

Chapter 412: LIMITATIONS ON COMPENSATION

SUMMARY: This Chapter establishes a limit on the amount of a member's compensation that may be taken into account when computing employee and employer contributions to or benefits due from a retirement program pursuant to Internal Revenue Code Section 401(a)(17).

SECTION 1. DEFINITIONS

1. **Annual Compensation.** "Annual compensation" means compensation during the plan year or the determination period.
2. **Code.** "Code" means the Internal Revenue Code of 1986, as amended.
3. **Determination Period.** "Determination period" means a consecutive 12-month period over which compensation is determined under the plan.
4. **Eligible Member.** "Eligible member" means a person who first became a member of a retirement program administered by the Maine Public Employees Retirement System prior to July 1, 1996.
5. **Plan year.** "Plan year" is the fiscal year commencing July 1.

SECTION 2. COMPLIANCE WITH CODE SECTION 401(a)(17) FOR THE LIMITATIONS ON COMPENSATION

1. Effective with respect to plan years beginning on and after July 1, 1996, and before July 1, 2002, the annual compensation of a member that exceeds \$150,000 (as adjusted for cost-of-living increases under Code Section 401(a)(17)(B)) shall be disregarded for purposes of computing employee and employer contributions to or benefits due from the retirement program for any plan year. Effective only for the plan year beginning July 1, 1996, in determining the compensation of an employee eligible for consideration under this provision, the rules of Code Section 414(g)(6) shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age 19 before the close of the year.
2. Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a member that exceeds \$200,000 (as adjusted for

cost-of-living increases under Code Section 401(a)(17)(B)) may not be taken into account in determining benefits or contributions due for any plan year.

- A. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.
 - B. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.
 - C. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.
3. Pursuant to section 13212(d)(3)(a) of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), and the regulations issued under that section, eligible members are not subject to the limits of Code Section 401(a)(17), and the maximum compensation used in computing employee and employer contributions to or benefits due from the retirement program for eligible members shall be the maximum amount allowed by the retirement program to be so used on July 1, 1993. The limits referenced in subsections (1) and (2) above apply only to plan years beginning on and after July 1, 1996, and only to individuals who first become members in plan years beginning on and after July 1, 1996.

STATUTORY AUTHORITY: 5 MRSA Section 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)(17) limits the amount of annual compensation that can be taken into account by a governmental defined benefit plan for the purpose of determining benefits and contributions in a plan year. The provisions of IRC Section 401(a)(17) are applicable to all governmental defined benefit retirement plans qualified under IRC Sections 401(a) and 414(d). IRC Section 401(a)(17) 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)(17). However, federal law requires that there be written provisions in the plan documents detailing the annual compensation limits. In the case of a governmental plan, the written plan documents are the statutes and rules governing the plan.

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)(17).

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