

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 1:270. Federal tax withholding or direct rollover of eligible distributions.

RELATES TO: KRS 16.505, 16.578, 16.645, 61.505(1)(g), 61.510, 61.625, 61.635, 61.640, 61.690, 78.510, 78.545, 26 U.S.C. 72(t), 401(a), 402

STATUTORY AUTHORITY: KRS 61.505(1)(g)

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 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852. 26 U.S.C. 402 establishes the federal taxation requirements regarding direct rollovers of distributions and the withholding of federal income tax on distributions that are not rolled over to an IRA or other qualified plan. This administrative regulation establishes the procedure for informing affected members, beneficiaries, and alternate payees of their rights with regard to federal taxation rules and provides forms for members, beneficiaries, and alternate payees to indicate their preference for federal tax withholding or direct rollover of eligible distributions. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not file the form required for federal income tax purposes within a reasonable time, and a procedure in the event that an alternate payee cannot be located.

Section 1. Definitions.

- (1) "Beneficiary" means a person designated by the member in accordance with KRS 61.542 and 78.545 to receive any available benefits in the event of the member's death. The "beneficiary" may be different from the person designated as the death benefit beneficiary.
- (2) "Death benefit beneficiary" means a person designated by the member in accordance with KRS 61.705 and 78.5538 to receive the five thousand dollar (\$5,000) death benefit in the event of the member's death. The "death benefit beneficiary" may be different from the person designated as the beneficiary.
- (3) "Eligible beneficiary" means a person who:
 - (a) Meets the eligibility qualifications for in-line-of-duty death benefits as provided by KRS 16.601(1)-(3) and 78.5534(1)-(3) or duty-related death benefits as provided by KRS 61.621(3) and 78.545; and
 - (b) Elects, or has a parent or guardian who elects on his or her behalf, the payment option for benefits that includes the one-time payment of ten thousand dollars (\$10,000) in accordance with KRS 16.601(1)(b) or (3) and 78.5534(1)(b) or (3) or 61.621(3)(b) and 78.545.

Section 2. Application for Refund of Accumulated Account Balance.

- (1)
 - (a) To apply for a refund of an accumulated account balance in accordance with KRS 61.625 and 78.545, a member shall complete and file a valid Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, selecting the option for payment.
 - (b) If the member intends to have the funds from the refund of an accumulated account balance rolled over directly into an IRA or other qualified plan, the member shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 4525, Application for Refund of Member Contributions

and Direct Rollover/Direct Payment Selection, certifying that the rollover will be accepted.

(c) The employer(s) may complete the applicable portion of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, verifying termination of employment.

(2) Upon request by the member, the agency shall provide the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, and a copy of the Special Tax Notice Regarding Payments, to the member.

(3)

(a) The refund of the accumulated account balance shall not be processed unless the member is eligible to receive a refund pursuant to KRS 61.625 and 78.545 and the valid Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, is filed.

(b) The refund of the accumulated account balance shall not be processed earlier than forty-five (45) calendar days from the date of the member's termination of employment with the participating employer(s) that previously employed the member.

(c)

1. The member's refund of the accumulated account balance shall not be processed if within forty-five (45) calendar days of the date of the member's termination of employment with the employer(s):

a. The member reemploys in any position, including a full-time, part-time, seasonal, temporary, emergency, interim, probationary, or intermittent position with one (1) or more employer(s) through which he or she has participated; or

b. The member participates in the system(s) from which his or her accumulated account balance refund has been requested.

2. A member whose accumulated account balance refund is not processed pursuant to subparagraph 1. of this paragraph may reapply for a refund in accordance with subsection (1) of this section if the member again becomes eligible to receive a refund of his or her accumulated account balance pursuant to KRS 61.625 and 78.545.

(4) The member shall be required to repay the accumulated account balance refund to the systems in compliance with KRS 61.685(1) and 78.545 if, at the time of the member's receipt of the accumulated account balance refund, the member is:

(a) Reemployed in any position, including a full-time, part-time, seasonal, temporary, emergency, interim, probationary, or intermittent position, with one (1) or more employer(s) through which he or she participated; or

(b) Participating in the system from which the accumulated account balance refund was been requested.

Section 3. Required Form for Member Selection of an Actuarial Refund Retirement Payment Option, Lump-sum Refund of the accumulated account balance, or Partial Lump-sum Retirement Payment Option.

(1) Along with each Form 6010, Estimated Retirement Allowance, the agency shall provide the member with the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, and the Special Tax Notice Regarding Payments.

(2)

(a) If the member files a valid Form 6010, Estimated Retirement Allowance, on which an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option is selected, the member shall also file a valid Form 6025, Direct Rollover/Direct Payment Election

Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, selecting the option for payment.

(b) If the member intends to have the funds rolled over directly into an IRA or other qualified plan, the member shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3) The agency shall not process payment of an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option to the member unless the following are on file:

(a) A valid Form 6010, Estimated Retirement Allowance, with the actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement option for payment selected; and

(b) A valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

Section 4. Required Form for Beneficiary Selection of Lump-sum Payment Option or Sixty (60) Months Certain Payment Option, or if Beneficiary Eligible for Lump-sum Refund of the Accumulated Account Balance Only.

(1) Single beneficiary.

(a)

1. Along with each Form 6010, Estimated Retirement Allowance, the agency shall provide the beneficiary with the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, and the Special Tax Notice Regarding Payments.

2. If the beneficiary is only eligible for a lump-sum refund of the deceased member's accumulated account balance, the agency shall provide the Form 6025, Direct Rollover, Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding Eligible Rollover Distribution, and the Special Tax Notice Regarding Payments, to the beneficiary.

(b)

1. If the beneficiary files a valid Form 6010, Estimated Retirement Allowance, on which a lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option is selected, or if the beneficiary is only eligible for a lump-sum refund of the deceased member's accumulated account balance, the beneficiary shall also file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, selecting the option for payment.

2. If the beneficiary intends to have the funds rolled over directly into an IRA or other qualified plan, the beneficiary shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(c) The agency shall not process payment to the beneficiary of a lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option unless the following are on file:

1. A valid Form 6010, Estimated Retirement Allowance, with the actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option selected; and

2. A valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(2) Multiple beneficiaries.

(a) If there are multiple beneficiaries and the beneficiaries have elected a lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option, all beneficiaries must agree to the option for payment selected and file a single valid Form 6010, Estimated Retirement Allowance, indicating the selection agreed upon, and signed by all beneficiaries. Each beneficiary shall also file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(b) If there are multiple beneficiaries and the beneficiaries are only eligible for a lump-sum refund of the deceased member's accumulated account balance, each beneficiary shall file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(c) Any beneficiary that intends to have his or her portion of the funds rolled over directly into an IRA or other qualified plan shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(d) The agency shall not process payment of a lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option to a beneficiary unless the following are on file for all beneficiaries:

1. A single valid Form 6010, Estimated Retirement Allowance, completed in accordance with paragraph (a) of this subsection, if applicable; and

2. A valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, for each beneficiary completed in accordance with paragraphs (b) and (c) of this subsection.

(3) This section solely establishes the forms and requirements for beneficiaries related to direct rollovers of distributions and the withholding of federal income tax on distributions that are not rolled over to an IRA or other qualified plan. Beneficiaries subject to this section may also be subject to additional requirements under 105 KAR 1:180 and 105 KAR 1:240...]

Section 5. Required Form for Death Benefit Beneficiaries.

(1) Upon a member's death, the agency shall provide the Form 6025, Direct Rollover, Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding Eligible Rollover Distribution, and the Special Tax Notice Regarding Payments, to the death benefit beneficiary.

(2)

(a) The death benefit beneficiary shall file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(b) If the death benefit beneficiary intends to have the funds rolled over directly into an IRA or other qualified plan, the death benefit beneficiary shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3) Payment to the death benefit beneficiary shall not be processed unless the member is deceased and the valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed.

(4) This section solely establishes the forms and requirements for death benefit beneficiaries related to direct rollovers of distributions and the withholding of federal income tax on distributions that are not rolled over to an IRA or other qualified plan. Death benefit beneficiaries subject to this section may also be subject to additional requirements under 105 KAR 1:240.

Section 6. Required Form for Eligible Beneficiaries.

(1) The agency shall provide the Form 6025, Direct Rollover, Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding Eligible Rollover Distribution, and the Special Tax Notice Regarding Payments, to the eligible beneficiary.

(2)

(a) The eligible beneficiary shall file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(b) If the eligible beneficiary intends to have the funds rolled over directly into an IRA or other qualified plan, the eligible beneficiary shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3) Payment to the eligible beneficiary shall not be processed unless the member is deceased and the valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed.

(4) This section solely establishes the forms and requirements for eligible beneficiaries related to direct rollovers of distributions and the withholding of federal income tax on distributions that are not rolled over to an IRA or other qualified plan. Eligible beneficiaries subject to this section may also be subject to additional requirements under 105 KAR 1:457.

Section 7. Required Form for Alternate Payee who is Eligible for Actuarial Refund or Partial Lump-sum Payment Option, or Eligible for a Portion of the Lump-sum Refund, Partial Lump-sum, or Actuarial Refund Retirement Payment Option selected by the Member.

(1) If the alternate payee is eligible for a lump-sum portion of the member's accumulated account balance, actuarial refund, or partial lump-sum payment option pursuant to a qualified domestic relations order, or an actuarial refund or partial lump-sum payment option pursuant to a qualified domestic relations order, the agency shall provide the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, and the Special Tax Notice Regarding Payments, to the alternate payee.

(2)

(a) To receive a lump-sum portion of the member's accumulated account balance, actuarial refund, or partial lump-sum payment option pursuant to a qualified domestic relations order, or to receive an actuarial refund or partial lump-sum payment pursuant to a qualified domestic relations order, the alternate payee shall file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(b) If the alternate payee intends to have the funds described in paragraph (2)(a) of this subsection rolled over directly into an IRA or other qualified plan, the alternate payee shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3) The payment to an alternate payee of an actuarial refund or lump-sum refund pursuant to a qualified domestic relations order, or a portion of the member's accumulated account balance, actuarial refund, or partial lump-sum payment option pursuant to the qualified domestic relations order shall not be processed until the valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed.

(4)

(a) If the alternate payee does not file the valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, by the end of day thirty (30) calendar days from the date the form and the Special Tax Notice Regarding Payments were provided to the alternate payee, the alternate payee's payment shall be processed and treated for federal income tax purposes as if the alternate payee had made an election to directly receive the funds instead of rolling over the payment to an IRA or other qualified plan.

(b)

1. The agency shall hold the amount payable to the alternate payee under this section for at least 180 calendar days after the payment becomes payable.

2. The agency shall make all reasonable efforts to locate the alternate payee during the 180 calendar days, and shall make payment to the alternate payee if he or she is located within that period.

3. If the alternate payee has not been located during the time period described in subparagraph 1. of this paragraph and the agency has exhausted all reasonable efforts to locate the alternate payee, the agency shall pay the payment held to the member and shall assign the federal tax liability for this payment to the member. Interest shall not accrue on this lump-sum payment during the 180 calendar day period or thereafter. If the alternate payee is subsequently located, any amounts already paid to the member shall no longer be payable to the alternate payee.

Section 8. Optional Form for Qualified Public Safety Employee electing to receive an Actuarial Refund Retirement Payment Option, Lump-sum Refund, Partial Lump-sum Refund, or Ten (10) Year Certain Retirement Payment Option.

(1) A member who was last employed as a "qualified public safety employee" as defined in 26 U.S.C. Internal Revenue Code, Section 72(t), and who is electing to receive an actuarial refund, lump-sum refund of the accumulated account balance, partial lump-sum refund, or the ten (10) years certain option, shall not be subject to the ten (10) percent early distribution tax penalty if the member files the following valid forms:

(a) The Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t); and

(b) The Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(2) Upon request by the member, the agency shall provide the Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), to the member.

Section 9. Optional Form for Greater Federal Tax Withholding.

- (1)
 - (a) If the member does not elect to have the refund of the accumulated account balance rolled over directly into an IRA or other qualified plan, except as provided in paragraph (b) of this subsection, twenty (20) percent for federal taxes shall be withheld from funds paid to a member who files a valid Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, in accordance with Section 2 of this administrative regulation.
 - (b) If the member wants to withhold more than the mandatory twenty (20) percent of the funds for federal taxes, the member shall file a valid Form 6028, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions.
- (2)
 - (a) If the member, beneficiary, death benefit beneficiary, eligible beneficiary, or alternate payee does not elect to have the funds rolled over directly into an IRA or other qualified plan, except as provided in paragraph (b) of this subsection, twenty (20) percent for federal taxes shall be withheld from funds paid to the member, beneficiary, or alternate payee who files a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, in accordance with Sections 3 through 7 of this administrative regulation.
 - (b) If the member, beneficiary, death benefit beneficiary, eligible beneficiary, or alternate payee wants to withhold more than the mandatory twenty (20) percent of the funds for federal taxes, the member, beneficiary, or alternate payee shall file a valid Form 6028, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions.
 - (c) If an invalid, incomplete, or incorrect Form 6028, "Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions," is filed, the agency shall notify the person who filed the incomplete or incorrect Form 6028 that he or she has until the end of day forty-five (45) calendar days from the date of notification to file a corrected valid Form 6028, or the funds will be paid with the regular twenty (20) percent withholding for federal taxes.

Section 10. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Special Tax Notice Regarding Payments", July 2023;
 - (b) Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection", April 2021;
 - (c) Form 4527, "Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t)", September 2023;
 - (d) Form 6010, "Estimated Retirement Allowance", April 2021;
 - (e) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution", April 2021; and
 - (f) Form 6028, "Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions", November 2022.
- (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.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: September 28, 2023

FILED WITH LRC: September 29, 2023 at 2:55 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Thursday, December 21, 2023, at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

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