

Proposed Regulation 55- Administration of Excess Benefit Arrangements for all Defined Benefit Plans Administered by the PERS Board of Trustees (To be effective July 1, 2007)

100. Purpose

The purpose of this regulation is to provide the administrative framework for the implementation of an excess benefit arrangement for each defined benefit pension plan administered by the PERS Board of Trustees where retirement benefits as provided by state statute must be limited based on the restrictions of Internal Revenue Code Section 415 and corresponding provisions of state law.

101. Administration of excess benefit arrangements

1. The Board of Trustees of the Public Employees' Retirement System (Board), pursuant to the authority vested in it by virtue of Miss. Code Ann. Sections 25-11-15, 25-11-301, 25-13-7 (Rev. 2006), 21-29-105 and 21-29-207 (Rev. 2001) shall maintain and administer a qualified governmental excess benefit arrangement under Section 415(m) of the Internal Revenue Code of 1986 (the Code), as amended from time to time, for the purpose of providing the retirement allowances payable from the Public Employees' Retirement System, the Supplemental Legislative Retirement Plan, the Mississippi Highway Safety Patrol Retirement System or the Municipal Retirement Systems that would otherwise be limited by Section 415 of the Code.
2. The excess benefit arrangement, as provided herein, shall be maintained solely for the purpose of providing participants in the excess benefit arrangements that part of the participant's annual benefit, otherwise payable under the applicable state law, that exceeds the limitations on benefits imposed by Section 415 of the Code. Participants do not make an election, directly or indirectly, to defer compensation to the excess benefit arrangement.
3. The Board shall have the authority to establish the necessary and appropriate policies and procedures for the administration of such benefit arrangements under the Code and to determine all questions arising in connection with the arrangements (including its interpretation and factual questions arising thereunder). The Board shall have the duty and responsibility to maintain records, perform calculations, and determine benefits payable thereunder.
4. The qualified excess benefit arrangement shall be a separate portion of each system noted in sub-section 101.1. Each system shall establish a separate account to hold employer contributions from which excess benefits shall be paid.

5. These excess benefit arrangements shall be administered by the Board of Trustees of the Public Employees' Retirement System. The Board shall have the same authority in its administration as it has in the administration of the Public Employees' Retirement System, the Supplemental Legislative Retirement Plan, the Mississippi Highway Safety Patrol Retirement System, and the Municipal Retirement Systems.
6. The excess benefit arrangements shall constitute qualified governmental excess benefit arrangements as provided in Section 415(m) of the Code.

102. Participation in excess benefit arrangement.

All retired members and beneficiaries of the aforementioned four (4) defined benefit retirement plans administered by the Public Employees' Retirement System whose effective retirement dates are July 1, 1998, or after, and whose retirement allowances would be or have been limited by Section 415 of the Code shall be participants in the arrangements. Participation in the arrangements shall be determined each calendar year and will cease for any year in which the retirement allowance of a member or beneficiary is not limited by Section 415 of the Code.

103. Determination of benefit amount.

At such time during the calendar year as the participant or beneficiary receives the maximum benefit allowable under Section 415 of the Code, no additional benefits shall be paid out of the system. Thereafter, any benefit amount due as provided by applicable state law shall be paid from the excess benefit arrangement on a monthly basis. The excess benefit shall be subject to withholding for applicable state and federal taxes. The excess benefit shall be paid in accordance with the retirement payment option selected by the member or beneficiary.

104. Financing the Excess Benefit Arrangement.

1. The arrangements at all times shall be entirely unfunded and no provision shall at any time be made with respect to segregating any assets of any of the systems for payment of benefits hereunder.
2. The Board, in accordance with the recommendation of the actuary, shall determine the required employer contributions for each of the four (4) excess benefit arrangements to pay benefits each calendar year. The required contribution for each of the four (4) excess benefit arrangements respectively in each calendar year shall be the total amount of benefits payable under this excess benefit arrangement to all participants in each system plus the amount required to pay the administrative expenses of the excess benefit arrangement and the employer's share of any employment taxes on the benefits paid from the arrangement, where applicable.

3. The required contributions for the payment of said excess benefits shall be paid by the participating employers from an allocation of the employer contribution amount calculated by the actuary to fund the benefit prescribed by law without regard to the limitation.
4. The required contribution for each arrangement shall be deposited into the separate account for each arrangement. Each excess benefit arrangement is intended to be exempt from federal income tax under Internal Revenue Code Sections Section 115 and Section 415(m)(1).
5. The benefit liability of each arrangement shall be determined on a calendar year basis, and contributions shall not be accumulated to pay benefits in future calendar years. Any assets of the arrangements not used to pay benefits in the current calendar year shall be used for payment of the administrative expenses of the excess benefit arrangement for the current or future calendar years or shall be paid to the appropriate retirement system as an additional employer contribution.

105. Treatment of Benefits – Benefits exempt from taxes, attachment or other process, and unassignable

The benefits payable from the excess benefit arrangements shall be treated in accordance with Miss. Code Ann. Sections 25-11-129, 25-11-319, 25-13-31 (Rev. 2006), and 21-29-307(Rev. 2001), respectively.

106. Effective Date

The provisions of any excess benefit arrangement created pursuant to the authority cited in this Regulation, and any administrative rules promulgated as a result of these provisions, shall apply to all retired members and beneficiaries of the defined benefit plans administered by PERS effective from and after July 1, 2007.