

104TH CONGRESS  
2D SESSION

# H. R. 3316

To amend the Internal Revenue Code of 1986 to revise the treatment of deferred compensation plans of State and local governments, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 1996

Mr. VENTO introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to revise the treatment of deferred compensation plans of State and local governments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Employee Re-  
5 tirement Security Act of 1996”.

6 **SEC. 2. TREATMENT OF GOVERNMENTAL PLANS UNDER**  
7 **SECTION 415.**

8 (a) COMPENSATION LIMIT.—Subsection (b) of sec-  
9 tion 415 of the Internal Revenue Code of 1986 is amended

1 by adding immediately after paragraph (10) the following  
2 new paragraph:

3           “(11) SPECIAL LIMITATION RULE FOR GOVERN-  
4           MENTAL PLANS.—In the case of a governmental  
5           plan (as defined in section 414(d)), subparagraph  
6           (B) of paragraph (1) shall not apply.”

7           (b) TREATMENT OF CERTAIN EXCESS BENEFIT  
8 PLANS.—

9           (1) IN GENERAL.—Section 415 of such Code is  
10          amended by adding at the end the following new  
11          subsection:

12          “(m) TREATMENT OF QUALIFIED GOVERNMENTAL  
13 EXCESS BENEFIT ARRANGEMENTS.—

14               “(1) GOVERNMENTAL PLAN NOT AFFECTED.—

15          In determining whether a governmental plan (as de-  
16          fined in section 414(d)) meets the requirements of  
17          this section, benefits provided under a qualified gov-  
18          ernmental excess benefit arrangement shall not be  
19          taken into account. Income accruing to a govern-  
20          mental plan (or to a trust that is maintained solely  
21          for the purpose of providing benefits under a quali-  
22          fied governmental excess benefit arrangement) in re-  
23          spect of a qualified governmental excess benefit ar-  
24          rangement shall constitute income derived from the  
25          exercise of an essential governmental function upon

1 which such governmental plan (or trust) shall be ex-  
2 empt from tax under section 115.

3 “(2) TAXATION OF PARTICIPANT.—For pur-  
4 poses of this chapter—

5 “(A) the taxable year or years for which  
6 amounts in respect of a qualified governmental  
7 excess benefit arrangement are includible in  
8 gross income by a participant, and

9 “(B) the treatment of such amounts when  
10 so includible by the participant,

11 shall be determined as if such qualified govern-  
12 mental excess benefit arrangement were treated as a  
13 plan for the deferral of compensation which is main-  
14 tained by a corporation not exempt from tax under  
15 this chapter and which does not meet the require-  
16 ments for qualification under section 401.

17 “(3) QUALIFIED GOVERNMENTAL EXCESS BEN-  
18 EFIT ARRANGEMENT.—For purposes of this sub-  
19 section, the term ‘qualified governmental excess ben-  
20 efit arrangement’ means a portion of a governmental  
21 plan if—

22 “(A) such portion is maintained solely for  
23 the purpose of providing to participants in the  
24 plan that part of the participant’s annual bene-  
25 fit otherwise payable under the terms of the

1 plan that exceeds the limitations on benefits im-  
2 posed by this section,

3 “(B) under such portion no election is pro-  
4 vided at any time to the participant (directly or  
5 indirectly) to defer compensation, and

6 “(C) benefits described in subparagraph  
7 (A) are not paid from a trust forming a part  
8 of such governmental plan unless such trust is  
9 maintained solely for the purpose of providing  
10 such benefits.”

11 (2) COORDINATION WITH SECTION 457.—Sub-  
12 section (e) of section 457 of such Code is amended  
13 by adding at the end the following new paragraph:

14 “(14) TREATMENT OF QUALIFIED GOVERN-  
15 MENTAL EXCESS BENEFIT ARRANGEMENTS.—Sub-  
16 sections (b)(2) and (c)(1) shall not apply to any  
17 qualified governmental excess benefit arrangement  
18 (as defined in section 415(m)(3)), and benefits pro-  
19 vided under such an arrangement shall not be taken  
20 into account in determining whether any other plan  
21 is an eligible deferred compensation plan.”

22 (3) CONFORMING AMENDMENT.—Paragraph (2)  
23 of section 457(f) of such Code is amended by strik-  
24 ing “and” at the end of subparagraph (C), by strik-  
25 ing the period at the end of subparagraph (D) and

1 inserting “, and”, and by adding at the end the fol-  
2 lowing new subparagraph:

3 “(E) a qualified governmental excess bene-  
4 fit arrangement described in section 415(m).”

5 (c) EXEMPTION FOR SURVIVOR AND DISABILITY  
6 BENEFITS.—Paragraph (2) of section 415(b) of such  
7 Code is amended by adding at the end the following new  
8 subparagraph:

9 “(I) EXEMPTION FOR SURVIVOR AND DIS-  
10 ABILITY BENEFITS PROVIDED UNDER GOVERN-  
11 MENTAL PLANS.—Paragraph (5) and subpara-  
12 graph (C) of this paragraph shall not apply  
13 to—

14 “(i) income received from a govern-  
15 mental plan (as defined in section 414(d))  
16 as a pension, annuity, or similar allowance  
17 as the result of the recipient becoming dis-  
18 abled by reason of personal injuries or  
19 sickness, or

20 “(ii) amounts received from a govern-  
21 mental plan by the beneficiaries, survivors,  
22 or the estate of an employee as the result  
23 of the death of the employee.”

24 (d) REVOCATION OF GRANDFATHER ELECTION.—

1           (1) IN GENERAL.—Subparagraph (C) of section  
2           415(b)(10) of such Code is amended by adding at  
3           the end the following new clause:

4                   “(ii) REVOCATION OF ELECTION.—An  
5                   election under clause (i) may be revoked  
6                   not later than the last day of the third  
7                   plan year beginning after the date of the  
8                   enactment of this clause. The revocation  
9                   shall apply to all plan years to which the  
10                  election applied and to all subsequent plan  
11                  years. Any amount paid by a plan in a tax-  
12                  able year ending after the revocation shall  
13                  be includible in income in such taxable  
14                  year under the rules of this chapter in ef-  
15                  fect for such taxable year, except that, for  
16                  purposes of applying the limitations im-  
17                  posed by this section, any portion of such  
18                  amount which is attributable to any tax-  
19                  able year during which the election was in  
20                  effect shall be treated as received in such  
21                  taxable year.”

22           (2) CONFORMING AMENDMENT.—Subparagraph  
23           (C) of section 415(b)(10) of such Code is amended  
24           by striking “This” and inserting:

25                   “(i) IN GENERAL.—This”.

1 (e) COMPENSATION.—Subsection (k) of section 415  
2 of such Code is amended by adding at the end the follow-  
3 ing new paragraph:

4 “(3) DEFINITION OF COMPENSATION FOR GOV-  
5 ERNMENT PLANS.—For purposes of this section, in  
6 the case of a governmental plan (as defined in sec-  
7 tion 414(d)), the term ‘compensation’ includes, in  
8 addition to the amounts described in subsection  
9 (c)(3)—

10 “(A) any elective deferral (as defined in  
11 section 402(g)(3)), and

12 “(B) any amount which is contributed by  
13 the employer at the election of the employee  
14 and which is not includible in the gross income  
15 of the employee under section 125 or 457.”

16 (f) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by  
18 subsections (a), (b), (c), and (e) shall apply to years  
19 beginning after the date of the enactment of this  
20 Act. The amendments made by subsection (d) shall  
21 apply with respect to revocations adopted after the  
22 date of the enactment of this Act.

23 (2) TREATMENT FOR YEARS BEGINNING BE-  
24 FORE DATE OF ENACTMENT.—Nothing in the  
25 amendments made by this section shall be construed

1 to infer that a governmental plan (as defined in sec-  
2 tion 414(d) of the Internal Revenue Code of 1986)  
3 fails to satisfy the requirements of section 415 of  
4 such Code for any taxable year beginning before the  
5 date of the enactment of this Act.

6 **SEC. 3. TREATMENT OF DEFERRED COMPENSATION PLANS**  
7 **OF STATE AND LOCAL GOVERNMENTS AND**  
8 **TAX-EXEMPT ORGANIZATIONS.**

9 (a) SPECIAL RULES FOR PLAN DISTRIBUTIONS.—  
10 Paragraph (9) of section 457(e) of the Internal Revenue  
11 Code of 1986 (relating to other definitions and special  
12 rules) is amended to read as follows:

13 “(9) BENEFITS NOT TREATED AS MADE AVAIL-  
14 ABLE BY REASON OF CERTAIN ELECTIONS, ETC.—

15 “(A) TOTAL AMOUNT PAYABLE IS \$3,500  
16 OR LESS.—The total amount payable to a par-  
17 ticipant under the plan shall not be treated as  
18 made available merely because the participant  
19 may elect to receive such amount (or the plan  
20 may distribute such amount without the partici-  
21 pant’s consent) if—

22 “(i) such amount does not exceed  
23 \$3,500, and

24 “(ii) such amount may be distributed  
25 only if—

1                   “(I) no amount has been deferred  
2                   under the plan with respect to such  
3                   participant during the 2-year period  
4                   ending on the date of the distribution,  
5                   and

6                   “(II) there has been no prior dis-  
7                   tribution under the plan to such par-  
8                   ticipant to which this subparagraph  
9                   applied.

10                  A plan shall not be treated as failing to meet  
11                  the distribution requirements of subsection (d)  
12                  by reason of a distribution to which this sub-  
13                  paragraph applies.

14                  “(B) ELECTION TO DEFER COMMENCE-  
15                  MENT OF DISTRIBUTIONS.—The total amount  
16                  payable to a participant under the plan shall  
17                  not be treated as made available merely because  
18                  the participant may elect to defer commence-  
19                  ment of distributions under the plan if—

20                         “(i) such election is made after  
21                         amounts may be available under the plan  
22                         in accordance with subsection (d)(1)(A)  
23                         and before commencement of such dis-  
24                         tributions, and

1                   “(ii) the participant may make only 1  
2                   such election.”.

3           (b) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DE-  
4 DEFERRAL AMOUNT.—Subsection (e) of section 457 of such  
5 Code, as amended by section 2(b)(2) (relating to govern-  
6 mental plans), is amended by adding at the end the follow-  
7 ing new paragraph:

8                   “(15) COST-OF-LIVING ADJUSTMENT OF MAXI-  
9           MUM DEFERRAL AMOUNT.—The Secretary shall ad-  
10           just the \$7,500 amount specified in subsections  
11           (b)(2) and (c)(1) at the same time and in the same  
12           manner as under section 415(d), except that the  
13           base period shall be the calendar quarter ending  
14           September 30, 1995, and any increase under this  
15           paragraph which is not a multiple of \$500 shall be  
16           rounded to the next lowest multiple of \$500.”.

17           (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to taxable years beginning after  
19 the date of the enactment of this Act.

20 **SEC. 4. TRUST REQUIREMENT FOR DEFERRED COMPENSA-**  
21 **TION PLANS OF STATE AND LOCAL GOVERN-**  
22 **MENTS.**

23           (a) IN GENERAL.—Section 457 of the Internal Reve-  
24 nue Code of 1986 is amended by adding at the end the  
25 following new subsection:

1       “(g) GOVERNMENTAL PLANS MUST MAINTAIN SET  
2 ASIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.—

3           “(1) IN GENERAL.—A plan maintained by an  
4 eligible employer described in subsection (e)(1)(A)  
5 shall not be treated as an eligible deferred com-  
6 pensation plan unless all assets and income of the  
7 plan described in subsection (b)(6) are held in trust  
8 for the exclusive benefit of participants and their  
9 beneficiaries.

10           “(2) TAXABILITY OF TRUSTS AND PARTICI-  
11 PANTS.—For purposes of this title—

12           “(A) a trust described in paragraph (1)  
13 shall be treated as an organization exempt from  
14 taxation under section 501(a), and

15           “(B) notwithstanding any other provision  
16 of this title, amounts in the trust shall be in-  
17 cludible in the gross income of participants and  
18 beneficiaries only to the extent, and at the time,  
19 provided in this section.

20           “(3) CUSTODIAL ACCOUNTS AND CONTRACTS.—  
21 For purposes of this subsection, custodial accounts  
22 and contracts described in section 401(f) shall be  
23 treated as trusts under rules similar to the rules  
24 under section 401(f).”

1 (b) CONFORMING AMENDMENT.—Paragraph (6) of  
2 section 457(b) of such Code is amended by inserting “ex-  
3 cept as provided in subsection (g),” before “which provides  
4 that”.

5 (c) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-  
7 graph (2), the amendments made by this section  
8 shall apply to assets and income described in section  
9 457(b)(6) of such Code held by a plan on and after  
10 the date of the enactment of this Act.

11 (2) TRANSITION RULE.—In the case of assets  
12 and income described in paragraph (1) held by a  
13 plan before the first day of the first calendar quarter  
14 beginning after the close of the first regular session  
15 of the State legislature of the State in which the  
16 governmental entity maintaining the plan is located  
17 beginning after the date of the enactment of this  
18 Act, a trust need not be established by reason of the  
19 amendments made by this section before such first  
20 day. For purposes of the preceding sentence, in the  
21 case of a State that has a 2-year legislative session,  
22 each year of such session shall be deemed to be a  
23 separate regular session of the State legislature.

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