

4 KAR 1:040. Limitation on Benefits.

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)(16), 415

STATUTORY AUTHORITY: KRS 21.402, KRS 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.402(8) and 21.540(3) authorize the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations to administer the provisions of the hybrid cash balance benefit tier and, 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 for the administration of testing contribution and benefit limits in accordance with 26 U.S.C. 415.

Section 1. Definitions. (1) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "415(d) limit" means the limitation on cost of living adjustments established by 26 U.S.C. 415(d).

(4) "Annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)), and with the benefit attributable determined in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1.

(5)(a) "Permissive service credit" means service credit:

1. Recognized by the Plan for purposes of calculating a member's benefit under the Plan;
2. Which the member has not received under the Plan; and
3. Which the member shall receive only by making a voluntary additional contribution, in an amount determined under the Plan, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the Plan.

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

Section 2. This administrative regulation shall apply to the Plans as of July 1, 2007. Subject to the provisions of this administrative regulation, benefits paid from, and employee contributions made to, these Plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415 and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

Section 3. Basic 415(b) and 415(d) Limitations. (1) A member shall not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1 and subject to any additional limits that are specified in this administra-

tive regulation.

(2) A member's annual benefit payable in any limitation year from a Plan shall not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and the Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

(3) If a member has had a severance from employment in any previous or subsequent year, the member's annual benefit, including any cost of living increases, shall be tested under the then applicable 415(d) limit, including, any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d) and the Treasury Regulations located in 26 C.F.R. 1.415(d)-1.

Section 4. Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the Plan is other than the form specified in Section 3 of this administrative regulation, the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations located in 26 C.F.R. 1.415(b)-1. For limitation years after December 31, 2008, for purposes of adjusting any benefit or limitation under 26 U.S.C. 415(b)(2)(B), (C) and (D), the mortality table used shall be the applicable mortality table within the meaning of 26 U.S.C. 417(e)(3)(B).

Section 5. Benefits Not Taken into Account for 415(b) Limit. For purposes of this administrative regulation, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity if the annuity is a qualified joint and survivor annuity; or

(3) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations located in 26 C.F.R. 1.415(b)-1 to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 6. Other Adjustments in 415(b) limitation. (1) If the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this administrative regulation shall be reduced in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1 pursuant to the provisions of 26 U.S.C. 415(b), so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to a \$160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) The reductions provided for in subsection (1) of this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 7. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations. (1) The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under Section 4 of this administrative regulation multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10).

(2) The reduction provided by this section shall not reduce the maximum benefit below ten (10) percent.

(3) The reduction provided by this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 8. Service Purchases Under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under the Plan, the

requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, the Plan shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3) The Plan shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this section before the member has at least five (5) years of participation under the Plan.

(4) For purposes of subsection (3) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, nonqualified service credit shall be the permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service as an employee (other than as an employee described in paragraph (a) of this subsection) of an educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the Plan.

(5) For service described in subsection (4)(a), (b), or (c) of this section, the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.

(6) For a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(a) The limitations of subsection (3) of this section shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable to the Plan shall apply to these amounts and any benefits attributable to these amounts.

Section 9. Repayments of Cashouts. Any repayment of contributions (including interest) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit under the Plan or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits. (37 Ky.R. 877; 1168; eff. 12-3-2010; 43 Ky.R. 2178; 44 Ky.R. 211; eff. 9-1-2017.)