

Rules of Retirement Systems

Division 50—The County Employees’ Retirement Fund Chapter 20—County Employees’ Deferred Compensation Plan

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Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees'
Retirement Fund
Chapter 20—County Employees' Deferred
Compensation Plan

16 CSR 50-20.010 Establishment and
Purpose of Plan

PURPOSE: This rule establishes the 457 Plan authorized by section 50.1300, RSMo, and describes its intent.

(1) In accordance with the authority granted to the County Employees' Retirement Board by section 50.1300, RSMo, the Board hereby adopts the County Employees' Deferred Compensation Plan (the "Plan"). The Plan shall be maintained for the exclusive benefit of covered employees and is intended to comply with the eligible deferred compensation plan requirements under section 457 of the *Internal Revenue Code* of 1986, as amended, and regulations thereunder, and other applicable law. Assets and income of the Plan shall be held in trust for the exclusive benefit of the Plan's Participants and their Beneficiaries.

(2) The purpose of this Plan is to enable employees who become covered under the Plan to enhance their retirement security by permitting them to enter into agreements with their Employer to defer a portion of their Compensation and receive benefits at retirement, Separation from Service, death, or in the event of financial hardship due to Unforeseeable Emergencies.

AUTHORITY: section 50.1300, RSMo Supp. 1999. Original rule filed May 9, 2000, effective Jan. 30, 2001.*

**Original authority: 50.1300, RSMo 1999.*

16 CSR 50-20.020 Definitions

PURPOSE: This rule provides the definitions needed to describe the terms of the 457 Plan authorized by section 50.1300, RSMo.

(1) Whenever used in this Chapter 20, the following terms shall have the meanings as set forth in this rule 16 CSR 50-20.020 unless a different meaning is clearly required by the context:

(A) Account means the individual book-keeping account maintained for each Participant that represents his or her total proportionate interest in the Trust Fund. A Participant is fully vested in his or her Account at all times.

(B) Beneficiary means the person, persons, or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death.

(C) Board means the Board of Directors of the County Employees' Retirement Fund.

(D) Code means the *Internal Revenue Code* of 1986, as amended, and includes any regulations thereunder.

(E) Compensation means all salary and other compensation paid to a county employee for personal services rendered as a county employee, which is currently includible in the Employee's gross income for the taxable year for federal income tax purposes (W-2 earnings); such term does not include any amount excludible from gross income under this Plan or any other plan described in section 457(b) of the Code, any amount excludible from gross income under section 403(b) of the Code, or any other amount excludible from gross income for federal income tax purposes.

(F) Deferral means the amount of Compensation that a Participant elects to defer pursuant to a properly executed Deferral Agreement.

(G) Deferral Agreement means the agreement between a Participant and an Employer to defer receipt of Compensation not yet earned.

(H) Employee means any person, an elective or appointive county official or employee regularly employed by a county who is under the direct control and supervision of a county or an elected or appointed county official and who is subject to continued employment, promotion, salary review or termination by a county or an elected or appointed county official and who is compensated directly from county funds and whose position requires the actual performance of duties during not less than 1,000 hours per calendar year, except county prosecuting attorneys covered under sections 56.800–56.840, RSMo, circuit clerks and deputy circuit clerks covered under the Missouri State Retirement System and county sheriffs covered under sections 57.949–57.997, RSMo, and employees who received some compensation from the county but who are subject to hiring, supervision, promotion or termination by an entity other than the county such as an extension council or the circuit court.

(I) Employer means each county in the state, except any city not within a county and counties of the first classification with a charter form of government.

(J) Investment Option means one of the options established by the Board, in which amounts contributed to a Participant's Account may be invested at the Participant's dis-

cretion. There is no limit on the type of investment that the Board may designate as an option.

(K) Participant means an Employee or former Employee who has been enrolled in this Plan and who retains his or her Account under the Plan.

(L) Plan means the County Employees' Deferred Compensation Plan as set forth in this Chapter 16 CSR 50-20 and as it may be amended from time to time.

(M) Plan Year means the calendar year.

(N) Prior Plan means any deferred compensation plan that is an eligible deferred compensation plan (as defined in section 457 of the Code), which has been consolidated with this Plan as permitted by section 50.1300, RSMo.

(O) Separation from Service means the severance of a Participant's employment with an Employer for any reason, including retirement or disability.

(P) Transfer Amounts means amounts transferred to a Participant's Account in accordance with 16 CSR 50-20.030(6) or 16 CSR 50-20.100.

(Q) Trust Agreement means an agreement entered into by the Board and one or more Trustees to govern the Trust Fund. The Trust Agreement shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state of Missouri.

(R) Trust Fund means the sum of the contributions made to the Plan and held by the Trustee or Trustees in a trust, increased by any profits or income thereon and decreased by any losses or expenses incurred in the administration of the Trust Fund and any payments made therefrom.

(S) Trustee means the entity, or individual, or committee that is responsible for holding and managing the Trust Fund.

(T) Unforeseeable Emergency means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The need to send a Participant's child to college or the desire to purchase a home shall not be an Unforeseeable Emergency. Payment may not be made in the event that such hardship is or may be relieved—

1. Through reimbursement or compensation by insurance or otherwise;

2. By liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or



3. By cessation of Deferrals under the Plan.

AUTHORITY: section 50.1300, RSMo Supp. 1999. Original rule filed May 9, 2000, effective Jan. 30, 2001.*

**Original authority: 50.1300, RSMo 1999.*

16 CSR 50-20.030 Participation in the Plan

PURPOSE: This rule provides the 457 Plan's eligibility requirements and the rules governing deferral elections to the 457 Plan.

(1) Eligibility. Effective January 1, 2000, each Employee who is employed by an Employer and is a member of the pension fund described in 50.100-50.1200, RSMo may become a Participant in this Plan. Participation shall commence when enrollment becomes effective pursuant to section (2).

(2) Enrollment. Employees may enroll in the Plan by completing a Deferral Agreement and submitting it to their Employer. The Employer shall be responsible for submitting the Deferral Agreement to the Board (or its designee) and ensuring that contributions are forwarded to the Trustee selected by the Board. Enrollment shall be effective on or after the first day of the month following the date the Deferral Agreement is properly completed by the Employee and received by the Employer.

(3) Modifications to Amount Deferred. A Participant may change Deferrals with respect to Compensation not yet earned by submitting a new properly executed Deferral Agreement to his or her Employer. The change shall take effect as soon as administratively practicable but not earlier than the first day of the pay period beginning in the calendar year quarter following receipt of the properly completed Deferral Agreement by the Employer.

(4) Revocation of Deferral. Any Participant may revoke his or her election to have Compensation deferred by notifying the Employer in writing. This revocation shall take effect as soon as administratively practicable, but no earlier than the first pay period following receipt of written notice of such revocation by the Employer. A Participant who revoked his or her Deferral may not enter into a new Deferral Agreement that is effective prior to the first day of the calendar year quarter following the revocation. Deferrals shall be revoked automatically for

any month in which there are insufficient monies to make the entire Deferral agreed upon, and automatically reinstated in the next pay period that Compensation is sufficient to make the agreed upon Deferral.

(5) Transmittal of Contributions. Notwithstanding any contrary provision of the Plan, in accordance with section 457(g) of the Code, all Deferrals, all property and rights purchased with such Deferrals, and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and Beneficiaries under the Plan. All amounts of compensation deferred under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.

(6) Acceptance of Transfers. A Participant who participated in any eligible deferred compensation plan described in section 457(b) of the Code may transfer his or her account in such a plan to his or her Account in this Plan.

(7) Minimum Deferral. The minimum deferral permitted under the Plan shall be \$10 per month.

AUTHORITY: section 50.1300, RSMo Supp. 1999. Original rule filed May 9, 2000, effective Jan. 30, 2001.*

**Original authority: 50.1300, RSMo 1999.*

16 CSR 50-20.050 Limitations on Deferral

PURPOSE: This rule describes the limitations on deferral elections to the 457 Plan imposed by the Internal Revenue Code.

(1) General Limitation. The maximum Deferral amount for any Participant in any taxable year shall not exceed the lesser of—

(A) \$7,500 (as adjusted for the calendar year to reflect increases in the cost of living in accordance with sections 457(e)(15) and 415(d) of the Code); or

(B) 33 1/3% of the Participant's Compensation for the taxable year.

(2) Coordination with Other Plans. If a Participant participates in more than one Code section 457 Plan, the maximum deferral under all such plans shall not exceed \$7,500, as adjusted. If a Participant participates in a Plan described in sections 401(k), 403(b), 408(k), 408(p) or 501(c)(18) of the Code, amounts deferred by the Participant to

such plan or plans and excluded from his or her gross income in any taxable year under such plan(s) shall reduce the general limitation amount.

(3) The provisions of this rule 16 CSR 50-20.050 shall be administered in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994.

AUTHORITY: section 50.1300, RSMo Supp. 1999. Original rule filed May 9, 2000, effective Jan. 30, 2001.*

**Original authority: 50.1300, RSMo 1999.*

16 CSR 50-20.060 Accounts of Participants

PURPOSE: This rule describes the accounting for a Participant's interest in the 457 Plan, and the investment of a Participant's Account.

(1) Accounts. The Board shall establish and maintain Accounts on behalf of each Participant. Such Participant Accounts shall be valued at fair market value as of each business day. Each Participant's Account balance shall reflect his or her aggregate Deferral Amounts, Transfer Amounts and any earnings (or losses) attributable to such amounts, and shall be reduced by administrative, investment, and other fees and expenses attributable to his or her Account that are necessary for the administration of the Participant's Account.

(2) Investments. A Participant may request that his or her Account (and his or her Deferrals) be allocated among the Investment Options made available by the Board. The initial allocation request shall be made at the time of enrollment. Once made, an investment allocation request shall remain in effect until changed by the Participant. A Participant may change his or her investment allocation by submitting a request to the Board (or its designee) in such form as may be permitted by the Board (or its designee). Such changes shall become effective as soon as administratively feasible after the Board (or its designee) receives such request. If the Participant fails to make an investment allocation request at the time of his or her enrollment, the Participant's Account shall be invested in default Investment Options selected by the Board, until such time as the Participant submits an investment allocation request.

AUTHORITY: section 50.1300, RSMo Supp. 1999.* Original rule filed May 9, 2000, effective Jan. 30, 2001.

*Original authority: 50.1300, RSMo 1999.

16 CSR 50-20.070 Distribution of Accounts

PURPOSE: This rule describes the timing and form of benefit payments from the 457 Plan.

(1) Eligibility for Payment. Distribution to a Participant of his or her Account shall be made no earlier than—

(A) Separation from Service;

(B) The calendar year in which the Participant attains age 70 1/2;

(C) The date the Board approves a distribution to the Participant on account of an Unforeseeable Emergency; or

(D) The date the Participant requests a voluntary in-service *de minimis* distribution from the Plan.

(2) Distribution Due to Unforeseeable Emergency. A Participant may request a distribution due to Unforeseeable Emergency by submitting a request to the Board (or its designee). The Board (or its designee) shall have the authority to require such evidence as it deems necessary to determine whether a distribution is warranted. If an application for a hardship distribution due to an Unforeseeable Emergency is approved, the distribution is limited to an amount sufficient to meet the Unforeseeable Emergency. The allowed distribution shall be paid in a single sum to the Participant as soon as possible after approval of such distribution.

(3) Voluntary In-Service *De Minimis* Distribution. A Participant who is an active Employee shall receive a distribution of his or her Account if the following requirements are met:

(A) The Participant's Account balance does not exceed \$5,000 (or the dollar limit under section 411(a)(11) of the Code, if greater);

(B) The Participant has not previously received an in-service distribution of his or her Account balance;

(C) The Participant has not made Deferrals during the two-year period ending on the date of the in-service distribution; and

(D) The Participant elects to receive the distribution.

(4) Commencement of Distributions.

(A) General Rule. Distribution of a Participant's Account under the Plan shall be made

in the form elected by the Participant, commencing as soon as administratively feasible after the calendar year quarter in which the Participant's Separation from Service occurs, unless the Participant makes a one-time irrevocable written election to defer this payment to a specified later date, and the election is made at least 30 days before the date benefits commence. A Participant may elect that the single-sum distribution of benefits be made on any determinable future date as long as distributions commence no later than 60 days following the close of the calendar year in which the Participant attains age 70 1/2, or retires, if later.

(B) If a Participant has elected a deferred commencement date, then the Participant may make an additional election to further defer the commencement of distributions, provided that the election is filed before distributions actually begin and the later commencement date meets the required distribution commencement date provisions of sections 401(a)(9) and 457(d)(2) of the Code. A Participant may not make more than one such additional deferral election.

(C) Notwithstanding subsections (4)(A) and (4)(B), if the value of a Participant's Account is \$5,000 or less, then his or her benefit under the Plan shall be distributed to him in a single sum as soon as administratively feasible following his or her Separation from Service.

(D) Employees who terminate employment and then resume employment with an Employer within 30 days will not forfeit their prior service and will not be required to receive a refund of their payroll contributions.

(5) Payment Options. A Participant's or Beneficiary's election of a payment option must be made at least 30 days prior to the date that the payment of benefits is to commence. If a timely election of a payment option is not made, benefits shall be paid in a single lump sum, as soon as administratively feasible following the Participant's Separation from Service. Once payments have commenced, the form of payment option may not be changed.

(6) Subject to applicable law and the other provisions of this Plan, distributions may be made in accordance with one of the following payment options:

(A) A single lump-sum payment;

(B) Substantially nonincreasing installment payments for a period of years (payable on a monthly, quarterly, semi-annual, or annual basis) which extends no longer than the life expectancy of the Participant;

(C) Partial lump-sum payment of a designated amount, with the balance payable in substantially nonincreasing installment payments for a period of years, as described in subsection (6)(B), as long as such installment payments begin prior to the end of the calendar year following the year the partial lump-sum payment was made; and

(D) Annuity payments (payable on a monthly, quarterly, or annual basis) for the lifetime of the Participant or for the lifetimes of the Participant and Beneficiary if permitted under sections 401(a)(9) or 459(d) of the Code. If the Participant fails to make a timely election of one of the payment options described above, payment shall be made in a single sum as soon as feasible following the Participant's Separation from Service.

(7) Plan-to-Plan Transfers. Notwithstanding any other provisions of the Plan, all or any part of the Account of a former Employee who is a Participant in the Plan shall, instead of being distributed in accordance with section (4), be transferred to another eligible deferred compensation plan in which the former Employee has become a participant, if—

(A) The plan receiving such amounts provides for acceptance of such transfers; and

(B) The Participant gives written direction to the Board (or its designee) to make such transfer.

(8) This Plan also shall accept the transfer of amounts previously deferred by a Participant under another eligible deferred compensation plan described in section 457 of the Code.

(9) All distributions under this rule 16 CSR 50-20.070 shall be made in accordance with the requirements of Code sections 457(d)(2) and 401(a)(9).

(10) Lost Participants. Notwithstanding any other provision of the Plan, if it is not possible to make payment because the Board cannot locate the Participant after making reasonable efforts to so do, a retroactive payment may be made as soon as administratively feasible after the date on which the Participant is located.

(A) If the Board is unable to locate any person entitled to receive distribution from an Account hereunder, such Account shall be forfeited and used to reduce Plan expenses on the date two years after the date the Board sends by certified mail a notice concerning the benefits to such person at his or her last known address (or determines that there is no last known address).

(B) If an Account is forfeited under this Section and a person otherwise entitled to the Account subsequently files a claim with the



Board during any Plan Year, before any allocations for such Plan Year are made, the Account will be restored to the amount which was forfeited without regard to any earnings or losses that would have been allocated. Such restoration shall first be taken out of forfeitures which have not been allocated and if such forfeitures are insufficient to restore such person's account balance, restoration shall be made by an Employer contribution to the Plan.

AUTHORITY: section 50.1300, RSMo Supp. 1999. Original rule filed May 9, 2000, effective Jan. 30, 2001.*

**Original authority: 50.1300, RSMo 1999.*

16 CSR 50-20.080 Death Benefits

PURPOSE: This rule describes the benefits available to a Participant's Beneficiary upon his or her death and the procedure for designating a Beneficiary.

(1) Death Benefit. As soon as administratively feasible following the close of the calendar year quarter in which the death of a Participant occurs, the Participant's Beneficiary shall receive a single-sum distribution of the Participant's entire Account balance.

(2) Beneficiary Designation. A Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time, in writing. Such designation, amendment or revocation shall be effective upon receipt by the Board.

(3) Failure to Designate a Beneficiary. If no designated Beneficiary survives the Participant, or no Beneficiary has been designated by the Participant, and benefits are payable following the Participant's death, the Board shall direct that payment of benefits be made to the person or persons in the first of the following classes of successive preference Beneficiaries:

- (A) The spouse of the Participant; and
- (B) The Participant's estate.

(4) All death benefits paid in accordance with this rule 16 CSR 50-20.080 shall be made in accordance with the requirements of Code sections 457(d)(2) and 401(a)(9).

AUTHORITY: section 50.1300, RSMo Supp. 1999. Original rule filed May 9, 2000, effective Jan. 30, 2001.*

**Original authority: 50.1300, RSMo 1999.*

16 CSR 50-20.090 Plan Administration

PURPOSE: The purpose of this rule is to outline the administrative procedures and responsibilities for the 457 Plan.

(1) Plan Administration. The management of the Plan shall be vested in the Board according to the provisions in sections 50.1000 to 50.1260, RSMo, as such Board is established in section 50.1030, RSMo. Any action taken on any matter within the discretion of the Board shall be final, conclusive, and binding on all parties. In order to discharge its duties hereunder, the Board shall have the power and authority to adopt, interpret, alter, amend or revoke rules and regulations necessary to administer the Plan, to delegate ministerial duties and to employ such outside professionals as may be required for prudent administration of the Plan. The Board shall also have authority to enter into agreements as may be necessary to implement this Plan. Any individual member of the Board who is otherwise eligible may participate in the Plan but shall not be entitled to make decisions solely with respect to his or her own participation and benefits under the Plan.

(2) Amendment of Plan. The Board shall have the right to amend the Plan, at any time and from time to time, in whole or in part.

(3) To implement the Plan, the Board shall enter into a Trust Agreement, so that Plan funds shall be segregated from an Employer's own assets and held in trust by the Trustee for the exclusive benefit of Participants and their Beneficiaries. Any or all benefits that may accrue to any Participant or Beneficiary under this Plan shall be subject to the terms and conditions of said Trust Agreement. Except as provided in section (4), it shall be impossible under any circumstances at any time for any part of the corpus or income of the Trust Fund to be used for, or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

(4) Plan Expenses. All expenses of Plan administration, including (by way of illustration and not limitation) those incurred by the Board and the fees of the Trustee shall be paid from the Trust Fund.

AUTHORITY: section 50.1300, RSMo Supp. 1999. Original rule filed May 9, 2000, effective Jan. 30, 2001.*

**Original authority: 50.1300, RSMo 1999.*

16 CSR 50-20.100 Merger of Prior Plan

PURPOSE: The rule describes how a county's prior 457 Plan may be merged into this 457 Plan.

If an Employer has sponsored any other plan described under section 457(b) of the Code, the Employer may elect to consolidate such Prior Plan with this Plan, with the consent of the Board. In this event, the account of each of the Employer's Employees in the Prior Plan shall be transferred to the Trust Fund and made a part of each Employee's Account in the Plan. An Employer is not required to consolidate a Prior Plan with this Plan.

AUTHORITY: section 50.1300, RSMo Supp. 1999. Original rule filed May 9, 2000, effective Jan. 30, 2001.*

**Original authority: 50.1300, RSMo 1999.*

16 CSR 50-20.110 Miscellaneous 457 Plan Rules

PURPOSE: The purpose of this rule is to set forth miscellaneous provisions relating to the 457 Plan.

(1) Limitation of Rights: Employment Relationship. Neither the establishment of this Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving a Participant or any other person any legal or equitable right against an Employer except as provided in the Plan. In no event shall the terms of employment of any Employee be modified or in any way be affected by the Plan.

(2) Benefits under this Plan may not be assigned, sold, transferred, or encumbered, and any attempt to do so shall be void. A Participant's or Beneficiary's Account shall not be subject to debts or liabilities of any kind and shall not be subject to attachment, garnishment or other legal process.

(3) Representations. The Board does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Board does not represent or guarantee successful investment of Deferrals and shall not be required to restore any loss which may result from such investment or lack of investment.

(4) Severability. If a court of competent jurisdiction holds any provision of this Chapter 16 CSR 50-20 to be invalid or unenforceable, the remaining provisions of the Chapter shall continue to be fully effective.

(5) The provisions of this Chapter 16 CSR 50-20 shall be construed in accordance with section 457 of the Code, all other applicable federal law, and, to the extent such other statutes do not apply, the laws of the State of Missouri.

AUTHORITY: section 50.1300, RSMo Supp. 1999. Original rule filed May 9, 2000, effective Jan. 30, 2001.*

**Original authority: 50.1300, RSMo 1999.*