

#### **4 KAR 1:010. General Compliance with Federal Tax Laws.**

RELATES TO: KRS 6.500, 6.505, 6.515, 6.520, 6.521, 6.525, 6.530, 6.535, 6.575, 6.577, 21.345, 21.347, 21.350, 21.357, 21.360, 21.370, 21.375, 21.380, 21.385, 21.400, 21.402, 21.405, 21.410, 21.415, 21.420, 21.425, 21.427, 21.440, 21.450, 21.460, 21.470, 21.480, 21.510, 21.525, 21.530, 21.540, 21.550, 21.560, 21.570, 26 U.S.C. 401(a)(8), (17), (25), (37), 401(h), 26 U.S.C. 414(u), 29 U.S.C. 623(i), and 38 U.S.C. 4301-4334

STATUTORY AUTHORITY: KRS 21.402, 21.530, 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.540(3) authorizes the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes requirements to ensure compliance with federal tax laws.

Section 1. Definitions. (1) "Differential wage payment" is defined by 26 U.S.C. 3401(h)(2).

(2) "Plan" means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. Compliance with 26 U.S.C. 401(a)(8) for Forfeitures. In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan shall not be used to pay benefit increases.

Section 3. Compliance with 26 U.S.C. 401(a)(17) for Compensation Limit. (1) For years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any plan year shall not exceed \$200,000. This limitation shall be adjusted at the same time and in the same manner as under 26 U.S.C. 415(d), except that the dollar increase in effect on January 1 of any calendar year shall be effective for plan years beginning with or within that calendar year, and the first adjustment to the \$200,000 limitation shall be effective on January 1, 1990.

(2)(a) For years beginning on or after January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any determination period shall not exceed \$150,000, as adjusted for the cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(b) For plan years beginning on or after January 1, 2002, the annual compensation of each member taken into account in determining all benefits provided under the Plans for any determination period shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(c) The cost-of-living adjustment in effect for a calendar year shall apply to any determination period beginning with or within that calendar year.

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

(a) For this purpose, in determining benefits in plan years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation limit in effect for determination periods beginning before January 1, 1989 shall be \$200,000.

(b) In determining benefits in plan years beginning on or after January 1, 1994, and before January 1, 2002, the annual compensation limit in effect for determination periods beginning

before January 1, 2002 shall be \$150,000.

(c) In determining benefits in plan years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date shall be \$200,000.

Section 4. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Judicial Form Retirement System shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by resolution. Plan benefits shall not be subject to employer discretion.

Section 5. Compliance with 26 U.S.C. 401(h). (1) No diversion. At any time prior to the satisfaction of all liabilities under the Plan to provide for the payment of medical benefits described in 26 U.S.C. 401(h), the corpus or income of the medical benefits account shall not be used for, or diverted to, any purpose other than the providing of Plan benefits.

(2) Reversion. Any amounts which are contributed to fund medical benefits described in 26 U.S.C. 401(h) and which remain in the medical benefits account upon the satisfaction of all liabilities arising out of the operation of the medical benefits portion of the Plan shall be returned to the Commonwealth.

(3) Forfeitures. If a member's interest in the medical benefits account is forfeited prior to termination of the Plan, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce contributions to fund the medical benefits described in 26 U.S.C. 401(h).

(4) Despite the definition of the dependent in KRS 21.427(1)(b), and as required by KRS 21.540(3) to implement federal requirements, including 26 U.S.C. 401(a) and for purposes of the Plans' 401(h) retiree medical benefits account, the term "dependent" means any individual who is a child (as defined in 26 U.S.C. 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age twenty-seven (27).

(5)(a) The health benefits of the 401(h) account shall be subordinate to the retirement benefits provided by the Plans.

(b) No life insurance protection is provided by the Plans.

(c) The requirement in paragraph (a) of this subsection shall be satisfied if the actual contributions to the 401(h) accounts established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the Plans.

(d) The determination of contributions shall be made on an aggregate basis since the inception of the 401(h) arrangement.

(6) The mandatory contribution established by the Plans shall be reasonable and ascertainable in accordance with 26 C.F.R. 1.401-14(c)(3).

Section 6. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. (1) Effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334.

(2) Effective for deaths on or after January 1, 2007, if a member dies while performing qualified military service (as defined in 26 U.S.C. 414(u)), the survivors of the member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) under the Plans had the member resumed and then terminated employment on account of death.

(3) Effective for Plan Years beginning on or after July 1, 2009, to the extent permitted by 26 U.S.C. 414(u)(12), an individual receiving a differential wage payment shall be treated as an

employee of the employer making the payment, and the differential wage payment shall be treated as compensation solely for Internal Revenue Code purposes and not for determining Plan benefits.

Section 7. Compliance with 29 U.S.C. 623(i). Termination Requirements. Upon termination of the Plan, the interest rate and mortality table used to determine the amount of any benefit under the Plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the Plan for such purpose as of the termination date.

Section 8. Hybrid Cash Balance Plan. This section shall apply solely to the hybrid cash balance benefit tier of the Plan under KRS 21.402.

(1) Geometric Average Net Investment Return. The Plan's geometric average net investment return shall be computed in accordance with KRS 21.402 and based on returns generated by assets of the individual Plan's segregated hybrid cash balance benefit tier to the extent such assets are segregated for investment purposes.

(2) Refund. Refunds may be requested at any time in accordance with KRS 21.402 and shall be paid as soon as administratively practicable following qualification for refund and request of the member. A partial refund shall not be permitted.

(3) Establishment of Hypothetical Accumulated Account Balance.

(a) A member's accumulated account balance shall be a hypothetical account for bookkeeping purposes only. The maintenance or the adding of credits to the hypothetical accumulated account balance shall not be construed as:

1. An allocation of assets of the Plan to, or a segregation of such assets in, any such hypothetical accumulated account balance; or

2. Otherwise creating a right for any member to receive specific assets of the Plan.

(b) Benefits provided under the cash balance benefit tier shall be paid from the assets of the applicable Plan.

(c) Interest credits shall not accrue to any portion of the hypothetical accumulated account balance after the annuity starting date that applies to that portion. (37 Ky.R.872; 1168; eff. 12-3-2010; 43 Ky.R. 2176; 44 Ky.R. 210; eff. 9-1-2017.)