

Sec. 742.3716. (A)(1) As used in this section:

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

(i) 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;

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

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

(iv) Is receiving a benefit in accordance with division (A), (B), or (C) of section 742.37, division (C)(2), (3), (4), or (5) of former section 742.37, section 742.3711, or section 742.39 of the Revised Code.

(b) "Recalculated average annual salary" means the highest average annual compensation of a member of the Ohio police and fire 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.

(2) In the case of a member participating in the deferred retirement option plan established under section 742.43 of the Revised Code or a member described in division (B) of section 742.444 of the Revised Code, the period of one year or more described in division (A)(1)(a)(i) of this section begins on the effective date of the member's election under section 742.44 of the Revised Code.

(B)(1) Notwithstanding section 742.37 or 742.39 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 a police or fire department may elect to have any future benefit or pension paid to the member or the member's spouse or survivors under this chapter calculated on the basis of the member's recalculated average annual salary rather than the member's 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. This division does not apply to a member of the fund who elected to participate in the deferred retirement option plan established under section 742.43 of the Revised Code unless the member's participation has terminated pursuant to division (C) of section 742.444 or to section 742.445 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 (3)

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)(1) The board of trustees of the Ohio police and fire pension fund shall annually 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.

The first increase is payable to all eligible persons who on July 1, 1988, have been receiving a pension or benefit for twelve months or longer. The increase 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 increase paid under this section shall be the anniversary date for future increases. The pension or benefit used in the first calculation of an increase under this section shall remain as the base for all future increases paid under this section, unless a new base is established by law. In the case of a member who has elected to participate in the deferred retirement option plan established under section 742.43 of the Revised Code or a member described in division (B) of section 742.444 of the Revised Code, the pension amount used in the first calculation of an increase under this section shall be the amount calculated under section 742.442 of the Revised Code unless the member's participation has terminated pursuant to division (C) of section 742.444 or to section 742.445 of the Revised Code.

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

(E) If payment of a portion of a benefit is made to an alternate payee under section 742.462 of the Revised Code, increases under this section granted while the order is in effect shall be apportioned between the

(eff. 10/27/06)

alternate payee and the benefit recipient in the same proportion that the amount being paid to the alternate payee bears to the amount paid to the benefit recipient.

If payment of a portion of a retirement allowance is made to one or more beneficiaries under "option 4" under division (A)(4) of section 742.3711 of the Revised Code, each increase under this section granted while the plan of payment is in effect shall be divided among the designated beneficiaries in accordance with the portion each beneficiary has been allocated.

(off 10/27/06)