2009-2010 Permanent Rules for Promulgation

TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 10. GENERAL OPERATIONS

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-1 is being amended to clarify fringe benefits and regular annual compensation.

715:10-13-1. Regular annual compensation requirements

Each member of the Teachers' Retirement System is required to make contributions to the Retirement Fund. Monthly contributions are a set percent of "regular annual compensation". Regular annual compensation is defined as wages plus fringe benefits, excluding the flexible benefit allowance provided by Section 26-105 of Title 70 of the Oklahoma Statutes, and shall include all normal periodic payments as provided in subsection D of Section 17-116.2 of Title 70 of the Oklahoma Statutes. Wages and fringe benefits for retirement purposes are defined as normal periodic payment for service the right to which accrues on a regular basis in proportion to the service performed. Such periodic payments shall include staff development or other periodic payments to qualifying members. Fringe benefits shall include employer-paid group health and disability insurance, group term life insurance, annuities and pension contributions and IRS Code Section 125 cafeteria benefits provided on a periodic basis to all qualified members of the employer, which qualify as fringe benefits under the United States Internal Revenue Code. ~~Reimbursement for travel, housing or other expenses are not fringe benefits and do not qualify as regular annual compensation. Payment for unused vacation or sick leave, retirement bonuses or any other payment when made for reason of termination or retirement shall not be included as regular annual compensation.~~Excluded from regular annual compensation are: expense reimbursement payments; office, vehicle, housing or other maintenance allowances; the flexible benefit allowance provided pursuant to Section 26-105 of Title 70 of the Oklahoma Statutes; payment for unused vacation and sick leave; any payment made for reason of termination or retirement; maintenance or other non-monetary compensation; payment received as an independent contractor or consultant; or any benefit payments not made pursuant to a valid employment agreement. Contributions can only be remitted on actual wages and fringe benefits. No individual can contribute on unearned or non-existent compensation. Under no circumstances can members pay retirement contributions on more than they actually earn.

715:10-13-5 is being amended to clarify that interest may be adjusted on annual compensation corrections in cases where a compensation correction should have been identified by TRS staff but was not.

715:10-13-5. Compensation corrections

The statutes provide that any member whose regular annual compensation was not determined as provided by law may pay the contribution on such amount not included in the member's regular annual compensation and receive credit for such amount in the calculation of the member's benefit. The member must also pay any employer contributions due TRS which are not paid by the employer. The intent of this provision and the provisions outlined above is to enable members to receive credit for their total contract salary up to applicable limits. Therefore, members' retirement contributions should be based on the gross salary before fringe benefits are subtracted, not after. No adjustments can be made until the corrections are documented as outlined in OAC 715:10-5-6. Any loss incurred by the Retirement System as a result of the failure of a school to comply with existing statutes or TRS Rules shall be paid by the member or school to the Retirement Fund. Interest compounded annually at ten percent (10%) per annum shall be charged on all balances due Teachers' Retirement because of failure to remit the proper contribution. In cases where a compensation correction should have been identified by TRS staff but was not, interest may be adjusted to correct for the error in accordance with TRS procedures.

SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT

715:10-17-7 is being amended to clarify when a disabled retiree must complete a TRS Report of Earned Income by Disabled Member Form; removes age "65" and inserts age"62".

715:10-17-7. Employment by a disabled retiree

A member retired under the disability retirement provisions of TRS is not eligible to be employed, in any capacity, by any school, public or private, in Oklahoma or in other state, from the date of retirement to age 62. After age 62, a member receiving disability retirement shall be eligible for post-retirement employment under the same conditions outlined above for other retired members.

(1) A disabled retiree who returns to Oklahoma public education employment at an annual salary equal to or greater than the annual salary received at the time of disability shall again become a contributing member of TRS. Disability retirement payments shall be suspended until the member has qualified to be restored to active service. Upon completion of six (6) months of membership service, the member shall be considered as having met the requirements to be restored to active service. At such time, disability retirement shall be terminated and the unused portion of the accumulated contributions shall be re-established in the member's active retirement account. If the member again retires under a regular retirement allowance, eligibility to receive a monthly retirement allowance shall be based on total years of creditable service (see OAC 715:10-15-21).

(2) Each retired member, who has not attained age ~~65~~62, receiving disability retirement from TRS shall complete a TRS Report of Earned Income by Disabled Member Form and file such form with TRS by April 15 each year. The report will list all "earned" income from all sources. Failure to complete a TRS Report of Earned Income by Disabled Member Form may result in suspension of monthly benefits if the executive secretary of TRS deems such action necessary and appropriate (see OAC 715:10-15-22).

715:10-17-12 is being amended to require remitting agencies to submit all earnings reports in a magnetic media format.

715:10-17-12. Earnings report by remitting agencies

Prior to March 15 of each year, each employer covered by the provisions of TRS shall submit a report showing the total earnings received by each individual, member and non-member of TRS, during the previous calendar year. The report ~~shall have the name, social security number, address and the total earnings paid from all sources from January 1 to December 31 of the year and shall be in the format provided by TRS~~provided by the employer shall be a copy of the magnetic media report prepared and submitted to IRS to report W-2 Tax Statements and other taxable income reportable to IRS and the Social Security Administration. In lieu of ~~this report, the employer may provide a copy of the magnetic media report prepared and submitted to IRS to report W-2 Tax Statements and other taxable income reportable to IRS and the Social Security Administration.~~the magnetic media report above, a magnetic media report may be created having the name, social security number, address and the total earnings paid from all sources from January 1 to December 31 of the year and shall be in the format specified by TRS.

SUBCHAPTER 19. TAX-SHELTERED ANNUITY PROGRAM

715:10-19-1, 715:10-19-2, 715:10-19-3, 715:10-19-4, 715:10-19-5, 715:10-19-7, 715:10-19-9, 715:10-19-11, 715:10-19-12, 715:10-19-13 were adopted as emergency rules and now are being promulgated as permanent rules to ensure continued compliance with Internal Revenue Code Section 403(b).

715:10-19-8 was adopted as an emergency rule and is being promulgated as a permanent rule to ensure continued compliance with Internal Revenue Code Section 403(b) and to clarify that 403(b) funds may be used to purchase permissive service credit.

715:10-19-1. Authority for program

The TRS Tax-Sheltered Annuity Program ("Program") is designed to meet the requirements of ~~sections~~section 403(b) of the Internal Revenue Code ("Code") and ~~401(g) of the Internal Revenue Code. The TRS Tax-Sheltered Annuity~~the federal regulations that have been promulgated to implement Code Section 403(b), specifically including Treasury Regulations Sections 1.403(b)-1 through 1.403(b)-11. The Program is administered by the Board of Trustees. However, the Board can retain a third-party to administer the Program, including providing investment options. Code Section 403(b)~~ of the Federal Internal Revenue Code~~ authorizes tax-sheltered annuity programs, setting forth requirements that must be followed. Failure to follow these requirements may cause penalties to be imposed on the individual member or cause the tax-sheltered status of the Oklahoma Teachers' Retirement System program to be disallowed. Changes to ~~this section of the tax code~~Code Section 403(b) by Congress or changes to the federal regulations usually affect the ~~program's~~Program's administration; therefore, this ~~program~~Program will change as often as Congress amends or revises Code Section 403(b) ~~of the IRS Code~~and as changes are made to related federal regulations. Title 70 O.S. 17-108 allows members of ~~TRS~~Teachers' Retirement System of Oklahoma ("TRS") to participate in the ~~TRS Tax-sheltered Annuity~~ Program. ~~In~~However, in making deposits to this ~~program~~Program, the member and the employing school must comply with all applicable aspects of the ~~IRS Code.~~Internal Revenue Code. The provisions of the Program described in this Subchapter 19 are effective as of January 1, 2009, except as otherwise noted in this Subchapter.

715:10-19-2. General description

The following is a general description of the ~~tax-sheltered annuity plan available from Teachers' Retirement.~~Program available from TRS. (Where the term "TRS" is used in this subchapter, the term includes, where appropriate, a third-party administrator or other service provider selected by TRS to perform services with respect to the Program.) The member should be aware that tax-sheltered annuity ~~plans~~plan investment options are also offered by ~~most~~many major insurance companies ~~to~~through the ~~employees of~~member's employing Oklahoma public ~~schools~~school.

(1) The ~~403(b) program's~~Program's primary purpose is to enable eligible members to contribute to a supplemental retirement program in preparation for retirement.

(2) An eligible employer makes salary reduction contributions on behalf of ~~an employee~~a member to the ~~403(b) program~~Program at the election of that ~~employee~~member. Employers cannot require contributions to the ~~program~~Program as a condition of employment. However, an employer may establish an auto enrollment feature in accordance with federal law. The member's employer deducts tax-sheltered ~~monies~~contributions from the member's salary and forwards the deductions to TRS. TRS places the monies in the member's Program account~~ and debits or credits earnings monthly.~~. The accounts are debited or credited with earnings according to the member's investment selection. Statements are mailed to the member's home address on a quarterly basis.

(3) Each participating member receives an immediate vested and nonforfeitable interest in the amounts credited to his or her ~~tax-sheltered~~Program account. The ~~participant~~member is precluded from selling, assigning, or pledging his or her funds in the ~~tax-sheltered~~Program account to another person or party, except to designate a beneficiary in the event of death. However, TRS will honor qualified domestic relations orders within the meaning of 70 O.S. 17-109, OAC 715:10-25-1 et seq, and Code Section 414(p).

(4) ~~Participant's~~Member accounts ~~are not~~may be assessed ~~administration~~investment management fees by TRS for services rendered by TRS.~~ However, investment management fees are deducted from gross earnings prior to earnings being applied to member accounts.~~

(5) Monies in this ~~program~~Program are not insured in the same manner as deposits are insured with various privately operated financial institutions, (i.e. FDIC). TRS may establish a recordkeeping account for each member by TRS. Deposits are kept separate from the member's regular retirement account~~, but are invested in the same manner, using the same investment practices and policies used to invest the other assets of TRS.~~. TRS may select investment options, including a default fund, and may establish procedures related to the transfer of funds among investment options, including mapping instructions and black-out periods. TRS has in general delegated investment authority to each member to select among investment options determined by TRS.

(6) Money deposited in the~~ Teachers' Retirement System Tax-Sheltered Annuity~~ Program will not be matched by the State of Oklahoma.

715:10-19-3. Eligible employees

To participate in the ~~403(b) program~~Program, a member must be an active ~~or retired~~ employee of a qualifying educational organization~~, one~~ within the meaning of section 170(b)(1)(A)(ii) of the Internal Revenue Code which normally maintains a regular faculty, curriculum, and a regular organized body of students in attendance at the place where its educational activities are conducted.~~ Oklahoma Department of Education employees are eligible to participate in the program because they perform services for educational organizations. Employees of organizations that are tax-exempt because they are organized and operated exclusively for educational purposes are also eligible to participate if the organizations are governmental.~~ University regents or trustees and members of boards of education are not eligible ~~employees~~to participate in the Program since they are elected or appointed. Employees of the Oklahoma Teachers' Retirement System are also not eligible to participate in the Program.

Retired members who are employed full-time or part-time by a public school in Oklahoma are eligible to participate in the ~~tax-sheltered annuity program~~Program.

715:10-19-4. Program requisites

The Internal Revenue Service has ruled that money deposited in the ~~Teacher Deposit Fund~~Program may be tax-sheltered, provided the following steps are taken:

(1) A board of education or other governing board of an eligible employer adopts a resolution making the ~~TRS Tax-sheltered Annuity~~ Program available to its employees. Once this action is taken, this subchapter and 70 O.S. 17-108 shall be deemed to be part of the employer's written plan document under Treasury Regulations § 1.403(b)-3(b)(3).

(2) The member signs an amended contract with the board of education or governing board for the express purpose of ~~buying an annuity with the Teachers' Retirement System.~~making elective deferrals to the Program. This is done by either taking a reduction in salary or waiving a salary increase. The salary reduction agreement must be entered into prior to the date contributions are to commence and may only apply to amounts earned by the member after the agreement is effective. Nothing in this section shall be construed to prohibit an employer from implementing auto enrollment pursuant to federal law.

(3) An eligible employer permitting any TRS member to contribute to the ~~tax-sheltered annuity program~~Program must permit all eligible TRS members to contribute to the ~~program, and other employees to contribute to other 403(b) programs~~Program in accordance with section 403(b)(12)(A)(ii) of the Internal Revenue Code and the Income Tax Regulations thereunder.

715:10-19-5. Contributions

After a member enters into the salary reduction agreement (completing an amended contract and any other payroll requirement specified by the eligible employer), the eligible employer shall make payroll deductions in lieu of the member receiving cash compensation on a monthly basis~~.~~ in accordance with the agreement. The eligible employer shall submit the contributions for all members in the school district to ~~TRS, on TRS Form 42 and TRS Form 17, showing the member's name, social security number and amount contributed on behalf of each member. (No substitute reporting form is accepted by TRS).~~the TRS service provider in the manner prescribed by the service provider.

(1) All contributions to the Program must be salary reductions. Members cannot make direct payments to the ~~403(b) program~~Program. If the contributions are not salary reductions, tax-deferral will not be possible. As a result, the ~~TRS program~~Program will only accept employer payments ~~for employees~~of salary reduction contributions for members. Nothing in this provision prohibits a member from making a rollover contribution to the Program.

(2) Employers should forward ~~tax-sheltered~~salary reduction contributions in a timely manner~~.~~, but in no event later than fifteen (15) business days following the end of the month in which the amount would have otherwise been paid to the member. Employers are also responsible for ensuring that members do not contribute more than the maximum amount allowed by federal tax law. Salary reduction agreements are ~~determined by the limits~~limited under the Internal Revenue Code~~.~~, as described in the following:

(A) The amount of ~~deferrals~~salary reduction contributions made in a member's taxable year under the ~~Tax-Sheltered Annuity~~ Program, and any other plans,

contracts, or arrangements of the employer, may not exceed the amount of the limitation in effect under Internal Revenue Code Section 402(g)(1), as increased by Internal Revenue Code Sections 402(g)(4) ~~and~~, ~~402(g)(8)~~402(g)(7) and 414(v), for such taxable year.

(B) Contributions to the ~~403(b) plan~~Program and to any other section 403(b) plan (or, if required by Internal Revenue Code Section 415 and the Income Tax Regulations thereunder, to any other defined contribution plan) made in a calendar year (unless another twelve (12) month period ending within the calendar year is elected) with respect to an employee may not exceed limitations under Code Section 415(c) for such calendar year. The limitation on annual additions set forth in Internal Revenue Code 415(c) for any calendar year is the lesser of: (i) Forty Thousand Dollars ($40,000), adjusted for cost-of-living to the extent provided under section 415(d) of the Code; or (ii) one hundred percent (100%) of the Participant's Includible Compensation.

(C) For purposes of this Section, "annual addition" has the meaning provided in section 415(c) of the Code, as modified by sections 415(l)(1) and 419A(d)(2) of the Code. In general, section 415(c) of the Code defines the annual addition as the sum of the following amounts credited to a member's accounts for any calendar year under this Program and to any section 403(b) plan (or, if required by section 415 of the Code and the Income Tax Regulations thereunder, to any other defined contribution plan): (1) employer contributions; (2) employee contributions; and (3) forfeitures. Annual additions shall not include: (1) any elective deferrals made by a member who is age fifty (50) or older in accordance with, and subject to, section 414(v) of the Code; (2) excess elective deferrals distributed in accordance with section 1.402(g)-1(e)(2) of the Income Tax Regulations; or (3) rollover contributions.

(D) "Includible compensation" means a member's compensation received from the employer that is includible in the member's gross income for federal income tax purposes (computed without regard to Internal Revenue Code Section 911) for the most recent period that is a year of service. Includible compensation also includes any amount contributed or deferred by the employer at the election of the member that would be includible in the gross income of the member but for the rules of section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code. The amount of Includible compensation is determined without regard to any community property laws. Includible compensation does not include any amounts "picked-up" by the employer within the meaning of Internal Revenue Code 414(h). Includible compensation includes differential pay as defined in Internal Revenue Code Section 414(u). Includible compensation includes any compensation described in paragraphs (E) or (F), provided the compensation is paid by the later of two and one-half (2 ½) months after the member's severance from employment with the employer or the end of the calendar year in which the member has a severance from employment with the employer.

(E) Any payment that would have been paid to the member prior to a severance from employment if the member had continued in employment with the employer and that is regular compensation for services outside the member's regular working hours (such as overtime or other similar payments).

(F) A payment for unused accrued bona fide sick, vacation, or other leave, but only if the member would have been able to use the leave if employment had continued and the payment would have been included in the definition of compensation if it was paid prior to the member's severance from employment.

(3) Each ~~employee~~member shall specify in the salary reduction agreement the dollar amount or percentage by which the ~~employee's~~member's salary is to be reduced by the employer. Each such agreement shall be legally binding and irrevocable as to the amounts earned while it is in effect. A member may change the salary reduction agreement during the member's taxable year. A member may terminate the agreement with respect to amounts not yet earned. Any member who wishes to change the amount contributed to the ~~tax-sheltered program~~Program must complete a new amended contract. Contributions can be stopped at any time.

(4) Employers are required to report ~~403(b) information~~salary reduction contributions made to the Program on the federal Form W-2. Employers should mark the "deferred compensation" block in the correct box of the W-2 and should put the amount of the contribution and the appropriate code in the specified box of the Form W-2.

(5) Employers should not withhold federal and state income taxes on ~~tax-sheltered~~salary reduction contributions~~.~~ made to the Program. No other withholdings, including regular contributions to TRS and FICA taxes, should be ~~lowered by the tax-sheltered~~affected or decreased by salary reduction contributions to the Program.

(6) Any active or retired member may roll over ~~or transfer funds from other 403(b) tax-sheltered annuity programs~~to the Program an eligible rollover distribution as defined in section 402(c)(4) of the Internal Revenue Code from other section 403(b) plans or eligible retirement plans within the meaning of section 402(c)(8)(B) of the Internal Revenue Code subject to limitations in the Internal Revenue Code and/or pertinent sections of the ~~U.S. Treasury Regulations.~~ Income Tax Regulations. An eligible rollover distribution means any distribution of all or any portion of a member's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Internal Revenue Code. An eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution. Written verification that the ~~roll-over or transfer is from a 403(b) plan or other allowable~~rollover is an eligible rollover distribution from an eligible retirement plan must be received by TRS before any such monies will be accepted. Such rollover contributions shall be made in the form of cash only, not in-kind. A separate rollover account will be established for these rollovers.

(7) The minimum allowable salary reduction contribution is ~~two hundred dollars~~Two Hundred Dollars ($200) per taxable year of the member.

(8) The Internal Revenue Code has set limits on the amount a member can exclude from his or her income for tax purposes. It is each ~~employee's~~member's and ~~the~~

~~employing school's~~his or her employer's responsibility to ensure that contributions do not exceed the maximum limitations set forth in the Internal Revenue Code. TRS does not compute the maximum allowable contribution for ~~the 403(b)~~Program participants and TRS is prohibited from entering into hold harmless agreements with participating ~~employees~~members or employers.

(9) If TRS ~~will distribute~~is notified of any excess deferral (within the meaning of Internal Revenue Code Section 402(g)), the excess deferral plus attributable income ~~to the employee~~will be accounted for separately under Code Section 403(c) and if instructed will distribute the excess deferral plus interest to the member on or before April 15 of the year following ~~April 15.~~the year of deferral. In the event of such a distribution, TRS will furnish the ~~employee~~member with a Form 1099R ~~form~~ with respect to the distribution of the excess deferral and attributable income. ~~The employee~~ If distributed by April 15, the member should include the excess deferral refund in the ~~employee's~~member's gross income for the year the excess ~~contribution~~deferral was made~~.~~ and refund of the attributable income in the year distributed. The employee may have to file an amended income tax return for the year the excess contribution was made. If the excess contribution is not distributed ~~as provided in this subsection,~~by April 15, the distribution may not occur until a regular distribution would occur, and the employee must ~~also~~ include the refund in the employee's gross income for the year of deferral and the year of distribution. In this case the excess ~~contribution~~deferral is taxed twice.

(10) A plan-to-plan transfer from another section 403(b) plan to this Program may be made on behalf of an active member if the following conditions are satisfied:

(A) The member is an employee of the employer for the transferring plan;

(B) The transferor plan provides for transfers; and

(C) The member whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit of that member immediately before the transfer.

(11) To the extent any amount transferred is subject to any distribution restrictions under section 1.403(b)-6 of the Treasury Regulations, the Program shall impose restrictions on distributions to the member whose assets are being transferred that are not less stringent than those imposed on the transferor plan. In addition, if the transfer does not constitute a complete transfer of the member's interest in the section 403(b) plan, the Program shall treat the amount transferred as a continuation of a pro rata portion of the member's interest in the section 403(b) plan.

(12) Notwithstanding any provisions of this subchapter, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and section 414(u) of the Internal Revenue Code. For this purpose, a member whose employment is interrupted by qualified military service under section 414(u) of the Internal Revenue Code or who is on a leave of absence for qualified military service under section 414(u) of the Internal Revenue Code may elect to make additional salary reduction contributions upon resumption of employment with the employer up to the maximum amount of salary reduction contributions that the member could have elected during that period if the member's employment with the employer had continued (at the same level of compensation) without the interruption or leave, reduced by the salary reduction contributions, if any, actually made for the member during the period of the

interruption or leave. Except to the extent provided under section 414(u) of the Internal Revenue Code, this right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

715:10-19-7. Methods of computing maximum ~~TSA~~Program contribution

(a) ~~The elective deferral limit for 403(b) plans for Calendar Year 2008 is $15,500. Elective deferral limits for future years will be set by the Internal Revenue Service.~~The maximum amount salary reduction contributions to the Program for any calendar year shall not exceed the applicable dollar amount in Internal Revenue Code Section 402(g)(1) for the year. The applicable dollar amount is Sixteen Thousand Five Hundred Dollars ($16,500) for 2009 for all elective deferrals made by a member. The applicable dollar amount limit is adjusted for cost-of-living after 2009 to the extent provided under Internal Revenue Code Section 402(g).

(b) ~~These contribution levels replace the 20% of compensation limitation with 100% of taxable compensation, not to exceed the applicable dollar limit. For persons age 50 or older, increased contribution amounts above the applicable deferral limits for Calendar Year 2008 is $20,500. The applicable deferral limits for future years will be set by the Internal Revenue Service.~~A member who will attain age fifty (50) or older by the end of the calendar year may elect to make an additional amount of salary reduction contributions to the Program in excess of the applicable dollar amount under Internal Revenue Code Section 402(g)(1). The maximum dollar amount of the age fifty (50) catch-up salary reduction contributions for a calendar year is Five Thousand Five Hundred Dollars ($5,500) for 2009 for all elective deferrals made by a member. The maximum dollar amount of age fifty (50) catch-up salary reduction contributions is adjusted for cost-of-living after 2009 to the extent provided under Internal Revenue Code Section 414(v).

(c) A special catch-up provision allows members who have more than fifteen years of service with their employer to make additional contributions up to Three Thousand Dollars ($3,000) per year. However, aggregate contributions of all years above the limits may not exceed Fifteen Thousand Dollars ($15,000). In addition a member can no longer make catch-up contributions under this special catch-up provision once his or her prior years' contributions to any tax-sheltered annuity exceed Five Thousand Dollars ($5,000) multiplied by the years of service (as defined in section 403(b)(4) of the Internal Revenue Code) with the employer.

(d) Salary reduction contributions in excess of the applicable dollar amount in Internal Revenue Code Section 402(g)(1) for the year shall be allocated first to the special catch-up provision under subparagraph (c) (if applicable) and next as an age fifty (50) catch-up contribution under subparagraph (b).

715:10-19-8. Distributions

(a) Distributions from members' accounts must be made in accordance with the Internal Revenue Code. TRS will distinguish pre-'87 and post-'86 account balances. Both account balances will be distributed in accordance with the applicable Internal Revenue Code provisions as they pertain to individual retirement accounts or annuities. The post-'86 account balance will include earnings after 1986 on the pre-'87 account balance. TRS will adjust each balance as required under IRS rules and regulations.

(b) Distribution of deposits made, or income earned, after December 31, 1988, will not be made to members except under one of the following circumstances:

(1) Attainment of age fifty-nine and one-half (59 1/2).

(2) Death.

(3) ~~Disability. For the purpose of this section, a member is considered disabled if the member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.~~Disability within the meaning of section 72(m)(7) of the Internal Revenue Code.

(4) ~~Separation from service (termination of employment).~~Severance from employment (with the member's employer). However, a severance from employment also occurs on any date on which a member ceases to be an employee of an educational organization, even though the member may continue to be employed by a related employer that is another unit of the State or local government that is not an educational organization or in a capacity that is not employment with an educational organization (e.g., ceasing to be an employee performing services for an educational organization but continuing to work for the same state or local government employer).

(5) Retirement.

(6) Financial hardship (this distribution does not include accumulated earnings).

(7) Transfer to another ~~tax-sheltered annuity program~~section 403(b) plan in accordance with subsection (n) of this section.

(8) Qualified reservist distribution under Code Section 72(t).

(9) Pursuant to a qualified domestic relations order.

(c) Distributions from this tax-sheltered annuity program are subject to federal and state income taxes. Certain distributions may also be subject to penalties and/or excise taxes under the Internal Revenue Code. Members should seek tax advice prior to requesting distributions.

(d) Upon filing a properly executed distribution request application, a portion or all of a member's tax-sheltered annuity balance that qualifies under Internal Revenue Code regulations, may be distributed. Distributions, other than required minimum distributions and hardship withdrawals, are subject to a mandatory federal withholding of twenty percent (20%). (Distribution of these deposits shall not affect membership status.)

(e) Members who have attained age ~~59 1/2~~fifty-nine and one-half (59 ½) are eligible to withdraw all or any portion of their deposits, subject to the provisions of subsection ~~(i)~~(h) of this section.

(f) Members who have not attained age ~~59 1/2~~fifty-nine and one-half (59 ½) and who have not ~~separated~~had a severance from ~~service~~employment (retired or terminated employment) may withdraw only contributions made prior to January 1, 1989, unless a financial hardship ~~exist~~exists. (See OAC 715:10-19-9.) Notwithstanding the foregoing sentence, a member may transfer his or her Program account to another section 403(b) plan subject to and in accordance with subsection (n) of this section. In addition, the restrictions of this section do not apply to amounts held in a separate rollover account.

~~(g) Members eligible to take a distribution may take up to 80% of their account balance at any time. For those desiring to close their accounts, they may do so after earnings from the previous month have been posted. No earnings will be paid during the month in which an account is closed.~~

~~(h)~~(g) Members who roll- over their ~~tax-sheltered annuity~~Program accounts to another ~~tax-sheltered annuity program may return~~section 403(b) plan may transfer these funds back to the ~~Teachers' Retirement System's program~~Program at a later time~~.~~ subject to and in accordance with paragraph 6 of OAC 715:10-19-5.

~~(i)~~(h) ~~At termination or retirement~~Upon severance from employment, a member may elect one of the following annuity distribution options subject to Internal Revenue ~~Service~~Code requirements, including Code Section 403(b)(10), Code Section 401(a)(9), and the incidental death benefit requirements of Code Section 401(a)~~;~~:

(1) Minimum distribution option under Code Section 401(a)(9), with the post-1986 deferrals and all post-1986 earnings subject to the current Internal Revenue Service distribution rules and the pre-1987 account balance subject to the prior applicable Internal Revenue Service distribution rules.

(2) Lump sum surrender option, payable only to the member.

(3) Partial lump sum, where the member selects a specified lump sum payable to the member.

(4) A nontransferable fixed or variable annuity issued by an insurance company providing for periodic payments to a member and his/her beneficiary.

~~(j) Earnings on Teachers' Retirement System tax-sheltered annuity accounts are calculated each month-end, based on accumulated deposits as of the first day of the month.~~

~~(k)~~(i) The beneficiary(ies) designated on a member's regular retirement account also shall serve as beneficiary(ies) for the ~~tax-sheltered annuity~~Program account, unless otherwise designated by the member.

(j) In the calendar year following the calendar year of the member's death, if the member dies before distribution of the member's account, the member's account shall be paid to his or her designated beneficiary in a lump sum. Alternatively, if the designated beneficiary with respect to the member's account is a natural person, at the designated beneficiary's election, distribution can be made in annual installments with the distribution period determined under this paragraph.

~~(l)~~(k) ~~In the event the member dies, and if the member's sole beneficiary is his or her spouse, the surviving spouse has the same privileges to the account as the member. In order to satisfy minimum distribution rules, if the sole designated beneficiary is the member's surviving spouse, distributions must commence on or before the later of:~~If the designated beneficiary is the member's surviving spouse, the distribution period is equal to the beneficiary's life expectancy using the single life table in section 1.401(a)(9)–9, A–1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year. If the designated beneficiary is not the member's surviving spouse, the distribution period is the beneficiary's life expectancy determined in the year following the year of the member's death using the single life table in section 1.401(a)(9)–9, A–1, of the Income Tax Regulations for the beneficiary's age on the beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year.

~~(1) the end of the calendar year immediately following the calendar year in which the member died; or~~

~~(2) the end of the calendar year in which the member would have attained age 70 1/2.~~

~~(m)~~(l) ~~Non-spousal beneficiaries (individuals or trusts) must begin taking a required minimum distribution no later than December 31 of the year following the year of the member's death.~~ In the event there is no designated beneficiary, or if the member's estate or trust or a charitable organization is the designated beneficiary, the entire account balance must be distributed by the fifth year following the member's death. For any year, a beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining account balance) in lieu of the amount calculated under this paragraph.

(m) In no event shall any distribution begin later than the later of (i) April 1 of the year following the calendar year in which the member attains age seventy and one-half (70 ½) or (ii)

April 1 of the year following the year in which the member retires or otherwise has a severance from employment. If distributions commence in the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70 ½) or the calendar year in which the severance from employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the member has a severance from employment and an amount equal to the annual installment payment for the year after severance from employment must also be paid before the end of the calendar year of commencement. For purposes of this paragraph, annual installment payments through the year of the member's death are calculated as the amount payable each year equal to a fraction of the member's account balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at section 1.401(a)(9)–9, A–2, of the Income Tax Regulations for the member's age on the member's birthday for that year. If the member's age is less than age seventy (70), the distribution period is twenty-seven and four-tenths (27.4) plus the number of years that the member's age is less than age seventy (70). At the member's election, this annual payment can be made in monthly or quarterly installments. The account balance for this calculation (other than the final installment payment) is the account balance as of the end of the year prior to the year for which the distribution is being calculated. For any year, the member can elect distribution of a greater amount (not to exceed the amount of the remaining account balance) in lieu of the amount calculated using this formula. Notwithstanding anything to the contrary in this Section, distribution of elective deferrals made prior to January 1, 1987 (but not any interest accumulated with respect thereto) need not commence until April 1 of the calendar year following the calendar year in which the Participant attains age seventy-five (75).

(n) ~~In all cases, distribution of a termination or retirement benefit must begin no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 1/2 or retires.~~A plan-to-plan transfer from the Program to another section 403(b) plan may be made on behalf of an active member if the following conditions are satisfied:

(1) The member is an employee of the employer for the receiving plan;

(2) The receiving plan provides for the receipt of transfers;

(3) The member whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit of that member immediately before the transfer;

(4) The receiving plan provides that, to the extent any amount transferred is subject to any distribution restrictions under section 1.403(b)-6 of the Income Tax Regulations, the receiving plan shall impose restrictions on distributions to the member whose assets are being transferred that are not less stringent than those imposed on the Program; and

(5) If the transfer does not constitute a complete transfer of the member's interest in the Program, the receiving plan shall treat the amount transferred as a continuation of a pro rata portion of the member's interest in the Program.

(o) Permissive Service Credit Transfers.

(1) If a member is also a member in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the member, then the member may elect to have any portion of the member's account transferred to the defined benefit governmental plan. A transfer under this section may be made before the member has had a severance from employment.

(2) A transfer may be made under this section only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

(3) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the member's or Beneficiary's interest in the transferor plan, the Program shall treat the amount transferred as a continuation of a pro rata portion of the member's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the member's or Beneficiary's interest in any after-tax employee contributions).

715:10-19-9. Withdrawals for financial hardship

(a) Financial hardship is defined as an immediate and heavy financial need experienced by the ~~participant~~member, resulting from a sudden and unexpected illness or accident of the ~~participant~~member or of a dependent of the ~~participant~~member, loss of the ~~participant's~~member's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the ~~participant.~~member. The circumstances that constitute a financial hardship will depend upon the relevant facts and circumstances of each case, but, in any case, payment may not be made to the extent that such financial hardship is or may be relieved:

(1) through reimbursement or compensation by insurance or otherwise~~, or~~;

(2) by liquidation of the ~~participant's~~member's assets, to the extent the liquidation of these assets would not itself cause severe financial hardship~~,~~;

(3) by cessation of ~~deferrals~~salary reduction contributions under the ~~plan,~~Program; or

(4) by other distributions ~~or~~and nontaxable (at the time of the loan) loans from plans maintained by the employer, by any other employer, the employer(s) of the ~~participant's~~member's spouse, or by borrowing from commercial sources on reasonable commercial terms, in an amount sufficient to satisfy the need.

(b) Specific needs that are deemed to satisfy the requirements of a hardship withdrawal include, but are not limited to:

(1) Medical expenses incurred by the ~~participant~~member, the ~~participant's~~member's spouse or dependents which are not covered by insurance or other reimbursement;

(2) Costs directly related to the purchase of a principal residence for the ~~participant~~member (excluding mortgage payments);

(3) Payment of tuition, related educational fees, and room and board expenses, for the next twelve (12) months of post-secondary education for the ~~participant~~member, or the ~~participant's~~member's spouse or dependents; or

(4) Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage of that residence.

(c) Withdrawal amounts are permitted only to the extent reasonably necessary to satisfy the financial hardship. Withdrawal of credited earnings in the member's account is not permitted.

~~(d) Once a member has satisfactorily completed a hardship application for withdraw, an administrative review will be conducted by a committee consisting of the Secretary-Treasurer, Director of Operations and the administrative assistant responsible for the Tax-Sheltered Annuity Program. The review committee will recommend to the Executive Secretary those applications that meet the requirement of a financial hardship.~~

~~(e)~~(d) ~~The Executive Secretary will have the authority to approve payment of qualifying requests. The Executive Secretary will also report all approved requests and denials to the Board~~

~~of Trustees each month.~~ The participating employer is responsible for the determination of hardship, in accordance with procedures established under the employer's plan.

~~(f)~~(e) Distributions made via a hardship withdrawal request may be subject to an early distribution penalty of ten percent (10%).

(f) A member who receives a hardship withdrawal is required to cease salary reduction contributions for six (6) months following the withdrawal.

(g) In lieu of the provisions of this section, an employer may prescribe hardship withdrawal requirements.

715:10-19-11. **Rollovers from ~~OTRS 403(b) program~~Program 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, may elect at the time and in the manner prescribed by ~~the Board of Trustees~~TRS, to have all or a portion of an eligible rollover distribution (as defined in Internal Revenue Code 402(c)(4) from the Program paid directly to another eligible retirement plan as ~~required~~defined under Internal Revenue Code ~~Section 403(b)(10~~402(c)(8)(B) and the regulations thereto. In addition, a designated beneficiary other than a surviving spouse may elect to roll over an eligible rollover distribution directly from the Program to an individual retirement plan that has been established on behalf of the beneficiary as an inherited individual retirement plan, subject to and in accordance with section 408(d)(3)(C) of the Internal Revenue Code.

(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 tax-sheltered annuity benefit to the credit of 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, or a deceased member's designated beneficiary 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 or the member and the member's spouse.

(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(a)(9).

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

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

(2) an "eligible retirement plan" includes an individual retirement account or annuity described in Internal Revenue Code Sections 408(a) or (b)~~ or another~~, a qualified trust described in Internal Revenue Code 401(a), an annuity program described in Internal Revenue Code ~~Section 403~~Sections 403(a) or 403(b), or an eligible governmental plan described in Internal Revenue Code 457(b) that is willing to accept the distributee's eligible rollover distribution. In addition, an eligible retirement plan includes a Roth IRA under Internal Revenue Code Section 408A. However, in the case of ~~an eligible rollover~~a distribution to a beneficiary who at the time of the member's~~ spouse, an eligible retirement plan only includes~~ death was neither the spouse of the member nor the spouse

or former spouse of the member who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or ~~an~~ individual retirement annuity ~~described in Internal Revenue Code Sections 408(a) or (b)~~that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

(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.

715:10-19-12. The Oklahoma Teachers' Deferred Savings Incentive Plan Fund

(a) The Oklahoma Teachers' Deferred Savings Incentive Plan Fund, established and funded pursuant to Enrolled House Bill 1428 of the first session of the 47th Oklahoma State Legislature, shall be used for payment by ~~the Teachers' Retirement System of Oklahoma (TRS)~~TRS of matching contributions into the ~~TRS Tax-Sheltered Annuity~~Program accounts of active, contributing TRS members. Accounts eligible to receive matching contributions are those maintained by TRS in accordance with ~~Section~~section 403(b) of ~~Title 26 of the United States~~the Internal Revenue Code.

(b) ~~The Teachers' Retirement System~~TRS shall hold and invest funds in the Oklahoma Teachers' Deferred Savings Incentive Plan Fund in the same manner ~~as funds managed in accounts of members contributing to an account established pursuant to Section 403(b) of the Internal Revenue Code of 1986, as amended~~determined by the Board of Trustees.

(c) If the Oklahoma Teachers' Deferred Savings Incentive Plan Fund is insufficiently funded to fully pay such contributions in any month, payments shall be suspended until sufficient monies are available.

715:10-19-13. Contributions from the Oklahoma Teachers' Deferred Savings Incentive Plan Fund into ~~Tax-Sheltered Annuity~~Program accounts of active contributing TRS members

Provided funds in the Oklahoma Teachers' Deferred Savings Incentive Plan Fund are sufficient to fully fund such contributions, ~~the Teachers' Retirement System of Oklahoma (TRS)~~TRS shall contribute $25.00 per month into the ~~Tax-Sheltered Annuity~~Program account of each active contributing TRS member who contributes at least $25.00 per month into his or her ~~TRS Tax-Sheltered Annuity~~Program account maintained pursuant to ~~Section~~section 403(b) of ~~Title 26 of the United States~~Internal Revenue Code.

SUBCHAPTER 21. INVESTMENT POLICY [REVOKED]

715:10-21-1 and 715:10-21-2 are being revoked as permanent rules to update the TRS investment policy. Since all sections under this subchapter will be revoked, "[REVOKED]" will be added to the subchapter title.

715:10-21-1. Investment of funds [REVOKED]

~~The Board of Trustees of the Teachers' Retirement System shall be the trustees of several funds created by the Teachers' Retirement Act and shall have full power to invest and reinvest such funds:~~

~~(1) The Board of Trustees shall employ an Executive Secretary who shall be the administrative officer of the Teachers' Retirement System and shall be responsible for the general administration of the Retirement System.~~

~~(2) The Chief Investment Officer of the Retirement System shall be an employee of the Teachers' Retirement System.~~

~~(3) The in-house investment staff shall be under the supervision of the Chief Investment Officer, under the authority of the Board of Trustees. The Executive Secretary will designate those persons who are authorized to trade the short-term investment fund.~~

715:10-21-2. Statement of investment policy [REVOKED]

~~(a) The purpose of the investment policy is to identify various policies and procedures that enhance opportunities for a prudent and systematic investment process. The purpose of the Oklahoma Teachers' Retirement System Fund is to provide for an orderly means whereby employees of the educational systems of the State of Oklahoma who have attained retirement age may be retired from active service, to enable such employees to accumulate reserves for themselves and their dependents, to provide for termination of employment and retirement and death benefits.~~

~~(b) The Standard of Investment for the Board of Trustees in making investments shall be to exercise the judgment and care in the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable safety of their capital.~~

~~(c) The Board of Trustees of the Oklahoma Teachers' Retirement System shall invest the Retirement Fund solely in the interest of the membership and their beneficiaries, and for the exclusive purpose of providing benefits to such membership and their beneficiaries and defraying reasonable expenses of administering the Oklahoma Teachers' Retirement System. Investing shall be handled with the care, skill, prudence and diligence, under the circumstances then prevailing, that a prudent man, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims.~~

~~(d) The Board will diversify the investments of the funds so as to minimize the risks of large losses. The Board shall be responsive to the financial needs and objectives of the Fund. The investment objectives of the Board, as fiduciaries, are long-term rather than short-term.~~

~~(e) The Board, in maintaining its investment policy, takes into consideration the actuarial assumptions of the retirement program and its unfunded liabilities.~~

~~(f) The Board of Trustees may appoint investment advisors to assist in the investment of the retirement funds.~~

~~(g) The proxy policy statement of the Board of Trustees reflects the fiduciary duty to vote proxies in a manner that most benefits its members. The advisors are to first consider the economic impact on the System, and should the economic impact be neutral, then the advisors should give consideration to acceptable efforts made on behalf of special interests of social conscience. The Board of Trustees retains the right to vote all proxies should it so choose. Special interest proxy voting decisions will be brought before the Board of Trustees at the earliest possible date prior to the voting of the proxy for possible direction by the Board. In addition, the advisors will comply with any supplemental proxy voting criteria which the Board may promulgate.~~