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**TITLE 35 BOARD OF TRUSTEES OF THE PUBLIC
EMPLOYEES' RETIREMENT FUND**

Proposed Rule
LSA Document #02-163

DIGEST

Amends 35 IAC 8 concerning rollover requirements to conform to changes made to the Internal Revenue Code by the federal Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Amends 35 IAC 9 concerning annual compensation limits to conform to changes made to the Internal Revenue Code by EGTRRA. Adds 35 IAC 10 regarding acceptance of rollovers and trustee to trustee transfers. Effective 30 days after filing with the secretary of state.

35 IAC 8-1-1	35 IAC 9-1-2
35 IAC 8-1-2	35 IAC 9-1-3
35 IAC 8-2-1	35 IAC 9-1-4
35 IAC 9-1-1	35 IAC 10

SECTION 1. 35 IAC 8-1-1, AS READOPTED AT 25 IR 898, IS AMENDED TO READ AS FOLLOWS:

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.

~~(d) An~~ (e) "Eligible rollover distribution" ~~is~~ **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 ~~includable~~ **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 which 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.

~~(e) (f)~~ (f) "Fund" or "funds" means the legislators' retirement system, public employees' retirement fund, state excise

police and conservation officers' retirement plan, judges' retirement fund, 1977 fund, **the prosecuting attorneys' retirement fund**, and funds funded through the pension relief fund.

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

(g) (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*)

SECTION 2. 35 IAC 8-1-2, AS READOPTED AT 25 IR 898, IS AMENDED TO READ AS FOLLOWS:

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 33-13-8-25; 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. 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 in this article apply to distributions made after December 31, 1992, and include the following:

(1) Changes in the rules applicable to rollovers from tax-qualified plans:

(2) A provision that requires such plans to give participants entitled to a distribution eligible for rollover treatment the option to have that amount paid directly (direct rollover) to a qualified defined contribution plan, an individual retirement account or annuity, or a similar plan specified by the participant:

(3) Changes in the withholding taxes applicable to distributions from such plans:

(b) The funds do not accept rollover contributions from other retirement plans. However, the funds permit rollover contributions to be paid directly to other retirement plans under certain circumstances. Accordingly, the rules governing the funds need to be amended to conform to the direct rollover requirements under of the UCA to allow such rollovers at the member's or member's spouse's election: **were subsequently amended by EGTRRA.**

(c) (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, pursuant to 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*)

SECTION 3. 35 IAC 8-2-1, AS READOPTED AT 25 IR 898, IS AMENDED TO READ AS FOLLOWS:

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 applies required by EGTRRA apply** to distributions made on or after January 1, ~~1993~~ **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" ~~An eligible rollover distribution is~~ **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; and

(C) the portion of any distribution that is not includible in gross income, ~~(determined without regard to the exclusion for net unrealized appreciation with respect~~ **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 employer securities 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" ~~An eligible retirement plan is 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; or

(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. ~~However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~

(3) "Distributee" ~~A 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, are distributees~~ **is a distributee** with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" ~~A direct rollover is 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)

SECTION 4. 35 IAC 9-1-1 IS AMENDED TO READ AS FOLLOWS:

35 IAC 9-1-1 Definitions

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; 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 5-10.2; 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) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

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

~~(e)~~ (d) "Fund" or "funds" means the following:

(1) Legislators' Retirement System.

(2) Public Employees' Retirement Fund.

(3) State Excise Police and Conservation Officers' Retirement Plan.

(4) Judges' Retirement System.

(5) 1977 Police Officers' and Firefighters' Pension and Disability Fund.

(6) **Prosecutor's Prosecuting Attorneys'** Retirement Fund.

(7) Local public safety funds funded through the Pension Relief Fund.

~~(d)~~ (e) “IRS” means the Internal Revenue Service.

~~(e)~~ (f) “OBRA ‘93” refers to the federal Omnibus Budget Reconciliation Act of 1993, P.L.103-66, and all applicable regulations and amendments related thereto. *(Board of Trustees of the Public Employees’ Retirement Fund; 35 IAC 9-1-1; filed May 31, 1996, 4:00 p.m.: 19 IR 2854)*

SECTION 5. 35 IAC 9-1-2 IS AMENDED TO READ AS FOLLOWS:

35 IAC 9-1-2 Introduction

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; 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 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 2. (a) OBRA ‘93 was signed into law on August 10, 1993. Among other things, OBRA ‘93 contained amendments to Section 401(a)(17) of the Code relating to the annual compensation limit for tax-qualified retirement plans. Section 401(a)(17) of the Code provides an annual compensation limit for each employee under a qualified plan. ~~This~~ **The annual compensation limit applies to a** ~~was subsequently amended by EGTRRA effective for plan in two~~ (2) ~~ways as follows: (1) years beginning after December 31, 2001. A plan may not base contributions or benefits on annual compensation in excess of the~~ **this annual compensation limit.**

~~(2) The amount of an employee’s annual compensation that may be taken into account in applying certain specified nondiscrimination rules under the Code is subject to the annual compensation limit.~~

(b) Prior to its amendment by OBRA ‘93, the annual compensation limit under Section 401(a)(17) of the Code was two hundred thousand dollars (\$200,000), adjusted for cost-of-living increases (two hundred thirty-five thousand eight hundred forty dollars (\$235,840) for 1993). Section 401(a)(17) of the Code was amended by OBRA ‘93 to reduce the annual compensation limit to one hundred fifty thousand dollars (\$150,000), and to modify the manner in which cost-of-living adjustments are made to the annual compensation limit. **EGTRRA subsequently amended this annual compensation limit to two hundred thousand dollars (\$200,000), as modified by cost of living adjustments.**

(c) OBRA ‘93, however, provides a grandfather clause for certain eligible participants in governmental plans. This grandfather rule applies to individuals who already were participants in governmental plans before the first plan year beginning after December 31, 1995, or, if earlier, the first plan year for which the plan is amended to comply with OBRA ‘93. Under the grandfather rule, the annual compensation limit contained in OBRA ‘93 will not apply to those eligible participants to the extent that the annual compensation limit in OBRA ‘93 would reduce the amount of compensation taken into account under the plan below the amount that was allowed to be taken into account under the plans as in effect on July 1, 1993. *(Board of Trustees of the Public Employees’ Retirement Fund; 35 IAC 9-1-2; filed May 31, 1996, 4:00 p.m.: 19 IR 2854)*

SECTION 6. 35 IAC 9-1-3 IS AMENDED TO READ AS FOLLOWS:

35 IAC 9-1-3 Purpose

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; 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 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 3. The purpose of this rule is to comply with OBRA ‘93 **and EGTRRA** ~~as it those acts~~ amended Section 401(a)(17) of the Code. *(Board of Trustees of the Public Employees’ Retirement Fund; 35 IAC 9-1-3; filed May 31, 1996, 4:00 p.m.: 19 IR 2855)*

SECTION 7. 35 IAC 9-1-4 IS AMENDED TO READ AS FOLLOWS:

35 IAC 9-1-4 Text

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; 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 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 4. The annual compensation limitations of Code Section 401(a)(17) shall be applied as follows:

(1) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93 **and EGTRRA**, shall not apply to any eligible participant, in any future year, to the extent that the application of the annual compensation limit in Code Section 401(a)(17), as amended by OBRA '93 **and EGTRRA**, would reduce the amount of annual compensation that is allowed to be taken into account under the fund below the amount that was allowed to be taken into account under the fund as in effect on July 1, 1993. As used in this subdivision, "eligible participants" includes all members who participated in the fund prior to July 1, 1996.

(2) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, will be effective with respect to noneligible participants as of July 1, 1996. As used in this subdivision, "noneligible participants" includes all members who did not participate in the fund prior to July 1, 1996. ~~401(a)(17) of the Code.~~ **Effective for years beginning after December 31, 2001, the annual compensation limit under Code Section 401(a)(17), as amended by EGTRRA, will be effective with respect to noneligible participants.**

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 9-1-4; filed May 31, 1996, 4:00 p.m.: 19 IR 2855; errata filed Jul 12, 1996, 12:30 p.m.: 19 IR 3471)

SECTION 8. 35 IAC 10 IS ADDED TO READ AS FOLLOWS:

ARTICLE 10. ROLLOVERS AND TRUSTEE-TO-TRUSTEE TRANSFERS

Rule 1. Acceptance of Rollovers and Trustee-to-Trustee Transfers

35 IAC 10-1-1 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) "Direct rollover" means a payment from an eligible retirement plan specified by the member to the fund.

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

(f) "Eligible retirement plan" means:

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

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

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

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

(5) 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

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

that accepts the distributee's eligible rollover distribution.

(g) "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.

(h) “Fund” or “funds” means the legislators’ retirement system, public employees’ retirement fund, state excise police and conservation enforcement officers’ retirement plan, judges’ retirement fund, prosecuting attorneys’ retirement fund, and the 1977 fund.

(i) “IRS” means the Internal Revenue Service. *(Board of Trustees of the Public Employees’ Retirement Fund; 35 IAC 10-1-1)*

35 IAC 10-1-2 Rollover for purchase of service

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. 2. The fund may accept any portion of an eligible rollover distribution in payment of all or a portion of a member’s purchase of service credit authorized under the fund’s statutes. The fund may accept an eligible rollover distribution paid directly to the system in a direct rollover. *(Board of Trustees of the Public Employees’ Retirement Fund; 35 IAC 10-1-2)*

35 IAC 10-1-3 Trustee-to-trustee transfer

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. 3. The fund may accept a direct trustee-to-trustee transfer from a deferred compensation plan under Code Section 457(b) or a tax-sheltered annuity under Code Section 403(b) for the purchase of permissive service credit, as defined in Code Section 415(n)(3)(A), or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3). *(Board of Trustees of the Public Employees’ Retirement Fund; 35 IAC 10-1-3)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 25, 2002 at 2:00 p.m., at the Board of Trustees of the Public Employees’ Retirement Fund, Harrison Building, 143 West Market Street, Suite 500, Indianapolis, Indiana the Board of Trustees of the Public Employees’ Retirement Fund will hold a public hearing on proposed amendment concerning compliance with federal annual compensation limits. Send written comments to Edward Gohmann, General Counsel, Public Employees’ Retirement Fund, Harrison Building, Suite 500, 143 West Market Street, Indianapolis, Indiana 46204. Copies of these rules are now on file at the Board of Trustees of the Public Employees’ Retirement Fund, Harrison Building, 143 West Market Street, Suite 500 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

E. William Butler
Executive Director
Board of Trustees of the Public Employees’ Retirement Fund