

**ARTICLE 9. ANNUAL COMPENSATION LIMITS; IMPLEMENTATION OF ANNUAL COMPENSATION LIMITATIONS PURSUANT TO INTERNAL REVENUE CODE SECTION 401(a)(17)**

**Rule 1. Annual Compensation Limits**

**35 IAC 9-1-1 Definitions**

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(c) "Fund" or "funds" means the following:

(1) Legislators' Retirement System.

(2) Public Employees' Retirement Fund.

(3) State Excise Police, Gaming Agent, Gaming Control Officer and Conservation Officers' Retirement Plan.

(4) Judges' Retirement System.

(5) 1977 Police Officers' and Firefighters' Pension and Disability Fund.

(6) Prosecutors' Retirement Fund.

(7) Local public safety funds funded through the Pension Relief Fund.

(d) "IRS" means the Internal Revenue Service.

(e) "OBRA '93" refers to the federal Omnibus Budget Reconciliation Act of 1993, P.L.103-66, and all applicable regulations and amendments related thereto. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 9-1-1; filed May 31, 1996, 4:00 p.m.: 19 IR 2854; adopted Nov 9, 2007: 20071205-IR-035070818ONA*) NOTE: Expiration postponed by Executive Orders #02-22, December 20, 2002, and #03-53, December 30, 2003.

**35 IAC 9-1-2 Introduction**

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 2. (a) OBRA '93 was signed into law on August 10, 1993. Among other things, OBRA '93 contained amendments to Section 401(a)(17) of the Code relating to the annual compensation limit for tax-qualified retirement plans. Section 401(a)(17) of the Code provides an annual compensation limit for each employee under a qualified plan. This annual compensation limit applies to a plan in two (2) ways as follows:

(1) A plan may not base contributions or benefits on annual compensation in excess of the limit.

(2) The amount of an employee's annual compensation that may be taken into account in applying certain specified nondiscrimination rules under the Code is subject to the annual compensation limit.

(b) Prior to its amendment by OBRA '93, the annual compensation limit under Section 401(a)(17) of the Code was two hundred thousand dollars (\$200,000), adjusted for cost-of-living increases (two hundred thirty-five thousand eight hundred forty dollars (\$235,840) for 1993), Section 401(a)(17) of the Code was amended by OBRA '93 to reduce the annual compensation limit to one hundred fifty thousand dollars (\$150,000), and to modify the manner in which cost-of-living adjustments are made to the annual compensation limit.

(c) OBRA '93, however, provides a grandfather clause for certain eligible participants in governmental plans. This grandfather rule applies to individuals who already were participants in governmental plans before the first plan year beginning after December 31, 1995, or, if earlier, the first plan year for which the plan is amended to comply with OBRA '93. Under the grandfather rule, the annual compensation limit contained in OBRA '93 will not apply to those eligible participants to the extent that the annual compensation limit in OBRA '93 would reduce the amount of compensation taken into account under the plan below the amount that was allowed to be taken into account under the plans as in effect on July 1, 1993. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 9-1-2; filed May 31, 1996, 4:00 p.m.: 19 IR 2854; adopted Nov 9, 2007: 20071205-IR-035070818ONA*) NOTE: Expiration postponed by Executive Orders #02-22, December 20, 2002, and #03-53, December 30, 2003.

**35 IAC 9-1-3 Purpose**

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

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Sec. 3. The purpose of this rule is to comply with OBRA '93 as it amended Section 401(a)(17) of the Code. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 9-1-3; filed May 31, 1996, 4:00 p.m.: 19 IR 2855; adopted Nov 9, 2007: 20071205-IR-035070818ONA) NOTE: Expiration postponed by Executive Orders #02-22, December 20, 2002, and #03-53, December 30, 2003.*

**35 IAC 9-1-4 Text**

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 4. The annual compensation limitations of Code Section 401(a)(17) shall be applied as follows:

(1) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, shall not apply to any eligible participant, in any future year, to the extent that the application of the annual compensation limit in Code Section 401(a)(17), as amended by OBRA '93, would reduce the amount of annual compensation that is allowed to be taken into account under the fund below the amount that was allowed to be taken into account under the fund as in effect on July 1, 1993. As used in this subdivision, "eligible participants" includes all members who participated in the fund prior to July 1, 1996.

(2) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, will be effective with respect to noneligible participants as of July 1, 1996. As used in this subdivision, "noneligible participants" includes all members who did not participate in the fund prior to July 1, 1996. 401(a)(17) of the Code.

*(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 9-1-4; filed May 31, 1996, 4:00 p.m.: 19 IR 2855; errata filed Jul 12, 1996, 12:30 p.m.: 19 IR 3471; adopted Nov 9, 2007: 20071205-IR-035070818ONA) NOTE: Expiration postponed by Executive Orders #02-22, December 20, 2002, and #03-53, December 30, 2003.*

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