

Voluntary Correction Program Policy - Approved at the June 14, 2011 NHRS Board meeting. Amended May 8, 2012.

NEW HAMPSHIRE RETIREMENT SYSTEM PLAN POLICIES

Policy Number: 2011-1

Topic: Voluntary Correction Program and Determination Letter Compliance

I. Purpose

Pursuant to RSA 100-A:14, II, this Policy has been approved by the board of trustees of the New Hampshire Retirement System (NHRS) to satisfy the terms of the Voluntary Correction Program compliance statement issued by the Internal Revenue Service to NHRS on September 1, 2010, and the determination letter issued by the Internal Revenue Service to NHRS on March 9, 2011.

- A. Definitions. To clarify the definition of "plan year" under NHRS.
- B. Limits on Compensation. To affirm that the annual compensation taken into account under NHRS will be limited to the maximum permissible amount that may be allowed under the Internal Revenue Code of 1986, as amended (Internal Revenue Code), and to define compensation under Internal Revenue Code Section 415.
- C. Internal Revenue Code Compliance Provisions. To affirm that NHRS will comply with qualification requirements of the Internal Revenue Code, including but not limited to, maximum contribution and benefit limits, the trust requirement, forfeiture treatment, required minimum distributions, actuarial assumptions, eligible rollover distributions, prohibited transactions, USERRA requirements, vesting requirements, and electronic transaction requirements. See e.g., RSA 100-A:1, XVII and XXV, RSA 100-A:2, RSA 100-A:4, IV, RSA 100-A:10, RSA 100-A:11-a, RSA 100-A:13, RSA 100-A:13-b, RSA 100-A:15, and RSA 100-A:54.

II. Policy

- A. Definitions
 - (a) "Plan year" means the fiscal year beginning each July 1 and ending the following June 30.
- B. Limits on Compensation
 - (a) Limit under Internal Revenue Code 401(a)(17): In no event will the earnable compensation for purposes of determining average final compensation exceed the limit under Internal Revenue Code Section 401(a)(17) pursuant to Section II.C(e) of this Policy.

(b) Limit under Internal Revenue Code 415:

(1) Calculation of a member's earnable compensation for the final 12 months of creditable service ending with the termination of employment pursuant to Ret 310.02(c) and Ret 310.03(b) shall include amounts paid after separation from service only if such amounts are paid by the later of 2½ months after an employee's severance from employment or the end of the plan year that includes the date of the employee's severance from employment and if:

- a. the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or
- b. the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

(2) Notwithstanding the definition of earnable compensation under Ret 310, for purposes of the limitations under Internal Revenue Code Section 415, the definition of compensation pursuant to Section II.C(i)(2) of this Policy shall apply.

C. Internal Revenue Code Compliance Provisions

(a) Effective as of July 1, 1989, the Retirement System will satisfy the qualification requirements in Internal Revenue Code Section 401, as applicable. In order to meet those requirements, NHRS is subject to the following provisions, notwithstanding any other provision of New Hampshire law. The board of trustees may adopt additional policies to implement this section, including additional policies to comply with the Pension Protection Act of 2006.

(b) Internal Revenue Code Section 401(a)(1), (2): Effective as of July 1, 1989, the assets of NHRS are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying NHRS's reasonable administrative expenses.

(c) Internal Revenue Code Section 401(a)(8): Effective as of September 1, 1974, NHRS will use forfeitures that arise for any reason, including from termination of employment or death, to reduce employer contributions. Forfeitures may not be applied to increase the benefits of any member.

(d) Internal Revenue Code Section 401(a)(9):

(1) Effective as of July 1, 1989, NHRS will pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9) and the regulations in effect under that

section, as applicable to a governmental plan within the meaning of Internal Revenue Code Section 414(d).

(2) Notwithstanding any other provision of this Policy, effective on and after January 1, 2002, NHRS is subject to the following provisions:

- a. Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the board of trustees will begin distributing the benefit as required by this Policy.
- b. The member's entire interest must be distributed over the member's life or the lives of the member and a designated Beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated Beneficiary.
- c. The life expectancy of a member, the member's spouse, or the member's Beneficiary may not be recalculated after the initial determination for purposes of determining benefits.
- d. If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
- e. If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either
 - (i) distributed (in accordance with federal regulations) over the life or life expectancy of the designated Beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death, or
 - (ii) distributed within five years of the member's death.

(3) The amount of an annuity paid to a member's Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G), and effective for any annuity commencing on or after July 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(4) The death and disability benefits provided by NHRS are limited by the incidental benefit rule set forth in Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from NHRS.

(e) Internal Revenue Code Section 401(a)(17):

(1) Notwithstanding the rules for calculating compensation for determination of benefits under Ret 310, effective July 1, 1996, in accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided in this section, the annual compensation NHRS takes into account for any purpose, including contributions or benefits, may not exceed the amount allowed by Internal Revenue Code Section 401(a)(17) as of the first day of the plan year.

(2) The annual compensation of each member taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 1996, and prior to July 1, 2002, may not exceed \$150,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

(3) Effective only for the 1996 plan year, the rules of Internal Revenue Code Section 414(q)(6) will apply in determining the annual compensation limitation, except that a member of the family group will include only the spouse of the member and any lineal descendant of the member who has not attained age nineteen (19) before the close of the year. If the annual compensation of a member and his family members is so limited, the annual compensation of the member and each such family member will be equal to the compensation of each such individual determined without regard to Internal Revenue Code Sections 401(a)(17) and 414(q)(6) divided by such annual compensation for all such individuals as so determined and the quotient multiplied by the applicable Internal Revenue Code Section 401(a)(17) limitation amount, as described above.

(4) The annual compensation of each member taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

(5) For purposes of paragraphs (e)(1) through (e)(4), annual compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction,

the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(6) The limits referenced in paragraph (e)(1) through (e)(5) above apply only to plan years beginning on or after July 1, 1996, and only to individuals who first become members in plan years beginning on and after July 1, 1996. Individuals who become members before plan years beginning on and after July 1, 1996, are not subject to the limits of Internal Revenue Code Section 401(a)(17). Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, the annual compensation in effect under Internal Revenue Code Section 401(a)(17) does not apply to any such member in any year.

(f) Internal Revenue Code Section 401(a)(25): Effective as of July 1, 1989, NHRS will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board of trustees by policy; such benefits will not be subject to employer discretion. Any such assumptions are incorporated herein by reference.

(g) Internal Revenue Code Section 401(a)(31): This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this Policy, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will 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 an individual retirement account or annuity described in Internal Revenue Code Section

408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) or to a qualified plan described in Internal Revenue Code Section 403(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(2) Eligible retirement plan: An eligible retirement plan is:

- a. effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from NHRS,
- b. an individual retirement account described in Internal Revenue Code Section 408(a),
- c. an individual retirement annuity described in Internal Revenue Code Section 408(b),
- d. an annuity plan described in Internal Revenue Code Section 403(a),
- e. effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b),
- f. a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution, or
- g. effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

(3) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).

(4) Distributee: A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the

account or annuity will be treated as an "inherited" individual retirement account or annuity.

(5) Direct rollover: A direct rollover is a payment by NHRS to the eligible retirement plan specified by the distributee.

(h) Automatic Rollovers under Internal Revenue Code Section 401(a)(31)(B): Effective January 1, 2006, in the event of a mandatory distribution greater than \$1,000, if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly, the board of trustees will pay the distribution in a direct rollover to an individual retirement plan designated by the board of trustees in accordance with Internal Revenue Code Section 401(a)(31)(B) and IRS Notice 2005-5.

(i) Internal Revenue Code Section 415:

(1) General: Effective as of July 1, 1989, member post-tax contributions paid to, and retirement benefits paid from, NHRS may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415 and the regulations thereunder. The foregoing section of the Code and the regulations thereunder are incorporated herein by reference. Notwithstanding the foregoing, effective July 1, 2004, the Plan shall comply with the provisions of the Pension Funding Equity Act of 2004 modifying the rules set forth in section 415 of the Code, to the extent applicable.

(2) Applicable Compensation: For purposes of applying the limits under Internal Revenue Code Section 415, the definition of compensation where applicable will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation; provided, however, that the definition of compensation will exclude member contributions picked up under Internal Revenue Code Section 414(h)(2), and for limitation years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Internal Revenue Code Section 125 or 457, and for limitation years beginning on and after January 1, 2001, Internal Revenue Code Section 132(f)(4). For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

- a. the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such

as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

- b. the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

(3) Defined Benefit Limits:

- a. ~~Before July 1, 1995~~, a member may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), subject to the applicable adjustments in that section. On and after July 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).

- b. On and after July 1, 1995, in no event shall a member's annual benefit payable under NHRS in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that takes into account the death benefits under the form of benefit:

- (i) For a benefit paid in a form to which section Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit which is the greater of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

- A. The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting

date as the form of benefit payable to the participant, or

- B. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to July 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years beginning on or after July 1, 2009, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)); or
- (ii) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):
 - A. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
 - B. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to July 1, 2009, the applicable mortality tables for the distribution under

Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years beginning on or after July 1, 2009, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)); or

- C. the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treas. Reg. §1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to July 1, 2007, using the rate in effect for the month prior to retirement, and on and after July 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to July 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years beginning on or after July 1, 2009, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)), divided by 1.05.

(4) Cost of Living Adjustments: For purposes of applying the limits under Internal Revenue Code Section 415(b) (Limit), the following will apply:

- a. prior to July 1, 2007, adjustments under RSA 100-A:41-a, b, and c will be taken into consideration when determining a member's applicable Limit;

- b. on and after July 1, 2007, with respect to a member who does not receive a portion of the member's annual benefit in a lump sum:
 - (i) a member's applicable Limit will be applied to the member's annual benefit in the first limitation year without regard to any automatic cost of living increases under RSA 100-A:41-a, b, and c;
 - (ii) to the extent the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases under RSA 100-A:41-a, b, and c until such time as the benefit plus the accumulated increases under RSA 100-A:41-a, b, and c are less than the Limit; and
 - (iii) thereafter, in any subsequent limitation year, the member's annual benefit including any automatic cost of living increase applicable under RSA 100-A:41-a, b, and c shall be tested under the then applicable benefit limit including any adjustment to the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) and the regulations thereunder; and
- c. on and after July 1, 2007, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit shall be applied taking into consideration automatic cost of living increases under RSA 100-A:41-a, b, and c as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations.

(5) Defined Contribution Limits:

- a. Unless the provisions of paragraph (6) apply, the post-tax member contributions and any additional member annuity contributions will be subject to the annual limits of Internal Revenue Code Section 415(c), subject to annual adjustments.
- b. Notwithstanding any other provision of law to the contrary, the board of trustees may modify a request by a member to make a contribution to NHRS if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:
 - (i) If the law requires a lump sum payment for the purchase of service credit, the board of trustees may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Internal Revenue Code Sections 415(c) or 415(n).

- (ii) If payment pursuant to clause (i) will not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c), the board of trustees will either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(6) Permissive Service Credit Purchases:

- a. Effective for permissive service credit contributions made in years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under NHRS, then the requirements of this section will be treated as met only if—
 - (i) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or
 - (ii) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c).

For purposes of applying clause (i) NHRS will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of this paragraph (6), and for purposes of applying clause (ii) NHRS will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this paragraph (6).

- b. For purposes of this paragraph (6) the term "permissive service credit" means service credit—
 - (i) specifically authorized by state law and recognized by NHRS for purposes of calculating a member's benefit under NHRS,
 - (ii) which such member has not received under NHRS, and
 - (iii) which such member may receive only by making a voluntary additional contribution, in an amount determined under NHRS, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may

include service credited in order to provide an increased benefit for service credit which a member is receiving under NHRS.

- c. The NHRS will fail to meet the requirements of this paragraph (6) if—
 - (i) more than 5 years of nonqualified service credit are taken into account for purposes of this paragraph (6), or
 - (ii) any nonqualified service credit is taken into account under this paragraph (6) before the member has at least 5 years of participation under NHRS.
- d. For purposes of subparagraph c, effective for permissive service credit contributions made in years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to—
 - (i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Internal Revenue Code Section 415(k)(3)),
 - (ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an education organization described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,
 - (iii) service as an employee of an association of employees who are described in clause (i), or
 - (iv) military service (other than qualified military service under Internal Revenue Code Section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

- e. For an eligible member, the limitation of Internal Revenue Code Section 415(c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of NHRS's statutes and rules as in effect on August 5, 1997. For purposes of this subparagraph, an eligible member is an individual who first became a member in NHRS before July 1, 1998.
- (7) Trustee-to-Trustee Transfers: In the case of a trustee-to-trustee transfer after December 31, 2001, to which Internal Revenue Code Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—
- a. the limitations of subparagraph (6)(c) will not apply in determining whether the transfer is for the purchase of permissive service credit, and
 - b. the distribution rules applicable under federal law to NHRS will apply to such amounts and any benefits attributable to such amounts.
- (8) Limitation Year: The limitation year for purposes of Internal Revenue Code Section 415 is the fiscal year beginning each July 1 and ending the following June 30.
- (9) Amendment: Nothing contained in this section will limit the Legislature from modifying benefits to the extent such modifications are permissible by applicable state and federal law.
- (j) Internal Revenue Code Section 503(b): Effective as of July 1, 1989, the board of trustees may not engage in a transaction prohibited by Internal Revenue Code Section 503(b).
- (k) Internal Revenue Code Section 414(u):
- (1) Effective December 12, 1994, notwithstanding any other provision of NHRS law, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.
 - (2) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), death benefits shall be provided by NHRS under RSA 100-A:9-I to the survivors of a member to the extent required by Internal Revenue Code Section 401(a)(37). A deceased member's period of qualified military service must be counted for vesting purposes.
 - (3) Beginning January 1, 2009, to the extent required by Internal Revenue Code Sections 3401(h) and 414(u)(2), any differential wage payments to an individual from an employer (while the individual is

performing qualified military service (as defined in chapter 43 of title 38, United States Code)) shall be treated as compensation for purposes of applying the limits on annual additions under Internal Revenue Code Section 415(c).

(l) Internal Revenue Code Section 411(e): Effective as of September 1, 1974, in addition to any protection provided by this ordinance and New Hampshire law:

(1) A member will be 100% vested in all Plan benefits upon attainment of the Plan's age and service requirements for the Plan's normal retirement benefit; and

(2) A member will be 100% vested in all Plan benefits, to the extent funded, if the Plan is terminated.

(m) Electronic Transactions: In those circumstances where a written election or consent is not prescribed by NHRS or the Internal Revenue Code, an electronic or telephonic form, in lieu of or in addition to a written form, may be prescribed by NHRS.