.S. 2001, Section 49-111, is
16 amended to read as follows:

17 Section 49-111. A. Whenever any member of the fire department
18 of any municipality, on account of sickness or temporary disability,
19 other than a burn injury, caused or sustained while in the discharge
20 of the member's duty as such member, is unable to perform the
21 member's duties, notwithstanding the provisions of Sections 11 and
22 12 of Title 85 of the Oklahoma Statutes, the salary shall be paid by
23 the municipality to the member and shall continue while the member
24 is sick or temporarily disabled for a period of not more than six

1 (6) months with the municipality having the option of extending the
2 period for up to an additional six (6) months, not to exceed a total
3 of twelve (12) months, after which period the provisions for
4 disability benefits under the Oklahoma Firefighters Pension and
5 Retirement System shall apply. The salary received by the member
6 under this subsection while the member is sick or temporarily
7 disabled for a period specified in this subsection shall be, or
8 deemed to be, part of the member's actual paid gross salary under
9 the Oklahoma Firefighters Pension and Retirement System.

10 Contributions shall be made on actual paid gross salary paid
11 pursuant to this section.

12 B. Whenever any member of the fire department of any
13 municipality, on account of a burn injury, caused or sustained while
14 in the discharge of the member's duty as such member, is unable to
15 perform the member's duties, notwithstanding the provisions of
16 Sections 11 and 12 of Title 85 of the Oklahoma Statutes, the salary
17 shall be paid by the municipality to the member and shall continue
18 while the member is sick or temporarily disabled for a period of not
19 more than twelve (12) months with the municipality having the option
20 of extending the period for up to an additional six (6) months, not
21 to exceed a total of eighteen (18) months, after which said period
22 the provisions for disability benefits under the Oklahoma
23 Firefighters Pension and Retirement System shall apply. The salary
24 received by the member under this subsection while the member is

1 sick or temporarily disabled for a period specified in this
2 subsection shall be, or deemed to be, part of the member's actual
3 paid gross salary under the Oklahoma Firefighters Pension and
4 Retirement System. Contributions shall be made on actual paid gross
5 salary paid pursuant to this section.

6 C. Should a member receiving a salary under this section be
7 eligible to receive, and should the salary of the member under this
8 section exceed any temporary disability benefit paid to the member
9 under Section 1 et seq. of Title 85 of the Oklahoma Statutes, the
10 member shall transfer such temporary disability benefits under
11 Section 1 et seq. of Title 85 of the Oklahoma Statutes to the
12 municipality while the member is sick or temporarily disabled.

13 SECTION 7. AMENDATORY 11 O.S. 2001, Section 49-122, is
14 amended to read as follows:

15 Section 49-122. A. Each municipality having a paid member of a
16 fire department shall deduct monthly from the salary of each member
17 of the fire department of such municipality an amount equal to eight
18 percent (8%) of the actual paid gross salary of each member of the
19 fire department. The deduction shall be considered the minimum
20 deduction. At the option of the municipality, the municipality may
21 pay all or any part of the member's required contribution. ~~The~~
22 ~~members of a fire department, by a majority vote of its paid~~
23 ~~members, may vote to increase the amount of the deduction.~~ The
24 treasurer of each municipality shall deduct the authorized

1 deductions from the salary of each paid member of the fire
2 department. The treasurer of the municipality shall deposit within
3 ten (10) days from each ending payroll date in the System the amount
4 deducted from the salary of each member of the fire department.
5 Amounts deducted from the salary of a member and not paid to the
6 System after thirty (30) days from each ending payroll date shall be
7 subject to a monthly late charge of one and one-half percent (1
8 1/2%) of the unpaid balance to be paid by the municipality to the
9 System.

10 Each municipality shall pick up under the provisions of Section
11 414(h)(2) of the Internal Revenue Code of 1986, as amended, and pay
12 the contribution which the member is required by law to make to the
13 System for all compensation earned after December 31, 1988.
14 Although the contributions so picked up are designated as member
15 contributions, such contributions shall be treated as contributions
16 being paid by the municipality in lieu of contributions by the
17 member in determining tax treatment under the Internal Revenue Code
18 of 1986, as amended, and such picked up contributions shall not be
19 includable in the gross income of the member until such amounts are
20 distributed or made available to the member or the beneficiary of
21 the member. The member, by the terms of this ~~system~~ System, shall
22 not have any option to choose to receive the contributions so picked
23 up directly and the picked up contributions must be paid by the
24 municipality to the System.

1 Member contributions which are picked up shall be treated in the
2 same manner and to the same extent as member contributions made
3 prior to the date on which member contributions were picked up by
4 the municipality. Member contributions so picked up shall be
5 included in salary for purposes of the System.

6 The municipality shall pay the member contributions from the
7 same source of funds used in paying salary to the member, by
8 effecting an equal cash reduction in gross salary of the member, or
9 by an offset against future salary increases, or by a combination of
10 reduction in gross salary and offset against future salary
11 increases.

12 The treasurer of each municipality shall deduct the picked up
13 contributions from the salary of each paid member of the fire
14 department. The treasurer of the municipality shall deposit monthly
15 in the System the amount picked up from the salary of each member of
16 the fire department.

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

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

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

1 3. Beginning July 1, 1992 through June 30, 1993, eleven percent
2 (11%) of the total actual paid gross salaries of the members of the
3 fire department;

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

7 5. Beginning July 1, 1994 through June 30, 1995, twelve percent
8 (12%) of the total actual paid gross salaries of the members of the
9 fire department;

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

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

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

18 Provided, the above-mentioned volunteer county or municipal
19 contributions shall be reevaluated by the next scheduled actuarial
20 study and the amounts adjusted so that in a nine-year period of
21 time, the amounts would reflect the actuarial recommendations at
22 that time. Any county or municipality with an income of less than
23 Twenty-five Thousand Dollars (\$25,000.00) to its general fund during
24

1 a fiscal year shall be exempt from the provisions of this
2 subsection.

3 Any municipality that fails to comply with the provisions of
4 this section shall not be entitled to its proportionate share of the
5 Motor Fuel Excise Tax which is received through the Oklahoma Tax
6 Commission. Any county or municipality may exceed the amount of
7 contribution required by this section.

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

10 SECTION 8. AMENDATORY 11 O.S. 2001, Section 49-126, as
11 last amended by Section 5, Chapter 356, O.S.L. 2007 (11 O.S. Supp.
12 2009, Section 49-126), is amended to read as follows:

13 Section 49-126. A. Except as otherwise provided by this
14 section, no portion of said pension shall, either before or after
15 its order of distribution by the State Board to such disabled
16 members of said fire department, or the surviving spouse, alternate
17 payee as defined in subsection B of this section, or guardian of
18 such minor child or children, to the deceased or retired member of
19 such department, be held, seized, taken, subjected to or detained or
20 levied on by virtue of any attachment, execution, injunction, writ
21 interlocutory or other order or decree, or any process or proceeding
22 whatever, issued out of or by any court of this state for the
23 payment or satisfaction, in whole or in part, of any debt, damages,
24 claim, demand or judgment against such member, or his or her

1 surviving spouse, alternate payee, or the guardian of said minor
2 child or children of any deceased member, nor shall said fund or any
3 claim thereto be directly or indirectly assigned and any attempt to
4 assign or transfer the same shall be void; but the funds shall be
5 held, kept, secured and distributed for the purpose of pensioning
6 the persons named in this article, and for no other purpose
7 whatever. Notwithstanding the foregoing, effective August 5, 1997,
8 the State Board may approve any offset of a member's benefit to pay
9 a judgment or settlement against a member for a crime involving the
10 System, for a breach of the member's fiduciary duty to the System,
11 or for funds or monies incorrectly paid to a member or beneficiary
12 by mistake, provided such offset is in accordance with the
13 requirements of Section 401(a)(13) of the Internal Revenue Code of
14 1986, as amended.

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

18 2. The term "qualified domestic order" means an order issued by
19 a district court of this state pursuant to the domestic relation
20 laws of this state which relates to the provision of marital
21 property rights to an alternate payee and which creates or
22 recognizes the existence of the right of an alternate payee and
23 assigns to an alternate payee the right to receive a portion of the
24 benefits payable with respect to a member of the System.

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

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

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

14 6. A qualified domestic order shall clearly specify:

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

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

3 a. does not require the System to provide any type or
4 form of benefit, or any option not otherwise provided
5 under state law as relates to the System,

6 b. does not require the System to provide increased
7 benefits, and

8 c. does not require the payment of benefits to an
9 alternate payee which are required to be paid to
10 another alternate payee pursuant to another order
11 previously determined to be a qualified domestic order
12 or an order recognized by the System as a valid order
13 prior to ~~the effective date of this act~~ June 7, 1993.

14 8. A qualified domestic order shall not require payment of
15 benefits to an alternate payee prior to the actual retirement date
16 of the related member.

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

23 10. The obligation of the System to pay an alternate payee
24 pursuant to a qualified domestic order shall cease upon the earlier

1 of the death of the related member or the death of the alternate
2 payee. Upon the death of the alternate payee, the assignment to the
3 alternate payee of the right to receive a portion of the benefits
4 payable with respect to the member shall cease and the payments of
5 benefits to the member shall be reinstated.

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

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

14 13. An alternate payee who has acquired beneficiary rights
15 pursuant to a valid qualified domestic order must fully comply with
16 all provisions of the rules promulgated by the State Board pursuant
17 to this subsection in order to continue receiving his or her
18 benefit.

19 C. The provisions of subsection A of this section shall not
20 apply to a Child Support Enforcement Division order for a support
21 arrearage pursuant to Section 240.23 of Title 56 of the Oklahoma
22 Statutes and current child support payments made pursuant to a valid
23 court order.

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

5 E. The provisions of subsection A of this section shall not
6 apply in the case of an overpayment to a member or other payee.

7 Such overpayment may be corrected through a return of the
8 overpayment, or an adjustment of future payments, or a combination
9 of these two methods, as approved by the State Board. The term
10 "other payee" shall include, but not be limited to, alternate payees
11 as defined in subsection B of this section, beneficiaries,
12 designated recipients, and other individuals eligible to receive
13 benefits pursuant to Section 49-113 of this title.

14 SECTION 9. AMENDATORY 11 O.S. 2001, Section 49-138, as
15 last amended by Section 4, Chapter 203, O.S.L. 2005 (11 O.S. Supp.
16 2009, Section 49-138), is amended to read as follows:

17 Section 49-138. A. Any member of a regularly constituted fire
18 department of any municipality who is now serving or may hereafter
19 serve in the Armed Forces of the United States whether such service
20 is voluntary or involuntary, who shall have been a member of such
21 fire department at the time of entering such service, shall be
22 entitled to have the whole of the time of such service applied under
23 the provisions of Section 49-106 of this title, so far as the same
24 applies to a service pension; provided further, that the

1 municipality shall continue its payment into said pension fund, to
2 the same force and effect as though the member were in the actual
3 service of such fire department; provided, that any person who is
4 eligible for such service but who shall have volunteered for
5 military or naval service for a period not to exceed five (5) years
6 shall likewise be entitled to all of the benefits of Sections 49-138
7 through 49-142 of this title for the full period of such service or
8 enlistment; provided further, that only one such period of voluntary
9 service shall be considered hereunder. If such person shall
10 reenlist, unless ~~he is~~ required to do so by law, ~~he~~ such person
11 shall not thereafter be entitled to the provisions of this
12 subsection. The provisions of this subsection shall not apply where
13 any such person dies during the period of said service or
14 enlistment, and shall not entitle the surviving spouse or children
15 to any benefits, and shall not apply to any member who shall have
16 served on active duty (including initial active duty) for training
17 purposes only and/or inactive duty training.

18 B. Effective February 1, 1997, credited service received
19 pursuant to this section or credited service for wartime military
20 service received as otherwise provided by law shall be used in
21 determining the member's retirement benefit but shall not be used in
22 determining years of service for retirement, vesting purposes or
23 eligibility for participation in the Oklahoma Firefighters Deferred
24 Option Plan. For a member of the System hired on or after July 1,

1 2003, if the military service credit authorized by this section is
2 used to compute the retirement benefit of the member and the member
3 retires from the System, such military service credit shall not be
4 used to compute the retirement benefit in any other retirement
5 system created pursuant to the Oklahoma Statutes and the member may
6 receive credit for such service only in the retirement system from
7 which the member first retires.

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

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

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

- 20 a. April 6, 1917, to November 11, 1918, commonly referred
21 to as World War I,
22 b. September 16, 1940, to December 7, 1941, for members
23 of the 45th Division,
24

- 1 c. December 7, 1941, to December 31, 1946, commonly
2 referred to as World War II,
- 3 d. June 27, 1950, to January 31, 1955, commonly referred
4 to as the Korean Conflict or the Korean War,
- 5 e. February 28, 1961, to May 7, 1975, commonly referred
6 to as the Vietnam era, except that:
- 7 (1) for the period from February 28, 1961, to August
8 4, 1964, military service shall only include
9 service in the Republic of Vietnam during that
10 period, and
- 11 (2) for purposes of determining eligibility for
12 education and training benefits, such period
13 shall end on December 31, 1976, or
- 14 f. August 1, 1990, to December 31, 1991, commonly
15 referred to as the Gulf War, the Persian Gulf War, or
16 Operation Desert Storm, but excluding any person who
17 served on active duty for training only, unless
18 discharged from such active duty for a service-
19 connected disability;

20 2. During a period of war or combat military operation other
21 than a conflict, war or era listed in paragraph 1 of this
22 subsection, beginning on the date of Congressional authorization,
23 Congressional resolution, or Executive Order of the President of the
24 United States, for the use of the Armed Forces of the United States

1 in a war or combat military operation, if such war or combat
2 military operation lasted for a period of ninety (90) days or more,
3 for a person who served, and only for the period served, in the area
4 of responsibility of the war or combat military operation, but
5 excluding a person who served on active duty for training only,
6 unless discharged from such active duty for a service-connected
7 disability, and provided that the burden of proof of military
8 service during this period shall be with the member, who must
9 present appropriate documentation establishing such service.

10 D. An eligible member pursuant to subsection C of this section
11 shall include only those persons who shall have served during the
12 times or in the areas prescribed in subsection C of this section,
13 and only if such person provides appropriate documentation in such
14 time and manner as required by the System to establish such military
15 service prescribed in this section, or for service pursuant to
16 division (1) of subparagraph e of paragraph 1 of subsection C of
17 this section, those persons who were awarded service medals, as
18 authorized by the United States Department of Defense as reflected
19 in the veteran's Defense Department Form 214, related to the Vietnam
20 Conflict for service prior to August 5, 1964. The provisions of
21 subsection C of this section shall include military retirees, whose
22 retirement was based only on active service, that have been rated as
23 having twenty percent (20%) or greater service-connected disability
24 by the Veterans Administration or the Armed Forces of the United

1 States. The provisions of subsection C of this section shall not
2 apply to any person who shall have served on active duty for
3 training purposes only unless discharged from active duty for a
4 service-connected disability.

5 E. Notwithstanding any provision herein to the contrary,
6 contributions:

7 1. Contributions, benefits and service credit with respect to
8 qualified military service shall be provided in accordance with
9 Section 414(u) of the Internal Revenue Code of 1986, as amended,
10 which is in accordance with the Uniformed Services Employment and
11 Reemployment Rights Act of 1994, as amended (USERRA) ~~as amended.~~
12 ~~The municipality's contributions to the System for a member covered~~
13 ~~by USERRA are due when such a member makes up his or her~~
14 ~~contributions that were missed due to his or her qualified military~~
15 ~~service; and~~

16 2. Effective January 1, 2007, if any member dies while
17 performing qualified military service (as defined in Section 414(u)
18 of the Internal Revenue Code of 1986, as amended), the survivors of
19 the member are entitled to any additional benefits (other than
20 benefits accruals relating to the period of qualified military
21 service) provided under the System had the member resumed and then
22 terminated employment on account of death.

23 F. Members or beneficiaries shall make application to the
24 System for credited service related to wartime military service.

1 Interest on additional benefits related to wartime military service
2 owed by the System to a retired member or beneficiary as provided by
3 law shall cease accruing one (1) year after the effective date the
4 additional benefits are payable by the System or July 1, 2000,
5 whichever is later, if the member has not applied to the System for
6 credited service related to such wartime military service.

7 SECTION 10. AMENDATORY 47 O.S. 2001, Section 2-305, as
8 last amended by Section 9, Chapter 169, O.S.L. 2009 (47 O.S. Supp.
9 2009, Section 2-305), is amended to read as follows:

10 Section 2-305. A. Except as otherwise provided in this title,
11 at any time after attaining normal retirement date, any member of
12 the Oklahoma Law Enforcement Retirement System upon application for
13 unreduced retirement benefits made and approved, may retire, and,
14 during the remainder of the member's lifetime, receive annual
15 retirement pay, payable in equal monthly payments, equal to two and
16 one-half percent (2 1/2%) of the final average salary times years of
17 credited service. If such retired member is reemployed by a state
18 agency in a position which is not covered by the System, such
19 retired member shall continue to receive in-service distributions
20 from the System. Prior to September 19, 2002, if such retired
21 member was reemployed by a state agency in a position which is
22 covered by the System, such member shall continue to receive in-
23 service distributions from the System and shall not accrue any
24 further credited service. If such a member is reemployed by a state

1 agency in a position which is covered by the System on or after
2 September 19, 2002, such member's monthly retirement payments shall
3 be suspended until such member retires and is not reemployed by a
4 state agency in a position which is covered by the System. No
5 ~~member shall be required to retire for length of service unless and~~
6 ~~until the member shall have reached the age of sixty (60) years, but~~
7 ~~any member of the System who shall have reached the age of sixty~~
8 ~~(60) years and who shall also have completed twenty (20) years or~~
9 ~~more of credited service shall be retired by the Board unless, after~~
10 ~~application to the Board and such examination and showing as the~~
11 ~~Board may deem proper, the Board shall determine that such member of~~
12 ~~the System is physically and mentally able to continue to perform~~
13 ~~duties or service as required of a member. Unless such application~~
14 ~~be made by a member of the System within thirty (30) days after~~
15 ~~reaching the age of sixty (60) years and completing twenty (20)~~
16 ~~years or more of credited service or if, after such application and~~
17 ~~examination, the Board shall determine that such member of the~~
18 ~~System is not physically or mentally able to continue to perform~~
19 ~~services as required of the employer, the Board shall by resolution~~
20 ~~order his or her retirement with retirement pay for length of~~
21 ~~service as provided herein.~~

22 B. Beginning July 1, 1994, members who retired or were eligible
23 to retire prior to July 1, 1980 or their surviving spouses shall
24 receive annual retirement pay, payable in equal monthly payments,

1 equal to the greater of their current retirement pay, or two and
2 one-half percent (2 1/2%) of the actual paid gross salary being
3 currently paid to a highway patrol officer, at the time each such
4 monthly retirement payment is made, multiplied by the retired
5 member's years of credited service.

6 C. Members of the System whose salary is set by statute who
7 have retired after completion of the mandatory twenty (20) years of
8 service, and those members with statutory salaries who retire after
9 reaching the mandatory twenty-year retirement, shall receive an
10 annual retirement pay, payable in equal monthly installments, based
11 upon the greater of either:

12 1. The top base pay currently paid to an active member, at the
13 time each such monthly retirement payment is made, multiplied by two
14 and one-half percent (2 1/2%) multiplied by the number of years of
15 credited service and fraction thereof for the following positions:

- 16 a. Oklahoma Highway Patrolman,
- 17 b. Communications Dispatcher,
- 18 c. Capitol Patrolman,
- 19 d. Lake Patrolman,
- 20 e. Oklahoma State Bureau of Investigation-Special Agent;
- 21 or

22 2. The member's final average salary as set forth in paragraph
23 9 of Section 2-300 of this title, multiplied by two and one-half
24

1 percent (2 1/2%), and multiplied by the number of years of credited
2 service and fraction thereof.

3 No member of the System retired prior to July 1, 2002, shall
4 receive a benefit less than the amount the member is receiving as of
5 June 30, 2002.

6 D. Other members of the System whose retirement benefit is not
7 otherwise prescribed by this section who have retired after
8 completion of the mandatory twenty (20) years of service, and those
9 members who retire after reaching the mandatory twenty-year
10 retirement, shall receive an annual retirement pay, payable in equal
11 monthly payments, based upon the greater of either:

12 1. The actual average salary currently paid to the highest
13 nonsupervisory position in the participating agency, at the time
14 each such monthly payment is made, multiplied by two and one-half
15 percent (2 1/2%), multiplied by the number of years of credited
16 service and fraction thereof for the following positions:

- 17 a. Alcoholic Beverage Laws Enforcement Commission-ABLE
18 Commission Agent III,
- 19 b. Oklahoma State Bureau of Narcotics and Dangerous Drugs
20 Control-Narcotics Agent III,
- 21 c. Oklahoma Tourism and Recreation Department-Park Ranger
22 II,
- 23 d. Oklahoma State Board of Pharmacy-Pharmacy Inspector,
- 24 e. University of Oklahoma-Police Officer,

1 f. Oklahoma State University-Police Officer; or

2 2. The other member's final average salary as set forth in
3 paragraph 9 of Section 2-300 of this title, multiplied by two and
4 one-half percent (2 1/2%), multiplied by the number of years of
5 credited service and fraction thereof.

6 No member of the System retired prior to July 1, 2002, shall
7 receive a benefit less than the amount the member is receiving as of
8 June 30, 2002. The participating employer must certify to the
9 System in writing the actual average gross salary currently paid to
10 the highest nonsupervisory position. The Board of Trustees shall
11 promulgate such rules as are necessary to implement the provisions
12 of this section.

13 E. A member who meets the definition of disability as defined
14 in paragraph 11 of Section 2-300 of this title by direct reason of
15 the performance of the member's duties as an officer shall receive a
16 monthly benefit equal to the greater of fifty percent (50%) of final
17 average salary or two and one-half percent (2 1/2%) of final average
18 salary multiplied by the number of years of the member's credited
19 service. If such member participates in the Oklahoma Law
20 Enforcement Deferred Option Plan pursuant to Section 2-305.2 of this
21 title, then such member's disability pension provided pursuant to
22 this subsection shall be reduced to account for such member's
23 participation in the Oklahoma Law Enforcement Deferred Option Plan.

1 F. A member who meets the definition of disability as defined
2 in paragraph 11 of Section 2-300 of this title and whose disability
3 is by means of personal and traumatic injury of a catastrophic
4 nature and in the line of duty, shall receive a monthly benefit
5 equal to:

6 1. Two and one-half percent (2 1/2%);

7 2. Multiplied by:

8 a. twenty (20) years of service, regardless of the actual
9 number of years of credited service performed by the
10 member prior to the date of disability, if the member
11 had performed less than twenty (20) years of service,
12 or

13 b. the actual number of years of service performed by the
14 member if the member had performed twenty (20) or more
15 years of service;

16 3. Multiplied by a final average salary equal to:

17 a. the salary which the member would have received
18 pursuant to statutory salary schedules in effect upon
19 the date of the disability for twenty (20) years of
20 service prior to disability. The final average salary
21 for a member who performed less than twenty (20) years
22 of service prior to disability shall be computed
23 assuming that the member was paid the highest salary
24 allowable pursuant to the law in effect at the time of

1 the member's disability based upon twenty (20) years
2 of service and with an assumption that the member was
3 eligible for any and all increases in pay based upon
4 rank during the entire period. If the salary of a
5 member is not prescribed by a specific salary schedule
6 upon the date of the member's disability, the final
7 average salary for the member shall be computed by the
8 member's actual final average salary or the highest
9 median salary amount for a member whose salary was
10 prescribed by a specific salary schedule upon the date
11 of the member's disability, whichever final average
12 salary amount would be greater, or

- 13 b. the actual final average salary of the member if the
14 member had performed twenty (20) or more years of
15 service prior to disability.

16 If such member participates in the Oklahoma Law Enforcement
17 Deferred Option Plan pursuant to Section 2-305.2 of this title, such
18 member's disability pension provided pursuant to this subsection
19 shall be adjusted as provided in Section 2-305.2 of this title to
20 account for such member's participation in the Oklahoma Law
21 Enforcement Deferred Option Plan.

22 G. A member who meets the definition of disability as defined
23 in Section 2-300 of this title and whose disability occurred prior
24 to the member's normal retirement date but after completing three

1 (3) years of vesting service and not by reason of the performance of
2 the member's duties as an officer or as a result of the member's
3 willful negligence shall receive a monthly benefit equal to two and
4 one-half percent (2 1/2%) of final average salary multiplied by the
5 number of years of the member's credited service.

6 H. Payment of a disability pension shall commence as of the
7 first day of the month coinciding or next following the date of
8 retirement and shall continue as long as the member meets the
9 definition of total and permanent disability provided in this
10 section.

11 I. For the purpose of determining the member's disability under
12 subsection E, F or G of this section, the member shall be required
13 by the Board to be examined by a minimum of two recognized
14 physicians selected by the Board to determine the extent of the
15 member's injury or illness. The examining physicians shall furnish
16 the Board a detailed written report of the injury or illness of the
17 examined member establishing the extent of disability and the
18 possibilities of the disabled member being returned to his or her
19 regular duties or an alternate occupation or service covered by the
20 System after a normal recuperation period. The Board shall require
21 all retired disabled members who have not attained their normal
22 retirement date to submit to a physical examination once each year
23 for a minimum of three (3) years following retirement. The Board
24 shall select a minimum of two physicians to examine the retired

1 members and pay for their services from the fund. Any retired
2 disabled member found no longer disabled by the examining physicians
3 to perform the occupation of the member or an alternate occupation
4 or service covered by the System shall be required to return to duty
5 and complete twenty (20) years of service as provided in subsection
6 A of this section, or forfeit all his or her rights and claims under
7 this act.

8 J. The disability benefit under this section shall be for the
9 lifetime of the member unless such member is found no longer
10 disabled pursuant to subsection I of this section. Such member
11 shall not be entitled to the retirement benefit pursuant to
12 subsection A of this section unless such member returns to active
13 duty and is eligible for a retirement benefit as provided in
14 subsection A of this section.

15 K. At the postoffer, preemployment physical examination
16 required under paragraph 6 of Section 2-300 of this title, the
17 physician selected by the Board shall determine the extent to which
18 a new member is disabled. If a member is determined to be partially
19 disabled, the physician shall assign a percentage of disability to
20 such partial disability. If such member then becomes entitled to a
21 disability benefit under either subsection E or subsection G of this
22 section, the benefit payable shall be reduced by the percentage
23 which such member was determined to be disabled at the postoffer,
24 preemployment physical unless the Board makes a determination that

1 the initially determined percentage of disability at the
2 preemployment physical examination is unrelated to the reason for
3 the disability currently sought pursuant to subsection E or
4 subsection G of this section. Upon employment, the member shall
5 disclose to the Board any disability payments received from any
6 source. The amount of disability to be paid to any member cannot
7 exceed one hundred percent (100%) disability from all sources. The
8 provisions of this subsection shall apply only to members whose
9 effective date of membership is on or after July 1, 2000.

10 L. In addition to the pension provided for under subsection F
11 of this section, if said member has one or more children under the
12 age of eighteen (18) years or under the age of twenty-two (22) years
13 if the child is enrolled full time in and is regularly attending a
14 public or private school or any institution of higher education,
15 Four Hundred Dollars (\$400.00) a month shall be paid from said Fund
16 for the support of each surviving child to the member or person
17 having the care and custody of such children until each child
18 reaches the age of eighteen (18) years or reaches the age of twenty-
19 two (22) years if the child is enrolled full time in and is
20 regularly attending a public or private school or any institution of
21 higher education.

22 M. Notwithstanding any other provisions in Section 2-300
23 through 2-315 of this title, in order to be eligible to receive
24 disability benefits, a member who meets the definition of disability

1 as defined in paragraph 11 of Section 2-300 of this title shall file
2 the member's completed application for disability benefits with the
3 System before such member's date of termination from service and
4 provide such additional information that the System's rules require
5 within six (6) months of the System's receipt of such application.
6 If the member's completed application for disability benefits is not
7 filed with the System before the member's date of termination from
8 service or such additional information as is required under the
9 System's rules is not provided within six (6) months of the System's
10 receipt of such application, such member shall be eligible only for
11 such other benefits as are available to members of the System and
12 shall not be eligible to receive any disability benefits.

13 N. If the requirements of Section 2-305.1C of this title are
14 satisfied, a member who, by reason of disability or attainment of
15 normal retirement date or age, is separated from service as a public
16 safety officer with the member's participating employer may elect to
17 have payment made directly to the provider for qualified health
18 insurance premiums by deduction from his or her monthly disability
19 benefit or monthly retirement payment, after December 31, 2006, in
20 accordance with Section 402(1) of the Internal Revenue Code of 1986,
21 as amended.

22 SECTION 11. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
24

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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