

94-411 Maine Public Employees Retirement System

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2024-011: Chapter 803, Participating Local District Consolidated Retirement Plan

Statutory Authority:	5 M.R.S. §§ 17103(4), 18801
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	<i>This rule governs the Consolidated Plan for Participating Local Districts.</i>
Basis Statement:	<p><i>The proposal for rulemaking was noticed on November 22, 2023. A public hearing was held on December 14, 2023.</i></p> <p><i>Under the current rule, cost-of-living adjustments (COLA) are paid to eligible retirees based on the Consumer Price Index for All Urban Consumers (CPI-U), up to a maximum of 2.5%. The CPI-U for the twelve-month period ending June 30, 2023 was 3.0%. The proposed amendment to the rule authorizes an additional one-time, non-cumulative COLA payment equal to 0.5% of retirement benefits to be paid to retirees who were eligible for a COLA in September 2023.</i></p> <p><i>The current rule includes several special plans that can be adopted by a participating local district (PLD) for its employees. Special Plan 4N is a non-COLA plan that provides for retirement after twenty-five (25) years of service at age 55. This plan is available only to certain classifications of employees. There currently are no employers participating in Special Plan 4N, and the proposed amendment removes that plan option effective February 1, 2024.</i></p> <p><i>The PLD Advisory Committee was provided with information about the cost-of-living adjustment provision and discussed various options to address the recent unusually high inflation. By unanimous vote, Committee members voted to recommend an additional one-time payment of 0.5% of benefits to eligible retirees. The Committee was also provided with information about Special Plan 4N no longer being utilized because it is less attractive to employers and employees than other plans, and the Committee voted unanimously to make that plan no longer available for adoption. MainePERS staff brought these recommendations to the Board of Trustees for consideration through the proposed rule amendments.</i></p> <p><i>No members of the public provided comments at the public hearing, and no written comments were submitted prior to the December 26, 2023 comment deadline.</i></p> <p><i>At the Board’s regular meeting held on January 11, 2024, Shirrin Blaisdell made the motion, seconded by Ken Williams to adopt the amended rule. Voted unanimously by all trustees present.</i></p>

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2024-163: Chapter 103, Qualified Domestic Relations Orders

Statutory Authority: 5 M.R.S. §§ 17103(4), 17059(13)

Type: Routine Technical

Emergency?: No

Fiscal Impact: None

Principal purpose: *This rule implements the provisions in statutes relating to qualified domestic relations orders, which provide the statutory authority for the retirement system to pay benefits to the alternate payee of a member or retiree when the right to such payment is established by a qualified domestic relations order. This Chapter provides the standards for such orders, procedures for their filing, and the procedures to be followed by the retirement system in reviewing and administering the statute.*

Basis Statement: *The proposal for rule-making was noticed on May 22, 2024. A public hearing was held on June 13, 2024. No members of the public provided comments at the public hearings, and no written comments were submitted prior to the June 24, 2024 comment deadline.*

This rule implements the provisions in statutes relating to qualified domestic relations orders, which provide the statutory authority for the retirement system to pay benefits to the alternative payee of a member or retiree when the right to such payment is established by a qualified domestic relations order. This Chapter provides the standards for such orders, procedures for their filing, and the procedures to be followed by the retirement system in reviewing and administering the statute.

The amendments: (1) streamline the rule by deleting unnecessary language, updating language and reorganizing language for improved clarity; (2) clearly state what happens in each situation when the alternate payee deceases before the member; (3) specify that payments to the alternate payee may begin before the member retires only if the order so specifies; (4) provide that where the alternate payee's benefits initiate before the member's retirement, the alternate payee's benefit will be recalculated if necessary at the time the member retires using the same actuarial factors used at the time the alternate payee initiated benefits; and (5) incorporate into rule the longstanding practice of requiring an additional filing fee when review is not completed within 18 months and the delay is not caused by the retirement system.

At the Board's regular meeting held on July 11, 2024, Henry Beck made the motion, seconded by Shirrin Blaisdell to adopt the amended rule. Five Trustees (Beck-Beliveau-Blaisdell-Duplessis-Metivier) voted in favor of the motion, and one (Kimball) voted in opposition. Motion to adopt the amended rule carried.

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2024-164: Chapter 506, Eligibility for Disability Retirement Benefits

Statutory Authority: 5 M.R.S. § 17103(4)

Type: Routine Technical

Emergency?: No

Fiscal Impact: None

Principal purpose: *This rule sets forth the standards and processes for determining eligibility for disability retirement benefits.*

Basis Statement: *This proposal for rule-making was noticed on May 22, 2024. A public hearing was held on June 13, 2024. One member of the public provided oral comments at the public hearing, and that same member of the public submitted written comments prior to the June 24, 2024 comment deadline. One additional member of the public submitted written comments prior the June 24, 2024 comment deadline. The comments are summarized below, and MainePERS' responses are in italics.*

This rule sets forth the standards and processes for determining eligibility for disability retirement benefits. The amendment to the rule changes the definition of "earnings" to align with the definition of that term in the new Rule Chapter 513.

One member of the public¹ made two recommendations regarding the proposed amended rule. First, the commenter opined that the new definition of "earnings" lacked clarity for those less knowledgeable about federal tax laws. The commenter suggested that the definition be more specific in its reference to federal tax forms and information found on those forms.

The language has been made more specific, but MainePERS declines to refer to particular line numbers because federal tax forms are revised annually, and it would be unwieldy to require rulemaking every time a line number changed on a federal form. MainePERS also declines to extend the definition of "earnings" to other contexts as suggested because "earnable compensation" is defined by statute and the ability to earn may not be reflected on tax filings.

Second, the commenter opined that how individuals report rental income on federal tax filings could result in that income being arbitrarily counted as "earnings" under the proposed definition. The commenter suggests that the rule provide guidance on the tax reporting of rental income as part of the definition of earnings.

MainePERS declines to depart from the clear guidance provided by the rule in favor of a more ambiguous standard.

One member of the public² offered written comments regarding the disability retirement program that were outside the scope of the current rulemaking.

Based on consideration of the comments received, staff recommends a change to the proposed amended rule to provide increased specificity on the tax information that

¹ Susan Hawes, Portland

² Wendy Fenderson, Limerick

will be used to determine earnings. The Board concurs with this recommendation.

At the Board's regular meeting held on July 11, 2024, Henry Beck made the motion, seconded by Shirrin Blaisdell to adopt the amended rule. Five Trustees (Beck-Beliveau-Blaisdell-Duplessis-Metivier) voted in favor of the motion, and one (Kimball) voted in opposition. Motion to adopt the amended rule carried.

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2024-165: Chapter 513, Disability Retirement Compensation Limitations and Benefit Offsets

Statutory Authority: 5 M.R.S. § 17103(4)

Type: Routine Technical

Emergency?: No

Fiscal Impact: [N]one

Principal purpose: *This proposed new rule sets forth guidance on compensation limitations and offsets applicable to disability retirement benefits and the submission of annual statements of compensation by disability retirees.*

Basis Statement: *This proposal for rulemaking was noticed on May 22, 2024. A public hearing was held on June 13, 2024. Three members of the public provided oral comments at the public hearing, and two of those same members of the public submitted written comments prior to the June 24, 2024 comment deadline. Two additional members of the public submitted written comments prior to the June 24, 2024 comment deadline. The comments are summarized below, and MainePERS' responses are in italics.*

This proposed new rule sets forth guidance on compensation limitations and offsets applicable to disability retirement benefits and the submission of annual statements of compensation by disability retirees. It establishes applicable definitions and the process for submission of an annual statement of compensation, including the required documentation and filing deadlines.

One member of the public³ commented that the rule should more clearly address the procedures that apply when a disability benefit recipient exceeds earnings limitations and must repay MainePERS. The commenter suggested the Social Security Administration limits on garnishment of benefits as an approach to follow rather than withholding the entire monthly benefit towards the repayment of the overpayment of benefits.

One member of the public⁴ spoke in support of the first commenter, a prior coworker, and opined that a 100% claw back of benefits to repay amounts due is catastrophic for the impacted individual.

Language has been added to the proposed rule to reflect that the steps to be taken when a disability retiree exceeds earnings limitations are set forth in statute. See, e.g., 5 M.R.S. § 17930(2)(A)&(B). No further procedural guidance is necessary in this rule. The Social Security garnishment limit was announced in March of 2024 and applies to recovery of overpaid benefits generally. MainePERS will consider whether rulemaking on the topic of overpayment recoveries generally would be appropriate.

One member of the public⁵ made several comments and recommendations regarding the proposed new rule. First, the commenter opined that MainePERS should not require disability retirees to submit SSA-1099's and that it has no legal authority for this requirement. Further, that the proposed rule would require all disability retirees

³ John York, Bangor

⁴ Andy Willigar, Bangor

⁵ Susan Hawes, Portland

to submit their SSA-1099, regardless of the basis on which the Social Security payments are paid. The commenter further opined that information reported on the SSA-1099 is not “compensation received from gainful occupation” and therefore is not needed to accurately apply benefit reductions as stated in the proposed rule. The commenter further opined that only a small subset of disability retirees are likely to also receive a Social Security disability benefit and that for those individuals who do, the information needed to determine any offset cannot be obtained from the SSA-1099. The commenter further opined that requiring the submission of SSA-1099’s creates unnecessary work for MainePERS staff, increases the chances of an inaccurate calculation of the offset and creates an unnecessary burden for disability retirees to submit the annual documents as part of the Annual Statement of Compensation filing process.

Second, the commenter suggests alternative wording to Section 2(3) of the rule to eliminate consideration of other benefits.

MainePERS has the authority and responsibility to administer the statutory provisions that require disability retirement benefits to be reduced when Social Security disability benefits are received for the same disability. See 5 M.R.S. § 17103(4)&(6); 17105(1)(A). It is clear from the proposed rule’s language that the information about other benefits is distinct from the annual statement of compensation requirement but for convenience is reported at the same time and on the same form. Doing so is efficient and minimizes the burden on retirees and staff. Language has been added to the proposed rule to clarify that the SSA-1099 is not used in isolation to change benefit reductions, but rather it is an indicator that leads to further inquiry if it shows unexplained increases or decreases in benefits. The burden of including this form with the annual statement of compensation filing is slight and is justified by its value in avoiding an underpayment or overpayment of benefits.

Third, the commenter suggests alternative wording to the definition of “earnings” in Section 1(1) of the proposed rule, with the stated intent to make it more understandable to those less knowledgeable about federal tax laws. The commenter suggests that the definition be more specific in its reference to federal tax forms and information found on those forms. The commenter also suggests inserting additional statutory references into the definition of “earnings” to apply it in other situations.

The language has been made more specific, but MainePERS declines to refer to particular line numbers because federal tax forms are revised annually, and it would be unwieldy to require rulemaking every time a line number changed on a federal form. MainePERS also declines to extend the definition of “earnings” to other contexts as suggested because “earnable compensation” is defined by statute and the ability to earn may not be reflected on tax filings.

Fourth, the commenter opined that how individuals report rental income on federal tax filings could result in that income being arbitrarily counted as “earnings” under the proposed definition. The commenter suggests that the rule incorporate the IRS definitions of “significant services” with respect to rental income; and “materially

participate” with respect to farming income.

MainePERS declines to depart from the clear guidance provided by the rule in favor of a more ambiguous standard.

The commenter also opined that the rule should be expanded to include various additional procedures and provisions pertaining to benefit offsets, overpayments, compensation limits, deadlines, and dates.

MainePERS believes that statute and the proposed rule provide sufficient guidance on the subject matter of this rule. As noted above, MainePERS will consider whether rulemaking on the topic of overpayment recoveries generally would be appropriate.

The commenter requested the Board to require the Chief Executive Officer to engage in consensus-based rulemaking on the proposed rule to include those directly impacted by the rule.

Formal consensus-based rule development is optional for an agency. Here, where stakeholder input was solicited informally during development and the proposed rule has gone through the formal rulemaking process including a public hearing, there is no need for further development.

Finally, the commenter alleged that “it appears MainePERS has been unlawfully reducing the benefit amounts of disability retirees based on what is reflected on SSA-1099s or some other benefit reduction” and submitted as support for this allegation a document the commenter had prepared listing payments to seven disability retirees that appeared to reduce in amount over time. She identified data provided by MainePERS as the source of these benefit payment amounts.

This allegation is false. While MainePERS did provide information to this commenter on all disability payments made over a seven year period in response to freedom of access requests, the document created by the commenter did not accurately reflect the data produced. The accurate data shows benefits to all seven of the disability retirees increased year-to-year – there were no reduced benefits, let alone “unlawfully” reduced benefits.

Written comments were received from one member of the public⁶ who opined that the rules pertaining to earnings for a disability retiree need to limit the impact on members who are attempting to improve their situations. The commenter also opined that repayment of overpaid benefits should never result in the garnishment of an individual’s entire benefit. Finally, the commenter opined that it should not be necessary for disability retirees to submit SSA-1099’s as part of the financial documents requested by MainePERS since all income information is available on the tax schedules that must be submitted and some retirees were not covered by Social Security.

⁶ Rick Cailler, Professional Firefighters of Maine

See response above to the first set of comments. Additionally, under the proposed rule, MainePERS no longer will require disability retirees to submit their entire tax filing, so the information on the SSA-1099 will not be available through other tax schedules submitted. Language has been added to the proposed rule to clarify that the Social Security reporting does not apply to those retirees who were not covered by Social Security.

Written comments were also received from a member of the public⁷ who opined that the rule should more clearly address how MainePERS uses the financial information collected from disability retirees to determine whether earnings limitations have been met, and should better articulate guidance on earnings limitations and how exceeding those limitations might result in the need for repayment of benefits, as well as how those repayments are expected to be made, including through the withholding of future benefits.

MainePERS believes that statute and the proposed rule provide sufficient guidance on the subject matter of this rule. As noted above, MainePERS will consider whether rulemaking on the topic of overpayment recoveries generally would be appropriate.

Based on consideration of the comments received, MainePERS staff recommends changes to the proposed new rule to: (1) provide increased specificity on the tax information that will be used to determine earnings; (2) specify that a disability retiree who was not covered by Social Security during the period of employment associated with the disability retirement is not required to report Social Security benefits or provide a SSA-1099; (3) include statutory context; (4) reorder the rule for clarity; (5) correct statutory cites; and (6) explain the steps to be taken if documentation submitted by a disability retiree reflects an unexplained change in other benefits being received by that retiree. The Board concurs with these recommendations.

At the Board's regular meeting held on July 11, 2024, Henry Beck made the motion, seconded by Shirrin Blaisdell to adopt the new rule. Five Trustees (Beck-Beliveau-Blaisdell-Duplessis-Metivier) voted in favor of the motion, and one (Kimball) voted in opposition. Motion to adopt the new rule carried.

⁷ Lance Sanborn, Hermon