

AMENDATORY SECTION (Amending WSR 10-24-099, filed 12/1/10, effective 1/1/11)

WAC 415-02-740 What are the IRS limitations on maximum benefits and maximum contributions? (1) **Basic Internal Revenue Code (IRC) section 415 limitations.** Subject to the provisions of this section, benefits paid from, and employee contributions made to, the plan shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under IRC section 415. This rule applies retroactively beginning on January 1, 2009, except as otherwise stated.

(2) **Definitions.** As used in this section:

(a) "IRC section 415(b) limit" refers to the limitation on benefits established by IRC section 415(b);

(b) "IRC section 415(c) limit" refers to the limitation on annual additions established by IRC section 415(c); and

(c) Limitation year is the calendar year.

(3) **Basic IRC section 415(b) limitation.** Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in IRC section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC section 415 (b)(1)(A), subject to the applicable adjustments in IRC section 415(b) and subject to any additional limits that may be specified in this section. In no event shall a member's annual benefit payable in any limitation year from this plan be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC section 415(d) and the regulations thereunder.

(4) **Annual benefit definition.** For purposes of IRC 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 the after-tax employee contributions (except pursuant to IRC section 415(n)) and to all rollover contributions as defined in IRC section 415 (b)(2)(A). The "benefit attributable" shall be determined in accordance with treasury regulations.

(5) **Adjustments to basic IRC section 415(b) limitation for form of benefit.** If the benefit under this plan is other than a straight life annuity with no ancillary benefit, then the benefit shall be adjusted so that it is the equivalent of the straight life annuity, using factors prescribed in treasury regulations.

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 IRC section 415(b) 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 benefits as follows:

(a) For a benefit paid in a form to which IRC section 417 (e)(3) does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417 (e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code).

(b) For a benefit paid in a form to which IRC section 417 (e)(3) applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(ii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one-half percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417 (e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal

Revenue Code).

(iii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417 (e)-1(d)(3) (the thirty-year treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)); and

(A) For years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation section 1.417 (e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05; or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(6) Benefits not taken into account for IRC section 415(b) limit. For purposes of this section, 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; and

(c) Any other benefit not required under IRC section 415 (b)(2) and treasury regulations thereunder to be taken into account for purposes of the limitation of IRC section 415 (b)(1).

(7) Other adjustments in IRC section 415(b) limitation.

(a) In the event the member's retirement benefits become payable before age sixty-two, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of IRC section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (as adjusted) annual benefit beginning at age sixty-two.

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

(c) The reductions provided for in (a) of this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(8) Less than ten years of ((service)) participation adjustment for IRC section 415(b) limitation. The maximum retirement benefits payable to any member who has completed less than ten years of ((service)) participation shall be the amount determined under subsection ((+1)) (3) of this section multiplied

by a fraction, the numerator of which is the (~~number of the~~) member's years of (~~service~~) participation and the denominator of which is ten.

(a) The reduction provided by this subsection cannot reduce the maximum benefit below ten percent.

(b) The reduction provided by this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(c) For purposes of this subsection, a member's "years of participation" equal the amount of service credit used in the computation of the member's retirement allowance, except as follows. Service credit purchased pursuant to RCW 41.26.199 (LEOFF Plan 1), RCW 41.26.432 (LEOFF Plan 2), RCW 41.32.066 (TRS), RCW 41.35.183 (SERS), RCW 41.37.265 (PSERS), RCW 41.40.034 (PERS), and RCW 43.43.233 (WSPRS) is not included in a member's "years of participation."

(9) **Effect of cost-of-living adjustment (COLA) without a lump sum component on IRC section 415(b) testing.** Effective on and after January 1, 2009, for purposes of applying the IRC section 415(b) limit to a member with no lump sum benefit, the following will apply:

(a) A member's applicable IRC section 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic COLAs;

(b) To the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for COLA increases until such time as the benefit plus the accumulated increases are less than the IRC section 415(b) limit; and

(c) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic COLA increases, shall be tested under the then applicable IRC section 415(b) limit including any adjustment to the IRC section 415 (b)(1)(A) dollar limit under IRC section 415(d), and the treasury regulations thereunder.

(10) **Effect of COLA with a lump sum component on IRC section 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 COLA increases as required by IRC section 415(b) and applicable treasury regulations.

(11) **IRC section 415(c) limit.** After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of forty thousand dollars, as adjusted pursuant to IRC section 415(d), or one hundred percent of the member's compensation.

(a) Annual additions are defined to mean the sum (for any year) of 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 to picked-up employee contributions that are paid to a defined benefit plan.

(b) For purposes of applying the IRC section 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 IRC 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 the plan, compensation will be defined as wages within the meaning of IRC 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 IRC sections 6041(d), 6051 (a)(3), and 6052 and will be determined without regard to any rules under IRC 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 IRC section 3401 (a)(2)).

(i) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC sections 125(a), 402 (e)(3), 402 (h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of IRC section 132 (f)(4).

(ii) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of two and one-half 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:

(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 (c)(ii) of this subsection are not considered compensation if paid after severance from employment, even if they are paid within two and one-half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of IRC section 414 (u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(iii) 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.

(iv) Beginning January 1, 2009, to the extent required by IRC sections 3401(h) and (~~414 (u)(2)~~) 414 (u)(12), an individual receiving a differential wage payment (as defined in section 3401 (h)(2) of the Internal Revenue Code) 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 section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(v) An employee who is in qualified military service (within the meaning of IRC section 414 (u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

(A) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or

(B) If the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(vi) If the annual additions for any member for a plan year exceed the limitation under IRC section 415(c), the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

(vii) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection shall not exceed the annual limit under IRC section 401 (a)(17).

(12) Service purchases under IRC section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC section 415(n) will be treated as met only if:

(a) The requirements of IRC section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or

(b) The requirements of IRC section 415(c) are met, determined by treating all such contributions as annual additions for purposes of IRC section 415(c).

(c) For purposes of applying this subsection, the plan will not fail to meet the reduced limit under IRC section 415 (b)(2)(C) solely by reason of this subsection and will not fail to meet the percentage limitation under IRC section 415 (c)(1)(B) solely by reason of this subsection.

(d) For purposes of this subsection the term "permissive service credit" means service credit:

(i) Recognized by the plan for purposes of calculating a member's benefit under the plan;

(ii) Which such member has not received under the plan; and

(iii) Which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the 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 (d)(ii) of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

(e) The plan will fail to meet the requirements of this section if:

(i) More than five years of nonqualified service credit are taken into account for purposes of this subsection; or

(ii) Any nonqualified service credit is taken into account under this subsection before the member has at least five years of participation under the plan.

(f) For purposes of (e) of this subsection, 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:

(i) 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 IRC section 415 (k)(3));

(ii) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in (f)(i) of this subsection) of an education organization described in IRC section 170 (b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education through grade twelve, or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(iii) Service as an employee of an association of employees who are described in (f)(i) of this subsection; or

(iv) Military service, other than qualified military service under section 414(u), recognized by the plan.

(g) In the case of service described in (f)(i), (ii), or (iii) of this subsection, 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.

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

(i) The limitations of (e) of this subsection will not apply

in determining whether the transfer is for the purchase of permissive service credit; and

(ii) The distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.

(i) For an eligible member, the limitation of IRC 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 plan as in effect on August 5, 1997. For purposes of this subsection (12)(i), an eligible member is an individual who first became a member in the plan before January 1, 1998.

(13) Modification of contributions for IRC sections 415(c) and 415(n) purposes. Notwithstanding any other provision of law to the contrary, the department may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in IRC section 415 by using the following methods:

(a) If the law allows, the department may establish either a lump sum or a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC sections 415(c) or 415(n).

(b) If payment pursuant to (a) of this subsection will not avoid a contribution in excess of the limits imposed by IRC sections 415(c) or 415(n), the department may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(14) Repayments of cash outs. Any repayment of contributions, including interest thereon, to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the state or a local government within the state shall not be taken into account for purposes of IRC section 415, in accordance with applicable treasury regulations.

(15) Participation in other qualified plans: Aggregation of limits.

(a) The IRC section 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 IRC section 414(j) maintained by the member's employer 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 IRC section 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 IRC section 414(i) maintained by the member's employer 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.

(16) Reduction of benefits priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's defined benefit component 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 the member's defined contribution component benefit under any defined benefit 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.

(17) Technical and Miscellaneous Revenue Act of 1988 (TAMRA) election. This subsection applies only to those plans for which it has been approved by the IRS. This subsection applies retroactively beginning on January 1, 1990, only to participants who first became participants in the system before January 1, 1990. For purposes of this subsection, these participants are referred to as "qualified participants." For a qualified participant, the 415(b) limit shall not be less than the accrued benefit of the participant under the plan determined without regard to any amendment of the plan made after October 14, 1987.

(18) Ten thousand dollar limit; less than ten years of service. Notwithstanding anything in this section to the contrary, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated, provided, however, that if the member has completed less than ten years of service with the employer, the limit under this section shall be a reduced limit equal to ten thousand dollars multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten, and such that the fraction so calculated may not be less than one-tenth.