ARTICLE 8. MODEL PLAN AMENDMENTS

Rule 1. Adoption of IRS Model Amendment to Comply with the Unemployment Compensation Amendments of 1992

35 IAC 8-1-1 Definitions

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Board of trustees" means the board of trustees of the public employees' retirement fund.

(c) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(d) "EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L.107-16, and all applicable regulations and amendments related thereto.

(e) "Eligible rollover distribution" means any distribution of all or any taxable portion of the benefit to the credit of a member or a member's spouse, except that an eligible rollover distribution does not include the following:

(1) Any distribution that is one (1) of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the member and the member's designated beneficiary.

(2) Any distribution that is one (1) of a series of substantially equal periodic payments for a specified period of ten (10) years or more.

(3) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.

(4) The portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:

(A) a traditional individual retirement account or individual retirement annuity; or

(B) a qualified trust that is part of a plan that is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer.

(5) Any distribution that is made upon hardship by the member.

(f) "Fund" or "funds" means the legislators' retirement system, public employees' retirement fund, state excise police, gaming agent, gaming control officer and conservation enforcement officers' retirement plan, judges' retirement fund, 1977 police officers' and firefighters' pension and disability fund, the prosecuting attorneys retirement fund, and funds funded through the pension relief fund.

(g) "IRS" means the Internal Revenue Service.

(h) "UCA" refers to the federal Unemployment Compensation Amendments of 1992, P.L.102-318, and all applicable regulations and amendments related thereto. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-1-1; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1992; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3868; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 8-1-2 Introduction

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8-6-2; IC 36-8-7-3; IC 36-8-7.5-2

Sec. 2. (a) The UCA was signed into law on July 3, 1992. The UCA expanded the permanent federal-state extended unemployment benefits program and extended the existing emergency unemployment insurance program. The sources of financing for the UCA benefit extensions include provisions affecting distributions from tax-qualified pension plans such as the funds. The provisions of the UCA were subsequently amended by EGTRRA.

(b) 35 IAC 8-2 includes the model language set forth in Revenue Procedure 93-12, issued December 30, 1992, to amend the fund to comply with the requirements of Section 401(a)(31) of the Code. 35 IAC 8-2 reflects the Model Amendment drafted by the IRS, as amended by EGTRRA. The board of trustees recognizes that some provisions included in the model amendment language are not applicable to a governmental plan as defined in Section 414(d) of the Code. As a result, those provisions that are not applicable to a governmental plan will not be applied by the board of trustees. Any local board may elect to use a different compliance mechanism should they decide, through adoption of appropriate bylaws, under IC 36-8-6-2(g)(5), IC 36-8-7-3(c), or IC 36-8-7.5-2(g)(5). *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-1-2; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1992; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3868; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 8-1-3 Purpose

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 3. (a) The purpose of this rule is to comply with the UCA to the extent required by Section 401(a)(31) of the Code.

(b) A member of the fund may elect, at the time and in the manner prescribed by the board of trustees, to have all or a portion of an eligible rollover distribution paid directly to another eligible retirement plan as specified by the member.

(c) A surviving spouse who is entitled to receive an eligible rollover distribution may elect, at the time and in the manner prescribed by the board of trustees, to have all or a portion of an eligible distribution paid directly to an individual retirement account or annuity as specified by the spouse. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-1-3; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

Rule 2. Model Amendment Language

35 IAC 8-2-1 Model amendment language

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 1. (a) The amendments to this rule required by EGTRRA apply to distributions made on or after January 1, 2002. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) The following definitions apply throughout this rule:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(A) any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;

(B) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(C) the portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:

(i) a traditional individual retirement account or individual retirement annuity; or

(ii) a qualified trust that is part of a plan that is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer; and

(D) any distribution that is made upon hardship by the member.

(2) "Eligible retirement plan" means:

(A) an individual retirement account described in Section 408(a) of the Code;

(B) an individual retirement annuity described in Section 408(b) of the Code;

(C) an annuity plan described in Section 403(a) of the Code;

(D) a qualified trust described in Section 401(a) of the Code;

(E) an eligible deferred compensation plan under Section 457(b) of the Code that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (so long as the plan agrees to separately account for amounts rolled into the plan); or

(F) an annuity contract under Section 403(b) of the Code;

that accepts the distributee's eligible rollover distribution.

(3) "Distributee" includes an employee or former employee, as well as the employee's or former employee's surviving spouse. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, is a distributee with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.
(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-2-1; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1993; errata, 18 IR 2412; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3869; adopted Nov 9, 2007: 20071205-IR-035070818ONA)

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