

715:10-11-7. Rollovers from OTRS to other eligible retirement plans

(a) Notwithstanding any other provision of the administrative code, ~~a member, a member's spouse, or a member's former spouse who is the alternate payee under a qualified domestic order, as defined in OAC 715:10-25-1, that otherwise would limit a distributee's election to make a direct rollover,~~ a distributee may elect at the time and in the manner prescribed by the Board of Trustees, to have all or a portion of an eligible rollover distribution paid directly to another eligible retirement plan as a direct rollover as required under Internal Revenue Code Section 401(a)(31) and the regulations thereto.

(b) The following definitions shall apply for purposes of the words and phrases used in this Section:

(1) An "eligible rollover distribution" includes any distribution of all or any ~~taxable~~ portion of the ~~defined benefit balance~~ to the credit of ~~a member, a member's spouse, or the members' former spouse who is the alternate payee under a qualified domestic order, as defined in OAC 715:10-25-1,~~ the distributee, except that an eligible rollover distribution does not include the following:

(A) any distribution that is one of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the ~~member and the member's spouse~~ distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary.

(B) any distribution that is one of a series of substantially equal periodic payments for a specified period of ten years or more.

(C) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(1)(9).

(D) the portion of any distribution that is not includable in gross income.

(E) any distributions during a year that are reasonably expected to total less than \$200.

(F) ~~any distribution from the tax sheltered annuity program.~~ Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p) and OAC 715:10-25-1.

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

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

(ii) on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to

separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(H) on or after January 1, 2008, to a Roth IRA described in Internal Revenue Code Section 408A.

(2) An "eligible retirement plan" includes an individual retirement account or annuity described in Internal Revenue Code Sections 408(a) or (b), an annuity plan described in Internal Revenue Code Section 403(a), or a qualified trust described in Internal Revenue Code Section 401(a) that is willing to accept the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the member's spouse, an eligible retirement plan only includes an individual retirement account or an individual retirement annuity in Internal Revenue Code Sections 408(a) or (b). any of the following that accepts the distributee's eligible rollover distribution:

(A) an individual retirement account described in Internal Revenue Code Section 408(a);

(B) an individual retirement annuity described in Internal Revenue Code Sections 408 (b);

(C) an annuity plan described in Internal Revenue Code Section 403(a);

(D) a qualified trust described in Internal Revenue Code Section 401(a);

(E) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);

(F) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system; or

(G) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

(3) A "distributee" means a member, a member's spouse, or a member's former spouse who is the alternate payee under a qualified domestic order, as defined in Internal Revenue Code Section 414(p) and OAC 715:10-25-1. Before January 1, 2002, in the case of an eligible rollover distribution to the member's spouse, an eligible retirement plan only includes an individual retirement account or an individual retirement annuity described in Internal Revenue Code Sections 408(a) or (b). Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity (or, effective January 1, 2008, a Roth IRA) established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(c) Eligible rollover distributions may be paid to not more than two eligible retirement plans, as selected by the distributee, when a direct rollover is elected.

715:10-15-26. Code Section 415 limits as applied to TRS

(a) Notwithstanding any other provision of the administrative code, contributions paid to and benefits paid from the retirement system shall not exceed the maximum contributions and benefits permissible under Internal Revenue Code Section 415. Solely for purposes of calculating and complying with the limitations under Internal Revenue Code Section 415, a member's compensation for a year shall be the member's taxable income as reported by the member's employer on the Form W 2 that is filed with the Internal Revenue Service for the year in question. For 415 testing purposes, the limitation year is the calendar year.

(b) Participation in Other Qualified Plans: Aggregation of Limits

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

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

(c) Basic 415(b) Limitation.

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

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

(d) Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the retirement system is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation

section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

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

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

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62); or

(3) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions:

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate the in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

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

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Internal Revenue Code Section 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Internal Revenue Code Section 415(b)(1).

(f) Other Adjustments in 415(b) Limitation.

(1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Internal Revenue Code Section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

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

(h) Ten Thousand Dollar (\$10,000) Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under the retirement system and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

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

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

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

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

(j) Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living

increases as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations.

(k) Section 415(c) limitations on contributions and other additions. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to Internal Revenue Code Section 415(d)) or 100% of the member's compensation.

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

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

(3) Solely for purposes of calculating and complying with the limitations under Internal Revenue Code Section 415, a member's compensation will be defined as wages within the meaning of Internal Revenue Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Internal Revenue Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Internal Revenue Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Internal Revenue Code Section 3401(a)(2)).

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

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

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

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

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

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

(1) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or

(2) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c).

(3) For purposes of applying this section, the retirement system will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of this subparagraph and will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit

(A) recognized by the retirement system for purposes of calculating a member's benefit under the retirement system,

(B) which such member has not received under the retirement system, and

(C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the retirement system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

(5) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (4), subparagraph (B), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the retirement system.

(6) The retirement system will fail to meet the requirements of this section if

(A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the retirement system.

(7) For purposes of paragraph (6), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Internal Revenue Code Section 415(k)(3)).

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (A)) of an education organization described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(C) service as an employee of an association of employees who are described in subparagraph (A), or

(D) military service (other than qualified military service under Internal Revenue Code Section 414(u)) recognized by the retirement system.

(8) In the case of service described in paragraph (7), subparagraph (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(9) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Internal Revenue Code Section 403(b)(13)(A) or Internal Revenue Code Section 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(A) the limitations of paragraph (6) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(10) For an eligible member, the limitation of Internal Revenue Code Section 415(c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the retirement system as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the retirement system before January 1, 1998.

(11) Nothing in this subsection (l) shall provide any additional rights to purchase service credit in the retirement system that are not otherwise expressly provided for under other provisions of these rules or Oklahoma statutes.

(m) Modification of Contributions for 415(c) and 415(n) Purposes. Notwithstanding any other provision of law to the contrary, the retirement system may modify a request by a member to make a contribution to the retirement system if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the retirement system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Internal Revenue Code Section 415(c) or 415(n), pursuant to OAC 715:10-5-4.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c) or 415(n), the retirement

system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution. The rules applicable to picked-up service purchases under OAC 715:10-5-35 are not subject to this subsection.

(n) Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the retirement system with respect to an amount previously refunded upon a forfeiture of service credit under the retirement system or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Internal Revenue Code Section 415, in accordance with applicable Treasury Regulations.

(o) Reduction of Benefits Priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.