

TITLE 14 DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 4 STATE OF HAWAII DEFERRED COMPENSATION PLAN

CHAPTER 41

GENERAL PROVISIONS

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§14-41-1 Purpose. Chapter 88E, Hawaii Revised Statutes, authorizes the board of trustees of the State of Hawaii deferred compensation plan to establish the State of Hawaii deferred compensation plan. Chapters 41 to 44 of Title 14, Administrative Rules, are adopted by the board to implement administration of the plan. [Eff. MAY 12 1933] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

§14-41-2 Definitions. As used in this chapter: "Administrator" means the company or persons engaged by the board to administer and maintain the plan under the direction of the board.

"Beneficiary" means a person designated by a participant, a participant's estate, or any person, whose rights under the plan are derived as a result of the participant's death.

"Board" means the board of trustees of the State of Hawaii deferred compensation plan created pursuant to section 88E-3, Hawaii Revised Statutes.

"Employee" means any person who is eligible to participate in the employees' retirement system of the State of Hawaii as defined in section 88-21, Hawaii Revised Statutes.

"Employer" means the State of Hawaii or any county of the State of Hawaii which enters into an agreement with the State of Hawaii to extend the plan to the employees of the county.

"Participant" means an employee who enters into a written agreement with the respective employer to defer compensation under the plan.

"Participation agreement" means the written agreement between an employee and employer to have compensation withheld each pay period and invested by the board.

"Plan" means the State of Hawaii deferred compensation plan established in accordance with chapter 88E, Hawaii Revised Statutes, and section 457 of the Internal Revenue Code, 26 U.S.C. §457. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-1 to 88E-3)

§14-41-3 Office of the board. (a) The office of the board is located at 830 Punchbowl Street, Room 421, Honolulu, Hawaii 96813.

(b) The office of the board shall be open from 7:45 a.m. to 4:30 p.m. of each weekday unless otherwise provided by statute or executive order. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§80-1, 88E-3)

§14-41-4 Appearances before the board. A party to a proceeding before the board may appear in person or may be represented by or with counsel or other person chosen as a representative. The board at any time may require evidence of authority and qualification to act in a representative capacity. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-41-5 Public records and information. (a) The term "public record," as used in this chapter, shall be as defined in section 92-50, Hawaii Revised Statutes.

(b) All public records shall be available for inspection in the office of the board during established office hours, in accordance with section 92-51 and chapter 92E, Hawaii Revised Statutes.

(c) Public records printed or reproduced by the board shall be made available to any person in accordance with section 92-21, Hawaii Revised Statutes. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§91-2, 92-21, 92-50, 92-51, 92E-1 to 92E-15)

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CHAPTER 42

ADOPTION, AMENDMENT, OR REPEAL OF RULES

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 §14-42-4 Rulemaking

§14-42-1 Petition. An interested person may petition the board for the adoption, amendment, or repeal of any rule of the board. The petition shall be submitted in duplicate and filed with the board. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp. HRS §§88E-3, 91-6)

§14-42-2 Form of petition. (a) The petition need not be in any special form but shall contain:

- (1) The petitioner's name, address, zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest;
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal;
- (4) A draft of the substance of the proposed rule, amendment, or repeal and the designation of any existing rules affected by the petition; and
- (5) The signature of the petitioner.

(b) A petition which does not conform to the foregoing requirements may be rejected by the board. The petitioner shall be notified in writing of the rejection. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-6)

§14-42-3 Disposition of petition. Upon submission of the petition, the board, within thirty days, shall either deny the petition in writing, stating its reasons for the denial, or initiate proceedings for the adoption, amendment, or repeal of the rule. Upon disposition of the petition, the board shall promptly notify the petitioner of the board's ruling. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-6)

§14-42-4 Rulemaking. The board at any time, on its own initiative, may institute proceedings in accordance with chapter 91, Hawaii Revised Statutes, for the adoption, amendment, or repeal of rules. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-3, 91-4 to 91-4.2, 91-5)

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CHAPTER 43

DECLARATORY RULING

§14-43-1	Petition
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§14-43-3	Non-issuance of declaratory order
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§14-43-5	Applicability of orders

§14-43-1 Petition. An interested person may petition the board for a declaratory order as to the applicability of any statutory provision administered by the board or any rule or order of the board. The petition shall be submitted in duplicate and filed with the board. [Eff. MAY 12 1983] (Auth: HRS §88E-3)
 (Imp: HRS §§88E-3, 91-8)

§14-43-2 Form of petition. (a) The petition need not be in any special form but shall contain:

- (1) The petitioner's name, address, zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest;
- (3) A designation of the specific statutory provision, rule, or order in question;
- (4) A complete statement of the relevant facts;
- (5) A statement of the interpretation given the statutory provision, rule, or order by the petitioner;
- (6) A memorandum containing the reasons, including any legal authorities, in support of the interpretation of the petitioner; and
- (7) The petitioner's signature.

(b) A petition which does not conform to the foregoing requirements may be rejected by the board. The petitioner shall be notified in writing of the rejection. [Eff. MAY 12 1983] (Auth: HRS §88E-3)
 (Imp: HRS §§88E-3, 91-8)

§14-43-3 Non-issuance of declaratory order. The board, for good cause, may refuse to issue a declaratory order. Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve an existing situation or a situation which may reasonably be expected to occur in the near future;
 - (2) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law;
 - (3) The issuance of the declaratory order may adversely affect the interest of the State, the board, or any officer or employee of the State involved in pending litigation or litigation which may reasonably be expected to arise; or
 - (4) The petition requests a ruling on a statutory provision not administered by the board or the matter is not otherwise within the jurisdiction of the board. [Eff. MAY 12 1983]
- (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-43-4 Disposition of petition. Within a reasonable time after the submission of the petition, the board shall either deny the petition in writing, stating its reasons for the denial, or issue a declaratory ruling on the matters contained in the petition. Upon disposition of the petition, the board shall promptly notify the petitioner of the board's ruling. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3, 91-8)

§14-43-5 Applicability of orders. An order disposing of a petition shall be applicable only to the fact situation alleged in the petition or as set forth in the order. The order shall not be applicable to different fact situations or to situations where additional facts not considered in the order exist. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

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CHAPTER 44
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SUBCHAPTER 1

ENROLLMENT

§14-44-1 Eligibility requirements. A person shall be eligible to enroll in the plan only if the person is:

- (1) Eligible to participate in the employees' retirement system of the State of Hawaii; and
- (2) Employed by the State of Hawaii or a county which has an agreement with the State of Hawaii to extend the plan to employees of the county. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

§14-44-2 Application for enrollment. (a) An application for enrollment shall be made on the participation agreement form prescribed by the board and shall be filed with the administrator.

(b) An applicant for enrollment shall enter on the participation agreement form the following:

- (1) Identifying information, including name, social security number, date of birth, home address, and home telephone number;
- (2) Employment information, including employer, department, division, business telephone number, and annual salary;

- (3) Designations allowed under the plan, including investment preference, amount of compensation to be deferred per pay period per investment product, normal retirement age, and beneficiary; and
- (4) Signature to indicate that the applicant:
 - (A) Agrees to the provisions of the plan, which are incorporated by reference;
 - (B) Authorizes disclosure of any information necessary for the administration of the plan; and
 - (C) Certifies that the information furnished on the form is true and correct to the best of the applicant's knowledge and belief.

[Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-2, 88E-3)

§14-44-3 Acceptance; effective date. (a) The participation agreement shall be effective upon acceptance by the board and shall remain in effect unless it is modified by the participant or otherwise rendered ineffective by the plan or this chapter.

(b) The administrator shall give each participant a copy of the participation agreement which has been accepted by the board. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-2, 88E-3)

§14-44-4 Rejection; notification. (a) A participation agreement shall be rejected if:

- (1) The participation agreement is incomplete;
- (2) An entry in the participation agreement is inconsistent with the plan or this chapter; or
- (3) The applicant does not meet the eligibility requirements.

(b) If a participation agreement is rejected, the administrator shall promptly notify the applicant in writing of the rejection and the reason for the rejection. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-2, 88E-3)

§14-44-5 Changes in participation agreement.

(a) It shall be the responsibility of a participant to notify the administrator in writing of any change in an entry on the participation agreement.

(b) Upon receipt of a notification of change, the administrator shall promptly inform the participant whether the change requires:

- (1) An amended participation agreement to be filed and accepted by the board; or
 - (2) Proof or documentation to substantiate the change.
 - (c) The administrator shall make the change as soon as practicable following the receipt of a notification of change and any additional material required.
 - (d) If a change would be inconsistent with the plan or this chapter, the administrator shall promptly notify the participant in writing that the change cannot be made and the reason why it cannot be made.
- [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

§14-44-6 Re-enrollment. A former participant may again apply for enrollment in the plan by filing a participation agreement with the administrator. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

SUBCHAPTER 2

DEFERRALS

§14-44-7 Deferrals allowed; authorization; commencement. (a) Only compensation from an employer which has not yet been paid shall be deferred under the plan.

(b) Upon receipt of a payroll authorization form signed by the participant, which designates the amount of compensation to be deferred, compensation shall be deferred each payroll date by the employer, provided there are sufficient funds to make the designated deferral. The authorization form shall be transmitted by the administrator to the state comptroller or county director of finance, as applicable.

(c) Deferrals shall commence as soon as practicable, but not earlier than the first day of the next calendar month following the date on which the board accepts the participation agreement. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-8 Limitations on amounts deferred. (a) The minimum amount of deferral per pay period shall be \$10 per investment product.

(b) The maximum amount of deferral per taxable year of the participant shall be 33 1/3 per cent of a participant's includable compensation (as defined in

regulations governing section 457 of the Internal Revenue Code, 26 U.S.C. §457), but not more than \$7,500, except as provided in §14-44-9. [Eff. MAY 12 1983]
 (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-9 Catch-up provision. (a) During one or more of a participant's last three taxable years ending before the participant attains normal retirement age, as defined in §14-44-23, a participant may be eligible to defer compensation in excess of the limitation under §14-44-8(b) as follows:

- (1) The maximum amount of deferral for each taxable year of the catch-up period shall be the sum of the underutilized limitation under §14-44-9(a)(2), but not more than \$15,000;
- (2) The underutilized limitation shall be computed by adding:
 - (A) The maximum amount of deferral under §14-44-8(b) for the taxable year; and
 - (B) The amount which a participant could have deferred but did not defer (which is the maximum amount under §14-44-8(b) less any amount previously deferred) in prior taxable years which the participant was eligible to participate in the plan or another eligible plan (within the meaning of section 457 of the Internal Revenue Code, 26 U.S.C. §457); and
- (3) A participant shall only be eligible to utilize the catch-up provision once, regardless of whether the participant fully utilizes the provision or rejoins the plan.

(b) A participant shall not be eligible to utilize the catch-up provision under the plan if the participant has utilized a catch-up provision under another eligible plan. (Eff. MAY 12 1983) (Auth: HRS §88E-3)
 (Imp: HRS §88E-3)

§14-44-10 Reduction in maximum amounts allowable. The maximum amounts allowable under §§14-44-8(b) and 14-44-9 shall be reduced in accordance with regulations governing section 457 of the Internal Revenue Code, 26 U.S.C. §457, if a participant is deferring or has deferred compensation under another eligible plan or annuity plan under section 403(b) of the Internal Revenue Code, 26 U.S.C. §403(b). [Eff. MAY 12 1983]
 (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-11 Responsibilities regarding maximum amounts. (a) It shall be the responsibility of a participant to furnish the administrator with all necessary information so that deferrals under the plan do not exceed the maximum amounts allowable under §§14-44-8(b), 14-44-9, and 14-44-10.

(b) A participant shall be responsible for any tax consequences which may arise as a result of deferrals under the plan which exceed the maximum amounts allowable under §§14-44-8(b), 14-44-9, and 14-44-10. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-12 Insufficient funds; suspension; reinstatement. (a) Whenever there are insufficient funds available to make the deferral designated in the participation agreement, the deferral shall not be made.

(b) Deferrals shall automatically be suspended if there are insufficient funds available to make the designated deferral for six consecutive pay periods.

(c) A participant whose deferrals have been suspended shall file a written request with the administrator to have deferrals reinstated on the same terms contained in the participation agreement prior to the suspension. However, if the desired reinstatement is to be on terms other than those contained in the participation agreement, a participant shall file an amended participation agreement, which shall be subject to acceptance by the board. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

§14-44-13 Deferrals remain as employer's assets.

(a) The amounts deferred under the plan by a participant, including income attributable to the investment of the amounts deferred, shall remain an asset of the participant's employer.

(b) When a participant changes employment from one employer to another employer under the plan, the amounts deferred by the participant, including income attributable to the investment of the amounts deferred, shall become an asset of the new employer.

(c) A participant's rights to the amounts deferred shall be limited to those provided in the plan and this chapter. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 88E-8)

SUBCHAPTER 3

INVESTMENTS

§14-44-14 Investment of deferred amounts. (a) The amounts deferred under the plan shall be invested by the board in fixed annuities, variable annuities, life insurance, savings accounts, or mutual funds, or any combination of the foregoing.

(b) Contracts entered into between the board and the companies selected by the board to offer the investment products for the plan shall be binding upon the participants. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 88E-9)

§14-44-15 Designation of investment preference.

(a) A participant shall designate a preference for the investment of amounts deferred from among the available investment products under the plan in the participation agreement.

(b) A participant may change a designation of an investment preference with respect to prospective deferrals by filing an amended participation agreement, which shall be subject to acceptance by the board.

(c) Investment of deferred amounts shall be made in accordance with the participants' designated preferences unless otherwise directed by the board for good cause, such as, circumstances which necessitate an immediate safeguarding of deferred amounts. Whenever deferred amounts are not invested in accordance with the participants' designated preferences, all affected participants shall be advised by the administrator in writing of the action taken by the board and the reason for the action. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 88E-9)

§14-44-16 Transfer of amounts previously deferred.

A participant may submit a written request to the administrator to transfer amounts previously deferred under the plan from one investment product to another investment product available under the plan. However, the transfer shall only be allowed in accordance with the provisions of the contracts pertaining to the applicable investment products. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 88E-9)

SUBCHAPTER 4

ACCOUNTS AND REPORTS

§14-44-17 Individual accounts. Individual deferred compensation accounts shall be established and maintained for each participant as necessary for record-keeping and reporting purposes. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-18 Adjustments to accounts. Each individual account shall be credited with the amount of compensation deferred and shall be further adjusted by any increase or decrease resulting from investments, any direct charge authorized in the applicable investment product contract, and any withdrawal or payment of benefits authorized by the board. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 88E-13)

§14-44-19 Reports on accounts. Each participant shall be provided semi-annually with a written report of any account maintained on behalf of the participant. The report shall be mailed to the participant's last home address on file with the administrator, unless otherwise requested in writing. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-20 Disclosure of information. Information about a participant shall only be disclosed to the participant or a person authorized in writing by the participant, unless otherwise authorized by law. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

SUBCHAPTER 5

DISTRIBUTION OF BENEFITS

§14-44-21 When payable; earliest and latest dates.
(a) Benefits under the plan shall be paid or made available to the participant no earlier than:
(1) Separation from service when an employee is no longer employed by an employer under the plan due to termination, retirement, or death; or
(2) The occurrence of an unforeseeable emergency as provided in §§14-44-30 to 14-44-33.

(b) Payment of benefits shall commence no later than sixty days after the close of the calendar year in which the participant separates from service or the participant attains or would have attained normal retirement age as defined in §14-44-23, whichever is later. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-22 Distribution request form; filing requirements. (a) A completed distribution request form prescribed by the board shall be filed with the administrator upon separation from service. Additional information may be required by the board prior to approval of the request.

(b) The following shall be entered on the form:

- (1) Identifying information, including name, social security number, date of birth, home address, and home telephone number;
- (2) Date of and reason for separation from service;
- (3) Whether the catch-up provision has been utilized;
- (4) Normal retirement age;
- (5) Payment option;
- (6) Commencement date of payments; and
- (7) Signature authorizing proper withholding of taxes and certifying the information is true and correct to the best of the person's knowledge and belief.

(c) The form shall be filed no later than thirty days after the close of the calendar year in which the separation from service occurs.

(d) In the event a distribution request form is not filed within the prescribed time or is otherwise rendered ineffective by the plan or this chapter, benefits shall be paid in accordance with §14-44-26. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-23 Normal retirement age defined; designation. (a) Normal retirement age means any age, at the option of the participant, that is within the range of ages:

- (1) Beginning no earlier than the earliest age at which the participant has the right to retire under the employees' retirement system and to receive immediate benefits without reduction; and
- (2) Ending not later than age 70 1/2.

However, if a participant continues to work beyond the specified ages, normal retirement age shall not be later than the mandatory retirement age applicable to

the participant or the date the participant separates from service with the employer.

(b) The participant shall designate a normal retirement age on the participation agreement or distribution request forms. In the absence of a designation, normal retirement age shall be age sixty-five. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-24 Election to commence benefits. (a) Upon separation from service, but not later than thirty days after the close of the calendar year in which the participant separates from service, an irrevocable election may be made to have benefits commence at a fixed future time. The designation shall be made on a distribution request form and filed with the administrator.

(b) In the absence of an election within the prescribed time, benefits shall be paid in accordance with §14-44-26. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-25 Selection of payment options. (a) The payment of benefits under the plan shall be made primarily for the benefit of the participant.

(b) A method for payment of benefits shall be designated on the distribution request form from among the options available under the applicable investment product contracts, which may include:

- (1) Fixed payments over a period of time;
- (2) Annuity payments; and
- (3) Lump sum payment.

(c) The designation of the method for payment of benefits is irrevocable, unless modified at least thirty days prior to the date benefits are to commence.

(d) In the absence of a designation within the prescribed time, benefits shall be paid in accordance with §14-44-26. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-26 Failure to select distribution options.

(a) In the event a distribution request form is not filed or an election to commence payments is not made in accordance with these rules, benefits shall be paid when the participant attains or would have attained normal retirement age, except as specified in §14-44-26(b)(1).

(b) In the event a method for payment of benefits is not designated in accordance with this chapter, benefits shall be paid as follows:

- (1) For an account valued at less than \$5,000, immediately and in a lump sum; and
- (2) For an account valued at \$5,000 or greater, in five equal annual installments. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-27 Beneficiaries; designation; rights.

(a) A participant shall designate on the participation agreement form a beneficiary or beneficiaries, who shall receive the participant's benefits in the event of the participant's death. In the event a beneficiary has not been designated or the designation is ineffective, the participant's estate shall become the beneficiary.

(b) Upon the participant's death, a beneficiary shall have all the rights of the participant, except as limited by regulations governing section 457 of the Internal Revenue Code, 26 U.S.C. §457. [Eff. MAY 12 1983] Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-28 Withholding of taxes. All payments under the plan shall be subject to applicable tax withholding requirements. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-29 Mailing of payments. Payments shall be mailed to the last home address on file with the administrator, unless otherwise requested in writing. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

SUBCHAPTER 6

UNFORESEEABLE EMERGENCY

§14-44-30 Request for emergency withdrawal; form.

(a) If a participant incurs an unforeseeable emergency as defined in §14-44-31, the participant may apply for an emergency withdrawal by filing with the administrator a completed emergency withdrawal request form prescribed by the board, attaching evidence in support of the request. Additional evidence may be required by the board as necessary to dispose of the request.

(b) A participant requesting an emergency withdrawal shall enter on the form the following:

- (1) Identifying information, including name, home address, employing department, and work telephone number;

- (2) List of participant's assets;
- (3) Specification of unforeseeable emergency;
- (4) Detail of costs incurred or to be incurred;
- (5) Whether the withdrawal results from an emergency affecting someone other than participant and, if so, whether that person is the participant's dependent;
- (6) Amounts not payable by other sources;
- (7) Amounts necessary to satisfy the emergency; and
- (8) Signature authorizing proper withholding of taxes and certifying the information is true and correct to the best of the participant's knowledge and belief. [Eff. MAY 12 1983]
(Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-31 Unforeseeable emergency defined. An unforeseeable emergency means severe financial hardship to a participant resulting from a sudden and unexpected illness or accident of the participant or of the participant's dependent (as defined in section 152(a) of the Internal Revenue Code, 26 U.S.C. §152(a)), loss of the participant's property due to casualty, or similar extraordinary circumstances beyond the participant's control. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-32 Limitations on withdrawals. An emergency withdrawal shall only be approved by the board to the extent that:

- (1) It is reasonably needed to satisfy the emergency; and
- (2) Severe financial hardship cannot be relieved by:
 - (A) Reimbursement or compensation from sources other than an emergency withdrawal under the plan;
 - (B) Cessation of deferrals under the plan; and
 - (C) Liquidation of the participant's assets, to the extent that the liquidation of assets would not in itself cause severe financial hardship.

[Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-33 Payment; board approval. (a) Only emergency withdrawals which have been approved by the board shall be made under the plan.

(b) Payments shall be made as directed by the board and shall include amounts which are required to be withheld for income tax purposes.

(c) If an emergency withdrawal is not approved by the board, the administrator shall promptly notify the participant in writing of the disapproval and the reason for the disapproval. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

SUBCHAPTER 7

TRANSFERS BETWEEN EMPLOYERS

§14-44-34 Transfers between employers under the plan. (a) When a participant changes employment from one employer to another employer under the plan, benefits shall not be payable under the plan. The participant's deferred compensation account with respect to previously deferred amounts shall continue in full force and effect.

(b) The amounts deferred in the participant's deferred compensation account, including income attributable to the investment of the amounts deferred, shall be transferred to the new employer. The participant's rights under the plan shall be maintained by the new employer.

(c) A participant shall file an amended participation agreement and other forms as may be required to have compensation deferred by the new employer. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-2, §88E-3)

§14-44-35 Transfers to another eligible plan.

(a) Regardless of any other provision of the plan or these rules, when a participant separates from service under the plan, benefits shall not be payable under the plan if the following conditions exist:

- (1) The participant separates from service to accept employment with an entity which has an eligible plan and is located within the State of Hawaii;
- (2) The participant has become a participant in the eligible plan of that entity; and
- (3) The eligible plan of that entity accepts the transfer of previously deferred amounts from another eligible plan.

(b) Participants shall furnish the administrator with information to determine if the conditions under §14-44-35(a) exist.

(c) If the conditions listed in §14-44-35(a) exist, the amounts deferred in the participant's deferred compensation account, including income attributable to the amounts deferred, shall automatically be transferred to the other eligible plan. The transfer shall be made as soon as practicable.

(d) If the conditions listed in §14-44-35(a) do not exist, benefits shall become payable in accordance with the provisions of the plan and this chapter. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-36 Transfers from another eligible plan.

(a) If a participant has previously deferred compensation under another eligible plan which has a plan-to-plan transfer provision in accordance with regulations governing section 457 of the Internal Revenue Code, 26 U.S.C. §457, the transfer of previously deferred amounts from the other eligible plan shall be accepted under the plan.

(b) The participant shall designate in writing from among the investment products available under the plan a preference for the investment of the amount transferred from the other eligible plan. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

SUBCHAPTER 8

BOARD REVIEW OF ADMINISTRATOR'S ACTIONS

§14-44-37 Request for board review. (a) A board review may be requested by an employee regarding an action taken by the administrator, as it applies to the employee, which the employee believes is inconsistent with the plan or this chapter. The employee shall make reasonable efforts to resolve the disagreement with the administrator prior to requesting a board review.

(b) All requests for board review shall be in writing and shall state the efforts taken to resolve the disagreement with the administrator, the specific reason why the action taken by the administrator is inconsistent with the plan or this chapter, the action requested, and the reason why the requested action is proper.

(c) Requests for board review shall be filed within thirty calendar days of the date of the action taken by the administrator. [Eff. MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-38 Disposition of request. An employee's request for a board review may be disposed of with or without an appearance before the board. The employee shall be promptly notified by the board in writing of the results of its review. [Eff.MAY 12 1983] (Auth: HRS §88E-3) (Imp: HRS §88E-3)