

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 28

OPERATING PROCEDURES TO ENSURE COMPLIANCE
WITH CERTAIN FEDERAL TAX LAW REQUIREMENTS

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SUBCHAPTER 1

GENERAL PROVISIONS

§6-28-1 Purpose. The purpose of this chapter is to establish procedures to comply with sections 401(a)(9) and 401(a)(31) of the Code covering required minimum distributions and direct rollovers, respectively. The procedures have

been revised for changes in federal tax law under the Pension Protection Act of 2006, as amended by the Worker, Retiree, and Employer Recovery Act of 2008. [Eff 5/20/05; am and comp APR 06 2012] (Auth: HRS § 88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

§6-28-2 Definitions. Unless a different meaning is plainly required by context, as used in this chapter:

"Code" means the Internal Revenue Code of 1986, as amended.

"Treasury Regulations" means regulations issued by the Internal Revenue Service. [Eff 5/20/05; comp APR 06 2012] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

SUBCHAPTER 2

REQUIRED MINIMUM DISTRIBUTIONS

§6-28-3 Definitions. Unless a different meaning is plainly required by context, as used in this subchapter:

"Designated beneficiary" means the individual who is designated as the beneficiary in accordance with section 88-21, HRS, and is the designated beneficiary under section 401(a)(9) of the Code.

"Required beginning date" means April 1 of the calendar year following the later of:

- (1) The calendar year in which the member attains age seventy and one-half; or
- (2) The calendar year in which the member retires. [Eff 5/20/05; am and comp APR 06 2012] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

§6-28-4 Good faith compliance with the Code. All benefit distributions shall be administered in accordance with a reasonable good faith interpretation of section 401(a)(9) of the Code. [Eff 5/20/05; am and comp APR 06 2012] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

§6-28-5 Time of distribution. (a) The member's entire interest shall be distributed to the member no later than the member's required beginning date or the member's entire interest must begin to be distributed to the member no later than the member's required beginning date and must be paid over the life of the member or the lives of the member and a designated beneficiary (or over a period that does not extend beyond the life expectancy of the member or the life expectancy of the member and a designated beneficiary).

(b) If the distribution of the member's interest has begun in accordance with subsection (a) and the member dies before the member's entire interest has been distributed, the remaining portion must be distributed at least as rapidly as under the method of distribution being used to satisfy subsection (a).

(c) If the member dies before distribution of the member's interest has begun under subsection (a), the member's entire interest shall be distributed, or begin to be distributed, no later than as follows:

- (1) If the member's surviving spouse is the member's sole designated beneficiary, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age seventy and one-half, if later;
- (2) If the member's surviving spouse is not the member's sole designated beneficiary, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, and shall be paid over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary); or
- (3) If there is no designated beneficiary, the member's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
[Eff 5/20/05; am and comp APR 06 2012] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

§6-28-6 REPEALED. [R APR 06 2012]

§6-28-7 REPEALED. [R APR 06 2012]

§6-28-8 Incidental death benefit requirements. If the member's benefit is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury Regulations. The applicable percentage is based on the adjusted age difference between the member and beneficiary. The age difference is determined by first calculating the excess of the age of the member over the age of the beneficiary based on their ages on their birthdays in the same calendar year. Then, if the member is younger than age seventy, the age difference determined in the preceding sentence is reduced by the number of years that the member is younger than age seventy in the calendar year that contains the annuity starting date. [Eff 5/20/05; am and comp APR 06 2012] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

§6-28-9 REPEALED. [R APR 06 2012]

SUBCHAPTER 3

DIRECT ROLLOVERS

§6-28-10 Definitions. Unless a different meaning is plainly required by context, as used in this subchapter:

"Direct rollover" means a payment by the system to the eligible retirement plan specified by the distributee.

"Distributee" means a member or a former member, the surviving spouse of a deceased member, and the current or former spouse of a member who is an alternate payee under a domestic relations order that has been approved by the administrator. Effective July 1, 2010, "distributee" also includes a nonspouse beneficiary of a deceased member. However, a nonspouse beneficiary may make a direct rollover only to an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code (including a Roth IRA) that is established on behalf of the nonspouse beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the Code.

"Eligible retirement plan" means any of the following accounts or plans to the extent it accepts the distributee's eligible rollover distribution:

- (1) A qualified retirement plan described in section 401(a) of the Code;
- (2) An individual retirement account described in section 408(a) of the Code;
- (3) An individual retirement annuity described in section 408(b) of the Code (other than an endowment contract);
- (4) An annuity plan described in section 403(a) of the Code;
- (5) An annuity contract described in section 403(b) of the Code; or
- (6) An eligible retirement plan described in section 457(b) of the Code that is maintained by a state, or political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and that agrees to separately account for amounts transferred into such plan from the system.

Effective January 1, 2008, "eligible retirement plan" also includes a Roth IRA described in section 408A of the Code if the distributee meets the requirements that apply to rollovers from a traditional IRA to a Roth IRA (i.e., for tax years prior to January 1, 2010, the distributee's modified adjusted gross income cannot exceed \$100,000, and the distributee must not be married filing a separate return). [Eff 5/20/05; am and comp APR 06 2012] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

§6-28-11 Eligible rollover distributions. (a) A distributee who is entitled to a distribution may elect, at the time and in the manner determined by the administrator, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan.

(b) "Eligible rollover distribution" means any distribution of all or any portion of a member's benefit, except that an eligible rollover distribution shall not include:

- (1) Any distribution that is one of a series of substantially equal periodic payments made no less frequently than annually for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's beneficiary, or for a specified period of ten years or more;
- (2) Any distribution to the extent such distribution is required under section 401(a)(9) of the Code;
- (3) Corrective distributions of contributions that exceed system or tax law limitations; and
- (4) Any distributions during a calendar year that are reasonably expected to total less than \$200.

(c) A portion of a distribution shall 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:

- (1) To an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code;
- (2) For taxable years beginning after December 31, 2001, and before January 1, 2007, to a qualified trust that is part of a defined contribution plan and that agrees to separately account for amounts so transferred (and earnings thereon) including separately accounting for the portion of such distribution which is includible in gross income, and the portion which is not so includible; or
- (3) For taxable years beginning after December 31, 2006, to a qualified trust (defined contribution or defined benefit) or 403(b) annuity contract, provided that the qualified trust or 403(b) annuity contract agrees to separately account for amounts so transferred (and the earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income, and the portion which is not so includible.

(d) In prescribing the manner of making elections with respect to eligible rollover distributions, as described above, the administrator may provide for the uniform application of any restrictions permitted under applicable sections of the Code and Treasury Regulations, including a requirement that a distributee may not elect to make a direct rollover from a single eligible rollover distribution to more than one eligible retirement plan.

(e) The administrator may require a recipient plan to provide a written statement that it will accept the rollover and separately account for the amount rolled over, where required.

(f) Prior to making an eligible rollover distribution, the administrator shall provide the distributee a notice describing the distributee's right to make a direct rollover to an eligible retirement plan and describing the tax consequences

that will follow if a direct rollover is not made. The administrator shall issue the notice at least thirty days but no more than one hundred eighty days prior to the date a distribution is made. However, the eligible rollover distribution may be made less than thirty days after the notice is given provided that the administrator informs the distributee that the distributee has the right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect an eligible rollover distribution and the distributee, after receiving the notice, affirmatively elects a distribution.

(g) Any taxable amount that is an eligible rollover distribution but that the distributee chooses not to have directly rolled over is subject to twenty per cent income tax withholding. This includes distributions to the distributee that the distributee intends to roll over in a traditional sixty-day rollover transaction. Eff 5/20/05; am and comp APR 06 2012] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

SUBCHAPTER 4

ACTUARIAL ASSUMPTIONS FOR ADJUSTMENT OF BENEFITS AND LIMITS UNDER SECTION 415(b)(2) OF THE CODE

§6-28-12 Mortality. For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D) of section 415(b)(2) of the Code, the system shall use the "applicable mortality table." For distributions with annuity starting dates after December 31, 1999, the "applicable mortality table" is the mortality table set forth in Revenue Ruling 1995-6. For distributions with annuity starting dates on or after December 31, 2002, the "applicable mortality table" is the mortality table set forth in Revenue Ruling 2001-62. For distributions with annuity starting dates after December 31, 2007, the "applicable mortality table" is defined by reference to section 417(e)(3)(B) of the Code, as amended by the Pension Protection Act of 2006. For distributions with annuity starting dates prior to January 1, 2000, the system shall use the mortality assumptions that are used to determine actuarial equivalence. [Eff APR 06 2012] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §§88-22.5 and 88-83.5)

§6-28-13 Interest. For purposes of adjusting any limitation under subparagraph (C) of section 415(b)(2) of the Code and for purposes of adjusting any benefit under subparagraph (B) of section 415(b)(2) of the Code other than a benefit that would be subject to section 417(e)(3) of the Code if section 417(e)(3) applied to governmental plans, the interest rate assumption shall not be less than the greater of 5% or the rate specified by the board for determining actuarial equivalence in accordance with section 88-90.5, Hawaii Revised Statutes. For purposes of adjusting any benefit under subparagraph (B) of section 415(b)(2) of the Code with an annuity starting date on or after January 1, 2009, that would be subject to section 417(e)(3) of the Code if section 417(e)(3) applied to governmental plans, the interest rate assumption shall not be less than the greatest of (i) 5.5%; (ii) the "applicable interest rate," as defined in section 417(e)(3) of the

Code, divided by 1.05; and (iii) the rate specified by the board for determining actuarial equivalence in accordance with section 88-90.5, Hawaii Revised Statutes. For purposes of adjusting any limitation under subparagraph (D) of section 415(b)(2) of the Code, the interest rate assumption shall not be greater than the lesser of 5% or the rate specified by the board for determining actuarial equivalence in accordance with section 88 90.5, Hawaii Revised Statutes." [Eff APR 06 2012] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §§88-22.5 and 88-83.5)

