

Rules Amending Title 6
Hawaii Administrative Rules

_____, 2012

1. Chapter 28 of Title 6, Hawaii Administrative Rules, entitled "Operating Procedures to Ensure Compliance With Certain Federal Tax Law Requirements", is amended and compiled to read as follows:

"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] (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] (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,] Hawaii Revised Statutes, and is the designated beneficiary under section 401(a)(9) of the Code [~~and section 1.401(a)(9)-4 of the Treasury Regulations~~].

~~["Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar~~

year is the calendar year in which distributions are required to begin under section 6-28-5(b).

~~"Life expectancy" means life expectancy as computed by use of the Single Life Table in section 1.401(a)(9) 9 of the Treasury Regulations.]~~

"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] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

§6-28-4 ~~[Requirements of the Treasury Regulations.]~~ Good-faith compliance with the Code. All benefit distributions shall be ~~[determined and made]~~ administered in accordance with ~~[the Treasury Regulations implementing a reasonable good-faith interpretation of section 401(a)(9) of the Code.~~ [Eff 5/20/05; am and comp] (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~~[, or begin to be distributed,]~~ to the member no later than the member's ~~["required beginning date," which is 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.]~~ 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).

~~[(b)]~~ (c) If the member dies before [distributions begin,] 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 [~~as of September 30 of the year following the year of the member's death~~], the member's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death[; ~~or~~
- (4) ~~If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection, other than paragraph (1), shall apply as if the surviving spouse were the member].~~

~~[For purposes of this subsection and section 6-28-9, unless paragraph (4) applies, distributions are considered to begin on the member's required beginning date. If paragraph (4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (1). If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph (1)), the date distributions are considered to begin is the date distributions actually commence.] [Eff 5/20/05; am and comp] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)~~

~~[§6-28-6 Forms of distribution. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year, distributions shall be made in accordance with sections 6-28-7, 6-28-8, and 6-28-9. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury Regulations. Any part of the member's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury Regulations that apply to individual accounts.] [Eff 5/20/05;~~

R
22.5)

] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-

~~[\§ 6-28-7 Determination of amount to be distributed each year. (a) If the member's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:~~

- ~~(1) — The annuity distributions shall be paid in periodic payments made at intervals not longer than one year;~~
- ~~(2) — The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in section 6-28-8 or 6-28-9;~~
- ~~(3) — Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum permitted;~~
- ~~(4) — Payments shall either be nonincreasing or increase only as follows:
 - ~~(A) — By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the federal Bureau of Labor Statistics;~~
 - ~~(B) — By an automatic, fixed percentage cost-of-living allowance applied not less frequently than annually at a rate not to exceed five per cent per year;~~
 - ~~(C) — To the extent of the reduction in the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in section 6-28-8 dies or is no longer the member's beneficiary pursuant to a domestic relations order;~~
 - ~~(D) — To provide cash refunds of employee contributions upon the member's death; or~~
 - ~~(E) — To pay increased benefits that result from a plan amendment.~~~~

~~(b) — The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under section 6-28-5(b)(1) or (2)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if the payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semi-annually, or annually. All of the member's benefit accruals as of the last day of the first distribution calendar~~

year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

~~(c) — Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.~~ [Eff 5/20/05; R]
(Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

§6-28-8 ~~[Requirement for annuity distributions that commence during the member's lifetime. (a)]~~ 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. ~~[If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in this subsection shall apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.]~~

~~[(b) — Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches age seventy, the applicable distribution period for the member is the distribution period for age seventy under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations plus the excess of age seventy over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period as determined~~

~~under this subsection or the joint life and last survivor expectancy of the member and the member's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.~~

~~(e) — This section shall be applicable to members retiring after December 31, 2005.] [Eff 5/20/05; am and comp]~~
(Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)

~~[§6-28-9 Requirements for minimum distributions where member dies before date distributions begin. (a) If the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest shall be distributed, beginning no later than the time described in section 6-28-5(b)(1) or (2), over the life of the designated beneficiary or over a period certain not exceeding:~~

~~(1) — Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or~~

~~(2) — If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.~~

~~(b) — If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.~~

~~(c) — If the member dies before the date distribution of his or her interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section 6-28-9 shall apply as if the surviving spouse were the member, except that the time by which distributions must begin shall be determined without regard to section 6-28-5(b)(1).] [Eff 5/20/05;~~

~~R] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §88-22.5)~~

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" ~~[shall mean]~~ 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 [~~(but not a Roth IRA described in section 408A 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 ~~[under]~~ described in section 457(b) of the Code ~~[which]~~ 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 ~~[which]~~ 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
§88-22.5) (Imp: HRS §88-22.5)

] (Auth: HRS §88-28; HRS

§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 [~~that is equal to at least \$500 (or such other minimum amount required under the Code or Treasury Regulations)~~] 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 [~~and section 6-28-5 and~~];
- (3) [~~The portion of any distribution that is not includible in gross income.~~] 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) ~~Notwithstanding the foregoing, a~~ 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 [~~to~~]:

- (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 [~~(other than an endowment contract)~~];
- (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 [~~plan that~~] 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 Internal Revenue Service has published a model notice that may be used for this purpose.~~] The administrator shall issue the notice at least thirty days but no more than [~~ninety~~] 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 [~~can be directly rolled over~~] 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 [~~rollover~~] roll over in a traditional sixty-day rollover transaction. [Eff 5/20/05; am and comp] (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 _____] (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 _____] (Auth: HRS §88-28; HRS §88-22.5) (Imp: HRS §§88-22.5 and 88-83.5)

2. Material, except for source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 6-28, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, 2012 and filed with the Office of the Lieutenant Governor.

Colbert Matsumoto
Chair, Board of Trustees
Employees' Retirement System of the
State of Hawaii

APPROVED AS TO FORM:

Deputy Attorney General