

840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION
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840 CMR 3.00. Internal Revenue Code Compliance Provisions

REGULATORY AUTHORITY

840 CMR 3.00: M.G.L. c. 32, § 21(4).

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3.01. Internal Revenue Code Compliance Provisions

Effective as of January 1, 1989, any retirement system subject to M.G.L. c. 32 will satisfy the qualification requirements in Internal Revenue Code Section 401, as applicable, as a governmental plan within the meaning of Internal Revenue Code Section 414(d). In order to meet those requirements, the retirement system is subject to the following provisions, notwithstanding any other provision of Massachusetts law.

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3.02. Internal Revenue Code Section 401(a)(1), (2)

Effective as of September 1, 1974, the assets of any retirement system subject to M.G.L. c. 32 are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the retirement system's reasonable administrative expenses.

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3.03. Internal Revenue Code Section 401(a)(8)

Effective as of September 1, 1974, and to confirm existing procedures, any retirement system subject to M.G.L. c. 32 will not use forfeitures that arise for any reason, including from termination of employment or death, to increase the benefits of any member.

3.04. Internal Revenue Code Section 401(a)(9)

(1) Effective as of January 1, 1989, any retirement system subject to M.G.L. c. 32 will pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9), as applicable to a governmental plan within the meaning of Internal Revenue Code Section 414(d).

(2) Notwithstanding any other provision of 840 CMR 3.04(2), effective on and after January 1, 2003, any retirement system subject to M.G.L. c. 32 is subject to the following provisions:

(a) Members must apply for benefits by completing all required forms and benefits must begin by the required beginning date, which is the later of April 1st of the calendar year following the calendar year in which the member reaches ~~70½ years of age~~ **age 72 (age 70½ if the member was born before July 1, 1949)** or April 1st of the calendar year following the calendar year in which the member terminates employment.

(b) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.

(c) The life expectancy of a member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

(d) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

(e) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

1. distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31st of the calendar year following the calendar year of the member's death; or

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2. distributed within five years of the member's death.

(3) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(4) The death and disability benefits provided by the retirement system are limited by the incidental benefit rule set forth in Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the retirement system.

3.05. Internal Revenue Code Section 401(a)(17)

(1) In compliance with the provisions of M.G.L. c. 32, § 1 and in furtherance of the application of the compensation limitations set forth in M.G.L. c. 32, § 1, the annual compensation any retirement system subject to M.G.L. c. 32 takes into account for any purpose, including contributions or benefits, may not exceed the amount allowed by Internal Revenue Code Section 401(a)(17) as of the first day of the plan year.

(2) The annual compensation of each member taken into account in determining benefits or contributions for any plan year beginning on January 1, 1996, and prior to January 1, 2002, may not exceed \$150,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

(3) Effective only for the 1996 plan year, the rules of Internal Revenue Code Section 414(q)(6) will apply in determining the annual compensation limitation, except that a member of the family group will include only the spouse of the member and any lineal descendant of the member who has not attained age 19 before the close of the year. If the annual compensation of a member and his family members is so limited, the annual compensation of the member and each such family member will be equal to the compensation of each such individual determined without regard to Internal Revenue Code Sections 401(a)(17) and 414(q)(6) divided by such annual compensation for all such individuals as so determined and the quotient multiplied by the applicable Internal Revenue Code Section 401(a)(17) limitation amount, as described in 840 CMR 3.05(1) and (2).

(4) The annual compensation of each member taken into account in determining benefits or contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

(5) For purposes of 840 CMR 3.04(2)(e)1. through (e)4., annual compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator

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of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(6) The limits referenced in 840 CMR 3.04(2)(e)1. through (e)5. apply only to plan years beginning on or after January 1, 1996, and only to individuals who first become members in plan years beginning on and after January 1, 1996. Individuals who become members before plan years beginning on and after January 1, 1996, are not subject to the limits of Internal Revenue Code Section 401(a)(17). Pursuant to Section 13212(d)(3)(A) of OBRA '93, the annual compensation in effect under Internal Revenue Code Section 401(a)(17) does not apply to any such member in any year.

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3.06. Internal Revenue Code Section 401(a)(25)

Effective as of January 1, 1985, any retirement system subject to M.G.L. c. 32 will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by ~~the Commission~~ **PERAC**; such benefits will not be subject to employer discretion.

3.07. Internal Revenue Code Section 401(a)(31)

840 CMR 3.07 applies to distributions made on or after January 1, 1993 by a retirement system subject to M.G.L. c. 32, provided that any regulations adopted by a retirement board that applied the rules of Code Section 401(a)(31) to distributions from its system shall be deemed to apply in *lieu* of 840 CMR 3.07. Notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under 840 CMR 3.07, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) Eligible Rollover Distribution: An eligible rollover distribution is 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: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the 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 years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(a) to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(b) on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon),

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including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(c) on or after January 1, 2008, to a Roth IRA described in Internal Revenue Code Section 408A.

(2) Eligible Retirement Plan: An eligible retirement plan is:

(a) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from the retirement system,

(b) an individual retirement account described in Internal Revenue Code Section 408(a),

(c) an individual retirement annuity described in Internal Revenue Code Section 408(b),

(d) an annuity plan described in Internal Revenue Code Section 403(a),

(e) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b),

(f) a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution, or

(g) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

(h) effective December 19, 2015, a SIMPLE IRA described in Internal Revenue Code Section 408(p), provided that the rollover contribution is made after the 2-year period described in Internal Revenue Code Section 72(t)(6).

(3) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse (as defined by federal law), or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).

(4) Distributee. A distributee includes an employee or former employee. It

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also includes 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 Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of

receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(5) Direct Rollover. A direct rollover is a payment by the retirement system to the eligible retirement plan specified by the distributee.

3.08. Internal Revenue Code Section 415

(1) Basic 415 Limitations. Effective as of September 1, 1974, in compliance with the provisions of M.G.L. c. 32, § 5(3)(f) and in furtherance of the application of the compensation limitations set forth in M.G.L. c. 32, § 1, member contributions paid to, and retirement benefits paid from, any retirement system subject to M.G.L. c. 32 (system) shall be limited to such extent as may be necessary to conform to the requirements of Internal Revenue Code Section 415 for a qualified governmental pension plan.

(2) Limitation Year. For purposes of Internal Revenue Code Section 415, the limitation year is the calendar year.

(3) Participation in Other Qualified Plans: Aggregation of Limits.

(a) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Internal Revenue Code Section 414(j) maintained by the member's employer in this system shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

(b) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Internal Revenue Code Section 414(i) maintained by the member's employer in this system shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

(4) Basic 415(b) Limitation.

(a) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), subject to the applicable adjustments in that section.

(b) On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b) and subject to any additional limits that may be specified in M.G.L. c. 32. In no event shall a member's annual benefit payable in any limitation year from a plan subject to this

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title be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d).

(5) Definition of Annual Benefit: For purposes of Internal Revenue Code Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Internal Revenue Code Section 415(n)) and to rollover contributions (as defined in Internal Revenue Code Section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(6) Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the system is other than the form specified in 840 CMR 3.08(5), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(a) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b), the benefit limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

(b) For a retirement benefit which is payable in a form other than a straight life annuity, and the form of benefit is not subject to Code Section 417(e)(3) for the purposes of applying the limitation in subsection (4), is adjusted to an actuarially equivalent straight life annuity that equals:

1. for limitation years beginning on or after January 1, 2012, the greater of the annual amount of the straight life annuity (if any) payable under the plan at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of 5% and the applicable mortality table under § 417(e)(3) (i.e., Rev. Rul. 2001-62) (and for years after December 31, 2008, the applicable mortality tables described in Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing

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Code Section 417(e)(3)(B)); and

2. for limitation years beginning before January 1, 2012, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

~~(1)~~ (a) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form; and

~~(2)~~ (b) a 5% interest rate assumption and the applicable mortality table (Code Section 415, Treas. Reg. 1.415(b)-1(c)(2)).

(c) For a retirement benefit which is payable in a form other than a straight life annuity, and the form of the benefit is subject to Code Section 417(e)(3) the benefit for purposes of applying the limitation in subsection (4), is adjusted to an actuarially equivalent straight life annuity that equals:

1. if the annuity starting date is in a plan year beginning after 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit using whichever of the following produces the greatest annual amount:

a. the interest rate and the mortality table or other tabular factor specified in the plan for adjusting benefits in the same form;

b. a 5.5% interest rate assumption and the applicable mortality table; and

c. the applicable interest rate under §417(e)(3) (effective January 1, 2013, using the rate in effect for the second month immediately prior to the first day of the limitation year with a one-year stabilization period) and the applicable mortality table, divided by 1.05 and for years after December 31, 2008, the applicable mortality tables described in Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code Section 417(e)(3)(B));

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(7) Benefits not Taken into Account for 415(b) Limitation. For purposes of M.G.L. c. 32, the following benefits shall not be taken into account in applying these limits:

- (a) Any ancillary benefit which is not directly related to retirement income benefits;
- (b) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- (c) Any other benefit not required under Internal Revenue Code Section 415(b)(2) and Regulations thereunder to be taken into account for purposes of the limitation of Internal Revenue Code Section 415(b)(1).

(8) Other Adjustments in 415(b) Limitation.

- (a) In the event the member's retirement benefits become payable before age 62, the benefit is limited to:
 - 1. if the annuity starting date is in a limitation year beginning before January 1, 2012, the annual amount of a benefit payable in the form of a single life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation determined, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:
 - a. the interest rate and mortality table or other tabular factor specified in the plan for determining actuarial equivalence for early retirement purposes; or
 - b. a 5% interest rate assumption and the applicable mortality table;
 - 2. if the annuity starting date is in a limitation year beginning on or after January 1, 2012, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation, with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity starting date; and

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3. if the annuity starting date is in a limitation year beginning on or after January 1, 2012, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the lesser of:

a. the adjusted dollar limitation determined in accordance with 840 CMR 3.08(a)2.; and

b. the product of the dollar limitation multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of Code Section 415. Code Section 415; Treas. Reg. 1.415(b)-1(d).

(b) In the event the member's benefit is based on at least 15 years of service as a full-time employee of any police or fire department or on 15 years of military service, the adjustments provided for in subsection a. above shall not apply.

(c) The reductions provided for in 840 CMR 3.08(8)(a) shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(9) Less than Ten Years of Participation or Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten years of service shall be the amount determined under 840 CMR 3.08(4), as adjusted under 840 CMR 3.08(6) and/or (8), multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten. The limit under 840 CMR 3.08(10) (concerning the \$10,000 limit) shall be similarly reduced for any member who has accrued less than ten years of service, except the fraction shall be determined with respect to years of service instead of years of participation. The reduction provided by 840 CMR 3.08(9) cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in 840 CMR 3.08(9) shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(10) Ten Thousand Dollar Limit. Notwithstanding the foregoing, the

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retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

(11) Effect of COLA without a Lump Sum Component on 415(b) Testing.

Effective on and after January 1, 2003, for purposes of applying the limits under Internal Revenue Code Section 415(b) (the "Limit") to a member with no lump sum benefit, the following will apply:

(a) a member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;

(b) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit;

(c) thereafter, in any subsequent limitation year, a member's annual

benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit Limit including any adjustment to the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d), and the Treasury Regulations thereunder.

(12) Effect of COLA with a Lump Sum Component on 415(b) Testing.

On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living increases as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations.

(13) 415(c) Limitations. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to Internal Revenue Code Section 415(d)) or 100% of the member's compensation.

(a) Annual additions are defined to mean the sum (for any year) of

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employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and topicked-up employee contributions that are paid to a defined benefit plan.

(b) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Internal Revenue Code Section 414(h) shall not be treated as compensation.

(c) Unless another definition of compensation that is permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, is specified by a system subject to this title, compensation will be defined as wages within the meaning of Internal Revenue Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Internal Revenue Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Internal Revenue Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Internal Revenue Code Section 3401(a)(2)).

1. However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Internal Revenue Code Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Internal Revenue Code Section 132(f)(4).

2. For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2% months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

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- a. the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or
- b. the payment is for unused accrued *bona fide* sick, vacation or other leave that the employee would have been able to use if employment had continued.

Any payments not described in 840 CMR 3.08(13)(c)2 are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the member who does not currently perform services for the employer by reason of qualified military service (within the meaning of section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the member had continued to perform services for the employer rather than entering qualified military service.

A member who is in qualified military service (within the meaning of section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

- (i) the compensation the member would have received during such period if the member were not in qualified military service, determined based on the rate of pay the member would have received from the employer but for the absence during the period of qualified military service; or
- (ii) if the compensation the member would have received during such period was not reasonably certain, the member's average compensation from the employer

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during the 12 month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

3. Back pay, within the meaning of Treasury Regulation Section 1.415(c)- 2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(14) Service Purchases under Internal Revenue Code Section 415(n).

Effective for permissive service credit contributions made in accordance with the applicable provisions of M.G.L. c . 32, in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under a plan, then the requirements of Internal Revenue Code Section 415(n) will be treated as met only if:

(a) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or

(b) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c).

(c) For purposes of applying 840 CMR 3.08(14), the system will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of 840 CMR 3.08(14) and will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of 840 CMR 3.08(14).

(d) For purposes of 840 CMR 3.08(14) the term "permissive service credit" means service credit:

1. recognized by the system for purposes of calculating a member's benefit under the system;
2. which such member has not received under the system; and
3. which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the

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benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding 840 CMR 3.08(14)(d)2., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(e) The system will fail to meet the requirements of 840 CMR 3.08(14) if:

1. more than five years of nonqualified service credit are taken into account for purposes of 840 CMR 3.08(14)(e); or
2. any nonqualified service credit is taken into account under 840 CMR 3.08(14)(e)2. before the member has at least five years of participation under the plan.

(f) For purposes of 840 CMR 3.08(14)(e), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

1. service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Internal Revenue Code Section 415(k)(3));
2. service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (1)) of an education organization described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,
3. service as an employee of an association of employees who

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are described in clause (1); or

4. military service (other than qualified military service under Internal Revenue Code Section 414(u)) recognized by such governmental plan.

In the case of service described in clause (1), (2), or (3), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(g) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Internal Revenue Code Section 403(b)(13)(A) or Internal Revenue Code Section 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

1. the limitations of 840 CMR 3.08(14)(e) will not apply in determining whether the transfer is for the purchase of permissive service credit; and
2. the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(h) For an eligible member, the limitation of Internal Revenue Code Section 415(c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the system as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the plan before January 1, 1998.

(15) Modification of Contributions for 415(c) and 415(n) Purposes.

Notwithstanding any other provision of law to the contrary, the system may modify a request by a member to make a contribution under M.G.L. c. 32 if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:

- (a) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Internal Revenue Code Section 415(c) or 415(n).
- (b) If payment pursuant to 840 CMR 3.08(15)(a) will not avoid a

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contribution in excess of the limits imposed by Internal Revenue Code Section 415(c) or 415(n), the system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(16) Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the system with respect to an amount previously refunded upon a forfeiture of service credit under the system or another governmental plan maintained by the State or a local government within the State shall not be taken into account for purposes of Internal Revenue Code Section 415, in accordance with applicable Treasury Regulations.

(17) Reduction of Benefits Priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

(18) Amendment. Nothing contained in 840 CMR 3.08 will limit the Legislature from modifying benefits to the extent such modifications are permissible by applicable state and federal law.

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3.09. Internal Revenue Code Section 503(b)

Effective as of January 1, 1989, a retirement board subject to M.G.L. c. 32 may not engage in a transaction prohibited by Internal Revenue Code Section 503(b).

3.10. Internal Revenue Code Sections 414(u), 401(a)(37) and the HEART Act

(1) Effective December 12, 1994, notwithstanding any other provision of retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

(2) Mandatory Provision. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in 38 USC c. 43), to the extent required by Internal Revenue Code Section 401(a)(37), survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

(3) Optional Provision. Effective with respect to deaths and disabilities (as determined under M.G.L. c. 32, § 6) occurring on or after July 1, 2007, while a member is performing qualified military service (as defined in 38 USC c. 43), to the extent permitted by Internal Revenue Code Section 414(u)(9), for benefit accrual purposes and for vesting purposes, the member will be treated as having earned years of service for the period of qualified military service, having returned to employment on the day before the death or disability (as determined under M.G.L. c. 32, § 6), and then having terminated on the date of death or disability (as determined under M.G.L. c. 32, § 6). 840 CMR 3.10(3) shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(4) Mandatory Provision for 415(c) Language. Beginning January 1, 2009, to the extent required by Internal Revenue Code Section 414(u)(12), an individual receiving differential wage payments (as defined under Internal Revenue Code Section 3401(h)(2)) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Internal Revenue Code Section 415(c). 840 CMR 3.10(4) shall be applied to all similarly situated individuals in a reasonably equivalent manner.

3.11 Internal Revenue Code Section 411(e)

Effective as of September 1, 1974, in addition to any protection provided by this ordinance and Massachusetts law:

- (1) A member will be 100% vested in all Plan benefits upon attainment of the Plan's age and service requirements for the Plan's normal retirement benefit; and
- (2) A member will be 100% vested in all Plan benefits, to the extent funded, if the Plan is terminated or experiences a complete discontinuance of employer contributions.

3.12 Electronic Transactions

In those circumstances where a written election or consent is not required by a retirement system or the Internal Revenue Code, an oral, electronic, or telephonic form in *lieu* of or in addition to a written form may be.