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Sec. 742.3716. (A) As used in this section:

(1) "Eligible person" means a person who meets all of the following conditions:

(a) Has been receiving a pension or benefit under this chapter for one year or more based on an award made on or after July 24, 1986;

(b) Has not made the election provided for in division (B) of this section;

(c) Is not the spouse or survivor of a person who has made the election provided for in division (B) of this section;

(d) Is receiving a benefit in accordance with division (A), (B), or (C)(1) to (7) of section 742.37 or section 742.3711 of the Revised Code.

(2) "Recalculated average annual salary" means the highest average annual compensation of a member of the police and firemen's disability and pension fund during any three years of contributions, including amounts included in terminal pay attributable to such three years, determined by dividing the member's total earnings as an employee during such years by three.

(B)(1) Notwithstanding section 742.37 of the Revised Code, a member of the fund who is not receiving a pension or benefit under this chapter and who on January 1, 1989, has completed fifteen or more years of active service in the police or fire department of a municipal corporation or fire department of a township may elect to have any future benefit or pension paid to him or his spouse or survivors under this chapter calculated on the basis of his recalculated average annual salary rather than his average annual salary. The election shall be made by the member prior to or at the time of making an election under SECTION 742.3711 of the Revised Code.

(2) If the member eligible to make the election under division (B)(1) of this section dies prior to making the election and at the time of death is eligible to retire and receive a pension or benefit under division (C)(1) or (7) of section 742.37 of the Revised Code, the person entitled to receive a benefit under section 742.3714 of the Revised Code may make the election provided for in division (B)(1) of this section.

(3) The election under division (B)(1) or (2) of this section shall be made on forms provided by the trustees of the fund. Once received by the fund, the election shall be irrevocable and shall bind the member and any other person who receives a pension or benefit based on the member's service. No person who receives a pension or benefit calculated in accordance with division (B) of this section is eligible to receive a cost-of-living allowance under this section. If the person making the election receives a benefit under section 742.3714 of the Revised Code, that person is not eligible to receive a cost-of-living allowance under section 742.3711 of the Revised Code:

(C) On or before the fifteenth of April of each year the board of trustees of the police and firemen's disability and pension fund shall determine the average percentage change in the consumer price index prepared by the United States bureau of labor statistics (U.S. City Average for Urban Wage Earners and Clerical Workers: "All Items 1967 1982-81=100") for the twelve-month period prior to the first day of January over the next preceding twelve-calendar-month period, as reported by the bureau. Upon a determination by the board that such change equals or exceeds an increase of three per cent, the board shall increase all benefits payable to eligible persons by three per cent, EXCEPT THAT NO BENEFIT SHALL EXCEED THE LIMIT ESTABLISHED BY SECTION 415 OF THE "INTERNAL REVENUE CODE OF 1986," 100 STAT. 2085, 26 U.S.C.A. 415, AS AMENDED.

Any percentage above the percentage authorized for the first increased payment shall be accumulated and combined with the percentage of change in the succeeding years. Whenever the balance of this accumulation is equal to or in excess of three per cent, the increased allowance provided in this section shall be paid. When the balance of the accumulation is less than three per cent, no additional increase shall be paid.

The first additional benefit is payable to all eligible persons who on July 1, 1988, have been receiving a pension or benefit for twelve months or longer. The additional benefit is payable for the ensuing twelve-month period or until the next increase is granted under this section, whichever is later.

The date of the first additional benefit paid under this section shall be the anniversary date for future additional benefits. The pension or benefit used in the first calculation of an additional benefit under this section shall

remain as the base for all future additional benefits paid under this section, unless a new base is established by law.

Additional benefits paid in years subsequent to the year of the first additional benefit paid under this section shall be paid to all eligible persons who, on the date that the additional benefit is authorized by the board, have been receiving a pension or benefit for twelve months.

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Effective
7/24/90