

Technical Amendment
June 11, 2019

105 KAR 1:400. Federal taxation limitation year.

RELATES TO: KRS 61.645(9)(e)

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 and to conform to federal statutes and regulations. This administrative regulation concerns the administration of testing contribution and benefit limits in accordance with 26 U.S.C. Section 415.

Section 1. Definitions.

- (1) "Fiscal year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).
- (2) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).
- (3) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

Section 2. The "fiscal year" shall be the limitation year as set out in 26 U.S.C. Section 415 for determining contribution and benefit limits in the plans administered by the Kentucky Retirement Systems.

Section 3. This administrative regulation shall apply to all plans administered by Kentucky Retirement Systems. 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.

Section 4. Participation in Other Qualified Plans: Aggregation of Limits. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a KRS plan shall apply as if the total benefits payable under all those defined benefit plans in which the member has been a member were payable from one (1) plan.

Section 5. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a KRS plan shall apply as if the total annual additions under all those defined contribution plans in which the member has been a member were payable from one (1) plan.

Section 6. Basic 415(b) Limitation. On and after January 1, 1995, 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 subject to any additional limits that are specified in this section. A member's annual benefit payable in any limitation year from a KRS 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 26 C.F.R. 1.415(d)-1.

Section 7. Definition of Annual Benefit. For purposes of 26 U.S.C. 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with 26 C.F.R. 1.415(b)-1(b)(2).

Section 8. Adjustments to Basic 415(b) Limitation for Form of Benefit.

(1) If the benefit under a KRS plan is other than the form specified in Section 6 of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in 26 C.F.R. 1.415(b)-1(c).

(2) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subsection (1) of this section shall be applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)

(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply a monthly benefit, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the KRS plan commencing at the same annuity starting date as the form of benefit to the member; or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption), and:

a. On or before December 31, 2008, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B), (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)); or

(b) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) applies a lump sum benefit, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the KRS plan for actuarial experience;

2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption), and:

a. On or before December 31, 2008, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)); or

3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the thirty (30) year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement,

and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one (1) year stabilization period)); and:

- a. On or before December 31, 2008, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05; or
- b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)) divided by 1.05.

Section 9. Benefits Not Taken into Account for 415(b) Limit. (1) 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 and that constitutes a qualified joint and survivor annuity;
- (3) Any other benefit not required under 26 U.S.C. 415(b)(2) and 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 10. 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 section shall be reduced in accordance with 26 C.F.R. 1.415(b)-1(d), 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) If the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in subsection (1) of this section shall not apply.
- (3) The reductions provided for in subsection (1) of this section shall not apply to preretirement disability benefits or preretirement death benefits.

Section 11. Less than Ten (10) Years of Participation. The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation in a system shall be the amount determined under Section 6 of this administrative regulation as adjusted under Sections 8 or 10 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). The reduction provided by this section shall not reduce the maximum benefit below ten (10) percent of the limit determined without regard to this section. The reduction provided by this section shall not apply to preretirement disability benefits or preretirement death benefits.

Section 12. \$10,000 Limit Less than Ten (10) Years of Service. Notwithstanding anything in this administrative regulation to the contrary, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this section if the benefits payable, with respect to the member under a KRS plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated. If the member has completed less than ten (10) years of service with the employer, the limit under this section shall be a reduced limit equal to \$10,000 multiplied by a fraction, the numerator of which is the number of years of service the member has and the denominator of which is ten (10).

Section 13. Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on and after January 1, 2003, for purposes of applying the 415(b) limit to a member with no lump sum benefit, the following shall apply:

- (1) A member's applicable 415(b) limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;
- (2) To the extent that the member's annual benefit equals or exceeds the Limit, the member shall not be eligible for cost of living increases from the funds created by KRS 16.510, 61.515, 78.520, until the time that the benefit plus the accumulated increases are less than the 415(b) limit; and
- (3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d), and 26 C.F.R. 1.415(b)-1(d). The provisions of this section shall not prevent the member receiving benefits from the funds created by KRS 16.568, 61.663, and 78.652.

Section 14. Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit shall be applied taking into consideration cost of living increases as required by 26 U.S.C. 415(b) and 26 C.F.R. 1.415(b)-1.

Section 15. 415(c) Limit. After-tax member contributions or other annual additions with respect to a member shall not exceed the lesser of \$40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100 percent of the member's compensation.

(1) Annual additions shall mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account. Member contributions shall be determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation if applicable shall be compensation actually paid or made available during a limitation year, except as noted in subsection (3) of this section and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; except that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another definition of compensation that is permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, is specified by a KRS plan, compensation shall be defined as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under 26 U.S.C. 6041(d), 6051(a) (3), and 6052 and shall be determined without regard to any rules under 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a) However, for limitation years beginning on and after January 1, 1998, compensation shall also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of two and one-half (2

1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is:
 - a. Regular compensation for services during the employee's regular working hours;
 - b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or
 - c. Commissions, bonuses, or other similar payments; and
2. Absent a severance from employment, the employee would have been able to use the payments (including unused accrued bona fide sick, vacation or other leave) if employment had continued.

(c) Any payments not described in paragraph (b) of this subsection shall not be considered compensation if paid after severance from employment, even if they are paid within two and one half (2 1/2) months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of 26 U.S.C. 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service. An employee who is in qualified military service (within the meaning of 26 U.S.C. 414(u)(1)) shall be treated as receiving compensation from the employer during the period of qualified military service equal to:

1. The compensation the employee would have received during the period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or
2. If the compensation the employee would have received during the period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(d) Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Section 16. 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 a KRS plan, then 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, a KRS 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)

- (a) For purposes of this section the term "permissive service credit" shall mean service credit:
1. Recognized by a KRS plan for purposes of calculating a member's benefit under a KRS plan;
 2. Which the member has not received under a KRS plan; and
 3. Which the member may receive only by making a voluntary additional contribution, in an amount determined under a KRS 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 a KRS plan.
- (4) The KRS 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 a KRS plan.
- (5) For purposes of subsection (4) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" shall mean 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 education 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 KRS plan.
- (6) For service described in subsection (5)(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.
- (7) 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 (4) shall 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 under federal law to a KRS plan shall apply to these amounts and any benefits attributable to these amounts.
- (8) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a KRS plan as in effect on August 5, 1997. For purposes of this subsection an eligible member shall be an individual who first became a member in a KRS plan before January 1, 1998.

Section 17. Modification of Contributions for 415(c) and 415(n) Purposes. The department may modify a request by a member to make a contribution to a KRS plan if the amount of the contribution would exceed the limits provided in Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, Kentucky Retirement Systems may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to subsection (1) of this section will not avoid a contribution in excess of the limits imposed by 26 U.S.C. 415(c) or 415(n), Kentucky Retirement Systems may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 18. Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the KRS plan with respect to an amount previously refunded upon a forfeiture of service credit under the KRS plan or another governmental plan maintained by the State or a local government within the state shall not be taken into account for purposes of the 415(b) or (c) limits.

(35 Ky.R. 1096; Am. 1723; eff. 2-6-2009; 39 Ky.R. 68; 750; eff.10-24-2012; TAm eff. 6-11-2019; Crt eff. 6-11-2019.)