WEST VIRGINIA CODE: §18-7B-13

§18-7B-13. Amount of annuity payments; federal law maximum benefit limitations.

(a) The amount of annuity payments a retired member shall receive shall be based solely upon the balance in the member's annuity account at the date of retirement, the retirement option selected, or in the event of an annuity option being selected, the actuarial life expectancy of the member and such other factors as normally govern annuity payments.

(b) The board, or its designee, is authorized upon retirement of a member, with the approval of that member, to purchase an annuity with the balance of the member's account. Upon delivery of the annuity to the member upon his or her retirement, the member shall execute a release surrendering any claim the member may have against the retirement trust.

(c) Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code (as such limitations are adjusted for cost of living in accordance with Section 415(d) of the Internal Revenue Code) and Treasury Regulations thereunder to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 annual addition limitation(s)") so that an annual addition made under this system shall not exceed those limitations. Any annual addition made under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which an annual addition under this retirement system shall be reduced, as compared to the extent which an annual addition under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annual addition required by this section. The 415 limitations shall apply as if the total annual additions under all defined contribution plans in which a member has been a member were payable from one plan for any member who has at any time been a member in any other defined contribution plan maintained by the member's participating employer. For purposes of the 415 limitations, the "limitation year" shall be the calendar year.

(d) Solely for purposes of calculating and applying the 415 limitations, a member's compensation for a limitation year is defined to be wages within the meaning of Section 3401(a) of the Internal Revenue Code (including amounts that would be included in wages but for an election under Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the Internal Revenue Code), plus all other payments of compensation to a member by a participating employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under Sections 6041(d),

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6051(a)(3) and 6052 of the Internal Revenue Code, and determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed. In addition:

(1) For limitation years beginning on or after January 1, 2009, compensation for a limitation year shall also include:

(A) Compensation paid by the later of two and one-half months after a member's severance from employment with the employer or the end of the limitation year that includes the date of the member's severance from employment with the employer maintaining the plan, if the payment is regular compensation for services during the member'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 member while the member continued in employment with the employer;

(B) Back pay, within the meaning of Treasury Regulation §1.415(c)-2(g)(8), for the limitation year to which the back pay relates, but only to the extent the back pay represents wages and compensation that would otherwise be included in compensation under this definition; and

(C) For an employee in qualified military service (within the meaning of Section 414(u)(5) of the Internal Revenue Code), compensation such employee would have received during such period if the employee were not in qualified military service, to the extent required pursuant to Section 414(u)(7) of the Internal Revenue Code.

(2) For limitation years beginning on or after January 1, 2009, compensation for a limitation year may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

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