

94-411 MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM

Chapter 413: LIMITATIONS ON CONTRIBUTIONS AND BENEFITS

SUMMARY: This Chapter establishes a limit on member contributions paid to and retirement benefits paid from a retirement program pursuant to Internal Revenue Code Section 415.

SECTION 1. DEFINITIONS

1. **Code.** "Code" means the Internal Revenue Code of 1986, as amended.
2. **Limitation Year.** "Limitation year" means a calendar year for Code section 415 testing purposes.
3. **Plan year.** "Plan year" is the fiscal year commencing July 1.
4. **QDRO.** "QDRO" means qualified domestic relations order, as defined in Code Section 414(p).

SECTION 2. APPLICABILITY

Unless otherwise specified, the provisions of this rule pertain only to the application of the limitations on contributions and benefits as required by Section 415 of the Internal Revenue Code. Nothing in this rule is otherwise intended to amend the amount of benefit that a qualified member is eligible to receive under State law.

SECTION 3. COMPLIANCE WITH CODE SECTION 415 LIMITATIONS ON CONTRIBUTIONS AND BENEFITS

1. Notwithstanding any other provisions of the retirement program to the contrary, the member contributions paid to and retirement benefits paid from each program shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified pension plan.
2. Participation in Other Qualified Plans: Aggregation of Limits
 - A. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Code Section 414(j) maintained by the member's employer in this plan shall apply as if the total benefits payable under all such

defined benefit plans in which the member has been a member were payable from one (1) plan.

- B. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Code Section 414(i) maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

3. Basic 415(b) Limitation

- A. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A), subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in the retirement program. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.
- B. For purposes of Code Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Code Section 415(n) and to rollover contributions (as defined in Code Section 415(b)(2)(A))). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

4. Adjustments to Basic 415(b) Limitation for Form of Benefit

If the benefit under the plan is other than the form specified in subsection (3)(b), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

- A. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially

equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefits as described in (b) or (c).

B. For a monthly benefit to which Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date which is the “lesser of” when adjusted in accordance with the following assumptions):

- (1) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or
- (2) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling or federal law modifying the applicable provisions of Revenue Ruling 2001-62).

C. For a lump sum benefit to which Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Code Section 415(b) limit applicable at the annuity starting date which is the “least of” when adjusted in accordance with the following assumptions):

- (1) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
- (2) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable

mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling or federal law modifying the applicable provisions of Revenue Ruling 2001-62); or

- (3) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(3)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate then in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling or federal law modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

5. Benefits Not Taken into Account for 415(b) Limitation

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

- A. Any ancillary benefit which is not directly related to retirement income benefits;
- B. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- C. Any other benefit not required under Code Section 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1).

6. Other Adjustments in 415(b) Limitation

- A. In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Code Section 415(b), so that such limit (as so

reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

- B. In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen years (15) years of military service, the adjustments provided for in (a) above shall not apply.
- C. The reductions provided for in (a) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

7. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations

The maximum retirement benefit payable to any member who has completed less than ten (10) years of service shall be the amount determined under subsection 3 multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

8. Ten Thousand Dollar (\$10,000) Limit

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

9. Effect of COLA without a Lump Sum Component on 415(b) Testing.

Effective on and after January 1, 2009, for purposes of applying the limits under section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

- A. a member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under relevant state law;
- B. to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and
- C. thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under relevant state law, shall be tested under the then applicable benefit Limit including any adjustment to the section 415(b)(1)(A) of the Internal Revenue Code dollar limit under section 415(d) of the Internal Revenue Code, and the regulations thereunder.

10. Section 415(c) Limitations on Contributions and Other Additions

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to section 415(d) of the Internal Revenue Code) or 100% of the member's compensation.

- A. Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.
- B. For purposes of applying section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under section 414(h) of the Internal Revenue Code shall not be treated as compensation.
- C. Compensation will be defined as wages within the meaning of section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3) and 6052 of the

Internal Revenue Code and will be determined without regard to any rules under section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2) of the Internal Revenue Code).

- (1) For limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.
- (2) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:
 - i. the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
 - ii. the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued.
- (3) Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) Retroactive pay will be treated as compensation in the year received.

D. For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this section shall not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code.

11. Service Purchases Under Section 415(n)

A. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of section 415(n) of the Internal Revenue Code will be treated as met only if:

(1) the requirements of section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of section 415(b) of the Internal Revenue Code, or

(2) the requirements of section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of section 415(c) of the Internal Revenue Code.

(3) For purposes of applying this section, the System will not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit:

(i) recognized by the System for purposes of calculating a member's benefit under the System,

(ii) which such member has not received under the System, and

- (iii) which such member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

B. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if permitted under State law, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (a)(4)(ii), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the System.

- (1) The retirement program will fail to meet the requirement of this section if :
 - (i) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or
 - (ii) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the System.
- (2) For purposes of paragraph (b)(1), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
 - (i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in section 415(k)(3) of the Internal Revenue Code),
 - (ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in section 170(b)(1)(A)(ii) of

the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

- (iii) service as an employee of an association of employees who are described in clause (i), or
- (iv) military service (other than qualified military service under section 414(u) of the Internal Revenue Code) recognized by the system.
- (v) In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(3) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) of the Internal Revenue Code or section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):

- (i) the limitations of paragraph (b)(1) will not apply in determining whether the transfer is for the purchase of permissive service credit, and
- (ii) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(4) For an eligible member, the limitation of section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the System before January 1, 1998.

12. Modification of Contributions for 415(c) and 415(n) Purposes

Notwithstanding any other provision of law to the contrary, the retirement program may modify a request by a member to make a contribution to the System if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code by using the following methods:

- A. If the law requires a lump sum payment for the purchase of service credit, the System may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code.
- B. If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by section 415(c) or 415(n) of the Internal Revenue Code, the System may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

13. Repayment of Cashouts

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement program shall not be taken into account for purposes of section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

14. Reduction of Benefits Priority

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

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 415 limits the amount of contributions that a member of a qualified retirement plan can make to the plan for any given year and sets forth adjustments and exceptions to those limits. Certain provisions of IRC Section 415 are applicable to all governmental defined benefit retirement plans qualified under IRC Sections 401(a) and 414(d). IRC Section 415 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 415. However, federal law requires that there be written provisions in the plan documents detailing the contribution limits and the adjustments and exceptions applicable to governmental plans. 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 415.

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 contributions and benefits. Voted unanimously by those Board members present.