

102 KAR 1:105. 401(h) established pursuant to 26 U.S.C. 401(h) account.

RELATES TO: KRS 161.420, 161.655, 161.675, 26 U.S.C. 152, 213(e), 401(h)

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. Pursuant to the provisions of KRS 161.420(5), this administrative regulation confirms a separate 401(h) account established pursuant to 26 U.S.C. 401(h).

Section 1. Definitions.

- (1) "Dependent" is defined by 26 U.S.C. 152, excluding subsections (b)(1), (b)(2), and (d)(1)(B).
- (2) "Medical expense" is defined by 26 U.S.C. 213(e).
- (3) "Retired", for purposes of eligibility to receive medical benefits described in 26 U.S.C. 401(h), means:
 - (a) An employee is eligible to receive benefits under the system;
 - (b) The employee is not still employed by the employer; and
 - (c) A separation from employment has occurred.
- (4) "System" means the retirement system administered by the Kentucky Teachers' Retirement System.

Section 2. The 401(h) account established pursuant to 26 U.S.C. 401(h) shall pay part of the subsidy for health benefits that are otherwise payable from the Medical Insurance Fund.

Section 3. The mandatory employee contribution established pursuant to KRS 161.420(5) shall be deposited in the Medical Insurance Fund.

Section 4. The health benefits shall be subordinate to the retirement benefits provided by the system.

- (1) Life insurance protection shall not be provided by the system, except death benefits payable pursuant to KRS 161.655
- (2) This requirement shall not be satisfied unless the actual contributions to the 401(h) account established pursuant to 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the system, other than contributions to fund past service credits, determined on an aggregate basis since the inception of the 401(h) account established pursuant to 26 U.S.C. 401(h).

Section 5.

- (1) Amounts in the 401(h) account established pursuant to 26 U.S.C. 401(h) shall be for the exclusive purpose of paying medical expenses for a retiree, a retiree's spouse, or any dependent.
- (2) Amounts in the 401(h) account established pursuant to 26 U.S.C. shall not be diverted for another purpose.

Section 6. An amount in the 401(h) accounts established pursuant to 26 U.S.C. 401(h) shall revert to the employer upon satisfaction of all liabilities for medical benefits.

Section 7. An employee shall not have an individual interest in the 401(h) accounts established pursuant to 26 U.S.C. 401(h).

Section 8.

(1) The 401(h) account established pursuant to 26 U.S.C. 401(h) may be commingled with the pension assets of the trust fund for investment purposes.

(2) Investment earnings shall be credited to the 401(h) account established pursuant to 26 U.S.C. 401(h) on a reasonable basis.

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

(10 KAR 001:105. 35 Ky.R. 1940; 2401; eff. 6-5-2009; Crt eff. 7-3-2019; Crt eff. 12-17-2025.)