

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 2:420. 401(h) account established under 26 U.S.C. 401(h).

RELATES TO: KRS 16.510, 16.555, 61.505(1)(g), 61.515, 61.701, 61.702, 78.520, 78.5536(3), 78.630, 78.782, 26 U.S.C. 401(h)~~[61.645(9)(e)]~~

STATUTORY AUTHORITY: KRS 61.505, 61.702, 61.645(9)(e)

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with KRS 13A.150(2) because it does not have a major economic impact.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority on behalf of Kentucky Retirement Systems and County Employees Retirement System~~[61.645(9)(e)]~~ requires the ~~Board of Trustees of Kentucky Retirement Systems~~ to promulgate~~[all]~~ administrative regulations that are consistent with and necessary or proper~~[in order]~~ to carry out the provisions of KRS 61.505~~[61.510]~~ to 61.705, 16.505 to 16.652, and 78.510 to 78.852 and to conform to federal statutes and regulations. Pursuant to KRS 61.701, 61.702(3) and (4)~~[the provisions of KRS 61.702(2)(b)(5), as amended by 2008 Extra Sess. Ky. Acts ch. 1, sec. 24 and of KRS] 61.645, and 78.5536~~, this administrative regulation establishes~~[, effective September 1, 2008,]~~ a separate 401(h) account under 26 U.S.C. 401(h) within~~[each of the following:]~~ the Kentucky Employees Retirement System Trust Fund, the State Police Retirement System Trust Fund, and the County Employees Retirement Trust Fund.

Section 1. Definitions.

(1) "Dependent" is defined by~~[the Internal Revenue Code,]~~ 26 U.S.C. 152, excluding subsections (b)(1), (b)(2), and (d)(1)(B).

(2) "Insurance trust" means the Kentucky Retirement Systems insurance trust established in KRS 61.701 or a County Employees Retirement System Trust established in KRS Chapter 78 .

(3) ~~[(2)]~~ "Medical expense" means expense for medical care as defined by 26 U.S.C. Section 213(d)(1)~~[213(e)(1) of the Internal Revenue Code].~~

(4) ~~[(3)]~~ "Retired", for purposes of eligibility to receive the medical benefits established~~[described]~~ in 26 U.S.C. 401(h), means an employee who:

(a) Is ~~[An employee is]~~ eligible to receive benefits under the Kentucky Retirement Systems or County Employee Retirement Systems;

(b) Is ~~[The employee is]~~ not still employed by the employer; and

(c) Has separated from employment ~~[A separation from employment has occurred].~~

~~[(4)]~~ ~~["Systems" means the retirement systems administered by Kentucky Retirement Systems.]~~

Section 2. The purpose of the 401(h) account established pursuant to 26 U.S.C. 401(h) in each of the systems shall be to pay part of the subsidy for health benefits that are otherwise payable from the insurance trust. The 401(h) account shall be used only to the extent that funds are not available from the insurance trust or if the Board determines that an employer's participation in the insurance trust conflicts with federal statute or regulations and risks disqualification of a plan or the insurance trust pursuant to 26 U.S.C. 115 or 401(a). ~~[The purpose of the 401(h) account established under 26 U.S.C. 401(h) in each of the systems shall be to pay part of the subsidy for health benefits that are otherwise payable from the health insurance fund. The 401(h) account shall be used only to the extent that funds are not available from the health insurance fund.]~~

Section 3.

(1) The ~~one (1) percent~~ mandatory contribution established in KRS 61.702(3) and KRS 78.5536(3) ~~by KRS 61.702(2)(b)~~ shall be deposited in the insurance trust if the employer is eligible to participate in the insurance trust ~~separate account of each system trust fund, respectively~~.

(2) The mandatory contribution established in KRS 61.702(3) or 78.5536(3) shall be deposited in the 401(h) account of the respective system trust fund if the employer is not eligible to participate in the insurance trust.

(3) These contributions are ~~reasonable~~ to pay medical expenses as required by 26 C.F.R. 1.401-14(c)(3).

Section 4. The health benefits shall be subordinate to the retirement benefits provided by the systems. ~~[(No life insurance protection is provided by any system.)]~~ This requirement shall not be satisfied unless 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 systems excluding contributions to fund past service credit ~~(other than contributions to fund past service credits)~~, determined on an aggregate basis since the inception of the 401(h) accounts established under 26 U.S.C. 401(h).

Section 5. Amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall:

(1) Be for ~~be~~ for the exclusive purpose of paying medical expenses for retirees, their spouses, and dependents;

(2) Not ~~Amounts in the 401(h) accounts established under 26 U.S.C. shall not~~ be diverted for other purposes; and

(3) Upon dissolution of the 401(h) account ~~;~~

~~Section 6. Any amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall~~ revert to the employers upon satisfaction of all liabilities for medical benefits.

Section 6. ~~Section 7.~~ Employees shall not have an individual interest in the 401(h) accounts established under 26 U.S.C. 401(h).

Section 7. ~~Section 8.~~ The 401(h) accounts established under 26 U.S.C. 401(h) may be commingled with the pension assets of the trust funds for investment purposes. Investment earnings shall be credited to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

Section 8. ~~Section 9.~~ Administrative and other expenses shall be charged to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

*105 KAR 2:420 401(h) account established under 26 U.S.C. 401(h). Is approved for filing.
RYAN BARROW, Executive Director*

APPROVED BY AGENCY: September 25, 2026

FILED WITH LRC: September 29, 2026 at 8:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2026 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 (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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

through December 31, 2026 and shall receive the same consideration as verbal comments. 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.

CONTACT PERSON: Carole J. Catalfo, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 696-8679, Fax (502) 696-8615, Email: Legal.Non-Advocacy@kyret.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Carole J. Catalfo, **Phone:** (502) 696-8679, **Email:** Legal.Non-Advocacy@kyret.ky.gov

Subject Headings:Retirement and Pensions, State Employees

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes an account pursuant to 26 U.S.C. Section 401(h) (i.e., a "401(h)" account) for receipt of mandatory employee contributions made by members of the Kentucky Retirement Systems and the County Employees Retirement System if the employer is not eligible to participate in the insurance trust.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish and maintain the 401(h) account for receipt of a mandatory employee contribution made by members of the Kentucky Retirement Systems and members of the County Employees Retirement System to pay part of the health benefit subsidy if the Board determines an employer's participation in the insurance trust conflicts with federal statute or regulations, and risks disqualification of a plan or the insurance trust pursuant to 26 U.S.C. 115 or 26 U.S.C. 401(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 61.645(9)(e) authorizes the Kentucky Public Pensions Authority on behalf of Kentucky Retirement Systems and County Employees Retirement System to promulgate administrative regulations that are consistent with and necessary or proper to carry out the provisions of KRS 61.505 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 and to conform to federal statutes and regulations. Pursuant to KRS 61.701, 61.702(3) and (4), 61.645, and 78.5536, this administrative regulation establishes a separate 401(h) account under 26 U.S.C. 401(h) within the Kentucky Employees Retirement System Trust Fund, the State Police Retirement System Trust Fund, and the County Employees Retirement Trust Fund for receipt of mandatory employee contributions if the employer's participation in the insurance trust conflicts with federal statutes or regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by establishing and maintaining a separate 401(h) account within the KERS, SPRS, and CERS Trust Funds for receipt of mandatory employee contributions if the employer's participation in the insurance trust conflicts with federal statutes or regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment to this administrative regulation includes the addition of a definition for "insurance trust", clarifying the use and purpose of mandatory contributions for health insurance benefits to the 401(h) account (if the employer's participation in the insurance trust conflicts with federal statutes or regulations) versus the insurance

trust (if the employer's participation does not conflict with federal statutes or regulations), removes the one (1) percent mandatory contribution to comply with SB 10 of the 2025 legislative session, corrects statutory references, and revises language to conform to drafting requirements.

(b) The necessity of the amendment to this administrative regulation:

The amendment to this administrative regulation is necessary to add a definition for "insurance trust", clarify the use and purpose of mandatory contributions for health insurance benefits to the 401(h) account (if the employer's participation in the insurance trust conflicts with federal statutes or regulations) versus the insurance trust (if the employer's participation does not conflict with federal statutes or regulations), remove the one (1) percent mandatory contribution to comply with SB 10 of the 2025 legislative session, correct statutory references, and revise language to conform to drafting requirements. (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.645(9)(e) authorizes the Kentucky Public Pensions Authority on behalf of Kentucky Retirement Systems and County Employees Retirement System to promulgate administrative regulations that are consistent with and necessary or proper to carry out the provisions of KRS 61.505 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 and to conform to federal statutes and regulations. Pursuant to KRS 61.701, 61.702(3) and (4), 61.645, and 78.5536, this administrative regulation establishes a separate 401(h) account under 26 U.S.C. 401(h) within the Kentucky Employees Retirement System Trust Fund, the State Police Retirement System Trust Fund, and the County Employees Retirement Trust Fund for receipt of mandatory employee contributions if the employer's participation in the insurance trust conflicts with federal statutes or regulations.

(c) How the amendment conforms to the content of the authorizing statutes:

No answer provided.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statutes by adding a definition for "insurance trust", clarifying the use and purpose of mandatory contributions for health insurance benefits to the 401(h) account for receipt of mandatory employee contributions if the employer's participation in the insurance trust conflicts with federal statutes or regulations, removing the one (1) percent mandatory contribution to comply with SB 10 of the 2025 legislative session, correcting statutory references, and revising language to conform to drafting requirements.

(3) Does this administrative regulation or amendment implement legislation from the previous five years?(If yes, provide the year of the legislation and either the bill number or Kentucky Acts chapter number being implemented). Yes. Senate Bill 10 of the 2025 regular legislative session.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Approximately 444,293 participants in the Kentucky Employees Retirement System, the State Police Retirement System, and the County Employees Retirement System.

(5) Provide an analysis of how the entities identified in question (4) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (4) will have to take to comply with this administrative regulation or amendment:

The regulated community will be minimally impacted and will not have to take any additional actions because the administrative regulation is already being implemented as written. The amendments are primarily technical in nature.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4):

There will be no additional costs to comply with the amendment because it is already being implemented as written. The amendment is primarily technical in nature.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4):

The regulated community will benefit from health benefit contributions being properly allocated between the insurance trust and 401(h) account, and the addition of a definition for "insurance trust".

(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no additional costs because the regulation is already being implemented as written.

(b) On a continuing basis:

There will be no additional costs because the regulation is already being implemented as written.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment:

Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No, an increase in fees or funding will not be necessary.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No, this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(10) TIERING: Is tiering applied?

Yes, tiering is applied only to the extent that mandatory member contributions will be directed to the 401(h) account if the employer's participation in the insurance trust would conflict with federal law.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation:

KRS 61.702, 61.645(9)(e).

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:

KRS 61.702, 61.645(9)(e); SB 10 of the 2025 regular legislative session.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions:

The promulgating agency is the Kentucky Public Pensions Authority. There are no other affected state units, parts, or divisions. (b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year:None.

For subsequent years:None.

2. Revenues:

For the first year:None.

For subsequent years:None.

3. Cost Savings:

For the first year:None.

For subsequent years:None.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts):

There are no affected local entities.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year:N/A

For subsequent years:N/A

2. Revenues:

For the first year:N/A

For subsequent years:N/A

3. Cost Savings:

For the first year:N/A

For subsequent years:N/A

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):

There are no additional regulated entities.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year:N/A

For subsequent years:N/A

2. Revenues:

For the first year:N/A

For subsequent years:N/A

3. Cost Savings:

For the first year:N/A

For subsequent years:N/A

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)

(a) Fiscal impact of this administrative regulation:

This administrative regulation has minimal fiscal impact. It is being implemented as written.

(b) Methodology and resources used to reach this conclusion:

The agency analyzed costs and procedures for collecting and allocating mandatory member contributions to the insurance trust and the 401(h) account.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(14):

No, this administrative regulation will not have a major economic impact as defined by KRS 13A.010(14).

(b) The methodology and resources used to reach this conclusion:

The agency analyzed costs and procedures for collecting and allocating mandatory member contributions to the insurance trust and the 401(h) account.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

26 U.S.C. 401(h)

(2) State compliance standards.

KRS 61.645, 61.701, 61.702, 78.5536

(3) Minimum or uniform standards contained in the federal mandate.

26 U.S.C. 401(h) requires a separate, exclusive account to fund medical benefits for retired employees and their spouses and dependents under certain circumstances.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No, this administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those in the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation does not impose stricter standards or additional or different responsibilities or requirements than the federal mandate.