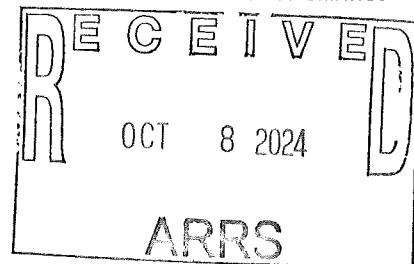


Andy Beshear  
Governor



Jamie Link  
Secretary  
Education and Labor Cabinet

Dr. Robbie Fletcher  
Commissioner of Education



KENTUCKY DEPARTMENT OF EDUCATION

300 Sower Boulevard • Frankfort, Kentucky 40601 Phone: (502) 564-3141 • www.education.ky.gov

October 8, 2024

Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
083, Capitol Annex  
Frankfort KY 40601

Re: 16 KAR 9:010. Provisional and Professional Certificate for Exceptional Work Experience

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 9:010, the Education Professional Standards Board proposes the attached substitute to 16 KAR 9:010.

Thank you for your consideration.

Sincerely,

Cassie L. Trueblood  
Policy Advisor and Counsel

**Subcommittee Substitute**  
**Final version: 9/18/2024**

**EDUCATION AND LABOR CABINET**  
**Education Professional Standards Board**

**16 KAR 9:010. Provisional and professional certificate for exceptional work experience.**

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program ***and requires the board to promulgate administrative regulations establishing standards and procedures for alternative certification options.*** This administrative regulation establishes the requirements for issuance [~~and renewal~~] of a provisional and professional certificate based on exceptional work experience.

Section 1. Definitions.

- (1) "Exceptional work experience" means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally accepted standards in the area in which certification is sought.
- (2) "Population based certificate" means a certificate for teaching elementary, exceptional children, or interdisciplinary early childhood education.

Section 2. Verification of exceptional qualifications of an applicant for certification, in a field of endeavor taught or service practiced in a public school of Kentucky, shall include:

(1) Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is one who has exceptional work experience and has talents and abilities commensurate with the teacher standards~~[,]~~ established in 16 KAR 1:010;

(2) Documentation **of [may include]** advanced degrees earned, distinguished employment, evidence of related study or experience, publications, professional awards, achievement, or recognition attained for contributions to an applicant's field of endeavor; and

**(3)** Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations **[shall]** support exceptional work in the field.

**(4)[(3)]** Exceptional work experience shall not apply to population based certificates.

### Section 3. Certification Requirements.

(1) An eligible candidate for certification other than a population based certificate who meets the requirements of KRS 161.048(2) and 16 KAR 2:010, Section 3(1), shall be issued a **one (1) [two-(2)]** year provisional certificate for exceptional work experience.

(2) The provisional certificate shall be issued for the content area and grade range corresponding to the candidate's degree and teaching experience.

(3) The provisional certificate shall be valid for teaching the content area and grade range indicated on the face of the certificate.

(4) If a candidate does not complete one (1) year of successful teaching experience during the initial provisional certificate, the candidate may apply to renew the provisional certificate.

(5) Application for renewal of the **one (1) [two-(2)]** year provisional certificate shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1).

(6) Upon completion of one (1) year of successful teaching experience on the provisional certificate, the candidate may apply for the professional certificate.

**(7)(2)** Application for the professional certificate shall be submitted to the EPSB and shall:

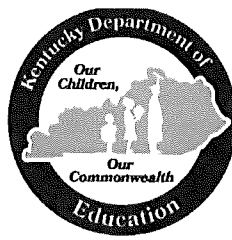
(a) Contain proof of successful completion of one (1) year of teaching experience;

(b) Contain a recommendation from the employing school district; and

(c) Be in compliance with 16 KAR 2:010, Section 3(1).

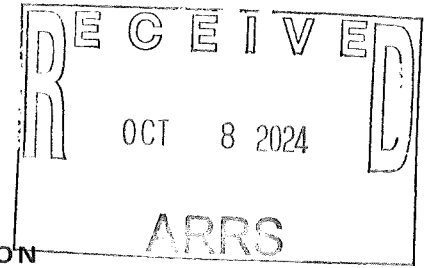
CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321; email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

Andy Beshear  
Governor



Jamie Link  
Secretary  
Education and Labor Cabinet

Dr. Robbie Fletcher  
Commissioner of Education



KENTUCKY DEPARTMENT OF EDUCATION

300 Sower Boulevard • Frankfort, Kentucky 40601 Phone: (502) 564-3141 • [www.education.ky.gov](http://www.education.ky.gov)

October 8, 2024

Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
083, Capitol Annex  
Frankfort KY 40601

Re: 16 KAR 9:080. University-based alternative certification program

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 9:080, the Education Professional Standards Board proposes the attached substitute to 16 KAR 9:080.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Cassie L. Trueblood".

Cassie L. Trueblood  
Policy Advisor and Counsel

**Subcommittee Substitute  
Final version: 9/18/2024**

**EDUCATION AND LABOR CABINET  
Education Professional Standards Board**

16 KAR 9:080. University-based alternative certification program.

RELATES TO: KRS 156.111, 160.345(2)(h), 161.027, 161.028(1)(k), (s), (t), 161.030(11), 161.048, 161.1211, 34 C.F.R. 300.156(c)(2)

STATUTORY AUTHORITY: KRS 161.027(1), 161.048(1)~~(e)(d)~~, (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)~~(e)(d)~~ and (7) require the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

Section 1. Definitions.

(1) "Alternative certification administrator program" means a college or university post baccalaureate or post masters administrator preparation program for an individual enrolled concurrently with employment in a local school district as an assistant principal, principal,

assistant superintendent, school counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent.

(2) "Alternative certification teacher program" means a college or university post baccalaureate teacher preparation program for an individual enrolled concurrently with employment as a teacher.

#### Section 2. Admission Requirements.

(1) An applicant for an alternative certification teacher program shall meet the admission standards for an initial certification program established in 16 KAR 5:020.

(2) An applicant for an alternative certification administrator program shall meet the admission standards for the corresponding administrator certification program established in 16 KAR Chapter 3.

#### Section 3. University Requirements for Alternative Certification Teacher Program.

(1) An accredited college or university seeking to offer an alternative certification teacher program shall apply to the EPSB for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider seeking alternative certification teacher program approval shall design the alternative certification teacher program to provide a candidate with the coursework and mentoring necessary to permit a candidate to maintain employment in an eligible position and to successfully complete any applicable assessments<sup>[i]</sup> ~~[including internship programs,]~~ within a period of three (3) years for those enrolled in an alternative certification teacher program for teachers of exceptional children or interdisciplinary early childhood education employed in a public school, or a period of five (5) years for all other alternative certification teacher programs.

(3) Upon approval, the alternative certification teacher program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification teacher program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;



3. The name, contact person, and role for the collaborating educator preparation provider mentor; and

4. The name and role of all school district mentor teachers;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EPSB in writing if a candidate's employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.

(4) Student teaching shall not be required for program completion.

#### Section 4. Temporary Provisional Certificate for Teaching.

(1) The temporary provisional certificate for teaching shall be issued and renewed in accordance with KRS 161.048(7).

(2) The temporary provisional certificate for teaching shall be issued in accordance with a grade level and specialization as recommended by the educator preparation provider and valid for employment consistent with the area of certification being sought through the preparation program.

(3) The temporary provisional certificate for teaching shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in KRS 161.1211 and 16 KAR Chapter 8.

#### Section 5. Issuance of a Temporary Provisional Certificate for Teaching.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

(5) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the grade level and specialization of the temporary provisional certificate.

#### Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching.

(1) A candidate shall be eligible for renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area or areas indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours, and progress towards the completion of the alternative teacher preparation program.

~~[(2) If a candidate is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.]~~

~~(2)[(3)]~~ A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school may only renew the temporary provisional certificate two (2) times.

~~(3)[(4)]~~ All other alternative certification teacher candidates may renew the temporary provisional certificate four (4) times.

#### Section 7. Alternative Certification Teacher Program Completion Requirements.

(1) An applicant for teacher certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 and the assessment requirements established in 16 KAR 6:010.

(2) Upon completion of all program requirements of the university based alternative teacher program, the candidate may apply to the EPSB for the professional certificate.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), recommendation of the employing school district, and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

#### Section 8. University Requirements for an Alternative Certification Administrator Program.

(1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the EPSB for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider seeking alternative certification administrator program approval shall

design the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.

(3) Upon approval, the alternative certification administrator program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:

a. A minimum of five (5) hours of observation by university faculty;

- b. A minimum of five (5) hours of observation by a district-based mentor; and
- c. Five (5) hours of observation by either the university faculty or the district-based mentor;
- 2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate's administrative responsibilities;
- 3. The name, contact person, and role for the collaborating educator preparation provider mentor; and
- 4. The name and role of all school district mentors;
- (e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider and employing school may assist the candidate as needed and address identified areas of improvement; and
- (f) Notify the EPSB in writing if a candidate's employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

#### Section 9. Temporary Provisional Administrative Certificate.

- (1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.
- (2) The temporary provisional administrative certificate may be renewed a maximum of one (1) time.
- (3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

#### Section 10. Issuance of a Temporary Provisional Administrative Certificate.

- (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider written and dated documentation of eligibility for the university

based alternative certification administrator program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

(5) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the specialization of the temporary provisional certificate.

Section 11. Requirements for Renewal of the Temporary Provisional Certificate for an Administrator.

(1) A candidate shall ***not*** be eligible for ***[no]*** more than one (1) renewal of the temporary provisional certificate.

(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours, and progress towards the completion of the alternative administrator program.

(3) If a candidate is seeking principal certification and is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 3:090 prior to renewal of the temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.

#### Section 12. Alternative Certification Administrator Program Completion Requirements.

(1)

(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(2) An applicant for administrator certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 3.

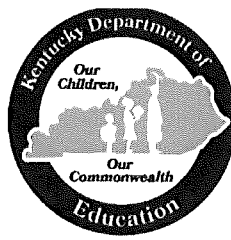
(3) Upon completion of all program requirements of the alternative administrator program the candidate may apply to the EPSB for the professional certificate.

(4) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321; email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

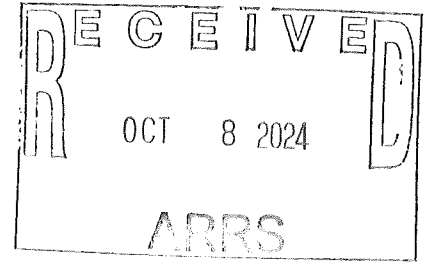


Andy Beshear  
Governor



Jamie Link  
Secretary  
Education and Labor Cabinet

Dr. Robbie Fletcher  
Commissioner of Education



KENTUCKY DEPARTMENT OF EDUCATION

300 Sower Boulevard • Frankfort, Kentucky 40601 Phone: (502) 564-3141 • [www.education.ky.gov](http://www.education.ky.gov)

October 8, 2024

Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
083, Capitol Annex  
Frankfort KY 40601

Re: 16 KAR 9:100. Alternative Route to Certification Institute

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 9:100, the Education Professional Standards Board proposes the attached substitute to 16 KAR 9:100.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Cassie L. Trueblood".

Cassie L. Trueblood  
Policy Advisor and Counsel

**Subcommittee Substitute**  
**Final version: 9/18/2024**

**EDUCATION AND LABOR CABINET**  
**Education Professional Standards Board**

16 KAR 9:100. Alternative Route to Certification Institute.

RELATES TO: KRS 161.028, 161.030, 161.048, 34 C.F.R. 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048(1)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(e) requires the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing standards and procedures for the Alternative Route to Certification Institute and the approval criteria for these programs. This administrative regulation establishes the required elements of the alternative route to certification and the application review process.

Section 1. Institute Providers.

(1) A provider not currently accredited by the EPSB in accordance with 16 KAR 5:010, may demonstrate a partnership with an institution of higher education accredited by the EPSB and a school district or cooperative recognized by the Kentucky Department of Education.

(2) A provider shall submit an application to the EPSB in accordance with the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

Section 2. Application Review.

(1) An application to provide an alternative route to certification institute shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(a) If EPSB staff determines that the application addresses the requirements of this subsection, the application shall be forwarded to an external review team.

(b) If EPSB staff determines that the application does not address all the requirements of this subsection, staff shall notify the provider of the deficiencies.

(3) **Pursuant to subsection (4) of this section,** an external review team of trained reviewers appointed by EPSB ~~[pursuant to subsection (4) of this section,]~~ staff shall review the application in accordance with KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(4) The external review team shall be comprised of:

(a) One (1) representative from an EPSB accredited postsecondary institution;

(b) One (1) representative from a Kentucky education cooperative; and

(c) One (1) representative from a Kentucky public school district.

(5) The external review team shall review the application to provide an alternative route to certification institute and determine the quality of the application based on compliance with subsection (2) of this section. The review team shall recommend acceptance or denial of the application to the EPSB and shall include a supporting rationale for the recommendation.

(6) The EPSB shall review the external review team's recommendation, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

(7) The provider may revise and resubmit a plan that has been denied.

(8) Any approval granted by the EPSB shall specify the period of approval of the institute, which shall not exceed two (2) years for initial approval. A provider may apply for an extension of approval as established in Section 3 of this administrative regulation.

#### Section 3. Continuance of Program Approval.

(1) An institute provider may apply for continuance of an approved alternative route to certification institute for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the institute received prior EPSB approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality as established in this section and the application required by this administrative regulation. The request for continuance shall include statistical information related to teacher retention for all prior candidates who have completed the institute. Standards for program approval established under this administrative regulation shall be maintained under any program extension.

#### Section 4. Revocation for Cause.

(1) If an area of concern or an allegation of misconduct arises after an institute has been approved, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the external review team for further investigation.

(3)

(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the provider.

(b) Within thirty (30) days of receipt of the complaint, the provider shall respond to the allegations in writing and provide information pertaining to the allegations in the complaint to the EPSB.

(4)

(a) The external review team shall review any evidence supporting the allegations and any information submitted by the provider.

(b) The external review team may conduct on-site evaluations to evaluate the quality of the program.

(c) Upon completion of the review, the external review team shall issue a report recommending to the EPSB continued approval of the institute or revocation of institute approval if the institute no longer meets the standards and requirements for approval established in this administrative regulation.

(5) The provider shall receive a copy of the external review team's report and may file a response to the recommendation.

(6)

(a) The recommendation from the external review team and the provider's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the external review team and make a final determination regarding the approval of the institute.

Section 5. Reconsideration.

(1) If a provider seeks reconsideration of an EPSB decision, the provider shall submit a request within thirty (30) days of receipt of the EPSB official notification. A provider shall submit the request on the grounds that:

- (a) A prescribed standard was disregarded;
- (b) A procedure was not followed; or
- (c) Evidence of compliance in place at the time of the review and favorable to the provider was not considered.

(2) A panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or institute.

The ***panel [ad-hoc committee]*** shall recommend action on the request to the full EPSB.

#### Section 6. Data Reports.

(1) The EPSB shall maintain data reports related to:

- (a) Approval status of all EPSB approved Option 7 programs;
- (b) Contact information for the person responsible for the institute;
- (c) Year of last program review;
- (d) Tables relating the institute total enrollment disaggregated by ethnicity and gender for the last three (3) years;
- (e) Tables relating the institute faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;
- (f) Table of the number of program completers for the last three (3) years;
- (g) Table relating pass rates on the required assessments;
- (h) Table relating program completer satisfaction with the preparation program; and

(i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.

(2) A provider shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the institute.

#### Section 7. Temporary Provisional Certificate.

(1) An eligible candidate who meets the requirements of KRS 161.048(8)(a)[1. through 4.] and 16 KAR 2:010, Section 3(1), shall be issued a one (1) year provisional teaching certificate.

(2) The candidate shall apply to the EPSB and provide:

(a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate degree and grade point average; and

(b) [~~Proof of a passing score on the admission assessments as established in 16 KAR 5:020, unless the applicant holds a terminal degree;~~

(c) [~~Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;~~

(d) [~~Verification by the institute provider of enrollment in an EPSB approved institute. [completion of half of the requisite institute hours; and~~

(e) [~~Evidence of employment in a Kentucky school district or regionally or nationally accredited nonpublic school in the content area of the certification.]~~

(3) A candidate shall be eligible for first renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification[:

(a) ~~Verification]~~ of completion of:

(a)[1.] 240 hour institute for elementary or K-12 certification; or

~~(b)[2.] 180 hour institute for middle or high school certification, and~~

~~(b) Evidence of employment in a Kentucky school district or regionally or nationally accredited nonpublic school in the content area of the certification.]~~

(4) A candidate shall be eligible for subsequent renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and recommendation~~[successful completion of the following requirements:~~

~~(a) Evidence of employment in a Kentucky school district or regionally or nationally accredited nonpublic school in the content area or areas indicated on the initial certificate; and~~

~~(b) Recommendation]~~ from the institute provider based on continued enrollment, completion of mentoring, and progress towards the completion of the program.

~~[(5) If a candidate is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.]~~

~~(5)[(6)]~~ A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school may only renew the temporary provisional certificate two (2) times.

~~(6)[(7)]~~ All other candidates may renew the temporary provisional certificate four (4) times.

#### Section 8. Professional Certificate.

(1) Upon completion of all program requirements established in this administrative regulation, and successfully completing one (1) year of teaching, the applicant may apply for the professional certificate.



(2) Prior to issuance of the professional certificate, the candidate shall obtain a passing score on the requisite assessments~~[pedagogy assessment]~~, as established in 16 KAR 6:010, for the certificate being sought.

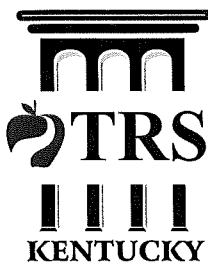
(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue the candidate a professional certificate.

#### Section 9. Incorporation by Reference.

(1) "Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7)", 2024~~[2022]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Education Professional Standards Board's Web site at <http://www.epsb.ky.gov/course/view.php?id=2>.

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321; email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

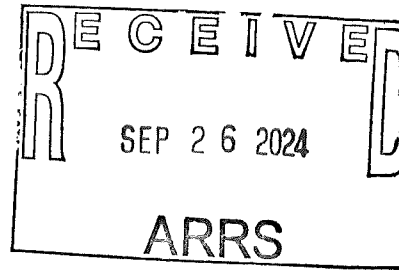


**TEACHERS' RETIREMENT SYSTEM**  
of the State of Kentucky

GARY L. HARBIN, CPA  
*Executive Secretary*

ROBERT B. BARNES, JD  
*Deputy Executive Secretary*  
*Operations and General Counsel*

ERIC WAMPLER, JD  
*Deputy Executive Secretary*  
*Finance and Administration*



September 25, 2024

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
083, Capital Annex  
702 Capital Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 102 KAR 1:350 and 102 KAR 1:370, Teachers' Retirement System of the State of Kentucky proposes the attached suggested amendments to 102 KAR 1:350 and 102 KAR 1:370.

Sincerely,

Robert B. Barnes  
Deputy Executive Secretary of Operations &  
General Counsel

**Staff-suggested Amendment**  
**Final version 9/25/2024**

**FINANCE AND ADMINISTRATION CABINET**  
**KENTUCKY TEACHERS' RETIREMENT SYSTEM**

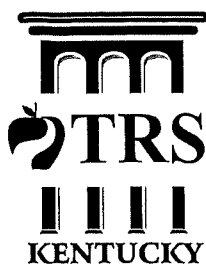
**102 KAR 1:350. Full actuarial cost purchase.**

**Page 1**

**Section 1**

**Line 18**

After "cost", insert "prior".

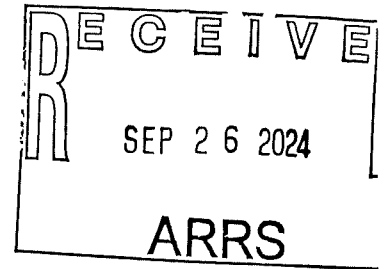


**TEACHERS' RETIREMENT SYSTEM**  
of the State of Kentucky

GARY L. HARBIN, CPA  
*Executive Secretary*

ROBERT B. BARNES, JD  
*Deputy Executive Secretary  
Operations and General Counsel*

ERIC WAMPLER, JD  
*Deputy Executive Secretary  
Finance and Administration*



September 25, 2024

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
083, Capital Annex  
702 Capital Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 102 KAR 1:350 and 102 KAR 1:370, Teachers' Retirement System of the State of Kentucky proposes the attached suggested amendments to 102 KAR 1:350 and 102 KAR 1:370.

Sincerely,

Robert B. Barnes  
Deputy Executive Secretary of Operations &  
General Counsel

**Staff-suggested Amendment  
Final version 9/25/2024**

**FINANCE AND ADMINISTRATION CABINET  
TEACHERS' RETIREMENT SYSTEM**

**102 KAR 1:370. Annuitization and disbursement from supplemental benefit.**

**Page 2**

**Section 3**

**Line 9**

After "partial disbursements", insert ", and".



## KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

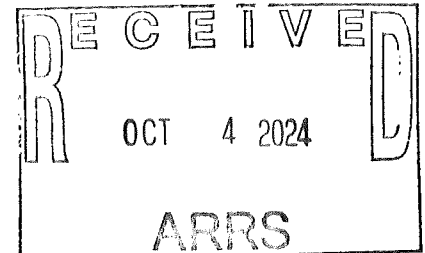
1260 Louisville Road • Frankfort, Kentucky 40601  
kyret.ky.gov • Phone: 502-696-8800 • Fax: 502-696-8822



Kentucky Public  
Pensions Authority

October 4, 2024

Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
083, Capitol Annex  
Frankfort KY 40601



Re: 105 KAR 1:140. Employer's Administrative Duties.

Dear Co-Chairs West and Lewis:

After discussions with the Administrative Regulation Review Subcommittee staff of issues raised by 105 KAR 1:140, the Kentucky Public Pensions Authority accepts the proposed attached staff suggested amendments.

Sincerely,

*Jessica Beaubien*

Jessica Beaubien, Policy Specialist  
Kentucky Public Pensions Authority  
1270 Louisville Road  
Frankfort, KY 40601

**Subcommittee Substitute  
Final version 10/4/2024**

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Public Pensions Authority  
(Amendment)**

**105 KAR 1:140. Employer's administrative duties.**

RELATES TO: KRS 16.505-16.652,~~[16.583, 16.645(18),]~~ 18A.095, 18A.105, 61.505-61.705~~[61.546, 61.552(23), 61.560, 61.565, 61.569, 61.597, 61.598, 61.637(17), 61.675, 61.685, 61.702],~~ 78.510-78.852~~[78.545(33), (37), 78.616, 78.625, 78.652],~~ 26 U.S.C. 401(a)(17), ~~[(31), 403(b), 408(a), (b), [414(g)(6), 457(b),]~~3121(b)(10), 41 C.F.R. Part 105-64,~~[Pub. L. 104-191, Pub. L. 111-5, Div. A, Title XIII, Div. B, Title IV, 26 C.F.R. 31.3121(b)(10)-2, 29 C.F.R. 519.2(a),]~~ 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. Parts 160, 162, 164

STATUTORY AUTHORITY: KRS 61.505(1)(g)~~[16.645(18)],~~ 61.565~~[- 61.645(9)(e)],~~ 61.675, ~~[78.545(33),]~~78.625, 78.635

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority~~[61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems]~~ to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with~~[necessary or proper in order to carry out the provisions of]~~ KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System are required by KRS 16.545,

16.645~~(18)~~, 61.543, 61.560, 61.565, 61.637, 61.675, [78.545(33), and]61.702, 78.5536, 78.5540, 78.610, 78.615, 78.625, and 78.635 to make contributions to the~~[-retirement]~~ systems,~~[-to]~~ report creditable compensation and other information that the systems may require to the Kentucky Public Pensions Authority~~[retirement systems and other information that the Board of Trustees may require]~~, and perform other duties and responsibilities as participating employers.~~[26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made.]~~ This administrative regulation sets out the administrative duties and reporting requirements for all participating employers~~[agencies]~~.

#### Section 1. Definitions.

(1) "Classify" means to report an employee as full-time, part-time, seasonal, temporary, emergency, probationary, volunteer, intermittent, or interim.

(2) "Confidential member account information" means information or data that relates directly or indirectly to a member's account at the agency that is specific or unique to the member.

(3) "County Fee Employer" means county employers who report to the Kentucky Personnel Cabinet due to the population of their county.

(4) "Employer Self-Service Web site" or "ESS Web site" means a secure agency Web site that:

(a) Allows employers to access its online employer account and employee information, download and submit forms, and provides other employer resources; and

(b) Allows some employers to perform reporting and contribution functions.

(5) "End of Year Report" or "EOY Report" means a school board's list of the classified participating and non-participating employees who were reported to the County Employees



Retirement System during the school year that is used to average monthly work hours and determine service credit.

(6) "ESS Employer" means all employers as defined by KRS 16.505(3), 61.510(6), and 78.510(7), except a KHRIS Employer or a County Fee Employer.

(7) "Excess contributions" means employee contributions that exceed what is required by statute.

(8) "KHRIS" means Kentucky Human Resource Information System.

(9) "KHRIS Employer" means employers subject to KRS Chapter 18A.

(10) "Non-renewable" means a position created for a fixed period of time that cannot be filled, renewed, or reused after the fixed period of time has lapsed.

(11) "Personal identifiable information" or "PII" is defined by 41 C.F.R. Part 105-64.

(12) "Protected health information" or "PHI" is defined by 45 C.F.R. 160.103.

(13) "Supplemental Report" means a record-keeping tool used by County Fee Employers to report additional non-monetary monthly reporting details that cannot be submitted through KHRIS.

Section 2. Kentucky Public Pensions Authority Employer Reporting Manual. All employers shall follow the requirements and guidelines provided in the Kentucky Public Pensions Authority Employer Reporting Manual.

Section 3. ESS Web site and the Agency's Secure Email Portal.

(1) Each employer shall submit a valid Form 7851, Data Use and Reporting Agreement, completed by the agency head or agency reporting official prior to participating in the systems.

(2) Each employer shall submit a valid Form 7072, Reporting/Balancing Employer Acknowledgment, completed by the agency head or agency reporting official if it needs to designate a third-party entity to report employee information on behalf of the employer.

(3) Each employer shall have an employer administrator to grant and revoke access and security levels to the employer's ESS Web site users. The employer shall submit a valid Form 7071, Employer Self-Service Employer Administrator Account Creation Request, to designate an employer administrator.

(a) The ESS Web site users designated by the employer administrator shall include a primary reporting official and an agency head, and may also include human resources contacts.

(b)1. Semi-annually, the ESS Web site shall require the primary reporting official to verify contact information for the employer administrator, primary reporting official, human resources contact, and the agency head.

2. If **[at any time]** there are changes to contact information in this paragraph or other account information changes, the primary reporting official shall update the ESS Web site with the new information.

(c) An employer is responsible for all acts and omissions of authorized ESS Web site users, including the employer administrator and any ESS Web site user designated by the employer administrator in accordance with paragraph (a) of this subsection.

(d) An employer shall ensure that the primary reporting official or any other authorized user holds any password or other means for accessing the ESS Web site in a confidential manner and does not release them to any other person.

(4) The agency shall notify employers of the Web address for the ESS Web site and shall notify employers if the Web address of the ESS Web site changes.

(5) Employers required to submit reports through the ESS Web site, as **established [indicated]** in Sections (4) through (5) of this administrative regulation, shall follow the instructions for submission as provided in the Kentucky Public Pensions Authority Employer Reporting Manual. Reports shall be submitted by:

~~[(1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site by:]~~

(a) The Enter Report Details Module through a series of ESS Web site screens used to enter monthly report details; or

(b) The Upload Detail File Module through an[Uploading an] electronic file upload on the ESS Web site.

1. To submit reports in the Upload Detail File Module, the employer's electronic file format **shall [must first]** meet[that meets] the requirements of the Strategic Technology Advancements for the Retirement of Tomorrow (START) Employer Contribution Record Layout as provided in the Kentucky Public Pensions Authority Employer Reporting Manual. The employer shall submit a test file to the agency[retirement systems], which shall be reviewed for compliance with the requirements of the START Employer Contribution Record Layout.

2. If the test file is in compliance with the requirements of the START Employer Contribution Record Layout, the agency[retirement systems] shall certify the electronic file and inform the employer of the month when the employer may begin using the Upload Detail File Module[electronic file] for submitting reports.

3. If the test file is not in compliance with the requirements of the START Employer Contribution Record Layout, the agency[retirement systems] shall inform the employer of the needed corrections to the test file.

4. The employer shall not submit a report using the Upload Detail File Module[by electronic file pursuant to this subsection] until the test file is certified by the agency[retirement systems]. If the employer is unable to timely submit its reports in accordance with KRS 61.675 and 78.625 through the Upload Detailed File Module, the employer shall timely submit its reports **through [via]** the Enter Report Details Module.

~~[(2) The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site changes.]~~

(6)(a) An employer shall submit electronic mail containing confidential member account information, PII, or PHI only through the agency's secure electronic mail portal. The Kentucky Public Pensions Authority Employer Reporting Manual shall provide employers with information on how to register, access, and use the secure electronic mail portal.

(b) An employer shall ensure that the primary reporting official or any other authorized user holds any password or other means for accessing the electronic mail portal in a confidential manner and does not release them to any other person.

Section 4. Submitting Reports.

(1) Each employer shall submit the monthly reports required by KRS 61.675, 78.625, and this administrative regulation on or before the **tenth [10<sup>th</sup>]** of the month following the period being reported. Reports shall be submitted through:

(a) The ESS Web site, for ESS Employers;

(b) KHRIS, for County Fee Employers and KHRIS Employers; and

(c) An electronic file transfer in a system maintained by the Finance and Administration Cabinet, for the Kentucky Personnel Cabinet.

(2) Each County Fee Employer shall also submit a Supplemental Report through the ESS Web site.

(3) Each month, the agency shall provide detailed information to employers regarding the employer submitted reports from the previous month. If the agency notifies the employer of any errors, the employer shall resolve the errors prior to the employer's next report submission.

#### Section 5. Additional Reporting Requirements for School Boards.

(1) Each school board shall submit the EOY Report through the ESS Web site by the end of day twenty (20) calendar days following the end of the fiscal year.

(2) After reviewing the EOY Report and identifying any employee who may need a correction or adjustment to his or her record, the agency shall provide the school board with the following applicable report(s) that the school board shall complete and submit through the ESS Web site no later than the end of day November 15th of the same calendar year:

(a) An Exception Report, if an employee had employee contributions reported during the fiscal year, but did not average eighty (80) hours per month of actual worked time in the fiscal year;

(b) A Multiple Enrollment Report, if an employee was reported with multiple periods of employment or multiple positions of employment during the fiscal year requiring an additional breakdown of the total actual days worked;

(c) A Non-Participating Employees Report, if an employee was reported as non-participating during the fiscal year and had salary reported during the school year that appears to meet the definition of a regular full-time position employee; and

(d) An Error Listing Report, if:

1. An employee was included on the EOY report, but was not otherwise reported during the fiscal year;

2. An employee was reported during the fiscal year, but was not included on the EOY report;

or

3. An employee had invalid data on the EOY report, including multiple records for the same employee or employees that do not have an account established with the agency.

(3) A penalty of \$1,000 shall be imposed on school boards who fail to submit the required reports within the time periods prescribed by this section. An additional penalty of \$250 per month may be imposed every month until the required reports are submitted.

#### Section 6. Full-time Employee and Non-participating Position Reporting.

(1) Each employer shall report:

(a) All employees in a regular full-time position;

(b) All employees in non-participating positions, except as provided in subsection (2) of this section; and

(c) Employees whose employment ended during the report month, including the employee's last day of paid employment and the reason the employment ended.

(2) Employers shall not report the following employees in non-participating positions:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are:

1. Exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; or

2. Classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a);

(b) Retired-reemployed school resource officers, sheriff's deputies, and police officers that are exempt from reporting under 105 KAR 1:390; and

(c) City managers and appointed local government officials in a retirement system, Mayors, or city legislative body members who elect not to participate in the systems by completing, and the employer submitting, Form 2012, Election or Rejection of Participation for Mayors and Members of City Legislative Bodies, prior to participation in the systems in accordance with KRS 78.540(1).

(3) Employees dually employed and participating in another state-administered retirement system shall also be reported to the applicable state-administered retirement system in accordance with its rules and regulations.

Section 7. Non-Participating Positions Classification.

(1) An employer shall not change an employee's position status for the same position from full-time to seasonal, temporary, emergency, probationary, or interim.

(2) An employer shall not change the classification of an employee from one (1) non-participating position status to another non-participating position status during a fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(d) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.

(3)(a) An employer shall classify an employee as holding a seasonal position pursuant to KRS 61.510(21)(a) and 78.510(21)(a) only if the position:

1. Is temporary in duration;

2. Coincides with one (1) or more particular season(s) of the year, which may recur regularly from year to year; and

3. Is limited to six (6) months for noncertified school board positions or nine (9) months for all other positions.

(b)1. Except as provided in subparagraph 2. of this paragraph, if the employer classifies an employee as holding a seasonal position and the employment of the employee in the seasonal position is terminated after the period defined in paragraph (a)3. of this subsection, there shall be a three (3) calendar month break in employment before the employee may again hold a seasonal position.

2. If the employer is a school board that classifies an employee as holding a seasonal position and the employment of the employee in the seasonal position is terminated after the period defined in paragraph (a)3. of this subsection during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employee may again hold the same seasonal position.



(4) An employer shall only classify an employee as holding an emergency position pursuant to KRS 61.510(21)(b) or 78.510(21)(b) if the position:

(a) Is created as a result of an emergency as determined by the employer for a period not to exceed thirty (30) working days, and is non-renewable; or

(b) Is created in direct relation to a state of emergency declared by the President of the United States or the Governor of Kentucky.

(5) An employer shall only classify an employee as holding a temporary position pursuant to KRS 61.510(21)(c) or 78.510(21)(c) if the position is nonrenewable and the period in which the position exists does not exceed nine (9) calendar months for positions in the Kentucky Employees Retirement System or twelve (12) calendar months for positions in the County Employees Retirement System.

(6) An employer participating in the Kentucky Employees Retirement System shall only classify an employee as holding an interim position pursuant to KRS 61.510(21)(e) if the position is created for a one (1) time or recurring need that does not exceed nine (9) months.

(7)(a) Except as provided in paragraph (b) of this subsection, an employer shall only classify an employee as holding a part-time position pursuant to KRS 61.510(21)(d) or 78.510(21)(e) if the position requires less than an average of 100 hours per month of actual worked time in a calendar or fiscal year.

(b) School boards shall only classify a noncertified employee as holding a part-time position pursuant to KRS 78.510(21)(e) if the position requires less than an average of eighty (80) hours per month of actual worked time in a fiscal year.

(8)(a) An employer shall only classify an employee as holding an intermittent position if the position requires a sporadic work schedule. Across a calendar or fiscal year, an intermittent position employee:

1. May or may not earn wages every month;

2. May qualify as a part-time position in accordance with subsection (7) of this section in some months; or

3. May qualify as a regular full-time position in some months.

(b) For non-school board employees:

1. If an employee's actual worked time averages less than 100 hours per month in a fiscal or calendar year, the employee shall be classified as non-participating.

2. If an employee's actual worked time averages more than 100 hours or more per month in a fiscal or calendar year, the employee shall be classified as participating.

(c) For school board employees:

1. If an employee's actual worked time averages less than eighty (80) hours per month in a fiscal year, the employee shall be classified as non-participating.

2. If an employee's actual worked time averages more than eighty (80) hours per month or more in a fiscal year, the employee shall be classified as participating.

(9)(a) Except as provided in paragraph (b) of this subsection, an employer shall only classify an employee as holding a volunteer position if the employee meets the requirements of KRS 61.510(42) or 78.510(39).

(b) An employer shall only classify a retired member as a volunteer if the employee meets the requirements in KRS 61.510(42), 61.637(17)(e), 78.510(39), and 78.5540(4)(e) and 105 KAR 1:390.

(10) The agency shall have the authority to determine whether any employee or retired member designated as holding a non-participating position by an employer is an employee in a regular full-time position.

(a) If the employer initially reports the employee in a non-participating position and the agency subsequently determines that the employee worked or averaged the necessary hours, or otherwise meets the requirements to be classified as an employee in a regular full-time position, the employer and employee shall be billed for omitted service in accordance with KRS 61.552(2) and 78.545, except as provided in paragraph (b) of this subsection.

(b) For retired reemployed members, the agency shall adjust the previously reported records from non-participating to retired reemployed and the employer shall pay the employer contributions and, if applicable, health insurance contributions.

(11)(a) Except as provided in subsections (c) and (d) of this section, hours worked and creditable compensation earned by an employee working in multiple positions with one (1) or more employers participating in the same system shall be combined in accordance with KRS 61.680 and 78.545 only for the following positions:

1. Regular full-time;
2. Part-time;
3. Intermittent; or
4. Volunteer, if the employee has a membership date prior to August 1, 2016.

(b) If multiple part-time positions, intermittent positions, or volunteer positions (for employees with a membership date prior to August 1, 2016) are combined under paragraph (a) of this subsection and, as a result, the employee averages the required hours for a regular full-time position, employer contributions and employee contributions (including any applicable health insurance contributions) shall be remitted in accordance with Section 9 of this administrative regulation.

(c) Hours worked and creditable compensation earned by an employee working in a seasonal, temporary, emergency, probationary, or interim position with an employer shall not be combined with any other regular full-time, part-time, intermittent, or volunteer position with an employer in the same system.

(d) Hours worked and creditable compensation earned by an employee who retires or terminates employment shall not be combined with hours worked and creditable compensation later earned by the employee if the employee reemploys with a participating employer during the same fiscal year.

#### Section 8. Independent Contractors and Leased Employees.

(1) Quasi-governmental employers, as defined in 105 KAR 1:451, shall report persons providing services as an independent contractor, leased employee, or other employment arrangement in accordance with KRS 61.5991 and 105 KAR 1:451.

(2) The agency shall have the full authority to determine whether any person designated as an independent contractor, leased employee, or non-employee by any employer:

(a) Is an employee in a regular full-time position required to participate in the systems prospectively; or

(b) Was an employee in a regular full-time position for previous periods that were not reported by the employer in accordance with KRS 16.543, 61.543, 61.675, 78.615, and 78.625, and this administrative regulation.

(3) The agency shall apply the common law factors used by the Internal Revenue Service, in accordance with IRS Publication 1779, to make the determination described in subsection (2) of this section. The agency may also consider rules issued by the United States Department of Labor for determining whether a worker is an employee or an independent contractor under federal wage and hour laws.

(4)(a) The agency shall provide written notification to the employer if it determines that any person designated as an independent contractor, leased employee, or non-employee by the employer:

1. Is an employee in a regular full-time position required to participate in the systems prospectively; or

2. Was an employee in a regular full-time position for previous periods that were not reported by the employer in accordance with KRS 16.543, 61.543, 61.675, 78.615, and 78.625, and this administrative regulation.

(b) A notice provided in accordance with paragraph (a)2. of this subsection shall include a Form 4225, Verification of Past Employment. The employer shall complete and submit the Form 4225 by the end of day thirty (30) calendar days from the date the notice was provided.

(5)(a) An employer shall remit all reports, records, contributions, and reimbursements for a person as an employee in a regular full-time position in accordance with KRS 61.675, KRS 78.625,

and this administrative regulation effective the first day of the calendar month after the date the notification described in subsection (4)(a) of this section is provided.

(b) Once a Form 4225, Verification of Past Employment, is received, the agency shall notify the employer of the delinquent omitted employer contributions owed.

1. An employer shall remit the delinquent omitted employer contributions in accordance with KRS 61.552(2), 61.675(3)(b), 78.545, and 78.625(3) no later than the end of day on the last day of the calendar month following the month the notice is provided.

2. If an employer needs an extension or payment schedule for the delinquent omitted employer contributions owed, it shall contact the agency to request the extension or payment schedule for the delinquent omitted employer contributions owed.

#### Section 9. Employer, Employee, and Health Insurance Contributions.

(1)(a)[(3)] Each employer shall remit[submit] the employer and employee contributions, and the employer contributions and reimbursements for retiree health insurance premiums as required by KRS 61.675 and [KRS-]78.625 no later than the end of day on the **tenth [10<sup>th</sup>]** calendar day of the month following the month being reported.

(b) Employers shall not remit employer or employee contributions for employees in a non-participating position unless required to do so pursuant to KRS 61.680(6) and 78.545.

(2) Required contributions as **established [indicated]** in subsection (1) of this section shall be remitted:

(a) By ESS Employers:

1. Through[Electronically using] the agency's secure ESS[Kentucky Retirement Systems' Employer Self Service] Web site;

2.[(b)] By mailing or hand delivering a check;

[(c) By the eMARS system maintained by the Finance and Administration Cabinet;] or

3.[(d)] By wire transfer; and[-]

(b) By KHRIS Employers and County Fee Employers through a payment system maintained by the Finance and Administration Cabinet.

(3)(a) Except as provided in subsection (b) of this section, if an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.543, 61.560, 61.597, 61.702, 78.5512, 78.5516, 78.5536, 78.610, or 78.615:

1. The agency shall notify the employer of the additional amount of employee contributions due from the employee;

2. The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.545, 16.583, 61.543, 61.560, 61.597, 61.702, 78.5512, 78.5516, 78.5536, 78.610, or 78.615 from his or her creditable compensation and remit the additional contributions to the agency; and

(b)1. If the employee is no longer employed by the employer, the employer shall notify the agency and the agency shall refund the incomplete employee contributions submitted by the employer on behalf of the employee to the employer, and the employer shall withhold the applicable taxes from the contributions and remit the remaining money to the employee.

2. If the contributions are refunded in accordance with this paragraph, then the agency shall provide the employee with:

a. Any interest credited on the incomplete employee contributions in accordance with KRS 61.575 or 78.640; and

b. Notification explaining the potential impact to his or her service credit and an invoice for omitted service in accordance with KRS 61.552(2) and 78.545. If the omitted service invoice is not paid, the employee may lose service credit for the month(s).

Section 10. Creditable Compensation.

(1)[(4)] The employer shall report all creditable compensation paid during a month no later than the end of day on[~~by~~] the tenth calendar day of the [~~following~~] month following the month being reported.

(2)(a) If creditable compensation is being reported for a month other than the reporting month, the[The] employer shall designate the month to which the creditable compensation shall[~~should~~] be applied[~~if it is not the month for which the employer is reporting and if the~~].

(b) The report may need to reflect a month other than the reporting month if the creditable compensation[~~was~~] earned is from the month in which the employee:

1. Became employed;
2. Became eligible to participate in[~~one of~~] the systems[~~administered by Kentucky Retirement Systems~~];
3. Was transferred from a[~~to hazardous coverage from~~] nonhazardous position to a hazardous position[~~participation~~];
4. Was transferred from a hazardous position[~~coverage~~] to a nonhazardous position[~~participation~~];
5. Terminated from employment; or



6. Became ineligible to participate in ~~one (1) of~~ the systems ~~administered by Kentucky Retirement Systems~~.

(3)(a)1. The employer shall submit a valid Form 7250, Verification of Payments Outside Regular Wages, prior to payment for creditable compensation paid as

~~[(b) If the employee is paid creditable compensation in] a lump sum, ~~or~~ nonrecurring payment, or other payment outside of regular wages, and ~~the employer~~ shall designate the reason for the lump sum, ~~or~~ nonrecurring payment, or other payment outside of regular wages.~~

2. ~~1.~~ If the lump sum, ~~or~~ nonrecurring payment, or other payment outside of regular wages is for ~~was earned during~~ a specific time period, the employer shall designate the time period during which the lump sum, ~~or~~ nonrecurring payment, or other payment outside of regular wages was or will be earned.

(b)1. The agency shall review the Form 7250 and notify the employer of its findings. If the agency determines the wages are creditable compensation, the agency shall also indicate how the wages shall be reported.

2. If the employer fails to designate a specific time period during which the lump sum, ~~or~~ nonrecurring payment, or other payment outside of regular wages was or will be earned in accordance with paragraph (a)2. of this subsection, the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(4) Workers' compensation payments shall not be included in creditable compensation.

~~[(5) The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.~~

~~(6) Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.~~

~~(7) If an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.560, 61.597, or 61.702:~~

~~(a) The retirement systems shall notify the employer of the additional amount of employee contributions due from the employee;~~

~~(b) The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.583, 61.560, 61.697, or 61.702 from the employee's creditable compensation and remit the additional contributions to the retirement systems;~~

~~(c) If the employee is no longer employed by the employer, the employer shall notify the retirement systems and the retirement systems shall refund the contributions submitted by the employer on behalf of the employee to the employer, which shall withhold the applicable taxes from the contributions and remit the remaining money to the employee; and~~

~~(d) If the contributions are refunded in accordance with paragraph (c) of this subsection, then that service credit shall be omitted service in accordance with KRS 61.552(23).~~

~~(8) Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:~~

~~(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university~~

~~and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; and~~

~~(b) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).~~

~~(9)(a) An employer participating in Kentucky Employees Retirement System or County Employees Retirement System shall not classify an employee in more than one (1) non-participating position status during the fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(d) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.~~

~~(b) An employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System shall not change an employee's position status from full-time to seasonal, temporary, or interim in the same fiscal year.~~

~~(c) An employer shall not classify an employee as a seasonal employee pursuant to KRS 61.510(21)(a) or 78.510(21)(a) unless the duties of the job can only be performed during a defined time period during a fiscal or calendar year. If the employer classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a three (3) calendar month break in employment before the employer may again classify the employee as a seasonal employee, except for employers that are school boards. If an employer that is a school board classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall~~

~~be a six (6) calendar month break in employment before the employer may again classify the employee as a seasonal employee.~~

~~(d) If an employer violates the provisions of this subsection, the retirement systems shall determine if the employee worked or averaged the necessary hours to be in a regular full-time position as provided in KRS 61.510(21) or 78.510(21). If the employee worked or averaged the necessary hours to be in a regular full-time position as defined by KRS 78.510(21), the service credit shall be omitted service in accordance with KRS 61.552(23).~~

~~Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.~~

~~(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format, the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.~~

~~(b) Personal information includes the member's first name or first initial and last name in combination with the member's:~~

- ~~1. Social Security number;~~
- ~~2. Driver's license number;~~
- ~~3. Personal Identification Number permitting access to the member's account; or~~
- ~~4. Medical Information.~~

~~(c) The retirement systems shall notify the employer of a disclosure upon discovery.~~

~~(d) The employer shall notify the retirement systems of a disclosure upon discovery.~~

~~(e) The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.~~

~~(f) The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.~~

~~(g) If the retirement systems is required by federal or state law to provide notification to affected members about the employer's disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer's disclosure.~~

~~(h) In transmitting any medically related personal information, the employer shall comply with all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.~~

~~(i) Each employer shall execute a data use agreement with retirement systems.~~

~~Section 3. (1)(a) The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.~~

~~(b) The employer shall remit payment to the retirement systems by the due date provided on the invoice.~~

~~(2) The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.~~

~~Section 4.~~

~~(1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.~~

~~(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.~~

~~Section 5. If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:~~

~~(1) Any funds due to the employer; or~~

~~(2) Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.]~~

Section 11.[Section 6.] Maximum Limits to Creditable Compensation.

(1) The agency shall provide the maximum annual compensation limit to employers.

(2) Effective only for the 1996 fiscal year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except

that in applying these rules, the term "family" shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the fiscal year.

(3) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). ~~[The retirement system shall notify employers of the maximum annual compensation limit.]~~ Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the amount of the employee's creditable compensation in accordance with Section 10 of this administrative regulation, but shall not remit~~[report]~~ any further employer or employee contributions on the employee's creditable compensation.~~[If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.]~~

~~(2) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.]~~

(4)~~(3)~~ Effective with respect to fiscal~~[plan]~~ years beginning on and after July 1, 2002, an employee's~~[a plan member's]~~ annual compensation that exceeds \$200,000, ~~[as adjusted for cost-~~

of-living increases in accordance with 26 U.S.C. 401(a)(17)(B),~~{}~~] shall not be taken into account in determining benefits or contributions due for any fiscal[plan] year.

(a) Annual compensation shall include compensation during the fiscal[plan] year or any other consecutive twelve (12) calendar month period over which compensation is otherwise determined under the plan (the determination period).

(b) If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be prorated based on the following for formula:

$$\begin{array}{rcccl} \text{The otherwise applicable} & & \text{Number of months in the} & & \text{The annual} \\ \text{annual compensation limit} & \times & \text{short determination period} & = & \text{compensation} \\ & & \text{12} & & \text{limit} \end{array}$$

(c) If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(d) The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year.~~[If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be 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 twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.]~~



(5)(a)(4) Creditable~~[A participating member may pay contributions for the creditable]~~ compensation over the maximum annual compensation limit may be considered for the years used to determine the employee's~~[member's]~~ final compensation for purposes of retirement if:

1.~~(a)~~ The employee's~~[member's]~~ creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

2.~~(b)~~ The employee~~[member]~~ has filed a notification of retirement;~~and~~

3.~~(c)~~ The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003; and

4. The employee has remitted payment of employee contributions on the excess creditable compensation at the rate proscribed by KRS 61.560, 61.702, 78.5536, and 78.610.

(b) Upon receipt of employee contributions, the agency~~[retirement systems]~~ shall bill the employer for the employer contributions on the excess creditable compensation in accordance with KRS 61.565 and 78.635, and the employer shall remit the employer contributions to the agency~~[retirement systems]~~.

(c) The excess creditable compensation shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 12. Creditable Compensation Paid as a Result of an Order of a Court, the Personnel Board, or the Kentucky Commission on Human Rights.

(1) The employer or employee may submit the following for review of potential effects to the employee's account and compliance with KRS 16.505-16.592, 61.510-61.705, and 78.510-78.852 prior to the entry of the agreement or order:

(a) A proposed settlement agreement or draft order related to the resolution of a case pending before the Personnel Board, the Kentucky Commission on Human Rights, or a court of competent jurisdiction regarding employment disputes that may affect an employee's service with the systems; or

(b) An order of reinstatement of an employee pursuant to KRS 61.569 and 78.545.

(2) For creditable compensation paid as a result of an order by the Personnel Board under the authority of KRS 18A.095, by a court of competent jurisdiction, or by the Kentucky Commission on Human Rights:

(a) The creditable compensation shall be reported in accordance with Section 10 of this administrative regulation and shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer;

(b) The employer shall pick-up the employee contributions as required by KRS 61.543, 61.560, 61.702, 78.5536, 78.610, and 78.615 for the designated period;

(c) The employer shall remit employer contributions as required by KRS 61.565 and 78.635 for the designated period; and

(d) The employer shall pay interest at the rate adopted by the Kentucky Retirement Systems or the County Employees Retirement System on the creditable compensation.

(3) The interest owed pursuant to subsection (2)(d) of this section shall be assessed beginning on the first day the designated period began or begins.

Section 13. Excess Contributions.

(1)(a) Upon discovery that excess contributions have erroneously been remitted, the agency shall correct its record in compliance with KRS 61.685 and 78.545 by refunding the excess contributions, except as provided in paragraph (c) of this subsection.

(b) The employer shall withhold the applicable taxes from the employee contributions and remit the remaining money to the employee.

(c) The agency may withhold excess employer contributions to offset a payment owed to the systems.

(d) The agency shall provide the employee with any interest credited on the excess employee contributions in accordance with KRS 61.575 or 78.640.

(2) If an employee uses paid sick leave while awaiting workers' compensation and subsequently receives workers' compensation payments for the hours during which paid sick leave was previously reported, the employee contributions on the paid sick leave that have been reported to the agency shall be refunded, unless the employee has remitted the workers' compensation payments to the employer in exchange for the use of his or her paid sick leave.

#### Section 14. Death or Disability of a Participating Employee.

(1)(a) Employers shall report the death of a participating employee through the ESS Web site. Employers may notify the agency of the death of a previous employee.

(b) Upon the employer's report of the death of an employee or retired member, the agency shall begin the process of determining death benefits as provided in KRS 16.601, 61.621, 61.630, 61.640, 61.703, 61.705, 78.545, 78.5532, 78.5534, and 78.5538.

(c) **If [In the event of]** a death **[that]** is due to an act in line of duty or is duty-related, the employer shall add a comment to the death notice indicating this and shall complete and submit

a valid Form 6800, Application for Duty Related/In Line of Duty Death Benefits. The employer shall also provide to the deceased employee's beneficiary or representative of the deceased employees' estate or trust, or submit to the agency:

1. The employer death investigation report;
2. A detailed position description or a valid Form 8030, Employer Job Description;
3. Certification or documentation of the employee's last day of paid employment; and
4. Any additional information requested by the agency or a third-party vendor on its behalf.

(2) ~~If [In the event of]~~ an **employee files a [employee's]** claim for disability retirement benefits, the employer shall comply with the provisions of KRS 16.582, 61.600, 61.621, 61.665, 78.545, 78.5522, 78.5524, and 105 KAR 1:210, 105 KAR 1:310, and 105 KAR 1:455, and submit to the agency:

(a) A valid Form 8030, Employer Job Description and, if the employee was injured on the job, a copy of the incident report;

(b) Certification or documentation of the employee's last day of paid employment;

(c) Information regarding the employee's request for reasonable accommodations as required by KRS 61.665(2)(a), 61.665(2)(b), and 78.545; and

(d) Any additional information regarding the employee's job duties and reasonable accommodations upon request by the agency or a third-party vendor on its behalf.

#### Section 15. Retirement and Other Reporting Requirements for Participating Employers.

(1)(a) The Form 6000, Notification of Retirement, Section H shall be completed by the employer when an employee files for retirement in accordance with KRS 16.582, 61.600, 61.590, 78.545, 78.5522, and 78.5524. The employer shall certify the employee's leave balances and final

salary, including any anticipated salary through the employee's termination date yet to be reported to the agency.

(b) The employer shall complete and provide the valid Form 6000, Section H, signed by the designated Agency Reporting Official, to the employee or through ESS.

(2) The employer shall submit personnel actions prior to September 15, 2011 on a valid Form 2020, Advice of Personnel Action.

(3) Each employer shall complete and file a valid Form 2023, Leave Without Pay Verification, when an employee begins and ends a period of leave without pay.

(4) If ~~an~~ **[at any time the]** employee provides a Form 2035, Beneficiary Designation, to his or her employer, the employer shall forward the Form 2035 to the agency immediately upon receipt.

(5) If either of the following forms are provided to the employer, it shall submit the completed applicable form by the end of day thirty (30) calendar days from the date the form was provided:

(a) A Form 6487, Request for Member Pension Spiking Exemption Amounts in accordance with 105 KAR 1:142, Section 4; or

(b) A Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, in accordance with 105 KAR 1:142, Section 3.

(6) If the agency is notified or becomes aware of past employment for which a member did not receive service credit, the agency shall provide the employer with a Form 4225, Verification of Past Employment, to certify dates, hours, wages, and the position classification for the past

employment. The employer shall complete and submit the valid Form 4225 by the end of day thirty (30) calendar days from the date the Form 4225 was provided.

(7) An employer shall submit any additional information requested by the agency, including a position description or any other documentation deemed necessary by the agency to ensure employer compliance with KRS16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

Section 16. Felony Charges Related to Employment. Employers shall notify the agency when an employee hired on or after August 1, 2000, is convicted of a felony related to his or her employment.

Section 17. Employer Cooperation with the Agency.

(1) If an ESS Employer or County Fee Employer refuses to provide the agency access to records or information requested in accordance with KRS 61.685 and 78.545, or does not respond to a request for information or records by the agency, the agency may, if appropriate, hold payments of:

(a) Any funds due to the employer; or

(b) Refunds or initial retirement allowances to an employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the agency.

(2) The agency may conduct an audit of the employer in accordance with KRS 61.675(2) and 78.625(5) to determine compliance with the provisions of KRS 16.505-16.652, 61.610-61.705, or 78.510-78.852.

~~[Section 7. (1) For members retiring on or after January 1, 2014, but prior to July 1, 2017, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.~~

~~(a) For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.~~

~~(b) For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).~~

~~(2) If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over his or her last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.~~

~~(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona~~

~~fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within sixty (60) days of the date on the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.~~

~~(4) The employer shall provide any additional information requested by the retirement systems.~~

~~(5) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.~~

~~(6) In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).~~

~~(7) The retirement systems shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.~~

~~(8) If the employer fails to submit a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, within sixty (60) days of the date on the notice, the employer shall pay the additional actuarial cost to the retirement systems attributable to~~



~~annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.~~

~~(9) If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date on the final administrative decision. The hearing shall be limited to the issue of whether the retirement systems correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.~~

~~(10) If the employer fails to file a written request for administrative hearing within thirty (30) days of the date on the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.~~

~~(11) The retirement systems shall issue an invoice to the last participating employer representing the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment. The employer may request that the retirement systems allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the retirement systems shall establish a payment plan for the employer.~~

~~(12) If the member was employed by more than one (1) participating employer when the member retired, the actuarial cost to the retirement systems attributable to annual increases in~~

creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last participating employers.

(13) An employer who is required to pay the additional actuarial cost pursuant to KRS 61.598 shall be treated as a participating employer in the system to which the employer is required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598.

Section 8. (1) For members retiring on or after January 1, 2018, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.

(a) For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(b) The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation greater than ten (10) percent occurred in the initial fiscal year of the member's last five (5) fiscal years.

(c) For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).

~~(2) The member shall receive a refund of all pre-tax and post-tax member contributions and interest directly attributable to the reduction in creditable compensation.~~

~~(a) Pre-tax member contributions shall be refunded to the member by the employer who picked up the contributions.~~

~~(b) Post-tax member contributions shall be refunded to the member directly from the retirement systems.~~

~~(c) Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly from the retirement systems.~~

~~Section 9. (1) If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts.~~

~~(a) Pursuant to KRS 16.645, 61.675, and 78.545, the employer shall furnish the information required by the retirement systems in the discharge of its duties. The employer shall complete the Form 6487 in its entirety and provide supporting documentation.~~

~~(b) The employer shall submit a completed Form 6487 at the retirement office within sixty (60) days from the date the Form 6487 was mailed. If the employer fails to submit a completed Form 6487 within that sixty (60) day time period, Kentucky Retirement Systems shall issue a final administrative decision and provide adjustment correspondence to the member.~~

~~(2) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was not due to a bona fide promotion or career advancement, a lump-sum payment for compensatory time, a~~

~~lump-sum payment made pursuant to alternate sick leave, leave without pay, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall indicate on the Form 6487 that none of the listed exemptions are applicable.~~

~~(a) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting.~~

~~(b) If, upon review of the Form 6487, the employer believes that adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.545.~~

~~(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall include the salary directly attributable to each exemption in Part 2 of the Form 6487.~~

~~(a) If the employer believes that any of the salary is directly attributable to a bona fide promotion or career advancement, the employer shall complete Part 3 of the Form 6487.~~

~~(b) The employer shall provide an explanation and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.~~

~~(c) In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).~~

~~(4) The employer shall provide any additional information requested by the retirement systems. The retirement systems may require the employer to make certifications regarding the information and documentation submitted.~~

~~(5) If the increases in creditable compensation are not directly attributable to any of the listed exemptions and no reporting information needs to be corrected, then any annual increase in creditable compensation greater than ten (10) percent shall not be used to calculate the member's retirement allowance.~~

~~(6) The retirement systems shall not issue a refund to the employer for the excess employer contributions. The retirement systems shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.]~~

Section 18.~~[Section 10.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Public Pensions Authority Employer Reporting Manual", July 2021;

(b) Form 2012, "Election or Rejection of Participation for Mayors and Members of City Legislative Bodies", March 2024;

(c) Form 2020, "Advice of Personnel Action", March 2024;

(d) Form 2023, "Leave Without Pay Verification", March 2024;

(e) Form 2035, "Beneficiary Designation", March 2024;

(f) Form 4225, "Verification of Past Employment", March 2024;

(g) Form 6000, "Notification of Retirement", June 2023;

(h) Form 6800, "Application for Duty Related/In Line of Duty Death Benefits", June 2023;

(i) Form 7071, "Employer Self Service Employer Administrator Account Creation Request",

March 2024;

(j) Form 7072, "Reporting/Balancing Employer Acknowledgment", April 2021;

(k) Form 7250, "Verification of Payments Outside Regular Wages", September 2024;

(l) Form 7851, "Data Use and Reporting Agreement", March 2024; and

(m) Form 8030, "Employer Job Description", June 2023.

~~[(a) Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", July 2015; and~~

~~(b) Form 6487, "Request for Member Pension Spiking Exemption Amounts", February 2018.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority,~~[Kentucky Retirement Systems, Perimeter Park West,]~~ 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at [kyret.ky.gov](http://kyret.ky.gov).

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email [Legal.Non-Advocacy@kyret.ky.gov](mailto:Legal.Non-Advocacy@kyret.ky.gov).



## KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

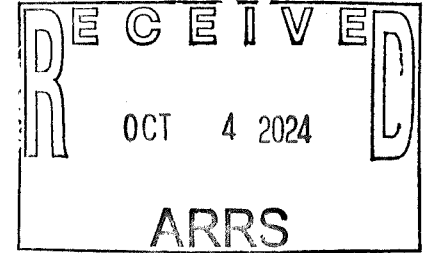
1260 Louisville Road • Frankfort, Kentucky 40601  
kyret.ky.gov • Phone: 502-696-8800 • Fax: 502-696-8822



Kentucky Public  
Pensions Authority

October 4, 2024

Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
083, Capitol Annex  
Frankfort KY 40601



Re: 105 KAR 1:142. Limitations and Exclusions on Creditable Compensation in the Last Five (5) Fiscal Years of Service.

Dear Co-Chairs West and Lewis:

After discussions with the Administrative Regulation Review Subcommittee staff of issues raised by 105 KAR 1:142, the Kentucky Public Pensions Authority accepts the proposed attached staff suggested amendments.

Sincerely,

*Jessica Beaubien*

Jessica Beaubien, Policy Specialist  
Kentucky Public Pensions Authority  
1270 Louisville Road  
Frankfort, KY 40601

**Subcommittee Substitute**  
**Final version 10/4/2024**

**FINANCE AND ADMINISTRATION CABINET**  
**Kentucky Public Pensions Authority**  
**(New Administrative Regulation)**

**105 KAR 1:142. Limitations and exclusions on creditable compensation in the last five (5) fiscal years of service.**

RELATES TO: KRS 16.645, 61.598, 61.645, 61.675, 78.545, 78.625, 78.782

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.598(6), 78.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.598(6) and 78.545 authorize the Kentucky Public Pensions Authority to promulgate an administrative regulation to administer the limitations and exclusions on increases in creditable compensation codified in KRS 61.598 and 78.545. This administrative regulation establishes limitations and exclusions on increases in creditable compensation in the last five (5) years of service for retiring members with a membership date prior to January 1, 2014 in accordance with KRS 61.598 and 78.545.

Section 1. Definition. "Member" means a member of the systems with a membership date prior to January 1, 2014.

Section 2. Determining Percentage Increases for Creditable Compensation.

(1) Except as provided in subsection (2) of this section, in accordance with KRS 61.598 and 78.545, the agency shall review each of the last five (5) fiscal years of the member's employment to determine if his or her creditable compensation in any of the last five (5) fiscal years increased by ten (10) percent or more compared to the immediately preceding fiscal year.

(a) The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation of ten (10) percent or more occurred in the initial fiscal year of the member's last five (5) fiscal years.

(b) For each of the member's last five (5) fiscal years of employment, the agency shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the immediately preceding fiscal year multiplied by 110 percent, the agency shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(c) For purposes of performing the calculations in this subsection:

1. Only fiscal years in which the member was employed in a regular full-time position in at least one (1) full month of the fiscal year shall be considered; and



2. The member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).

(2) For members with an effective retirement date on or after January 1, 2018:

(a) The agency shall not review creditable compensation earned by the member prior to July 1, 2017; and

(b) For members with an effective retirement date on or after June 29, 2021, if a reduction in the member's creditable compensation causes his or her monthly retirement allowance to decrease by twenty-five (25) dollars or more, the member's monthly retirement allowance shall only be reduced by the amount that exceeds \$24.99.

(3) The agency shall not consider the following changes in creditable compensation to be increases in creditable compensation:

(a) The employee was on leave without pay for any reason in the fiscal year(s) prior to the fiscal year that contained the increased creditable compensation for members with an effective retirement date on or after January 1, 2014, but prior to July 1, 2017; or

(b) Modifications to the accounting method for reporting employees in accordance with KRS 61.675, KRS 78.625, and 105 KAR 1:140.

Section 3. Final Administrative Determination for Members with an Effective Retirement Date on or after January 1, 2014, but Prior to July 1, 2017.

(1)(a) Based on the review as provided in Section 2 of this administrative regulation, if the agency determines that the member's creditable compensation in any of the last five (5) fiscal years increased by more than ten (10) percent compared to the immediately preceding fiscal year, the agency shall provide written notice to the member's last participating employer of the agency's determination.

(b) If the member was employed by more than one (1) employer when the member retired, the agency shall provide written notice to each of the member's last participating employers.

(c) The written notice shall include:

1. A statement that the member's creditable compensation in one (1) or more of the last five (5) fiscal years increased by more than ten (10) percent compared to the prior fiscal year;
2. The fiscal year or fiscal years in which the creditable compensation increased by more than ten (10) percent compared to the immediately preceding fiscal year;
3. Details of each increase in creditable compensation; and
4. The amount of the additional actuarial cost to the systems attributable to the increase or increases in creditable compensation.

(2)(a) If the employer believes that one (1) or more annual increases in creditable compensation greater than ten (10) percent in the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement, by the end of day thirty (30) calendar days from the date the notice indicated in subsection (1) of this section was provided, the employer shall:

1. Complete and submit a valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement;
2. Submit predetermination documentation if the agency previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career

advancement, and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring;

3. Provide a copy of the personnel form with the date of the promotion or advancement, an explanation, and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement, if the employer believes that any salary increase is directly attributable to a bona fide promotion or career advancement; ***and***

4. Effective July 1, 2024, submit a copy of the personnel form with the date of increased rate of pay, an explanation, and documentation supporting the assertion that the increase in rate of pay was authorized or funded by the legislative or administrative body of the employer or mandated in a collective bargaining agreement approved by the legislative body of the employer, if the bona fide promotion or career advancement resulted from an increase in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer.

(b) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time during the employer's normal monthly reporting in accordance with 105 KAR 1:140.

(3)(a) The agency shall consider the following in determining if a change in position or hiring was a bona fide promotion or career advancement:

1. A valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, submitted in accordance with subsection (2)(a) of this section; and
2. Supporting documentation submitted by the employer in accordance with subsection (2)(a) of this section.

(b)1. The agency may require the employer to provide additional information or require the employer to make certifications regarding the information and documentation submitted.

2. In accordance with KRS 16.645, 61.675, 78.545, and 78.625, the employer shall provide any additional information and certifications requested by the agency under this paragraph by the end of day thirty (30) days from the date the request for additional information was provided.

(4) The employer shall pay the additional actuarial cost to the systems attributable to any annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment if the employer fails to comply with:

- (a) Subsection (2) of this section; or
- (b) Subsection (3)(b) of this section if additional information is requested in accordance with that subsection.

(5)(a) If the employer timely submits a valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, in accordance with subsection (3)(a) of this section, the agency shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.

(b) If the employer disagrees with the final administrative decision by the agency, the employer may appeal the decision in accordance with Section 6 of this administrative regulation.

(c) If the employer does not file a written request for administrative hearing timely as provided in Section 6 of this administrative regulation, the employer shall pay the additional actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(6)(a) If an employer is required to pay the additional actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the agency shall issue an invoice to the last employer representing the actuarial cost.

(b) If the member was employed by more than one (1) employer when the member retired, the actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last employers. Each of the member's last employers shall receive an invoice as provided in this subsection.

(c) An employer that receives an invoice may request that the agency allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the agency shall establish a payment plan for the employer.

(d) An employer that is required to pay the additional actuarial cost shall be treated as a participating employer in the system to which the employer is required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598 and 78.545.

Section 4. Exemption Determination Process for Members with an Effective Retirement Date on or after January 1, 2018.

(1) This section shall only apply to members with an effective retirement date on or after January 1, 2018.

(2) Exemptions shall include:

(a) Exemptions provided in KRS 61.598(4) and 78.545;

(b) A bona fide promotion or career advancement as defined in 105 KAR 1:001; or

(c) Overtime worked from May 28, 2020, through May 11, 2021, due to local government emergencies issued on or after May 28, 2020, but prior to October 5, 2020, regardless of whether or not the National Guard was mobilized for the entire period.

(3) If the agency review, as provided in Section 2 of this administrative regulation, determines that the member's creditable compensation in any of the last five (5) fiscal years increased by more than ten (10) percent compared to the immediately preceding fiscal year, the agency shall provide the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts. If the reductions in the member's creditable compensation would result in reduction to the member's monthly retirement allowance of less than twenty-five (25) dollars per month or the actuarial equivalent, a Form 6487 shall not be provided.

(4) The employer shall complete and submit the valid Form 6487, Request for Member Pension Spiking Exemption Amounts, and provide supporting documentation as required by KRS 16.645, 61.675, and 78.625 by the end of day thirty (30) calendar days from the date the Form 6487 was provided.

(a) ~~[In order]~~ To indicate that none of the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to an

exemption as provided in subsection (2) of this section, the employer shall select that none of the listed exemptions are applicable on the Form 6487.

(b)1. **[In order]** To indicate that one (1) or more of the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to an exemption as provided in subsection (2) of this section, the employer shall select which of the listed exemption are applicable on the Form 6487. Except as provided in subsection (5)(a) of this section, the employer shall list the portion of the salary directly attributable to each exemption in the corresponding section of the Form 6487.

2.a. **[In order]** To verify that one (1) or more salary increase is directly attributable to a bona fide promotion or career advancement, the employer shall provide a copy of the personnel form with the date of the promotion or advancement, an explanation, and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.

b. Effective July 1, 2024, **[in order]** to verify that one (1) or more bona fide promotion or career advancement resulted from an increase in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer, the employer shall submit a copy of the personnel form with the date of increased rate of pay, an explanation, and documentation supporting the assertion that the increase in rate of pay was authorized or funded by the legislative or administrative body of the employer or mandated in a collective bargaining agreement approved by the legislative body of the employer.

c. **[In order]** To verify that one (1) or more salary increase is directly attributable to overtime hours worked under a state or federal grant as prescribed in KRS 61.598(4)(e)1., a copy of the grant shall be submitted with the specific language in the grant requiring overtime highlighted or otherwise emphasized.

d. Except as provided in subsection (2)(c) of this section, **[in order]** to verify that one (1) or more salary increase is directly attributable to a local state of emergency where the Kentucky National Guard was mobilized as prescribed in KRS 61.598(4)(f)2., the applicable Executive Order number that mobilized the National Guard shall be provided.

(5)(a) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting in accordance with 105 KAR 1:140.

(b) If, upon review by the employer of the Form 6487, Request for Member Pension Spiking Exemption Amounts, adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.625.

(6)(a) The agency may require the employer to provide additional information or require the employer to make certifications regarding the information and documentation submitted.

(b) In accordance with KRS 16.645, 61.675, and 78.625, the employer shall provide any additional information and certifications requested by the agency under this subsection by the end of day thirty (30) days from the date the request for additional information was provided.

(7)(a) Following review of the completed Form 6487, Request for Member Pension Spiking Exemption Amounts, and any additional information and certifications, the agency shall make a final administrative decision in accordance with Section 5 of this administrative regulation.

(b) The agency shall issue a final administrative decision in accordance with Section 5 of this administrative regulation if:

1. A valid Form 6487 is not submitted timely in accordance with subsection (4) of this section; or
2. Additional information **[is]** requested in accordance with **[that]** subsection (6) of this section is not submitted timely.

Section 5. Final Administrative Decisions for Members with an Effective Retirement Date on or after January 1, 2018.

(1) This section shall only apply to members with an effective retirement date on or after January 1, 2018.

(2)(a) If the agency determines an increase in creditable compensation of more than ten (10) percent over the immediately preceding fiscal year, as provided in Section 2 of this administrative regulation, is not directly attributable to any of the listed exemptions in Section 4(2) of this administrative regulation, and no reporting information needs to be corrected, then the increase in creditable compensation above ten (10) percent shall not be used to calculate the member's retirement allowance, unless the reductions in the member's creditable compensation would result in reduction to the member's monthly retirement allowance of less than twenty-five (25) dollars per month or the actuarial equivalent.

(b) The agency shall notify the member of the final administrative decision which shall provide the member's benefit adjustment details. If the member disagrees with the final administrative decision by the agency, he or she may appeal the decision in accordance with Section 6 of this administrative regulation.

(3) Pursuant to KRS 61.598(2)(c)2. and 78.545, the agency shall not issue a refund to the employer for the excess employer contributions. The agency shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.

(4)(a) Pursuant to KRS 61.598(2)(c)1. and 78.545, the member shall receive a refund of all pre-tax and post-tax member contributions and interest directly attributable to the reduction in creditable compensation.

1. Pre-tax member contributions shall be refunded to the member by the employer that picked-up the contributions.

2. Post-tax member contributions shall be refunded to the member directly by the agency.

3. Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly by the agency.

(b)1. If a member files an appeal in accordance with Section 6 of this administrative regulation, the refunds indicated in this subsection shall be placed on hold during the pendency of the appeal.

2. No additional interest shall accrue during the pendency of the appeal.

Section 6. Appeal.

(1)(a) For members with an effective retirement date on or after January 1, 2014, but prior to July 1, 2017, pursuant to KRS 61.645(16) and 78.782(16), if the employer disagrees with the final

administrative decision in accordance with Section 3 of this administrative regulation, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B by the end of day thirty (30) calendar days from the date of the final administrative decision.

(b) In accordance with KRS 61.598(7) and 78.545, the employer's right to appeal is limited to the issue of whether the agency correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.

(c) Pursuant to KRS Chapter 13B.090(7), the employer has the burden to show its entitlement to the benefit of not paying the additional actuarial costs related to the employer's appeal in accordance with this subsection, and the ultimate burden of persuasion on that issue.

(2)(a) For members with an effective retirement date on or after January 1, 2018, pursuant to KRS 61.645(16) and 78.782(16), if the member disagrees with the final administrative decision by the agency in accordance with Section 5 of this administrative regulation, the member shall file a written request for an administrative hearing to be held in accordance with KRS Chapter 13B by the end of day thirty (30) calendar days from the date of the final administrative decision.

(b) The member's right to appeal is limited to the issue of whether the agency correctly determined that the annual increases in the member's creditable compensation were not due to one (1) of the exemptions found in KRS 61.598(4) and 78.545, and 105 KAR 1:001(14).

(c) Pursuant to KRS Chapter 13B.090(7), the agency has the burden to show the propriety of the agency action to remove or reduce benefits related to the member appeals in accordance with this subsection, and the ultimate burden of persuasion as to that issue.

#### Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", June 2024; and

(b) Form 6487, "Request for Member Pension Spiking Exemption Amounts", June 2024.

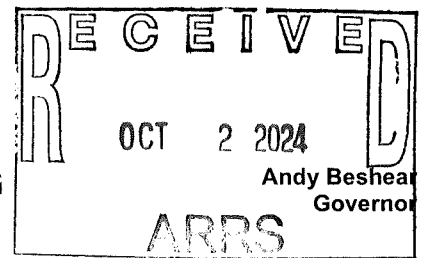
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m., or on the agency's Web site at [kyret.ky.gov](http://kyret.ky.gov).

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pension Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email [Legal.Non-Advocacy@kyret.ky.gov](mailto:Legal.Non-Advocacy@kyret.ky.gov).

502-429-3300  
800-305-2042  
Fax: 502-429-1245

**KENTUCKY BOARD OF NURSING**

312 Whittington Parkway, Suite 300  
Louisville, Kentucky 40222-5172  
kbn.ky.gov



October 2, 2024

Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
c/o Emily Caudill, Regulation Complier  
Adminstrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Captiol Annex  
Frankfort, KY 40601

Re: 201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

Dear Co-Chairs West and Lewis:

After discussions with Adminstrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:056, the Kentucky Board of Nursing proposes the attached suggested substitute to 201 KAR 20:056.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Prather".

Jeffrey R. Prather, General Counsel  
Kentucky Board of Nursing  
312 Whittington Parkway, Suite 300  
Louisville, KY 40222  
Phone: (502) 338-2851  
Email: [Jeffrey.prather@ky.gov](mailto:Jeffrey.prather@ky.gov)

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS**

**Board of Nursing**

**201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.**

RELATES TO: KRS 218A.205(3)(h), (8), 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, 314.475

STATUTORY AUTHORITY: KRS 218A.205(3)(h), (8), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(h) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205(8) requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)

- (a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);
- (b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure does not issue licensure cards;
- (c) Submit the fee required by 201 KAR 20:240, Section 1(2)(j); and
- (d) Comply with the requirements established in KRS 314.042 and this administrative regulation.

(2) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also:

- (a) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);
- (b) Use the FBI Applicant Fingerprint Card;
- (c) Pay any required fee to the KSP and the FBI;
- (d) Complete the criminal record check within six (6) months of the date of the application; and
- (e) If there are any misdemeanor or felony convictions, provide:
  - 1. A certified or attested copy of the court record as required by 201 KAR 20:370, Section 1(3); and
  - 2. A letter of explanation that addresses each conviction.

(3) An applicant shall not be licensed until:

- (a) A report is received from the FBI pursuant to the request submitted under subsection (2) of this section and any conviction is addressed by the board; and



(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(h) and any relevant data on the applicant is received.

(4) An applicant shall provide evidence of completion of the jurisprudence examination required by KRS 314.042(1)(d).

## Section 2. Education and Clinical Experience.

(1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited education program that prepares a registered nurse for one (1) of the four (4) APRN roles established under Section ~~13(5)~~~~12(5)~~ of this administrative regulation and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.

(2)

(a) If the applicant for licensure as an advanced practice registered nurse completed a program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

## Section 3. National Certifying Organizations.

(1) A nationally established organization or agency ~~that~~~~which~~ certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as ~~established in KRS 314.042(6)(a)~~~~defined by KRS 314.042(2)(a)~~ and in a population focus as defined by KRS 314.011 and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board of Certification and Recertification for Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy of Nurse Practitioners Certification Board; and

(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010, and who has continually renewed his or her Kentucky advanced practice registered nurse license since that date.

## Section 4. Practice Pending Licensure.

(1) A registered nurse who meets all **of** the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "advanced practice registered nurse" or "APRN[ Applicant" or "APRN App.".

#### Section 5. Provisional License.

(1) An applicant who meets the requirements of KRS 314.042(2) may request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)

(a) The board shall issue the provisional license to the applicant after **the requirements of** Section ~~1[1(1)]~~ of this administrative regulation are met, **but not until the report is received from the FBI and any conviction is addressed by the board.**

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480 are met.

(3) The applicant shall not prescribe medications and shall only practice under a mentorship with an advanced practice registered nurse or a physician.

(a) To qualify as **a** mentorship pursuant to KRS 314.042(3), the APRN or physician responsible for the applicant shall be physically present and immediately available to the applicant during work hours while the applicant holds a provisional license; and

(b) The APRN or physician mentoring the applicant shall be currently licensed in Kentucky.

(4) Upon notification to the board that the applicant has failed the national certification exam after two (2) attempts, the provisional license shall be voided. The applicant shall:

(a) Notify the board within forty-eight (48) hours; **and/;**

(b) Cease practicing under the provisional license provided by this section.

(5) An individual authorized to practice pursuant to subsection (1) of this section may use the title "advanced practice registered nurse applicant" or "APRNA".

(6) A provisional license shall be valid for a period not to exceed six (6) months.

#### Section 6.[Section 5.] License Renewal.

(1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed Annual Licensure Renewal Application: RN and APRN or a completed Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky) form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(k); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

- (a) A current active license has been issued by the board or a privilege is recognized by the board; and
  - (b) The advanced practice registered nurse license has been reinstated.
- (4) An advanced practice registered nurse shall provide to the board evidence of current certification by a recognized national certifying organization upon recertification or at the request of the board.

Section 7.~~[Section 6.]~~ License Reinstatement.

- (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.
- (2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:
- (a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);
  - (b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(l); and
  - (c) Maintain and submit evidence of current certification by a recognized national certifying organization.
- (3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also:
- (a) Provide a criminal record check by the KSP and the FBI;
  - (b) Use the FBI Applicant Fingerprint Card;
  - (c) Pay any required fee to the KSP and the FBI;
  - (d) Complete the criminal record check within six (6) months of the date of the application; and
  - (e) If there are any misdemeanor or felony convictions, provide:
    - 1. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
    - 2. A letter of explanation that addresses each conviction, if applicable.
- (4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

Section 8.~~[Section 7.]~~ Certification or Recertification.

- (1)
- (a) An advanced practice registered nurse (APRN) shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.
  - (b) The APRN shall notify the board if current certification or recertification has been obtained and provide evidence of the certification or recertification prior to the expiration date.
- (2)
- (a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.
  - (b)
    - 1. An APRN who does not provide evidence of current certification or recertification prior to its expiration date shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The board shall send written notice to the APRN if the license has been voided.
    - 2. The APRN may request a hearing on this action by submitting the request in writing. If a hearing is requested and the order of the board is adverse to the APRN, the board may impose the costs pursuant to 201 KAR 20:162, Section 7. If the action is upheld or not challenged, the APRN may seek

reinstatement of the license in accordance with Section ~~7[6]~~ of this administrative regulation, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN provides evidence of current certification acquired before the certification expiration date and there are no complaints pending against the APRN pursuant to 201 KAR 20:161 that indicate that reinstatement would create an immediate danger to the public health, safety, or welfare, then the APRN shall meet the requirements of Section ~~7[6]~~ of this administrative regulation except for Section ~~7(4)[6(4)]~~ of this administrative regulation.

A license may be issued prior to receipt of the FBI report in such cases.

(3) An advanced practice registered nurse whose certification lapses or is not renewed by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

#### Section 9.~~[Section 8.]~~

(1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 10.~~[Section 9.]~~ The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) An accredited educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 11.~~[Section 10.]~~ A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing.

Section 12.~~[Section 11.]~~ A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures established in KRS 314.091.

#### Section 13.~~[Section 12.]~~ Dual Designations.

(1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.

(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(k).

(4) For the purposes of Section ~~8(2)(b)[7(2)(b)]~~ of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role designation is maintained. All other provisions of Section ~~8(2)(b)[7(2)(b)]~~ of this administrative regulation shall apply to the voided designation.

(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

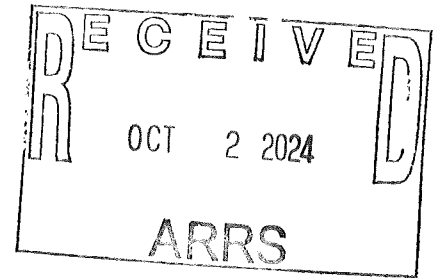
CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at:<https://secure.kentucky.gov/formservices/Nursing/PendReg>

502-429-3300  
800-305-2042  
Fax: 502-429-1245

## KENTUCKY BOARD OF NURSING

312 Whittington Parkway, Suite 300  
Louisville, Kentucky 40222-5172  
kbn.ky.gov

Andy Beshear  
Governor



October 2, 2024


Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
c/o Emily Caudill, Regulation Complier  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort, KY 40601

Re: 201 KAR 20:215. Continuing competency requirements.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:215, the Kentucky Board of Nursing proposes the attached suggested substitute to 201 KAR 20:215.

Sincerely,

  
Jeffrey R. Prather, General Counsel  
Kentucky Board of Nursing  
312 Whittington Parkway, Suite 300  
Louisville, KY 40222  
Phone: (502) 338-2851  
Email: [Jeffrey.prather@ky.gov](mailto:Jeffrey.prather@ky.gov)

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS**

**Board of Nursing**

**201 KAR 20:215. Continuing competency requirements.**

RELATES TO: KRS 194A.540, 218A.205(3)(i), 314.011(12), 314.042(11), 314.073, 314.991(1)-(3), 620.020(8)

STATUTORY AUTHORITY: KRS 218A.205(3)(i), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions.

- (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.
- (2) "Earning period" means November 1 through October 31 of a current licensure period.
- (3) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a nursing student or new employee.

Section 2.

- (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.
- (2) A licensee shall maintain the documentation of the method chosen.
- (3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation as established in subsection (1) through (4) of this section shall be:

- (1) Fourteen (14) contact hours of continuing education, which shall:
  - (a) Be from a provider approved by the board pursuant to 201 KAR 20:220;
  - (b) Be completed during the earning period; and
  - (c) Include the continuing education required by Section 5 of this administrative regulation;
- (2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:
  - (a) Have been initially attained during the earning period;
  - (b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire earning period; or
  - (c) Have been recertified during the earning period;
- (3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the earning period:
  - (a) Completion of a research project that is nursing-related:
    1. As principal investigator, coinvestigator, or project director;
    2. That is qualitative or quantitative in nature;
    3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior; and
  5. That is evidenced by an abstract of the project, which includes a summary of the findings;
- (b) Publication of an article in a peer-reviewed health-related journal; or
- (c) Participation as a preceptor for at least one (1) nursing student or new employee:
1. That has a preceptorship that shall be for at least 120 hours;
  2. Requires a one (1) to one (1) relationship between the preceptor and the student or employee;
  3. Authorizes the preceptor to train more than one (1) student or employee and to combine the hours to total 120 hours; and
  4. Includes that the preceptorship shall be evidenced by submission of the Preceptor Continuing Education Verification Form completed by the educational institution or preceptor's supervisor; or
- (4)
- (a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period, which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and
- (b) A nursing employment evaluation that is satisfactory for continued employment.
1. The nurse shall submit the Nursing Continuing Education Employment Evaluation Form, completed and signed by the nurse's supervisor or employer, which shall cover a period of at least six (6) months during the earning period; or
  2. The board may accept from the employer a standard employee evaluation, which covers a period of at least six (6) months during the earning period.
- (5) Contact hours of continuing education earned for the methods of continued competency validation as established in subsection (1) or (4) of this section may **be** earned by:
- (a)
1. A nursing continuing education presentation that is:
    - a. Designed and developed by the presenter;
    - b. Presented to nurses or other health professionals;
    - c. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and
    - d. Offered by a provider approved pursuant to 201 KAR 20:220.
  2. The number of contact hours that may be earned shall be twice the number of contact hours offered to an attendee of the presentation; or
- (b) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution if relevant to nursing practice as determined by this subsection.
1. Contact hours shall be calculated as follows:
    - a. One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or
    - b. One (1) quarter hour of academic credit shall equal twelve (12) contact hours.
  2. The following courses shall be relevant to nursing practice:
    - a. A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or
    - b. An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.
  3. A licensee may request course review for approval of applicable nursing content pursuant to Section 7 of this administrative regulation.
  4. If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.



Section 4.

(1) A licensee shall provide documentation of the method used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the method used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5.

(1)

(a) An Advanced Practice Registered Nurse (APRN) shall earn a minimum of five (5) contact hours in pharmacology, as required by KRS ~~314.073(8)~~ **314.073(9)**.

(b) An APRN who is registered with the DEA and has a PDMP account, as defined by 201 KAR 20:057, Section 1(7), shall earn a minimum of five (5) contact hours in pharmacology, including at least three

(3) contact hours on either pain management or addiction disorders.

(c) To qualify as pharmacology pursuant to KRS 314.073, content shall include drug specific information, safe prescribing practices, safe medication administration, prescribing methodologies, new administrative regulations, or similar topics.

(d) Objectives for the contact hours related to pharmacology shall be identified. Casual mention of medications or medical treatments shall not qualify.

(2) After June 27, 2023, and before the APRN's next scheduled DEA registration, an APRN who has a DEA registration shall earn a minimum of eight (8) hours on the subject of treating and managing patients with opioid or other substance use disorders, including the appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of a substance use disorder.

(3) The following APRNs shall be deemed to have satisfied the earning requirement in subsection (2) of this section:

(a)

1. Those who graduated from an advanced practice nursing school within five (5) years prior to June 27, 2023, and have successfully completed a comprehensive curriculum that included at least eight (8) hours of training on the subject of treating and managing patients with opioid or other substance use disorders, including the appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of a substance use disorder; or

2.

a. Those who have satisfied this training by earning a minimum of eight (8) hours of training on treatment and management of patients with opioid or other substance use disorders.

b. Past trainings on the treatment and management of patients with opioid or other substance use disorders may count towards an APRN meeting this requirement, including past DATA-Waiver trainings.

(b) In addition to continuing education providers approved by the board pursuant to 201 KAR 20:220, groups approved by the DEA or the Substance Abuse and Mental Health Services Administration (SAMHSA) may provide trainings that satisfy the earning requirement of subsection (2) of this section.

(4) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(5) ~~Registered nurses and licensed practical nurses~~ Nurses shall earn, the following one (1) time continuing education requirements, **subject to the applicable timeframes established in subsection (8) of this section:** ~~within three (3) years of licensure],~~

(a) ~~A~~ [a] minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6); ~~and~~

(b) ~~A~~[a] minimum of three (3) contact hours on domestic violence~~[,]~~ and elder abuse, neglect, and exploitation as required by KRS 194A.540(9)(d);

(c) A minimum of one (1) contact hour on Alzheimer's disease and other forms of dementia as required by KRS 314.073(7); and[,]

~~[(6)] [Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing license on July 1, 2022, shall satisfy the continuing competency requirement in subsection (8) of this section on or before July 1, 2023.]~~

~~[(7)] [Registered nurses, licensed practical nurses, and advanced practice registered nurses who obtain licensure by examination, endorsement, or reinstatement after July 1, 2022, shall satisfy the continuing competency requirement in subsection (8) of this section within three (3) years of licensure.]~~

~~(d)~~[(8)] [Nurses shall earn a] A minimum of two (2) contact hours on the subject of suicide prevention, which shall consist of one (1) contact hour on suicide prevention generally, and one (1) contact hour that addresses:

1.~~[(a)]~~ Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

2.~~[(b)]~~ A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals, and follow-up for nurses at risk for suicide;

3.~~[(c)]~~ Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and

4.~~[(d)]~~ Ethical legal considerations of caring for patients and nurses who are suicidal.

(6) Nurses who have satisfied each of the continuing education requirements in subsection (5) of this section on or before July 15, 2024, shall not be required to complete them again.

(7) Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing license on July 15, 2024, shall satisfy the continuing competency requirement in subsection (5)(c) of this section on or before October 31, 2027.

(8) The following licensees shall satisfy the continuing competency requirement in subsection (5) of this section within three (3) years of licensure:

(a) Registered nurses and licensed practical nurses who graduated from a Kentucky program of nursing that did not include the curriculum additions in 201 KAR 20:320, Section 6, and obtain licensure by examination or reinstatement after July 15, 2024;

(b) Advanced practice registered nurses who hold a privilege to practice as a registered nurse and obtain initial licensure after July 15, 2024; and

(c) Registered nurses and licensed practical nurses who have graduated from an out-of-state program of nursing and obtain licensure through examination, endorsement, or reinstatement after July 15, 2024.

(9) Medicinal cannabis practitioners and medicinal cannabis practitioner applicants shall earn the continuing education required by 201 KAR 20:067, Section 6.

## Section 6.

(1)

(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period.

(2)

(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section, in electronic format to CE Broker, the continuing education tracking system utilized by the board, via <https://cebroker.com>.

(b) Copies shall be furnished within twenty (20) days of the date a written request is sent to the last known email address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)

(a) Except as provided by paragraph (b) of this subsection, if a licensee has failed to comply with the continuing competency requirements, the licensee shall be allowed to rectify the noncompliance if he or she:

1. Meets the continuing competency requirements within ten (10) business days of notification of noncompliance; and

2. Enters a consent decree with the board pursuant to 201 KAR 20:161, Section 2(5), within ten (10) days of notification by the board.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat the same continuing education offering within a licensure period. The board shall determine whether a continued education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.

#### Section 7.

(1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an Application for Individual Review; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role.

(3) Approval of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be found to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

#### Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Individual Review", 9/2023;

(b) "Nursing Continuing Education Employment Evaluation Form", 9/2023; and

(c) "Preceptor Continuing Education Verification Form", 9/2023.

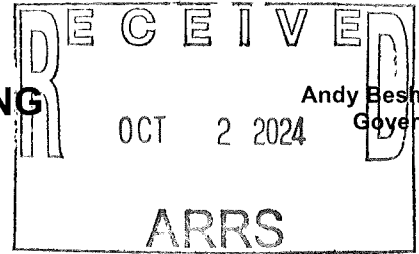
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/document-library/Pages/default.aspx>.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov). Or submit a comment at: [HTTPS://secure.kentucky.gov/formservices/Nursing/PendReg](https://secure.kentucky.gov/formservices/Nursing/PendReg)

502-429-3300  
800-305-2042  
Fax: 502-429-1245

**KENTUCKY BOARD OF NURSING**

312 Whittington Parkway, Suite 300  
Louisville, Kentucky 40222-5172  
kbn.ky.gov



October 2, 2024


Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
c/o Emily Caudill, Regulation Complier  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort, KY 40601

Re: 201 KAR 20:390. Nursing Incentive Scholarship Fund.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:390, the Kentucky Board of Nursing proposes the attached suggested substitute to 201 KAR 20:390.

Sincerely,



Jeffrey R. Prather, General Counsel  
Kentucky Board of Nursing  
312 Whittington Parkway, Suite 300  
Louisville, KY 40222  
Phone: (502) 338-2851  
Email: [Jeffrey.prather@ky.gov](mailto:Jeffrey.prather@ky.gov)

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS**

**Board of Nursing**

**201 KAR 20:390. Nursing Incentive Scholarship Fund.**

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 authorize the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026(1) requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program.

Section 1. Definitions.

(1) "Academic year" means[:]

~~[(a)] [For a registered nursing or graduate nursing program,] a twelve (12) month period beginning with a fall session[; and]~~

~~[(b)] [For a practical nursing program, the completion of the required program].~~

(2) "Board" is defined by KRS 314.011(1).

(3) "Graduate nursing education" means the pursuit of a master's degree, post-master's certificate, or doctoral degree.

(4) "Initial year award" means the first Nursing Incentive Scholarship Fund award received by an individual.

(5) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(10).

~~(6) [(5)] "Program of nursing" means a prelicensure, BSN completion, or graduate program of nursing[ program].~~

~~(7) [(6)] "Subsequent year award" means any Nursing Incentive Scholarship Fund award other than an initial year award. ["Successful academic progression" means, except during the last academic year preceding graduation;]~~

~~[(a)] [For a prelicensure or BSN completion nursing program, the completion of a minimum of twelve (12) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average, which would allow continuation in a program of nursing; or]~~

~~[(b)] [For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average, which would allow continuation in the graduate program.]~~

Section 2. Application.

(1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident;~~[ and]~~

(b) Have been accepted for admission to a program of nursing[.]; **and**

(c) 1. Have attained a sufficient point ranking pursuant to[under] Section 3 of this administrative regulation for initial year award eligibility; or[and]

2. ~~(d)~~ Have met the requirements in Section 4 of this **administrative** regulation for subsequent year award eligibility.

(2) An applicant shall submit:

- (a) A completed Nursing Incentive Scholarship Fund Application on or before ~~[June 8]~~ May 1;
- (b) For initial year award applicants, a [A] copy of the [Student Aid Report from the -]Free Application for Federal Student Aid (FAFSA) Submission Summary for the current year, listing the applicant's Student Aid Index calculation, if requesting preference for financial need;
- (c) A copy of the program of nursing acceptance letter verifying initial enrollment;
- (d) For initial year award~~[newly enrolled nursing]~~ applicants, an official transcript from the last academic institution in which the applicant was enrolled for verification of GPA or copy of a GED; and
- (e) For subsequent year award applicants, a document issued by the program of nursing verifying~~[applicants enrolled in a program of nursing, a copy of an official transcript to verify continued]~~ enrollment.

Section 3. Criteria for an Initial Year Award~~[Awards]~~. The board shall consider the following criteria in evaluating an application for an initial year award and shall allocate~~[award]~~ points as follows:

(1) Preference categories as established in KRS 314.025(2):

- (a) Licensed practical nurses, fifteen (15) points;
- (b) Registered nurses pursuing a bachelor's degree or graduate nursing education, fifteen (15) points;
- (c) ~~[Prelicensure nursing]~~ Nursing students who have not been issued a nursing license, ten (10) points; and
- (d) Financially needy Kentucky residents, up to thirty-five (35) points. Financial need shall be determined by the Student Aid Index (SAI) calculation listed on the applicant's Free Application for Federal Student Aid (FAFSA) Submission Summary for the current year,~~[estimated Federal Expected Family Contribution (EFC) as calculated by the annual FAFSA]~~ and points shall be awarded based on need-based aid eligibility as follows:

1. SAI~~[EFC]~~ of negative \$1,500~~[\$0]~~ to \$3,500~~[\$5,000]~~, thirty-five (35) points;
2. SAI~~[EFC]~~ of \$3,501~~[5,001]~~ to \$8,500~~[10,000]~~, thirty (30) points; and
3. SAI~~[EFC]~~ of \$8,501~~[10,001]~~ to \$18,500~~[20,000]~~, twenty-five (25) points;

(2) Potential for academic success, as follows: high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended:

- (a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;
- (b) Three (3) to three and four-tenths (3.4), twenty (20) points; and
- (c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points; and

(3) Potential for academic success when GED is earned in place of a high school diploma:

- (a) A GED score of 601 to 800, twenty-five (25) points;
- (b) A GED score of 501 to 600, twenty (20) points; and
- (c) A GED score of 401 to 500, fifteen (15) points.

Section 4. Criteria for a Subsequent Year Award.

(1) Except as established in subsection (2) of this section, a past recipient of a Nursing Incentive Scholarship Fund award shall be eligible to receive a subsequent year award if the recipient:

- (a) Is enrolled in a program of nursing;
- (b) Is not in default as to a prior Nursing Incentive Scholarship award; and
- (c) Submits to the board a completed Nursing Incentive Scholarship Fund Application on or before May 1.

(2) If combined awards to past recipients are projected to exceed the current fund balance, past recipient eligibility shall be based on level of education of the program of nursing in which the applicant is enrolled, first being a prelicensure LPN program of nursing, second being a prelicensure non-BSN RN program of nursing, third being a BSN program of nursing, and fourth being a graduate degree program of nursing.

Section 5.~~[Section 4.]~~ Amount of Award.

(1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

(2)

(a) The board shall first make awards to those recipients who:

1. Received an award previously~~[in the previous year]~~; and
2. Remain eligible to receive an award pursuant to Sections~~[Section]~~ 2 and 4~~[6]~~ of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section 6.~~[Section 5.]~~ Procedure for Disbursement of Awards.

(1) Prior to disbursement of funds, each year that funds are disbursed, the recipient shall sign a Nursing Incentive Scholarship Fund Contract and Promissory Note.

(2) Disbursement of funds shall be made directly to the recipient's ~~[recipient]~~ bank account via automated clearing house electronic funds transfer.

~~(3)~~~~(2)~~ Disbursement shall be made annually.

~~(3)~~ ~~[Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:]~~

~~[(a)] [Has enrolled; and]~~

~~[(b)] [Is in good standing in the nursing program.]~~

~~[Section 6.] [Continuing Eligibility Criteria.]~~

~~[(1)] [Except as established in subsection (3) of this section, a recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:]~~

~~[(a)] [Maintains successful academic progression through the program; and]~~

~~[(b)] [Submits to the board a completed Nursing Incentive Scholarship Fund Application on or before June 8.]~~

~~[(2)] [The educational institution shall immediately notify the board of a change in a recipient's enrollment status.]~~

~~[(3)] [An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.]~~

~~[Section 7.] [Disbursement Contract.]~~

~~[(1)] [Prior to disbursement of initial funds, the recipient shall sign a Nursing Incentive Scholarship Fund Contract.]~~

~~[(2)] [The recipient shall sign a Nursing Incentive Scholarship Fund Promissory Note for each year in which funds are disbursed.]~~

Section 7.~~[Section 8.]~~ Repayment and Deferral.



(1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

(a) Nursing program in which he or she is enrolled within the time established by the program of nursing; or

(b) Required employment as established in the contract.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.

(a) The board may agree to accept repayment in installments in accordance with a schedule established by the board.

(b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness, or accident that prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student who ceases to be enrolled in a program of nursing prior to graduation may defer repayment for one (1) academic year ~~[if the student fails to achieve successful academic progression]~~.

(a) ~~[This deferment shall apply for one (1) academic year.]~~

~~[(b)]~~ If the student fails to resume enrollment ~~[achieve successful academic progression]~~ after one (1) academic year, monetary ~~[that time]~~, repayment shall be due.

~~[(b)]~~ ~~[(c)]~~ If the student resumes enrollment ~~[achieves successful academic progression]~~ within one (1) academic year ~~[the allotted time]~~, he or she may apply for a continuation award pursuant to Section 4 ~~[Section 6]~~ of this administrative regulation.

(5)

(a) If a deferment is requested, the recipient shall submit the request to the board on a Nursing Incentive Scholarship Fund Request for Deferral form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the Nursing Incentive Scholarship Fund Request for Deferral form shall be accompanied by a statement by a physician, advanced practice registered nurse, or physician's assistant.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

(7) If a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5), shall apply.

(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.

(9) The board may utilize the services of a third party for collection of sums owed pursuant to a Nursing Incentive Scholarship Fund Contract and Nursing Incentive Scholarship Fund Promissory Note, including reasonable attorney fees.

(10) After the board refers a debt to a third party for collection, a recipient shall not be eligible for deferment or to otherwise cure the recipient's breach, other than through payment of all sums owed to the board.

(11) Employment and repayment requirements specified in the contract and promissory note are not tolled or deferred as a consequence of a continuation of nursing education in a different degree program than was specified in the recipient's Nursing Incentive Scholarship Fund application; however, employment and repayment requirements are not activated **if/when** a recipient transfers to the same degree program at a different school.

Section 8. ~~[Section 9.]~~ Verification.

(1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the [employer and the] recipient.

(2) A recipient shall notify the board immediately of a change of name, [or] address, school, or enrollment status in school.

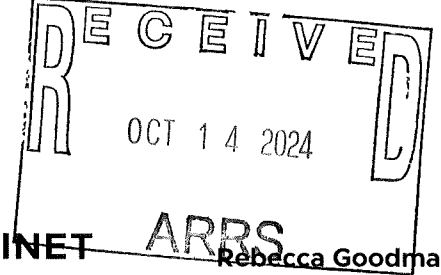
Section 9. [~~Section 10.~~] Incorporation by Reference.

(1) The following ***material is[are]*** incorporated by reference:

- (a) "Nursing Incentive Scholarship Fund Application", 06/24[~~05/23~~];
- (b) "Nursing Incentive Scholarship Fund Request for Deferral", 06/24[~~10/96~~];
- (c) "Nursing Incentive Scholarship Fund Contract", 06/24[~~10/13~~]; and
- (d) "Nursing Incentive Scholarship Fund Promissory Note", 06/24[~~10/13~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/document-library/Pages/default.aspx>.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov). Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.



**Andy Beshear**  
GOVERNOR

**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

**Rebecca Goodman**  
SECRETARY

300 Sower Boulevard  
Frankfort, Kentucky 40601  
Phone: (502) 564-2150  
Fax: 502-564-4245

**Anthony R. Hatton**  
COMMISSIONER

October 14, 2024

Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
083, Capitol Annex  
Frankfort KY 40601

Re: 401 KAR 50:038. Air emissions fee.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 50:038, the Energy and Environment Cabinet, Division for Air Quality proposes the attached amendment to 401 KAR 50:038.

Sincerely,

Cassandra Jobe, Manager  
Division for Air Quality  
300 Sower Blvd Frankfort, KY 40601

## SUGGESTED SUBSTITUTE

Final Version 9/9/24 at 9:02 a.m.

### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality

#### 401 KAR 50:038. Air emissions fee.

RELATES TO: KRS 224.10-100, 224.10-230, 224.20-050, 224.20-100, 224.20-130, 40 C.F.R. Part 60, 63, 70, 72.20(b), 15 U.S.C. 2641 – 2656, 26 U.S.C. 6621(a)(2), 42 U.S.C. 7401-7671q, et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230(3), 224.20-050, 224.20-100, 224.20-130, 40 C.F.R. Part 70, 42 U.S.C. 7401-7671q, et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~]cabinet to ***promulgate***~~*prescribe*~~ administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation ***establishes provisions***~~*provides*~~ for the assessment of fees necessary to fund the state "permit program", as defined ***by***~~*in*~~ Section 1(8) of this administrative regulation.

Section 1. Definitions. As used in this administrative regulation, terms defined in this section shall have the ~~*following*~~ meanings ***established in this section***. All terms not defined in this section shall have the meaning ***established***~~*given them*~~ in 401 KAR 50:010.

(1) "Act," "Clean Air Act," or "CAA" means 42 USC 7401 through 7671q.

(2) "Actual emissions" means the amount of a pollutant actually emitted in the calendar year immediately preceding the fiscal year during which an emissions fee is assessed, as recorded by the Kentucky Emissions Inventory System (KyEIS).

(3) "Designated representative" means a responsible person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program.

(4) "Emissions fee" means the amount of money assessed by the cabinet to fund the cost of administering the operating permit program.

(5) "Fiscal year" means the period beginning July 1 and ending the following June 30.

(6) "Hazardous air pollutant" means a pollutant listed in 401 KAR 63:060.

(7) "Kentucky emissions inventory system" or "KyEIS" means a database used by the cabinet to record, among other information, emissions of air pollutants from Kentucky sources.

(8) "Permit program" means the issuance and enforcement of permits for all sources subject to this administrative regulation.

(a) Permit program includes:

1. The review of permit applications and exemptions;
2. The issuance of permits to air pollution sources;
3. Inspections of air pollution sources;
4. Enforcement activities other than prosecutions in a court of law or administrative hearings;
5. Air quality and emissions monitoring, including quality assurance;
6. The preparation of generally applicable reports, plans, administrative regulations, and statutes;
7. Responses to inquiries;
8. Preparing inventories and tracking emissions;

9. The preparation and maintenance of records, including computerized data bases;
10. Air quality modeling, analyses, and demonstrations; and
11. Providing direct and indirect support through a small business technical assistance program.

(b) Permit program does not include:

1. The control of asbestos emissions from renovations or demolitions, or any activities required under the Asbestos Hazard Emergency Response Act (AHERA), **15 U.S.C. 2641 through 2656**;
2. The issuance of permits or the enforcement of permit conditions required only by 401 KAR 63:020, 63:021, ~~63:022~~ or any other "applicable requirement", as defined **by[in]** 401 KAR 52:001, that is not required to be federally enforceable; or
3. The control and enforcement of any activity not required to be permitted, and the enforcement of applicable requirements at any source not required to have a permit.

(9) "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or **operating under[subject to]** a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For affected sources, if requested by the source, the designated representative.

(10) "Subject emissions;

**(a)** Means actual emissions, as recorded in the Kentucky emissions inventory system, of sulfur dioxide, oxides of nitrogen, particulate matter[PM]<sub>10</sub>, lead, volatile organic compounds, hazardous air pollutants listed in ~~[401 KAR 57:061 or]~~ 401 KAR 63:060 for which a standard applies, or a pollutant subject to a standard contained in Section 111 of the Act, from an air pollution source **governed by[subject to]** this administrative regulation~~, except that actual emissions in excess of 4,000 tons of a single pollutant from a source shall not be subject emissions~~; **and**

**(b) Does not mean[.]** pollutants **governed only by[subject only to]** 42 USC 7412r (Section 112(r) of the Act), **or[and]** pollutants that are class I or class II substances under 42 USC 7671 through 7671q **that[and which]** are not otherwise regulated~~[shall not be subject emissions]~~.

Section 2. Applicability. (1) This administrative regulation shall apply to all "major sources" as defined **by[in]** 401 KAR 52:001~~[i]~~ and to the following minor sources unless a final rule exempting the minor source category from the permitting requirements of 42 USC 7661 through 7661f (Title V of the Act) has been published by the U.S. EPA:

- (a) Minor sources subject to a standard, federal regulation, or state administrative regulation promulgated pursuant to 42 USC 7411 or 7412 (Section 111 or 112 of the Act);
- (b) Minor sources required to have a permit pursuant to 42 USC 7470 through 7515 (Part C or D of Title I of the Act); and

(c) Any other minor stationary source in a category required by the U.S. EPA to obtain a permit pursuant to 42 USC 7661 through 7661f (Title V of the Act).

(2) This administrative regulation shall not apply to:

(a) Mobile sources;

(b) Sources located in an air pollution control district granted concurrent jurisdiction by the cabinet under KRS 224.20-130;

(c) An electric utility unit exempted by 42 USC 7651g, unless a substitute unit has been approved by the administrator of the U.S. EPA pursuant to 42 USC 7651c; or

(d) A substitute unit approved by the U.S. EPA pursuant to 42 USC 7651c, if the cabinet has been notified in writing at least thirty (30) days prior to the fee assessment established in Section 3(1) of this administrative regulation.[:]:]

(3) A minor source with the only applicable requirement of 40 C.F.R. Part 60, Subpart JJJJ, Subpart IIII, or 40 C.F.R. Part 63 Subpart ZZZZ, or any combination of those, which **shall be[is]** required for fire suppression purposes only as **stated[depicted]** in the source's permit when the survey is sent shall not be required to pay an emissions fee.

Section 3. Fee Assessment. (1) On or about ~~[July 1, 1994, and on or about]~~ July 1 of each ~~[succeeding]~~ year, the Division for Air Quality shall calculate and assess an annual emissions fee based on subject emissions for each air pollution source ~~governed by[subject to]~~ this administrative regulation and shall provide written notification to the source of the amount of fee due. If a pollutant qualifies as more than one (1) of the subject emissions listed in Section 1(10) of this administrative regulation, ~~the pollutant[it]~~ shall be assessed as a single subject emission.

(2) Determining subject emissions. At least four (4) months, but not more than twelve (12) months prior to assessing the emissions fee, the cabinet shall provide each source subject to the emissions fee, a written copy of the KyEIS containing the most recent information appropriate to that source.

~~(a)~~ Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its subject emissions.

~~(b)~~ The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information.

~~(c)~~ Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation.

~~(d)~~ If no response is received by the deadline, the cabinet shall estimate the subject emissions for the source based on previous actual emissions and on other ~~pertinent~~ information ~~[considered pertinent by the cabinet]~~.

(3) Fee assessment. At least sixty (60) days prior to assessing the fee, the cabinet shall determine the subject emissions for each source, based on the information provided by the source and on other information available to the cabinet.

~~(a)~~ The cabinet shall notify the source of its determination for subject emissions at least forty-five (45) days prior to assessing the fee.

~~(b)~~ Assessment of the subject emissions shall be a final determination by the cabinet.

~~(c)~~ If the source fails to notify the cabinet of an error in the determination of subject emissions within thirty (30) days after the date the determination is mailed by the cabinet, the source shall be assessed a fee based on the cabinet's determination.

~~(d)~~ If the source notifies the cabinet in a timely manner that there is an error in the determination of its subject emissions, and the cabinet disagrees with the assessment by the source, the cabinet shall notify the source, in writing, ~~stating[specifying]~~ the reasons for rejecting the error notification.

(4) Computation of emissions fee. The cabinet shall compute the emissions fee as ***established in paragraphs (a) through (c) of this subsection.***~~[follows:]~~

(a) For fiscal year 1995, the emissions fee shall be \$5,505,200, and for fiscal year 1996 the emissions fee shall be \$6,594,700. The cost per ton of the subject emissions shall be the emissions fee, minus \$150 times the number of sources subject to subsection (5)(b) of this section, divided by the total number of tons of subject emissions from all sources subject to this administrative regulation ***that[which]*** emit twenty-five (25) tons or more of subject emissions.

(b) Except as ***established[provided]*** in paragraph (c) of this subsection, the emissions fee for each succeeding fiscal year shall be \$6,594,700, adjusted annually using the method ~~[provided]~~ in 40 CFR 70.9(b)(2)(iv). The cost per ton of subject emissions shall be determined as ***established[prescribed]*** in paragraph (a) of this subsection.

(c) ~~[Notwithstanding the provisions of paragraph (b) of this subsection.]~~The emissions fee for a fiscal year may be increased by an amount greater than that calculated pursuant to 40 CFR 70.9(b)(2)(iv), may be left unchanged from the previous fiscal year, or may be decreased from the previous fiscal year if the cabinet determines after public hearing and after approval by the U.S. EPA that the increase is necessary, or the same or lesser amount is adequate, to cover all reasonable costs of administering the permit program.

(5) Payment of fees.

(a) A source subject to this administrative regulation ***that[which]*** emitted twenty-five (25) tons or more of subject emissions shall pay a portion of the emissions fee which shall be determined by multiplying the subject emissions from the source, expressed in tons to the nearest ton, by the cost per ton of subject emissions, and subtracting from that amount any portion of unexpended emissions fees ***that[which]*** are carried forward from the previous year in an amount proportional to that paid by the source during the previous year. The source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the fee invoice is mailed.

(b) A source subject to this administrative regulation ***that[which]*** emitted less than twenty-five (25) tons of subject emissions shall pay an annual fee of \$150. The source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the fee invoice is mailed.

(c) The fee invoice shall be mailed to the permit holder of record as of the date the invoice is mailed, and the permit holder shall be responsible for payment.

(6) Enforcement.

(a) Each day after the deadline for payment of the source's portion of the emissions fee during which the source fails to pay the fee shall be a separate violation of this administrative regulation.

(b) Failure to pay the fee within ninety (90) days after the date on which the cabinet notifies the source of the amount of fee due shall result in:

1. An increase in the fee of an additional fifty (50) percent of the original amount due, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986, ***26 U.S.C. 6621(a)(2)*** (relating to computation of interest on underpayment of federal taxes); and

2. Suspension of the source's permit until the fee is paid or until ~~[the cabinet has approved]~~a schedule of payment ***has been agreed upon between the source and the cabinet.***

Section 4. Use of Fees. All fees collected pursuant to this administrative regulation shall be deposited in a trust and agency account and shall be used solely for funding the permit program.