

Chapter 411: ELIGIBLE ROLLOVER DISTRIBUTIONS

SUMMARY: This Chapter establishes the rules pertaining to a member's right to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan pursuant to Internal Revenue Code Section 401(a)(31).

SECTION 1. DEFINITIONS

1. **Code.** "Code" means the Internal Revenue Code of 1986, as amended.
2. **Eligible rollover distribution.** "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee.
 - A. 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:
 - (1) to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified defined contribution plan described in Code Section 401(a);
 - (2) on or after January 1, 2007, to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in 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
 - (3) on or after January 1, 2008, to a Roth IRA described in Code Section 408A.
 - B. 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 QDRO.
 - C. Effective January 1, 2007, the definition of an eligible rollover distribution also includes a distribution to a nonspouse beneficiary who is a designated beneficiary as defined in Code Section

401(a)(9)(E).

D. An eligible rollover distribution does not include:

- (1) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
- (2) Any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (3) The portion of any distribution that is not includible in gross income; and
- (4) Any other distribution that is reasonably expected to total less than \$200 during the year.

3. **Eligible retirement plan.** "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

- A. An individual retirement account described in Code Section 408(a);
- B. An individual retirement annuity described in Code Section 408(b);
- C. An annuity plan described in Code Section 403(a);
- D. A qualified trust described in Code Section 401(a);
- E. Effective January 1, 2002, an annuity contract described in Code Section 403(b);
- F. Effective January 1, 2002, a plan eligible under 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 program; or
- G. Effective January 1, 2008, a Roth IRA described in Code Section 408A.

4. **Distributee.** "Distributee" means a member or former member.
5.
 - A. Effective January 1, 2002, a distributee also includes the member's or former member's spouse and the member's or former member's spouse or former spouse who is the alternate payee under a QDRO.
 - B. Effective January 1, 2007, a distributee also includes a nonspouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
6. **Direct rollover.** "Direct rollover" means a payment by MainePERS to the eligible retirement plan specified by the distributee.
7. **QDRO.** "QDRO" means qualified domestic relations order, as defined in Code Section 414(p).

SECTION 2. COMPLIANCE WITH CODE SECTION 401(a)(31) FOR ELIGIBLE ROLLOVER DISTRIBUTIONS

For purposes of compliance with Code Section 401(a)(31), this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

STATUTORY AUTHORITY 5 MRSA §17103(4)

EFFECTIVE DATE: February 9, 2010

BASIS STATEMENT FOR ADOPTION JANUARY 14, 2010/STATEMENT OF COMMENTS:

This rule was noticed for public hearing on November 18, 2009. A public hearing was held on December 10, 2009. No members of the public presented testimony at the hearing and no written comments were submitted prior to or at the hearing or during the subsequent 10-day period for written comments. The public comment period closed on December 21, 2009.

In 2007, the Internal Revenue Service (“IRS”) implemented a staggered remedial amendment program allowing governmental plans to submit for updated determination letters and retroactively amend plan documents (i.e., statutes and rules) to bring them into compliance with federal law. MainePERS retained outside pension tax counsel in June of 2008 to complete a detailed review of the System’s compliance with the provisions of the Internal Revenue Code (“IRC”) and to assist the System with an application to the IRS for an updated qualified plan status determination letter. A number of areas where the defined benefit plans administered by MainePERS were not in compliance with the IRC were identified during the review, and applications were submitted to enter the defined benefit plans in the IRS Voluntary Compliance Program (“VCP”) in January 2009. To enter the VCP, the System was required to both identify the areas of non-compliance and propose amendments to correct those deficiencies.

IRC Section 401(a)(31) rules require that qualified plans provide participants with direct roll-over options for all eligible roll-over distributions and require that plan administrators withhold a portion of any eligible roll-over distribution if it is not directly rolled (by a trustee-to-trustee transfer) into another qualified retirement plan. The provisions of IRC Section 401(a)(31) are applicable to all governmental defined benefit retirement plans qualified under IRC Sections 401(a) and 414(d). IRC Section 401(a)(31) applies to all of the defined benefit plans administered by MainePERS. A violation of the rules could lead to the disqualification of the defined benefit plans administered by MainePERS, resulting in the loss of favorable tax status.

MainePERS was and continues to be operationally compliant with IRC Section 401(a)(31). However, federal law requires that there be written provisions in the plan documents detailing the right of a member to have an eligible rollover distribution transferred directly to an eligible retirement plan. In the case of a governmental plan, the written plan documents are the statutes and rules governing the plan. This rule accomplishes the requirement, by using model language set forth in IRS Notice 2001-57 for Eligible Rollover Distributions. Changes to the model amendment were made to remove any provisions not applicable to government plans as defined in Section 414(d) of the IRC.

On August 20, 2009, MainePERS received favorable determination letters from the IRS confirming the continued qualification and favorable tax treatment of the defined benefit plans administered by the System, subject to correction of the compliance issues self-identified by MainePERS in its January 2009 VCP filings with the IRS. The Compliance Statements that accompanied the determination letters approve the methods of correction proposed in the VCP filings and require MainePERS to verify the adoption of the changes no later than December 31, 2010. The adoption of this rule brings MainePERS plan documents into compliance with IRC Section 401(a)(31).

At its regular meeting held on January 14, 2010, Dick Metivier made the motion, seconded by Catherine Sullivan, to adopt the rule on eligible rollover distributions. Voted unanimously by those Board members present.