

BALDWIN'S OHIO ADMINISTRATIVE CODE
148. PUBLIC EMPLOYEES DEFERRED COMPENSATION BOARD
CHAPTER 148-1. GENERAL PROVISIONS

Rules are current through June 30, 2001

148-1-01 OHIO PUBLIC EMPLOYEES DEFERRED COMPENSATION PROGRAM

(A) The purpose of this rule is to provide all necessary standards or conditions for the administration of the Ohio public employees deferred compensation program created by sections 145.71 to 145.76 of the Revised Code.

(B) The following terms, when used herein, shall have the designated meaning unless a different meaning is plainly required by the context.

(1) "Program"--The Ohio public employees deferred compensation program as set forth in sections 145.71 to 145.76 of the Revised Code.

(2) "Board"--The Ohio board established pursuant to section 145.72 of the Revised Code for the purpose of administering the program.

(3) "Employer"--The state and various political subdivisions whose employees are permitted under division (A) of section 145.71 of the Revised Code to participate in the program.

(4) "Eligible employees"--Those employees defined in division (A) of section 145.71 of the Revised Code.

(5) "Employer agreement"--An agreement between an eligible employer and the board designed to facilitate the board's common administration of all employer plan agreements adopted under the program.

(6) "Plan(s) or plan agreement(s)"--The document adopted by an eligible employer under the program which sets forth the terms and conditions governing the deferral of an eligible employee's compensation.

(7) "Participating employees or participants"--Those eligible employees who have elected to defer a portion of their compensation pursuant to a participation agreement.

(8) "Participation agreement"--The agreement between the eligible employer and the eligible employee by which an eligible employee adopts the plan agreement and elects to become a participating employee under the plan.

(9) "Investment index (indices)"--Those investment indices selected by a participating employee under the program which determine the level of benefits payable to a participating employee.

(10) "Funding agents"--Those insurance companies, banks and other financial institutions which the board shall select to invest compensation deferred under plans adopted under the program.

(11) "Funding media"--Those insurance policies, investment funds, mutual funds, annuities, variable annuities, regulated investment trusts, pooled investment funds or other forms of investments managed or issued by the funding agents and selected by the participants as investment indices and, into which compensation deferred under an eligible employer's plan is invested by the board on behalf of such eligible employer.

(12) "Participant's account"--An account maintained by the board evidencing those monies deferred by participating employees under a plan adopted under the program which are transmitted to the board by an eligible employer for investment in the funding media.

(13) "Payroll center(s)"--Those facilities where the participating employees' paychecks are computed and issued.

(14) "Retirement system"--The public board or authority which administers the pension fund of the participant's employer.

(15) "Trust or plan-trust document"--The document which sets forth the terms and conditions governing the trust by which all funds of the plan are held in trust by the board on behalf of an eligible employer for the exclusive benefit of an eligible employee.

(C) The board or its designees shall observe the following procedures in implementing and administering the program.

(1) The board shall, with the advice and assistance of counsel, formulate and design plan agreements for adoption by those eligible employers electing to offer a plan of deferred compensation to their eligible employees under the program.

(2) The plan agreements prepared by the board shall be designed to obtain the desired federal and state income tax treatment of all amounts deferred by a participating employee under the plan agreement. The plan agreement may be amended from time to time, to reflect those changes which are necessary to assure the desired tax treatment and the proper administration of the individual plans under the program. The limit on the portion of a participating employee's compensation that may be deferred shall be the maximum annual deferral permitted under section 457 of the "Internal Revenue Code," or any other applicable section of the "Internal Revenue Code," provided that such a limit does not cause a reduction of compensation in any given pay period which is greater than the amount of compensation available for such pay period.

(3) The board shall advise all eligible employees of the existence of the program and shall supply them with sufficient information to assist them in determining whether to participate in the program. Each employer shall execute an employer agreement upon an eligible employee's application to participate in a plan under the program. The employer shall assist the board in communicating the availability of the plan to all eligible employees including any personal explanation prepared and deemed necessary by the board for an eligible employee to make an informed decision regarding his right to participate. The different funding media into which the participating employees' deferred income may be invested shall be fairly and impartially presented to the eligible employees. The employer's payroll center shall recompute the participant's income as specified in the participation agreement and shall remit such deferred amounts to the board.

(4) Each eligible employee who elects to participate under a plan of deferred compensation established by an eligible employer under the program, shall execute a participation agreement by which he becomes a member of the plan. The board shall undertake to provide all the necessary services required to implement, offer and administer the program on behalf of the eligible employer, and shall be empowered in the employer agreement to perform any and all acts incidental to the administration of the plan.

(5) The board shall contract with those funding agents whose funding media are selected by the board to serve as investment indices under plans adopted under the program. The board's contract with such funding agents shall provide that all amounts deferred under plans adopted under the program will be invested by the board with the funding agents for the period of time that the investment index is made available under an eligible employer's plan and is selected by the participating employee.

(6) Plan assets are not the property of the participating employees. All plan assets and income shall be held by the board in trust on behalf of the eligible employer for the exclusive benefit of eligible employees and their beneficiaries. All assets, whenever contributed to the plan, are assigned to the trust established by the board. To facilitate administration of the program, the board shall create individual participant accounts, bearing the participant's name, but all assets and income of plans under the program shall be held in trust by the board on behalf of the employer for the exclusive benefit of eligible employees and their beneficiaries. The board shall issue to the participating employees, on behalf of the employer, at least annually, a statement of account values, setting forth the value of a participating employee's account as of such date. All information regarding a participant's account shall be confidential.

(7) The board, on behalf of the employer, may assess a participant's account to pay the cost of administering the plan adopted under the program. Interest earned on any employer's funds prior to investment with the funding agent may be applied by the board to fund any costs incident to the operation of the program.

(8) In accordance with the payment option selected by a participant on the benefit payment options election form, or the default benefit methods if applicable:

(a) The board may at any time direct the funding agents to distribute benefits payable to the participants or their beneficiaries in the manner the board designates.

(b) The board may establish a commercial checking account from which it will distribute benefits payable to participants or their beneficiaries.

(9) If any plan is curtailed, terminated, or the acceptance of additional deferred amounts suspended permanently, the board shall nonetheless be responsible for the supervision and the payment of all participant benefits under such plan.

(10) The board is authorized to decide or to resolve any questions of fact regarding a participant or his deferred account needed or necessary to decide the participant's rights under the program and such decision is final and binding on the participant and any beneficiary thereof.

(11) The participant shall not be permitted to seek recovery against his employer, the board or any other participant, contractee or agent of the board, or as against any other person having an administration or investment position relative to the program, for any loss, if any, sustained by the participant or his beneficiary, for the nonperformance of their duties, negligence, or any other misconduct of the above-named persons except that such persons shall not be excused from fraud or any wrongful taking of the participant's property.

(12) The members of the board shall be trustees of the funds created by sections 145.71 to 145.76 of the Revised Code. The board and other fiduciaries shall discharge their duties with respect to the funds solely in the interest of the eligible employees and beneficiaries.

(13) The board shall, with the advice and assistance of counsel, formulate and design a plan-trust document setting forth the terms under which the board shall hold all plan assets and income earned on those assets contributed by those eligible employers electing to offer a plan of deferred compensation to eligible employees under the program. The plan-trust document prepared by the board shall be designed for the exclusive purpose of investing plan accounts and paying plan distributions for the benefit of eligible employees and their beneficiaries.

(D) If any paragraph, term or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair, or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and conditions shall be and continue in full force and effect.

148-1-02 PUBLIC NOTICE OF MEETINGS

(A) This rule is adopted in compliance with, and under the authority of, section 121.22(F) of the Revised Code. Subject to the provisions of section 122.22 of the Revised Code, all meetings of the public employees deferred compensation board, and all meetings of any committee or subcommittee of the board, shall be open to the public.

(B) Any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings by:

(1) Writing to the following address: "Ohio Public Employees Deferred Compensation Board, 172 East State Street, Columbus, Ohio 43215".

(2) Calling the following telephone number during normal business hours: (614) 466-7245.

(C) Any representative of the news media may obtain notice of all special meetings by requesting in writing that such notice be provided. Such notice will only be given, however, to one representative of any particular publication or radio or television station. A request for such notification shall be addressed to: "Ohio Public Employees Deferred Compensation Board, 172 East State Street, Columbus, Ohio 43215".

The request shall provide the name of the individual media representative to be contacted, his mailing address and a maximum of two telephone numbers where he can be reached. The Secretary of the Board shall maintain a list of all representatives of the news media who have requested notice of special meetings pursuant to this section.

In the event of a special meeting not of an emergency nature, the Secretary of the Board shall notify all media representatives on the list of such meeting by doing at least one of the following:

(1) Sending written notice, which must be mailed no later than four calendar days prior to the day of the special meeting.

(2) Notifying such representatives by telephone no later than twenty-four hours prior to the special meeting, such telephone notice shall be complete if a message has been left for the representative or if, after reasonable effort, the Secretary of the Board has been unable to provide such telephone notice;

(3) Informing such representative personally no later than twenty-four hours prior to the special meeting.

In the event of a special meeting of an emergency nature, the Secretary of the Board shall notify all media representatives on the list of such meeting by providing either the notice described in paragraph (C)(2) of this rule or that described in paragraph (C)(3) of this rule or notifying the clerk of the State House Press Room. In such event, however, the notice need not be given twenty-four hours prior to the meeting, but shall be given as soon as possible.

In giving the notices required by this paragraph, the Secretary of the Board may rely on assistance provided by any member of the Ohio Public Employees Deferred Compensation Board and any such notice is complete if given by such member in the manner provided in this paragraph.

(D) The Secretary of the Board shall maintain a list of all persons who have requested, in writing, notice of all meetings of the Ohio Public Employees Deferred Compensation Board at which specific subject matters designated by such persons are scheduled to be discussed. Any person may, upon payment of an annual fee in the amount of \$5.00 have his name placed on such list. The Secretary of the Board shall, no later than seven days prior to each meeting, send by first class mail an agenda of the meeting to such persons.

148-1-03 NOTICE ON RULES

The procedure of the Ohio public employees deferred compensation board for giving public notice relative to the adoption, amendment or rescision of rules under Chapter 119. of the Revised Code shall be:

(A) The board shall cause a statement of its intention to consider adopting, amending or rescinding a rule, a brief synopsis or a general statement of said proposed rule for adoption, amendment or rescission, a statement of the reason or purpose for adopting, amending or rescinding the rule, and the date, time and place of hearing on the proposed action, to be inserted in at least three newspapers of general circulation in the state no less than thirty days prior to the hearing.

(B) The board shall furnish the public notice required under section 119.03 of the Revised Code and as detailed by paragraph (A) of this rule to any person who requests notice in writing and who supplies an addressed, stamped envelope.

(C) The board shall furnish copies of the proposed rule to be adopted, amended or rescinded as required under section 119.03(B) of the Revised Code.

(D) The board shall have available for review at the board's office by any person upon request a legible copy of the text of the proposed rule to be adopted, amended or rescinded.

(E) If after public hearing the board determines that the proposal shall be adopted, amended or rescinded, or in the case of an emergency rule, that the adoption shall be made final, a copy of said rule as adopted, amended or rescinded shall be filed with the secretary of state and the director of the legislative service commission in the number of copies required under Chapter 119. of the Revised Code.

(F) Prior to the effective date of the rule, amendment or rescision, the board shall make a reasonable effort to inform those affected by the rule, amendment or rescision and to have available for distribution to those requesting it, the full text of the rule as adopted, amended or rescinded.

(G) This rule is adopted in accordance with the express provisions of division (A) of section 119.03 of the Revised Code.