**94-411 MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**Chapter 513: DISABILITY RETIREMENT COMPENSATION LIMITATIONS AND BENEFIT OFFSETS**

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**SUMMARY:** This Chapter provides guidance on compensation limitations and offsets applicable to disability retirement benefits and the submission of annual statements of compensation by disability retirees.

# SECTION 1. DEFINITIONS

1. **Earnings**. “Earnings” as used in this Chapter means wages, tips, and other compensation from employment that is reported as Medicare wages and tips on federal W-2 tax forms and income that is reported on federal self-employment tax schedules as subject to self-employment tax. Unless the context indicates otherwise, “compensation” received from engaging in any gainful activity, occupation, or employment as used in Title 5, Sections 17930 or 18530 has the same meaning as earnings.
2. **Statement of Compensation.** “Statement of compensation” as used in Title 5, Part 20, means: (1) a completed, signed form in the format prescribed by the Chief Executive Officer specifying the disability retiree’s earnings; and (2) a copy of the disability retiree’s federal W-2 tax forms, any self-employment tax schedules filed by or for the disability retiree, and any other federal tax forms and schedules determined by the Chief Executive Officer to be necessary to show the disability retiree’s earnings.

**SECTION 2. EARNINGS LIMITATIONS, OFFSETS, AND THE ANNUAL STATEMENT OF COMPENSATION PROCESS**

1. Title 5, Sections 17930 and 18530 specify the calculation of earnings limitations for each retiree and the reduction, or offset, to disability retirement benefits when the retiree also receives disability benefits under other laws, including workers’ compensation benefits and Social Security disability benefits. These sections also specify the steps to be taken when a retiree exceeds earnings limitations, including the reduction or elimination of further benefits and reimbursement of any remaining excess benefit payments.
2. Earnings and benefits as reported in the annual statement of compensation process will be used in applying the benefit reduction provisions in Title 5, Sections 17930 or 18530.
3. The statement of compensation required by Title 5, Sections 17931 or 18531 must be submitted so that it is received by MainePERS by the deadline for filing federal tax returns for the year covered by the statement of compensation.
	1. A disability retiree who obtains an extension of the tax filing deadline must submit proof of the extension application so it is received by MainePERS by the original deadline. The statement of compensation will be due on the extended deadline.
	2. MainePERS may extend the deadline or waive in whole or in part the statement of compensation requirement for good cause.
	3. Disability retirement benefits may be withheld for failure to submit a statement of compensation only after compliance with Title 5, Section 17105-A, including the right to an informal hearing, written decision, and appeal process.
	4. If disability retirement benefits are withheld for failure to submit a statement of compensation and the statement is subsequently submitted within one-year of the original due date, MainePERS will disburse the withheld benefits to the retiree.
4. In order for MainePERS to accurately apply the benefit reductions in Title 5, Sections 17930 and 18530 for receipt of other benefits, except as provided in paragraph A, each person required to submit a statement of compensation must at the same time and on the same form report any Social Security disability and workers’ compensation benefits and submit any SSA-1099 tax form received for the year covered by the statement of compensation.
	1. A disability retiree is not required to report Social Security benefits or provide SSA-1099 tax forms if the retiree was not covered by Social Security during the employment service associated with the disability retirement.
	2. If the information submitted reflects a decrease in other benefits or an increase beyond a cost of living adjustment, MainePERS, with the cooperation of the retiree, will seek further information from the other benefit provider to determine whether the change in other benefits should result in a change in benefit reductions.

STATUTORY AUTHORITY: 5 M.R.S. § 17103(4)

EFFECTIVE DATE:

 July 31, 2024 – filing 2024-165

**BASIS STATEMENT FOR ADOPTION JULY 11, 2024/STATEMENT OF COMMENTS:**

This proposal for rulemaking was noticed on May 22, 2024. A public hearing was held on June 13, 2024. Three members of the public provided oral comments at the public hearing, and two of those same members of the public submitted written comments prior to the June 24, 2024 comment deadline. Two additional members of the public submitted written comments prior to the June 24, 2024 comment deadline. The comments are summarized below, and MainePERS’ responses are in italics.

This proposed new rule sets forth guidance on compensation limitations and offsets applicable to disability retirement benefits and the submission of annual statements of compensation by disability retirees. It establishes applicable definitions and the process for submission of an annual statement of compensation, including the required documentation and filing deadlines.

One member of the public[[1]](#footnote-1) commented that the rule should more clearly address the procedures that apply when a disability benefit recipient exceeds earnings limitations and must repay MainePERS. The commenter suggested the Social Security Administration limits on garnishment of benefits as an approach to follow rather than withholding the entire monthly benefit towards the repayment of the overpayment of benefits.

One member of the public[[2]](#footnote-2) spoke in support of the first commenter, a prior coworker, and opined that a 100% claw back of benefits to repay amounts due is catastrophic for the impacted individual.

*Language has been added to the proposed rule to reflect that the steps to be taken when a disability retiree exceeds earnings limitations are set forth in statute. See, e.g., 5 M.R.S. § 17930(2)(A)&(B). No further procedural guidance is necessary in this rule. The Social Security garnishment limit was announced in March of 2024 and applies to recovery of overpaid benefits generally. MainePERS will consider whether rulemaking on the topic of overpayment recoveries generally would be appropriate.*

One member of the public[[3]](#footnote-3) made several comments and recommendations regarding the proposed new rule. First, the commenter opined that MainePERS should not require disability retirees to submit SSA-1099’s and that it has no legal authority for this requirement. Further, that the proposed rule would require all disability retirees to submit their SSA-1099, regardless of the basis on which the Social Security payments are paid. The commenter further opined that information reported on the SSA-1099 is not “compensation received from gainful occupation” and therefore is not needed to accurately apply benefit reductions as stated in the proposed rule. The commenter further opined that only a small subset of disability retirees are likely to also receive a Social Security disability benefit and that for those individuals who do, the information needed to determine any offset cannot be obtained from the SSA-1099. The commenter further opined that requiring the submission of SSA-1099’s creates unnecessary work for MainePERS staff, increases the chances of an inaccurate calculation of the offset and creates an unnecessary burden for disability retirees to submit the annual documents as part of the Annual Statement of Compensation filing process.

Second, the commenter suggests alternative wording to Section 2(3) of the rule to eliminate consideration of other benefits.

*MainePERS has the authority and responsibility to administer the statutory provisions that require disability retirement benefits to be reduced when Social Security disability benefits are received for the same disability. See 5 M.R.S. § 17103(4)&(6); 17105(1)(A). It is clear from the proposed rule’s language that the information about other benefits is distinct from the annual statement of compensation requirement but for convenience is reported at the same time and on the same form. Doing so is efficient and minimizes the burden on retirees and staff. Language has been added to the proposed rule to clarify that the SSA-1099 is not used in isolation to change benefit reductions, but rather it is an indicator that leads to further inquiry if it shows unexplained increases or decreases in benefits. The burden of including this form with the annual statement of compensation filing is slight and is justified by its value in avoiding an underpayment or overpayment of benefits.*

Third, the commenter suggests alternative wording to the definition of “earnings” in Section 1(1) of the proposed rule, with the stated intent to make it more understandable to those less knowledgeable about federal tax laws. The commenter suggests that the definition be more specific in its reference to federal tax forms and information found on those forms. The commenter also suggests inserting additional statutory references into the definition of “earnings” to apply it in other situations.

*The language has been made more specific, but MainePERS declines to refer to particular line numbers because federal tax forms are revised annually, and it would be unwieldly to require rulemaking every time a line number changed on a federal form. MainePERS also declines to extend the definition of “earnings” to other contexts as suggested because “earnable compensation” is defined by statute and the ability to earn may not be reflected on tax filings.*

Fourth, the commenter opined that how individuals report rental income on federal tax filings could result in that income being arbitrarily counted as “earnings” under the proposed definition. The commenter suggests that the rule incorporate the IRS definitions of “significant services” with respect to rental income; and “materially participate” with respect to farming income.

*MainePERS declines to depart from the clear guidance provided by the rule in favor of a more ambiguous standard.*

The commenter also opined that the rule should be expanded to include various additional procedures and provisions pertaining to benefit offsets, overpayments, compensation limits, deadlines, and dates.

*MainePERS believes that statute and the proposed rule provide sufficient guidance on the subject matter of this rule. As noted above, MainePERS will consider whether rulemaking on the topic of overpayment recoveries generally would be appropriate.*

The commenter requested the Board to require the Chief Executive Officer to engage in consensus-based rulemaking on the proposed rule to include those directly impacted by the rule.

*Formal consensus-based rule development is optional for an agency. Here, where stakeholder input was solicited informally during development and the proposed rule has gone through the formal rulemaking process including a public hearing, there is no need for further development.*

Finally, the commenter alleged that “it appears MainePERS has been unlawfully reducing the benefit amounts of disability retirees based on what is reflected on SSA-1099s or some other benefit reduction” and submitted as support for this allegation a document the commenter had prepared listing payments to seven disability retirees that appeared to reduce in amount over time. She identified data provided by MainePERS as the source of these benefit payment amounts.

*This allegation is false. While MainePERS did provide information to this commenter on all disability payments made over a seven year period in response to freedom of access requests, the document created by the commenter did not accurately reflect the data produced. The accurate data shows benefits to all seven of the disability retirees increased year-to-year – there were no reduced benefits, let alone “unlawfully” reduced benefits.*

Written comments were received from one member of the public[[4]](#footnote-4) who opined that the rules pertaining to earnings for a disability retiree need to limit the impact on members who are attempting to improve their situations. The commenter also opined that repayment of overpaid benefits should never result in the garnishment of an individual’s entire benefit. Finally, the commenter opined that it should not be necessary for disability retirees to submit SSA-1099’s as part of the financial documents requested by MainePERS since all income information is available on the tax schedules that must be submitted and some retirees were not covered by Social Security.

*See response above to the first set of comments. Additionally, under the proposed rule, MainePERS no longer will require disability retirees to submit their entire tax filing, so the information on the SSA-1099 will not be available through other tax schedules submitted. Language has been added to the proposed rule to clarify that the Social Security reporting does not apply to those retirees who were not covered by Social Security.*

Written comments were also received from a member of the public[[5]](#footnote-5) who opined that the rule should more clearly address how MainePERS uses the financial information collected from disability retirees to determine whether earnings limitations have been met, and should better articulate guidance on earnings limitations and how exceeding those limitations might result in the need for repayment of benefits, as well as how those repayments are expected to be made, including through the withholding of future benefits.

*MainePERS believes that statute and the proposed rule provide sufficient guidance on the subject matter of this rule. As noted above, MainePERS will consider whether rulemaking on the topic of overpayment recoveries generally would be appropriate.*

Based on consideration of the comments received, MainePERS staff recommends changes to the proposed new rule to: (1) provide increased specificity on the tax information that will be used to determine earnings; (2) specify that a disability retiree who was not covered by Social Security during the period of employment associated with the disability retirement is not required to report Social Security benefits or provide a SSA-1099; (3) include statutory context; (4) reorder the rule for clarity; (5) correct statutory cites; and (6) explain the steps to be taken if documentation submitted by a disability retiree reflects an unexplained change in other benefits being received by that retiree. The Board concurs with these recommendations.

At the Board’s regular meeting held on July 11, 2024, Henry Beck made the motion, seconded by Shirrin Blaisdell to adopt the new rule. Five Trustees (Beck-Beliveau-Blaisdell-Duplessis-Metivier) voted in favor of the motion, and one (Kimball) voted in opposition. Motion to adopt the new rule carried.

1. John York, Bangor [↑](#footnote-ref-1)
2. Andy Willigar, Bangor [↑](#footnote-ref-2)
3. Susan Hawes, Portland [↑](#footnote-ref-3)
4. Rick Cailler, Professional Firefighters of Maine [↑](#footnote-ref-4)
5. Lance Sanborn, Hermon [↑](#footnote-ref-5)