

Act 2015-93 INFORMATION

On December 28, 2015, Governor Tom Wolf signed Act 2015-93, which instituted several technical, tax-related requirements for SERS and is part of Pennsylvania's ongoing efforts to maintain the Retirement Code's compliance with federal and state laws, including the Internal Revenue Code. Many of these technical changes are transparent to SERS members, and most of the other changes affect only a few State employees. Most importantly, the passage of this legislation ensures that State employees continue to enjoy the benefits of their retirement accounts remaining tax-deferred until they leave state service and begin receiving a pension.

These changes include:

- Retiree return to service rules, allowing annuitants to return to active service in limited circumstances, are structured to satisfy federal requirements
- Minimum vesting standards are established in the event SERS pension plan is closed
- Benefit limits for higher salaried or longer service employees and the handling of pickup contributions
- Maximum contribution and minimum distribution rules, and death benefit parameters
- Coordination of retirement benefits between SERS and PSERS to ensure that any combined benefit does not exceed the IRS maximum distribution limit

Section-specific Changes and Pertinent Citations:

1. Section 401(a)(1) and (2) - Exclusive Benefit Rule. IRC Section 401(a)(1) and (2) and the related regulations provide that pension fund assets must be for the exclusive benefit of the fund's members and their beneficiaries. Act 2015-93 eliminates an exception to the Retirement Code's general rule that SERS benefits cannot be attached or assigned by deleting the sections that permitted the repayment of credit union loans and interest. This practice was ended more than 20 years ago and is no longer relevant.

2. Section 401(a)(7) - Minimum Vesting Standards. IRC Section 401(a)(7) provides that the plan document must state that, in the event of termination of the plan or discontinuance of benefit accruals, a member must be fully vested in his or her account to the extent then funded. Act 2015-93 adds Section 5955.2(b) which satisfies IRC Section 401(a)(7), providing that upon plan termination, the accrued benefits of affected members are fully vested to the extent then funded, subject to certain limitations such as application of the Public Employee Pension Forfeiture Act.

3. Section 401(a)(9) - Minimum Distribution Rules. IRC Section 401(a)(9) sets forth the required minimum distribution rules for qualified retirement plans including the incidental death benefit rules of IRC Section 401(a)(9)(G). Act 2015-93 expressly incorporates the minimum distribution rules into the Retirement Code, defining "Required beginning date" and making the rules applicable to the benefit payment plans the Retirement Code allows under Option 4 and to the payment of death benefits.

4. Section 401(a)(36) - In-service Distributions. IRC Section 401(a)(36) prohibits a plan participant from receiving distributions from a qualified plan prior to death, disability, separation from service, or the attainment of normal retirement age. Previously, Section 5706 of the Retirement Code permitted an annuitant to return to service without interruption of annuity payments under a variety of situations, the most common of which is when an "emergency" exists.

The receipt of annuity payments while employed is an in-service distribution. Inservice distributions are disfavored, but allowed if the member is over "normal retirement age," which is an IRC term of art. "Normal retirement age" can vary depending on the circumstances of an employee's job, but is not higher than 62. It is important to note that "normal retirement age" does not change the Retirement Code definition of "superannuation age" or the SERS benefit formulas.

Act 2015-93 defines "normal retirement age" as that term is defined in the IRC. It limits emergency returns to service to those who have attained normal retirement age or those who have been retired for at least one year. Act 2015-93 also places similar restrictions on an annuitant who returns as a senior judge or a senior magisterial district judge, and on an annuitant who returns to service as a member of a board or commission.

5. Section 414(h) - Pickup Contributions. IRC Section 414(h) prohibits employees from having tax deferred pickup contributions on amounts that they have the choice of receiving in cash instead of contributing to the plan. Act 2015-93 eliminates Section 5502.1, which allowed members whose estimated Maximum Single Life Annuity exceeds 110% of compensation to waive payment of regular member contributions because the option to elect to whether or not to contribute runs afoul of the IRC rule.

6. Section 415(b) and (c) - Annual Contribution and Benefit Limitations. Section 415(b) limits annual benefits; and Section 415(c) limits some contributions, such as those for the purchase of service credit, including nonstate service credit. The Section 415(b) limits were added to the Retirement Code as part of Act 2001-9 when the increase in benefits increased the possibility that members would exceed the Section 415(b) limits. Shortly thereafter, the Retirement Code was amended to authorize a Section 415(m) Qualified Governmental Excess Benefit Arrangement (QGEBA) for the payment of benefits in excess of the Section 415(b) limits. The Retirement Code identifies SERS' QGEBA as its Benefits Completion Plan.

Act 2015-93 makes all of Section 415 applicable to SERS benefits and contributions. It also provides that, when a multiple service member's combined SERS and PSERS benefit exceeds the Section 415(b) limitation, the excess shall be paid from SERS' Benefits Completion Plan. SERS has been in compliance with Section 415(b) since at least 2001; however, the system has not always complied with Section 415(c).