

742-9-16

Federal tax compliance provisions.

- (A) The board shall distribute the funds established in Chapter 742. of the Revised Code to participants and their beneficiaries in accordance with the provisions of such chapter. No part of the corpus or income of these funds may be used for or diverted to any purpose other than the exclusive benefit of the participants and their beneficiaries.
- (B) If there is a termination of the plan described in Chapter 742. of the Revised Code or a complete discontinuance of contributions to the plan, the rights of each affected member to the benefits accrued at the date of termination or discontinuance of contributions, to the extent then funded, are non-forfeitable.
- (C) Employer contribution forfeitures of a member arising from severance of employment, death, or for any other reason shall not be applied to increase the benefits any member would otherwise receive under Chapter 742. of the Revised Code in accordance with section 401(a)(8) of the Internal Revenue Code or its successor provision and applicable regulations thereunder.
- (D) Notwithstanding any provisions in OP&F rules or Chapter 742. of the Revised Code to the contrary, distributions to members and beneficiaries shall be made in accordance with section 401(a)(9) of the Internal Revenue Code or its successor provision and applicable regulations thereunder and with the following rules.
- (1) The entire interest of a member shall be distributed to such member:
- (a) No later than the required beginning date; or
- (b) Beginning not later than the required beginning date, in accordance with applicable regulations, over the life of such member and a designated beneficiary within the meaning of section 401(a)(9) of the Internal Revenue Code or its successor provision.
- (2) The required beginning date means April first of the calendar year following the later of:
- (a) The calendar year in which the member attains ~~age seventy and one-half~~ years of the required minimum distribution age; or
- (b) The calendar year in which the member retires.
- (3) If distribution of a member's benefit has begun pursuant to the provisions of section 401(a)(9) of the Internal Revenue Code or its successor provision and the accompanying regulations, and the member dies, any survivor benefits will be distributed as reasonably practicable under the plan of payment selected

under Chapter 742. of the Revised Code and effective as of the date following the member's death.

- (4) If a member dies before the distribution of the member's interest has begun pursuant to the provisions of section 401(a)(9) of the Internal Revenue Code or its successor provision and the accompanying regulations, any remaining interest of the member will be distributed within five years after the death of such member. Notwithstanding the foregoing, if any benefit is payable to or for the benefit of a designated beneficiary within the meaning of section 401(a)(9) of the Internal Revenue Code or its successor provision, the benefit may be distributed (in accordance with applicable regulations) over the life of such beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), provided that such distribution begin not later than one year after the date of the member's death. If the beneficiary is the surviving spouse of the member, distributions shall not be required, pursuant to this rule, to begin until the end of the calendar year in which the member would have attained the required minimum distribution age of seventy and one-half and, if the spouse dies before the distribution to the spouse commences, then the spouse shall be treated as the member for purposes of this rule.
- (5) Any death benefit amounts payable under Chapter 742. of the Revised Code must comply with the incidental death benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code or its successor provision and regulations thereunder.
- (E) Whenever the amount of the benefit is to be determined on the basis of actuarial assumptions, no employer discretion will be permitted.
- (F) A member who is entitled to a distribution which qualifies as an eligible rollover distribution pursuant to sections 401(a)(31)(D) and 402(f)(2)(A) of the Internal Revenue Code, their regulations, or successor provisions may request that the distribution be paid in a direct rollover to another eligible retirement plan to the extent permitted by sections 401(a)(31)(A) and 408A of the Internal Revenue Code, their regulations, or successor provisions. A qualified non-spouse beneficiary of a deceased member may only rollover directly to an inherited individual retirement account or annuity to the extent permitted by section 402(c)(11) of the Internal Revenue Code.
- (G) The annual compensation of each member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001 shall not exceed two hundred thousand dollars. Annual compensation means "salary," as such term is defined in section 742.01 of the Revised Code and rule 742-3-2 of the Administrative Code during the plan year or such other consecutive twelve month period over

which salary is otherwise determined under the plan (hereinafter referred to as the "Determination Period"). In determining benefit accruals in plan years beginning after December 31, 2001, the annual compensation limit for the determination period beginning before January 1, 2002 shall be two hundred thousand dollars. The two hundred thousand dollar limit on annual compensation in this paragraph shall be adjusted for cost-of-living increases in accordance with Internal Revenue Code section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to annual "salary" for the determination period that begins with or within such calendar year.

(H) For purposes of the limit established by section 415 of the Internal Revenue Code (as used in section 742.37, 742.3716, 742.3717, 742.3719 or 742.39 of the Revised Code), effective January 1, 1998, compensation shall include amounts excludable from the employee's gross income under sections 125, 132(f), 402(e)(3), 402(h), 403(b), or 457 of the Internal Revenue Code. Effective January 1, 2009, compensation shall include differential wage payments as defined in section 3401(h)(2) of the Internal Revenue Code of 1986, 26 U.S.C.A. 3401(h)(2).

(I)

(1) Effective for the limitation year beginning on January 1, 2012, the final regulations promulgated April 5, 2007 with respect to section 415 of the Internal Revenue Code are incorporated herein by reference, including any provisions of the pension funding equity act of 2004 that apply to governmental plans.

(2) "Limitation year" is the year used in determining whether the limits set forth in section 415 of the Internal Revenue Code (as used in section 742.37, 742.3716, 742.3717, 742.3719 or 742.39 of the Revised Code) have been exceeded with respect to a member or retirant in the plan described in Chapter 742. of the Revised Code. The limitation year for the plan is the calendar year.

(J)

(1) Within the Ohio police & fire pension fund ("OP&F") described in section 742.02 of the Revised Code, a separate account was established to comply with section 401(h) of the Internal Revenue Code known as the "401(h) account." The 401(h) account provided for the funding of health care benefits authorized under section 742.45 of the Revised Code and ~~rule 742-7-13 of the Administrative Code.~~ Subsequently, as authorized by the board of trustees, and based on a report and advice of an actuary and tax counsel, on and after January 1, 2006, the 401(h) account shall be used to fund only the payment of medicare part B premiums under ~~rules 742-7-13 and~~ rule 742-7-09 of the Administrative Code. On and after January 1, 2006, the section 115 trust established by OP&F shall be used

to fund all other health care benefits authorized in the Revised Code and the Administrative Code.

- (2) The assets in the 401(h) account shall be accounted for separately from the other assets of the pension fund, but may be commingled with the other assets of the system for investment purposes. Investment earnings and expenses shall be allocated on a reasonable basis. All assets in the 401(h) account shall be held in trust for the exclusive benefit of eligible members of the fund, their spouses, and their eligible dependents.
- (3) OP&F shall designate the amount of employer contributions, if any, that are to be allocated to the 401(h) account for any year. Any contributions shall be funded by employer contributions and shall include any employer contributions previously allocated by OP&F for health care benefits described in section 742.45 of the Revised Code and ~~rule 742-7-13 of the Administrative Code~~, together with any earnings credited thereon, with respect to individuals participating in the pension fund. Contributions to the 401(h) account are subordinate to the contributions to the pension fund. At no time shall contributions to the 401(h) account be in excess of twenty-five per cent of the total aggregate actual contributions made to the pension fund since the inception of the 401(h) account, excluding contributions to fund past service credit. In any event, all contributions to the 401(h) account shall be reasonable and ascertainable.
- (4) If any rights of an individual who was eligible to receive health care benefits as described above prior to or after January 1, 2006, and paid from the 401(h) account shall be forfeited, an amount equal to the amount of the forfeiture shall be applied as soon as administratively possible to reduce employer contributions allocated to the 401(h) account.
- (5) At no time prior to the satisfaction of all liabilities under this rule, ~~or section 742.45 of the Revised Code, and rule 742-7-13 of the Administrative Code~~ shall any assets in the 401(h) account be used for, or diverted to, any purpose other than as provided in paragraph (J)(1) of this rule and for the payment of administrative expenses relating to the 401(h) account. Assets in the 401(h) account may not be used for retirement, disability, or survivor benefits, or for any other purpose for which the other funds of the pension fund are used.
- (6) Upon satisfaction of all liabilities under this rule, any assets in the 401(h) account, if any, that are not used as provided in paragraph (J)(1) of this rule shall be returned to the employers, as required by section 401(h)(5) of the Internal Revenue Code.

- (7) It is the intent of OP&F in adopting this rule to comply in all respects with sections 401(a) and 401(h) of the Internal Revenue Code and regulations interpreting those sections. In applying this rule, OP&F will apply the interpretation that achieves compliance with those sections and preserves the qualified status of the pension fund as a governmental plan under sections 401(a) and 414(d) of the Internal Revenue Code.
- (8) This rule is intended to codify OP&F's past and current practices and procedures with respect to the funding and payment of health care coverage and does not confer any new rights to or create any vested interest in receiving health care coverage for members, retirees, survivors, beneficiaries, or their dependents.
- (K) Effective January 1, 2007, notwithstanding any provision in Chapter 742. of the Revised Code to the contrary, the survivor of a member on a leave of absence to perform military service with reemployment rights described in section 414(u) of the Internal Revenue Code of 1986, 26 U.S.C.A. 414(u), where the member cannot return to employment on account of his or her death, shall be entitled to any additional benefits (other than benefit accrual relating to the period of qualified military service) that would be provided under Chapter 742. of the Revised Code had the member resumed employment and then terminated employment on account of death.

Effective:

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Certification

Date

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