

such signs. The Department believes that it is extremely unlikely that the amendments and new rule would bring about a change in the average costs associated with housing.

**Smart Growth Development Impact Analysis**

The proposed amendments and new rule will have no impact on smart growth. The Department believes that it is extremely unlikely that the proposed amendments and new rule would bring about a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules control and regulate roadside signs and outdoor advertising, provide for the safety and convenience of the public, and the need to stimulate economic and commercial activity within the State of New Jersey. This chapter requires and provides for the issuing of licenses and permits for roadside signs and outdoor advertising and the establishment, use, maintenance, and removal of such signs.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. PURPOSE, SCOPE, AND CONTACT INFORMATION

16:41C-1.2 Scope

(a) (No change.)

(b) The following signs are allowed in accordance with this chapter and require the issuance and maintenance of a permit:

1. Off-premise signs (see N.J.A.C. 16:41C-8), including, but not limited to:

- i-iv. (No change.)
- v. Transit bus shelter signs; [and]
- vi. Bike share signs; and**
- [vi.] **vii.** (No change in text.)
- (c)-(d) (No change.)

SUBCHAPTER 2. DEFINITIONS

16:41C-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...  
**“Bike share sign” means a sign on a bike share station located on public property as part of a bike share program that is sponsored by the municipality that has jurisdiction over the roadway on which the bike share station is located.**

**“Bike share station” means a structure that provides bicycles at a self-service station located on public property as part of a bike share program that is sponsored by the municipality that has jurisdiction over the roadway on which the structure is located. This is distinguished from a private bike rental agreement or program.**

...

SUBCHAPTER 8. OFF-PREMISE SIGNS

16:41C-8.7 Bike share signs

(a) **No permit for a sign on a bike share kiosk may be issued, other than a conditional permit, until there has been a public hearing affording the opportunity for public comment. Documentation of a public hearing shall be submitted with any application for an outdoor advertising permit on a bike share sign.**

(b) **The bike share sign must be erected and maintained with the express permission of the governing authority of the public property on which the bike share is located. No bike share signs or bike share structures will be permitted within the Department’s right-of-way.**

(c) **All bike share signs shall be physically attached to the bike share bicycle structure. No permit shall be issued for any structure that is not attached and within five feet of a bike share bicycle structure.**

(d) **Bike share signs shall be installed on one sign structure with two sign faces back-to-back or one wall in each traveling direction of the structure for a maximum of two signs visible to the travelling**

**public. No sign face shall exceed 24 square feet in area. No signs shall be placed on the back wall of the bike share station.**

(e) **A multi-message sign shall not be allowed on a bike share kiosk.**

(f) **No bike share sign shall be constructed less than 300 feet from a transit bus shelter. In all instances, transit bus shelter applications shall have a priority of location over bike share applications.**

(g) **A permit for a bike share sign may be issued in any area regardless of whether the site complies with the zoning requirements of this chapter.**

(h) **The minimum spacing between permitted bike share stations shall be 300 feet.**

Recodify existing N.J.A.C. 16:41C-8.7 and 8.8 as **8.8 and 8.9** (No change in text.)

**TREASURY—GENERAL**

**(a)**

**DIVISION OF PENSIONS AND BENEFITS  
 PUBLIC EMPLOYEES’ RETIREMENT SYSTEM**

**Public Employees’ Retirement System  
 Proposed Redoption with Amendments: N.J.A.C.  
 17:2**

**Proposed Repeal and New Rule: N.J.A.C. 17:2-6.11**

Authorized By: Public Employees’ Retirement System Board of Trustees, Jacquelyn Bussanich, Secretary.

Authority: N.J.S.A. 43:15A-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-123.

Submit comments by September 15, 2017, to:

Susanne Culliton  
 Assistant Director  
 Division of Pensions and Benefits  
 PO Box 295  
 Trenton, NJ 08625-0295  
 E-mail: [DPB.regulations@treas.nj.gov](mailto:DPB.regulations@treas.nj.gov)

The agency proposal follows:

**Summary**

The Board of Trustees of the Public Employees’ Retirement System (“PERS,” “Board,” or “System”) is responsible for maintaining the administrative rules within N.J.A.C. 17:2. When the Board becomes aware of a change in the laws or a court decision that could affect the PERS, the Board reviews the administrative rules to determine where changes, if any, are required. Amendments to the affected rules are then proposed, in order to uphold the new statute or court decision effectively. Additionally, the rules are periodically reviewed by the Division of Pensions and Benefits (Division) and the Board’s staff to determine whether the current rules are necessary, are cost-efficient, reflect the current policies and procedures of the Division, and maintain qualified-plan status in compliance with Federal IRS regulations. When clarification or revision is required, the affected rules are amended accordingly. Finally, when the rules under N.J.A.C. 17:2 are about to expire, they must be reviewed, amended as needed, and readopted.

The Board proposes to readopt N.J.A.C. 17:2, which was scheduled to expire on June 16, 2017, with the following amendments, repeals, and new rules. As the Division filed this notice of readoption with the Office of Administrative Law prior to that date, the expiration date was extended 180 days to December 13, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The rules proposed for readoption with amendments, repeals, and new rules affect the administration, enrollment, contributions, withdrawals, insurance and death benefits, membership, eligible service, service-credit purchases, retirements, and transfers within the PERS.

**Subchapter 1. Administration**

The Board proposes to amend N.J.A.C. 17:2-1.1, Board meetings, to provide that the Secretary, in addition to the Chairperson, may call special meetings, and to specify that persons audio- or video-recording a Board meeting shall inform the Secretary of the Board and provide their names and addresses. This change assists in expediting emergent matters for which the Secretary must publish the requisite meeting notices and assists in establishing guidelines for the public to help maintain order at public meetings.

The Board proposes to amend N.J.A.C. 17:2-1.3(d), so that it more clearly states that the Finance Committee shall consist of five members, including “at least” three members that have been elected to the “various” pension boards (not just the Board), pursuant to N.J.S.A. 43:15A-32.

The Board also proposes to amend N.J.A.C. 17:2-1.4(b) to state that all candidates must comply with the residency requirements of N.J.S.A. 52:14-7, commonly known as the New Jersey First Act. Having a principal residence in New Jersey is required under this act, unless an exemption applies. Furthermore, the Board proposes to amend subparagraph (d)3ii by reducing from 500 to 300, the number of nominations required for a member to become a candidate for a municipal trustee election. Municipal members who seek to be nominated as a trustee but are employed at small municipal locations can face difficulties in obtaining the requisite number of nominations. This can result in a municipal trustee position sitting vacant for long periods; for example, between June 30, 2010 and July 1, 2012, the municipal trustee position remained vacant, because no member had received the required number of nominations. Similarly, paragraph (d)5 is proposed to be amended to reflect this change in the number of nominations required for a municipal trustee position. In addition, new paragraph (h)5 is proposed to specify that certification of the election results shall occur at the first board meeting after the final election count. This provides a time frame for this action by the Board.

Proposed new N.J.A.C. 17:2-1.6(d) will prohibit the release of any active or retired member’s postal address, telephone number, or e-mail address; and proposed new subsection (e) will prohibit the release of any active or retired member’s beneficiary designations while the member is living. Proposed new subsections (d) and (e) uphold current Division procedures for all State-administered defined contribution and defined benefit plans that protect a member’s personal information, and reflect similar language already found in the Teachers’ Pension and Annuity Fund (TPAF) rules at N.J.A.C. 17:3-1.6(b) and (c).

N.J.A.C. 17:2-1.7, Appeal from Board decisions, is proposed for amendment through the addition of codification to the currently uncodified first paragraph and to make technical changes to the quoted language to match the letter sent out by the PERS.

In addition, the Board proposes new N.J.A.C. 17:2-1.7(b), which will delegate authority to the Director of the Division to grant or deny requests to extend the time allowed for exceptions and replies, and to request that the Office of Administrative Law extend the time for the Board, if necessary, to render final decisions to adopt, reject, or modify an initial decision. This will allow the Board to have time to receive all documentation pertinent to rendering a particular final decision.

N.J.A.C. 17:2-1.9, Verified discrepancy in member’s age, is proposed for amendment to clearly specify that a member’s active or retired account shall be reconstructed and all benefit entitlements and contributions shall be determined on the basis of the member’s correct date of birth, in cases where proof of age documents establish a verified discrepancy between a member’s proven age and the age on file with the Division.

N.J.A.C. 17:2-1.11, Proof of age, is proposed for amendment to specify currently acceptable proof-of-age evidence that members may submit to the Division. Since proof of age is required for disbursement of retirement benefits and death claim settlements for PERS members, the proposed amendment is necessary to expedite processing and payment of retirement benefits and death claims for active and retired PERS members and their beneficiaries.

Current proof-of-age rules allow PERS members to submit any of the following documents to the Division as proof of age: birth or baptismal

certificates, passports, naturalization papers, Biblical records, affidavits of older members of the immediate family, or primary school records. Subsection (a), as amended, will modify the list of acceptable proof-of-age documents to include birth certificates with visible seal; passports; U.S. Passport Cards, naturalization, and immigration papers; digital non-driver identification cards from the New Jersey Motor Vehicle Commission (MVC); and valid New Jersey, Pennsylvania, or New York digital driver licenses. Affidavits of older members of a member’s immediate family, Biblical records, baptismal certificates, and school records will no longer be accepted as proof-of-age evidence for members and beneficiaries, as their reliability is not always accurate. Expanding the list of documents allowable as proof-of-age evidence for PERS members will help to expedite retirement processing and death claim settlements for PERS members and their beneficiaries, and will also help to minimize the resources used to mail deficiency letters to members who have not submitted proof-of-age evidence by their date of retirement. Furthermore, proposed new subsection (d) is added to specify that if a member has already established proof of his or her age before a transfer into or out of the PERS, no additional proof-of-age evidence will be required.

The Board proposes to modify the age determination rule at N.J.A.C. 17:2-1.13. The section heading is for amendment to include “contribution rate,” rather than simply “Age determination,” because the section encompasses member contribution rates, as well as age determination. Moreover, the section applies to age determination for purchase, option selection, Option 1 reserve balance, and group life insurance benefits, in addition to enrollment and other areas of retirement.

Proposed new subsection (f) provides information about the increases in the PERS member contribution rate that have occurred since 2004. Under P.L. 2007, c. 92, and P.L. 2007, c. 103, the member contribution rate was initially increased to 5.5 percent in July of 2007. Later, P.L. 2011, c. 78, called for a one-percent increase in the member contribution rate in October of 2011, to 6.5 percent, as well as subsequent incremental increases in the contribution rate from July 2012 through July 2018, when the total pension contribution rate will stand at 7.5 percent of salary, under the provisions of N.J.S.A. 43:15A-25. Proposed new subsection (g) specifies that for members enrolled in the System prior to July 1, 2007, with no break in service after that date, the contribution rate is applied to the full pensionable salary, but only up to the current Federal ceiling on pensionable compensation under § 401(a)(17) of the Internal Revenue Code; however, for members who enroll (or enrolled) on or after July 1, 2007, proposed new subsection (h) stipulates that the contribution rate in effect is applied to the pensionable salary up to the maximum compensation limit for pension contributions, pursuant to the Federal Insurance Contributions Act and based on the annual maximum wage for Social Security deductions.

**Subchapter 1A. Definitions**

In Subchapter 1A, Definitions, the Board proposes to add “Break in service” to mean any pension reporting period without pay, a monthly or a biweekly pay period as appropriate to the employer’s reporting method, with the exception of approved leaves of absence, lay-off, abolishment of position, military leave, Workers’ Compensation, litigation, or suspension. A definition of “DCRP” is added, to mean the Defined Contribution Retirement Program. PERS members whose salary exceeds the maximum compensation limit for pension contributions, pursuant to the Federal Insurance Contributions Act, are now enrolled in the DCRP for salary amounts exceeding that limit. A definition of “final compensation” is added because the meaning of “final compensation” is dependent on enrollment date. For System members enrolled on or before May 21, 2010, “final compensation” is based on the final three years of service or the highest three fiscal years. For members enrolled after May 21, 2010, “final compensation” is based on the final five years of service, or the highest five fiscal years. The distinction is significant in the calculation of retirement benefits. Finally, definitions for “full cost purchase” and “shared cost purchase” are added, to establish a distinction between the two types of costs for allowable service credit purchases.

**Subchapter 2. Enrollment**

The Board proposes a number of changes to Subchapter 2, Enrollment, due to changes brought about by several different new laws governing this aspect of PERS membership. At N.J.A.C. 17:2-2.1, the Board proposes to modify subsection (a), so that it reflects the prohibition of multiple memberships for enrollments as of the effective date of P.L. 2010, c. 1 (May 21, 2010). Existing subsection (b) is proposed for deletion and replacement to reflect recently established membership levels (also referred to as “tiers”) that have different enrollment requirements corresponding to a PERS member’s enrollment date: Members who were eligible for enrollment prior to November 2, 2008, must meet the minimum annual salary requirement of \$1500 PERS limit for the work year. Members who became eligible for enrollment between November 2, 2008 and May 21, 2010, must meet the minimum salary requirements pursuant to the provisions of P.L. 2008, c. 89, and N.J.S.A. 43:15A-7, which are subject to change each year (and set forth in subsection (c), as amended). Finally, under N.J.S.A. 43:15A-7, members with enrollment dates falling after May 21, 2010, are required to work a minimum number of regular hours per week, 35 hours for State employees or 32 hours for local government employees. Moreover, proposed new N.J.A.C. 17:2-2.1(b)4 stipulates that for breaks of service of two years or more, a member will be reenrolled under a new PERS account based on the member’s date of eligibility for enrollment. N.J.A.C. 17:2-2.1(c) is proposed for amendment, to specify that while the initial minimum base salary for enrollees between November 2, 2008 and May 21, 2010, was set at \$7,500, it is to be adjusted yearly, to reflect increases in the Consumer Price Index.

Since newly elected and appointed public officials are now enrolled in the DCRP and not PERS, new subsections (e), (f), and (g) are proposed regarding PERS enrollment for elected and appointed officials who are continuing service, and for officials with a professional license or certificate who are appointed to one of the titles excluded from DCRP membership. Under subsection (e), those elected officials enrolled in the PERS prior to July 1, 2007, whose membership has not expired may continue that PERS membership while continuing to serve in the same elected public office, provided no break of more than two years in that PERS service occurs. Under subsection (f), an appointed official enrolled prior to July 1, 2007, whose membership has not expired may continue as a PERS member while serving in the same or a subsequent appointment, provided that no break of more than two years in that PERS service occurs. Subsection (g) is proposed to allow members who hold a professional license or certificate and are appointed to one of the titles excluded from DCRP membership under N.J.S.A. 43:15C-2, to enroll in the PERS, but only if all other eligibility requirements are met.

The Board proposes to amend N.J.A.C. 17:2-2.2, Multiple enrollment, to delete and replace subsection (a). This revision is necessary because, under N.J.S.A. 43:15A-25.2 and P.L. 2010, c. 1, employees who are eligible to enroll in the System after May 21, 2010, are no longer permitted to be enrolled, by more than one PERS participating employer, as multiple members. Proposed new subsection (b) stipulates that members who enrolled on or before May 21, 2010, will not be allowed to continue as multiple members if they have a break in service (a monthly or a biweekly pay period as appropriate to the employer’s reporting method) or terminate employment in either position after May 21, 2010. Furthermore, recodified subsection (c) is proposed for amendment to reflect enrollment procedures for elected officials who had the option of becoming multiple members prior to July 1, 2007. Now multiple membership is prohibited for all PERS positions under N.J.S.A. 43:15A-25.2, and newly elected officials are enrolled in the DCRP, not PERS.

N.J.A.C. 17:2-2.3(a)7 is proposed for amendment to state that a retired member who is employed on an hourly basis shall be reenrolled in the PERS as soon as the compensation received exceeds the calendar year compensation limit “or the member’s regular work hours per week require reenrollment,” under N.J.S.A. 43:15A-7. These requirements are in accordance with the reenrollment provisions of N.J.S.A. 43:15A-7. N.J.A.C. 17:2-2.3(a)12 and 13 are proposed for amendment to specify that newly elected and appointed officials, who are ineligible for PERS membership effective July 1, 2007, may enroll in the DCRP, provided

that all other eligibility requirements are met. New subparagraph (a)12ii specifies that a non-veteran elected official whose election occurred prior to July 1, 2007, and who chose not to enroll in PERS is eligible for membership in the DCRP, regardless of whether that official is elected to the same elected office or a different elected office. Proposed new paragraph (a)16 states that on-call substitute teachers who do not meet the eligibility requirements for PERS enrollment provided at N.J.A.C. 17:2-2.1 are enrolled in the DCRP, rather than the PERS, provided that all eligibility requirements for DCRP membership are met.

N.J.A.C. 17:2-2.4(c)1 is proposed for amendment to specify that, in the case of local government employers, a member’s appointment date shall “begin the first day of work after the” date that the employee accepted employment in a regular budgeted position, for regular appointments not covered by Civil Service, as this reflects current procedures; the added phrase is to replace “constitute,” in order to simplify the paragraph.

The Board proposes to amend N.J.A.C. 17:2-2.6, Enrollment eligibility of professors and instructors employed on a temporary, provisional, or adjunct basis by public institutions of higher education, to reflect current statutes and procedures regarding PERS enrollment eligibility for these groups of employees. Subsection (a) is proposed for amendment to state that newly hired adjunct professors and part-time instructors are eligible for enrollment only in the Alternate Benefit Program (ABP) and may no longer enroll in the PERS based solely on that employment. Prior to November 2, 2008, professors and instructors employed on a temporary, provisional, or adjunct basis by public institutions of higher education were eligible for PERS enrollment if they met the provisions specified. Subsection (b) is proposed for deletion and replacement, to state that current PERS members working as adjunct professors or part-time instructors may continue their PERS membership or transfer membership to the ABP; however, this option is provided as a one-time decision that is irrevocable for the balance of a member’s employment; further, this option does not apply to current PERS members who are employed as professors and instructors on a temporary or provisional basis.

The Board proposes to amend N.J.A.C. 17:2-2.7, Enrollment following deferred retirement, because the age at which a member’s deferred retirement will take effect is now dependent on the member’s enrollment date, under P.L. 2007, c. 92, P.L. 2008, c. 89, P.L. 2010, c. 1, P.L. 2010, c. 3, and P.L. 2011, c. 78. For members whose enrollment date occurred before November 2, 2008, a deferred retirement will still take effect at age 60; however, for members whose enrollment date is between November 2, 2008 and June 27, 2011, a deferred retirement takes effect at age 62; and for members who enrolled in the PERS on or after June 28, 2011, a deferred retirement takes effect at age 65. The two-year window for a member’s return to service after electing a deferred retirement still determines whether the member’s original membership account remains in effect or whether the member will be enrolled under a new membership account; however, for members enrolled before November 2, 2008, the original membership account will continue if service is resumed within the two-year window prior to age 60; for members who enrolled between November 2, 2008 and June 27, 2011, the original membership account will continue if service is resumed within the two-year window prior to age 62; and for members who enrolled in the PERS on or after June 28, 2011; the original membership account will recommence if service is resumed within the two-year window prior to age 65. Existing subsections (b), (c), and (d) are proposed for deletion, as they will be replaced by the new subsections (b) and (c) discussed above.

N.J.A.C. 17:2-2.9 is proposed to be amended to include a reference to a bi- or multi-state agency’s adoption of the Chapter 263 resolution as a condition precedent to enrolling eligible employees in PERS; under N.J.S.A. 43:15A-73, such employers must adopt such a resolution before enrolling PERS-eligible employees, so that the required Social Security modification can occur.

N.J.A.C. 17:2-2.10(a) is proposed to be amended, as on-call employees who enroll on or after May 21, 2010, must now work at least the minimum number of regular hours per week required for enrollment in the PERS. Otherwise, on-call substitute teachers who meet the eligibility requirements for DCRP membership, including the established

minimum salary requirements, will be enrolled in the DCRP. However, replacement teachers and long-term substitute teachers who meet all other eligibility requirements, including working the minimum number of required fixed weekly hours, will continue to be enrolled in PERS, and on-call substitute teachers who enrolled in PERS prior to May 21, 2010, can continue to participate in PERS, as long as all other eligibility requirements are met. In addition, subsection (d) is proposed to be amended to state that when a member has an active PERS membership based upon other employment, the on-call employment must represent an intrafund transfer if begun after May 21, 2010, as multiple enrollments are prohibited after that date.

### Subchapter 3. Insurance and Death Benefits

The Board proposes to amend N.J.A.C. 17:2-3.8, Withdrawal and return; contributory insurance, so that it provides the correct statutory citation for conversion of group life insurance as N.J.S.A. 43:15C-8. The current citation references a rule that incorrectly addresses group life insurance conversions and is proposed to be repealed. In addition, the sentence, “The converted individual policy will not take effect until the expiration of the group life insurance policy at the conclusion of the 31-day grace period,” is to be added, as a converted individual policy will only take effect after the 31-day grace period, when the group life insurance policy expires.

The Board proposes to amend N.J.A.C. 17:2-3.12(a), so that it stipulates that multiple membership is not permitted for those enrolling in the System after May 21, 2010. In addition, the first sentence of N.J.A.C. 17:2-3.12(a) is proposed for amendment through the replacement of the word “status” with the word “membership,” so that this subsection more clearly expresses that a member has PERS membership at multiple employing locations.

The heading of N.J.A.C. 17:2-3.13 is amended, so that it clearly represents the topic that this section covers; namely, the benefits that are payable when a member dies with a retirement application pending. References to chapter laws in this section are also replaced by the specific statutes that govern this area. N.J.A.C. 17:2-3.13(a) will also include the phrase, “upon the member’s death,” to clarify that this subsection applies only if a member passes away with a retirement application pending.

N.J.A.C. 17:2-3.13(b) is proposed for deletion because it is subject to misinterpretation that contradicts the intent of current statutes legislating the administration of beneficiary benefits in cases where a member dies with a retirement application pending. Existing case law supports that when a member dies with a retirement application pending, the member’s beneficiary (or beneficiaries) is entitled to receive active group life insurance benefits or retired pension benefits, but not both. For example, in the case, *New Jersey Education Association v. Board of Trustees, Public Employees’ Retirement System*, 327 N.J. Super. 405 (App. Div.), cert. denied, 165 N.J. 135 (2000), the Appellate Division of the Superior Court of New Jersey ruled that based on pertinent legislative history, the legislative intent of existing statute was “to continue the practice of allowing certain beneficiaries to choose either an active member insurance death benefit or a retirement allowance, but not both.” Otherwise, “a limited class of beneficiaries would receive benefits that exceed the benefits that a retiring member could receive.” Further, when a member leaves public employment, there is a 31-day grace period where the member is still covered under the group life insurance policy. If the separating member applies to the carrier to convert the expiring group life insurance policy into an individual policy, the individual policy will not take effect until the expiration of the group life insurance policy at the conclusion of the 31-day grace period.

The Board proposes to amend N.J.A.C. 17:2-3.15, Suspension, so that it also stipulates that a suspended member may convert “non-contributory” group life insurance coverage to individual coverage after 93 days.

### Subchapter 4. Membership

N.J.A.C. 17:2-4.10, Waiver of retirement benefits upon withdrawal, is proposed for amendment to reflect changes in the normal age at which a member becomes eligible to retire under P.L. 2008, c. 89, P.L. 2010, c. 1 and c. 3, and P.L. 2011, c. 78. The normal retirement age for PERS

members now depends on a member’s date of enrollment. Members who are eligible to begin receiving a monthly retirement allowance but choose to withdraw from the System must still sign a “waiver of retirement benefits,” as before; however, the age at which PERS members are required to sign a waiver of retirement benefits is now determined by a member’s enrollment date: those enrolled in the System prior to November 2, 2008, become eligible for retirement at age 60; those enrolled in the System between November 2, 2008 and June 27, 2011, become eligible for retirement at age 62; and those enrolled in the PERS on or after June 28, 2011, become eligible to retire at age 65. Thus, under the proposed amendments to N.J.A.C. 17:2-4.10, members who decide to withdraw from the System must waive their right to retirement benefits, if they have at least 25 years of service and have reached the normal age for retirement specified under the law, according to their date of enrollment.

The Board proposes to amend N.J.A.C. 17:2-4.11, Termination; withdrawal, by adding new subsection (b) that requires members to use the Member Benefits’ Online System (MBOS) to apply for a withdrawal via the Internet. Only those members who establish that they cannot access MBOS will be exempt from this requirement.

### Subchapter 5. Purchases and Eligible Service

The Board proposes to amend N.J.A.C. 17:2-5.1, Eligibility for purchase, by amending subsection (b) and adding new subsection (c). Subsection (b) will, as amended, require members to apply for purchases using the Internet-based MBOS Purchase Application, while new subsection (c) establishes conditions that will exempt members from using MBOS for purchases; namely, purchases of military service after enrollment under Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provisions; and purchases of leaves of absence for union representation, respectively.

The Board also proposes to amend N.J.A.C. 17:2-5.4, Compulsory contributions (back deductions) by replacing the word “full” pension rate with the word “current” pension rate. The member contribution rate is being increased through 2018, so the change reflects those projected increases.

The Board proposes to amend N.J.A.C. 17:2-5.5, Optional purchases of eligible service. Subparagraph (a)4iii is proposed to be amended to reflect language in the recently amended N.J.A.C. 17:3 regarding maternity leave, specifying that, absent a doctor’s certification, the maximum period of purchase for maternity leave is three months. N.J.A.C. 17:2-5.5(b)2i is proposed for amendment to replace “U.S. Government service cannot” with “only New Jersey service may” be used to qualify for an ordinary disability retirement. Pursuant to N.J.S.A. 43:15A-42, only New Jersey service may be used for this purpose. In addition, the Board proposes to amend subparagraph (b)2ii to stipulate that for purchase applications received on or after November 2, 2008, purchases of U.S. government service, military service, and out-of-State service cannot be used to qualify for post-retirement medical benefits, in accordance with N.J.S.A. 43:15A-73.1 (P.L. 2008, c. 89).

N.J.A.C. 17:2-5.12, Correction of errors for prior service credit, is proposed to be amended by adding, “If errors have been made, correction and adjustment of all prior service shall occur in accordance with the provisions of N.J.S.A. 43:15A-54,” in order to clarify that the purchase calculations referred to in this subsection are for corrections to a member’s service credit, as the title indicates.

### Subchapter 6. Retirements

At N.J.A.C. 17:2-6.1(a), the Board proposes to make it a requirement that members submit their retirement applications online, through MBOS. In addition, subsection (a) is further amended to stipulate that multiple members enrolled on or before May 21, 2010, must retire from all covered positions before their retirement becomes effective, because multiple membership is not permitted for members who enroll after May 21, 2010, under N.J.S.A. 43:15A-25.2. Proposed amendments to subsection (b) represent clarifications to the subsection, without substantive change.

Proposed new N.J.A.C. 17:2-6.1(c) states that members who enroll in the PERS after May 21, 2010, are not eligible to apply for disability retirement, although they may be eligible for disability insurance

coverage, in accordance with N.J.S.A. 43:66-39. Recodified N.J.A.C. 17:2-6.1(d) is proposed for amendment for clarity, so that it states, “once a member designates a ‘pension’ beneficiary, that beneficiary cannot be changed.” This distinction is proposed because group life insurance beneficiaries, unlike pension beneficiaries, can be altered after a member’s retirement takes effect. In addition, as recodified subsection (d), the reference to chapter law and the general explanation of the new beneficiary benefit options under N.J.S.A. 43:15A-50 are proposed for deletion, since each option is explained explicitly in recodified paragraphs (d)1 through 9.

Recodified N.J.A.C. 17:2-6.1(f) is proposed for amendment to provide a more concise introduction for this subsection. Furthermore, recodified N.J.A.C. 17:2-6.1(f)1 and 2 are amended to use clearer language and to include a clause stating that the medical condition(s) described on the member’s retirement application must correspond to the medical reports submitted in support of the member’s retirement application; paragraph (f)1 is also amended to stipulate that for accidental disability retirements, only those disabilities associated with the purported disabling event will be considered; it is also to be amended to state that in cases where a member is denied an accidental disability retirement but qualifies for an ordinary disability retirement based on the disabilities associated with the purportedly disabling event identified on the original accidental disability retirement application, no additional application needs to be filed, pursuant to recodified (f)7 below. At paragraph (f)2, the word, “medical” is to be removed from the phrase, “An application for a mental health medical disability retirement ...” so that it correctly states, “mental health disability retirement,” as “medical disability retirement” and “mental health disability retirement” are the correct designations for the types of disability retirements for which members may apply. In addition, new paragraph (f)3 is proposed to stipulate that the reason for terminating employment must be the medical conditions provided on the disability retirement application; members who terminate employment for employer-initiated disciplinary action or for criminal or administrative charges leading to a settlement agreement that results in resignation or termination will be disqualified from filing for a disability retirement. New paragraph (f)3 will state that the member must be unable to perform his or her regular assigned duties and that the employer could not accommodate the disability; it will also stipulate that agreement by settlement or forfeiture would preclude the member from being eligible for a disability retirement under N.J.S.A. 43:15A-44. New paragraph (f)4 is proposed to set forth the specific circumstances under which a member who discontinues service may nonetheless be entitled to file for a disability retirement, in order to help prevent abuses. Recodified paragraph (f)5 is proposed for amendment to state that a member who retired and subsequently reenrolled may not file for any other type of disability retirement while the original disability retirement application is pending. If the disability retirement benefit is denied, the member must submit a separate application for a subsequent date. However, as noted above, recodified paragraph (f)1 is amended to state that if a member is denied an accidental disability retirement but qualifies for an ordinary disability retirement based on the disabilities associated with the purportedly disabling event, no additional application is required.

These proposed amendments are needed to help prevent abuses of the System. In particular, these amendments are intended to prevent members from “switching” conditions when their original disability retirement application is denied. Members whose disability retirement applications are denied by the Board based on the medical documentation submitted will have to submit a new prospective application with supporting medical documentation if they seek a disability retirement for a condition not reflected in the original application. However, a member who is denied an accidental disability retirement but who qualifies for an ordinary disability retirement based on the medical condition identified on original application is not required to submit a new application. Besides targeting pension fraud and abuse, this specific amendment will help to eliminate unnecessary processing and paperwork.

Recodified subsection (h) refers to a return to public employment and the issuance of pension checks at retirement, except in the case of a disability retirement. It is proposed for amendment to state that when a

member returns to public employment and the membership eligibility requirements are the same for both former and new positions (same membership tier), the member’s new retirement benefit is combined with the original retirement benefit and paid in one monthly benefit check; however, in cases where a member returns to public employment that is covered under different membership eligibility requirements (a different tier), the accounts are not combined.

N.J.A.C. 17:2-6.3, Effective date; changes, is proposed for amendment to account for recent changes in the eligibility requirements for a deferred retirement. Specifically, the age at which a member’s deferred retirement takes effect is now dependent on a member’s enrollment date, under P.L. 2007, c. 92, P.L. 2007, c. 103, P.L. 2008, c. 89, P.L. 2010, c. 1, and P.L. 2011, c. 78. For members whose enrollment occurred before November 2, 2008, a deferred retirement will still be available at age 60; however, for members whose enrollment date is between November 2, 2008 and June 27, 2011, a deferred retirement is available at age

62; and for members who enroll(ed) in PERS on or after June 28, 2011, a deferred retirement is available at age 65. The proposed amendments are predicated on the changes in the eligibility requirements for a deferred retirement according to a member’s enrollment date, pursuant to the recent pension reform laws cited above. The Board also proposes to amend subsection (a), so that it also cross-refers to N.J.A.C. 17:2-6.1, as that section is also needed to cover exceptions in this section.

The Board proposes to amend N.J.A.C. 17:2-6.4, Outstanding loan, by removing the chapter law cross-reference that is provided and leaving only the statutory citation in paragraph (a)2.

The Board proposes to amend N.J.A.C. 17:2-6.5, Willful negligence, by clarifying the type of deliberate act, or deliberate failure to act, that constitutes willful negligence.

The Board proposes to amend N.J.A.C. 17:2-6.7(a), Disability determination, by adding the phrase, “enrolled in the System before May 21, 2010,” since members enrolled on or after May 21, 2010, will not be eligible to apply for a disability retirement. Further, the phrase, “by the member, by his employer, or by one acting in behalf of the member” is to be deleted, because the subsection will apply regardless of who submits the disability retirement application. In addition, paragraph (a)2 is proposed for amendment to specify that a member must be physically or mentally incapacitated “at the time the member terminates employment as a result of the disabling condition identified on the Accidental Disability Retirement application, and should be retired.” The intent of this amendment is to emphasize that disability retirements are reserved for members who are truly disabled; members who leave public service for a reason other than disability may not apply for disability retirement benefits at a future date, for the purpose of receiving heightened retirement benefits and State-paid health benefits after terminating service. Since the Division has amended the General Administration rules at N.J.A.C. 17:1-6, which in part apply to disability retirements, the Board incorporates those rules and proposes to add new subsection (c) to state that N.J.A.C. 17:1-6 is also in effect; new subsection (c) also supports N.J.A.C. 17:1-6 by stating that the receipt of a disability retirement is conditioned on a member’s honorable service, and that full or partial forfeiture of disability retirement benefits may be imposed when appropriate.

The Board proposes to amend N.J.A.C. 17:2-6.10, Involuntary disability application, by adding the phrase, “enrolled in the System before May 21, 2010,” since like other disability retirements, involuntary disability retirements will not be available to members who enroll in the System on or after May 21, 2010.

At N.J.A.C. 17:2-6.11, the Board proposes to repeal and replace the subsection to reflect the changes in eligibility requirements and reductions that are currently in effect for early retirement, because those qualifications are now based on a member’s enrollment date, under P.L. 2007, c. 92, P.L. 2007, c. 103, P.L. 2008, c. 89, P.L. 2010, c. 1, and P.L. 2011, c. 78. Members who have 25 or more years of service before age 60 and whose enrollment date is on or before July 1, 2007, may take an early retirement, with a pension reduction of ¼ of one percent for each month before the member turns age 55, if the member retires before age 55. Members who have 25 years of service before age 60 and whose

enrollment date is after July 1, 2007 but before November 2, 2008, may take an early retirement, with a pension reduction of 1/12 of one percent for each month under age 60 through age 55 if the member retires before age 60, and an additional reduction of ¼ of one percent for each month under age 55, if the member also retires before age 55. Members who have 25 or more years of service before age 62 and whose enrollment date is on or after November 2, 2008 but before June 28, 2011, may take an early retirement, with a pension reduction of 1/12 of one percent for each year under age 62 through age 55 if the member retires before age 62, and an additional pension reduction of ¼ of one percent per month for each year under age 55, if the member also retires before age 55. Members who have 25 or more years of service before age 65 and whose enrollment date is on or after June 28, 2011, may take an early retirement, with a pension reduction of ¼ of one percent per month for each month prior to the month when the member reaches age 65.

Furthermore, the Board proposes to amend N.J.A.C. 17:2-6.12, Service retirement; eligibility, because the eligibility requirements for a service retirement now depend on a member's enrollment date. Members whose enrollment date was before November 2, 2008, are eligible for a service retirement at age 60. Members whose enrollment date occurred between November 2, 2008 and May 21, 2010, become eligible for a service retirement at age 62. Members whose enrollment date occurs after May 21, 2010, become eligible for a service retirement at age 65.

At N.J.A.C. 17:2-6.13, Disability retiree; annual medical examinations, the phrase "normal retirement" is proposed for deletion, because 60 is no longer the "normal" retirement age for all members; the age at which a member can retire now depends upon a member's enrollment date.

An amendment is proposed at N.J.A.C. 17:2-6.14, Disability retiree; annual report (employment, earning, test and adjustment), regarding forms that the Division may require from PERS members on a disability retirement, who are subject to an earnings test. Namely, the Board proposes to add that the Division may require a disability retiree to complete and submit the Federal Form 4506-T, Request for Transcript of Tax Return, on penalty of suspension of disability retirement benefits.

The Board proposes to amend N.J.A.C. 17:2-6.20(a) to reflect changes in the calculation of final compensation as required under P.L. 2010, c. 1 and c. 3, and P.L. 2011, c. 78. These laws have changed the final compensation calculation for members enrolled after May 10, 2010, from a final 36-month average to a final 60-month average; or from a highest three fiscal years average to a highest five fiscal years average. If the member is a 10-month employee enrolled after May 10, 2010, final compensation will be based on a final 50-month average rather than a final 30-month average, or highest five fiscal years average rather than the highest three fiscal years average. For members enrolled in the System on or before May 21, 2010, final compensation calculations remain unchanged. Likewise, final compensation calculations for biweekly employees have changed for employees enrolled after May 21, 2010, from a final 78-pay period average to a final 130-pay period average. Those distinctions are reflected in the amendments to N.J.A.C. 17:2-6.24 Final compensation; biweekly salary computation for employees reported on a biweekly basis.

#### Subchapter 7. Transfers

At N.J.A.C. 17:2-7.1, Honorable service; interfund transfers; State-administered retirement systems, subsection (a) lays out certain provisions for "interfund" transfers of service credit, from one retirement system to another, in cases where the Board of a member's former system has determined that all or a portion of the member's prior service was dishonorable. In such cases, the service credit that was deemed dishonorable will not be transferable. The proposed amendments to subsection (a) clarify the rules for transferring service credit to another system in cases of dishonorable service. In addition, the Board proposes to amend N.J.A.C. 17:2-7.1(b) and (c), so that they specify that transfers apply to defined benefit plans only and to merge the two subsections (the text of subsection (c) will remain so codified, but all paragraph are relocated to subsection (b)); in addition, present policy requires an "Interfund Transfer" but not an "Enrollment Application," so recodified paragraph (b)1 is proposed for amendment accordingly. Finally, under recodified subparagraph (b)5ii, the chapter law reference, P.L. 2001, c.

341 is proposed for deletion, as the statute governing this area is already cited in this subsection and is to be used in place of the chapter law citation. Moreover, the phrase, "unless the member is vested in the TPAF" is proposed for deletion, as it does not apply in cases where a member's account has expired and the member must enroll under a new account and membership level.

At N.J.A.C. 17:2-7.2, Intrafund transfers; State-administered retirement systems, in subsection (a), the clause, "The account has not expired; that is" is proposed to be added, to use language for accounts to which member contributions have been made within a two-year period.

#### Subchapter 8. Prosecutors Part

N.J.S.A. 43:15A-156 closed the Prosecutors Part of the PERS to new members as of May 21, 2010. For this reason, the rules in Subchapter 8 apply only to members of the PERS Prosecutors Part who had established membership by May 21, 2010.

At N.J.A.C. 17:2-8.1, Definitions, the definition of "service" will be modified to reflect the provisions of N.J.S.A. 43:15A-156, as indicated above. In addition, N.J.A.C. 17:2-8.6 Purchase of service, will be amended accordingly.

At N.J.A.C. 17:2-8.3, Contribution rate, new subsection (c) is proposed to direct PERS Prosecutors Part members to the Prosecutors Part Addendum of the PERS Member Handbook on the Division's website for information about the PERS Prosecutors Part member contribution rate.

Furthermore, amendments to N.J.A.C. 17:2-8.8, Vesting, and 8.14, Retirement date for prosecutors having both regular and Prosecutors Part PERS service, are proposed to reflect the PERS membership tiers that have been added, as discussed above.

N.J.A.C. 17:2-8.11, Election of largest possible retirement allowance, is proposed for amendment to replace the PERS Prosecutors' Part chapter law reference with the applicable statute, namely, N.J.S.A. 43:15A-155.

Finally, N.J.A.C. 17:2-8.16 is to be amended, so that it correctly states that when a member with both regular PERS and PERS Prosecutors Part Service returns to employment under the same membership account and subsequently retires, the member's retirement benefits will be combined as one check. If the member returns under a new membership account, two separate retirement checks will be issued.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The members, retirees, beneficiaries, and employers of the Public Employees' Retirement System rely on the efficient operation of the PERS to provide proper service credit, death benefits, monthly retirement benefits, withdrawals, group life insurance, and information needed regarding individual accounts. The citizens of the State of New Jersey also rely on established protections that ensure that the System is administered efficiently, through rules that guard against pension fraud and abuse, and waste of taxpayer dollars. PERS members rely upon the presence and predictability of rules that guide the efficient administration of their benefits and promote the stability of the System, while citizens rely on the presence of rules that minimize abuses of New Jersey's public pension systems. The protections and guarantees that these rules afford both members and citizens mandate their continued existence.

The rules proposed for re-adoption with amendments, a repeal, and a new rule benefit members and citizens alike, as they help to ensure that PERS members receive the benefits that their membership provides, while at the same time hindering wasteful abuses that taxpayers must pay for. They also ensure that recently enacted laws are put into practice effectively and efficiently. Many of the proposed amendments and new rule are necessary to uphold recent pension reform laws, including P.L. 2008, c. 89, P.L. 2010, c. 1, P.L. 2010, c. 3, and P.L. 2011, c. 78. These laws have brought significant changes to deferred retirements, early retirements, service retirements, maximum compensation limits for pension contributions, normal retirement age, and other important areas of membership in the System.

Therefore, affected rules must be amended, in order to implement these important changes effectively. In addition, the Prosecutors Part of the PERS was closed as of May 21, 2010, under P.L. 2010, c. 1, so the rules governing the Prosecutors Part in Subchapter 8 must also be amended accordingly.

Other important changes include revisions to the rules that govern disability retirements. Many of the proposed changes are needed to help prevent pension fraud and abuse. Disability retirements are especially prone to exploitation, because they generally provide a higher retirement benefit than other retirement types, while also providing State-paid medical benefits in retirement, even when members do not have 25 years of service credited to their account. Other changes to the current disability retirement rules are needed to put recent laws affecting disability retirements into practice. For example, members who enroll in the System after May 21, 2010, are not eligible to apply for a disability retirement, under P.L. 2010, c. 3, so existing rules must be amended accordingly.

The rules proposed for readoption with amendments, a repeal, and a new rule help to promote operational efficiency and hinder members who are not disabled from submitting disability retirement applications in order to obtain higher pension and health benefits. They help to prevent pension abuse, while at the same time protect the benefits of truly disabled members who can no longer perform their job duties. In addition, the proposed amendments provide for the effective implementation of recent pension reform laws, while also clarifying other important membership issues.

#### Economic Impact

The rules proposed for readoption with amendments, a repeal, and a new rule promote the effective and efficient administration of enrollments, retirements, transfers, purchases, withdrawals, and other areas of membership in the System. They uphold the laws governing the State-administered retirements, especially in the area of recent pension reform. They will not impose any adverse economic effects on the public; in fact, they will have a positive economic impact by helping to prevent pension fraud and abuse, which will protect the pension system and monies that are contributed to the pension system by New Jersey taxpayers. While the proposed amendments and new rule may impose additional recordkeeping requirements, they will serve to preserve and improve the efficient administration and operation of the PERS by helping to prevent members who are ineligible for specific retirement benefits from collecting such benefits. The new and amended rules will also promote operational efficiency by upholding the maximum compensation limits established by recent pension laws, thereby curbing the bloating of benefits paid to public employees. Overall, the new and amended rules will help to put recent pension-reform laws into practice, while also helping to prevent pension fraud and promoting more effective and efficient operations in most areas of membership in the System. The rules will enable the Division to continue to provide benefits in a manner that meets both statutory and contractual requirements.

#### Federal Standards Statement

The rules proposed for readoption with amendments, a repeal, and a new rule meet the applicable Federal standards, that is, 26 U.S.C. § 403(b). There are no other Federal standards applicable to the subject matter of this chapter.

#### Jobs Impact

Implementation of the rules proposed for readoption with amendments, a repeal, and a new rule will not result in the generation or loss of jobs. The Division invites any interested parties to submit written comments along with any data or studies concerning the jobs impact of the rules proposed for readoption with amendments, a repeal, and a new rule.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments, a repeal, and a new rule will not have any impact on the agriculture industry.

#### Regulatory Flexibility Statement

The rules of the System affect members, retirees, and survivors of the PERS. Thus, the rules proposed for readoption with amendments, a

repeal, and a new rule do not impose any reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

#### Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, a repeal, and a new rule will have no impact on the affordability of housing in New Jersey, nor will they evoke a change in the average costs associated with housing, because the rules pertain only to administration of the PERS for members, retirees, and survivors of members and retirees.

#### Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, a repeal, and a new rule will not have any impact on the achievement of smart growth; nor will they evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the rules pertain to administration of the PERS for members, retirees, and survivors of members and retirees.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:2.

**Full text** of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 17:2-6.11.

**Full text** of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 1. ADMINISTRATION

##### 17:2-1.1 Board meetings

(a) (No change.)

(b) The chairperson **or Secretary** may call for special meetings when necessary.

**(c) Persons audio- or video-recording a Board meeting shall inform the Secretary of the Board and provide their names and addresses. The location of cameras and recording devices shall not obstruct nor interfere with the conduct of business by the Board and the Secretary shall assist in identifying an appropriate location for such devices.**

##### 17:2-1.2 Fiscal year

The transaction of business and control of finance shall be conducted [from] **on** a July 1 to June 30 fiscal year.

##### 17:2-1.3 Officers and committees

(a) The members of the Board shall elect a chairperson and vice chairperson. A representative to the Pension System Actuary Selection Committee, as provided for by N.J.S.A. [43:4(b)]**43:4B-1**, shall be elected by the Board whenever the selection of a new actuary is needed. A representative to the State Investment Council shall be elected pursuant to N.J.S.A. 52:18A-83 and N.J.A.C. 17:1-1.1A, from its membership for the forthcoming year at its regular meeting held in July.

(b) The chairperson of the Board shall preside at all of its meetings[, or in]. **In** the absence of the chairperson, the vice chairperson shall assume the chairperson's responsibilities. In the absence of the chairperson and vice chairperson, another member selected by the majority of the members in attendance will preside for that single meeting.

(c) (No change.)

(d) There shall be one standing committee, which is the [finance committee] **Finance Committee**, pursuant to N.J.S.A. 43:15A-32. The [committee] **Committee** shall be appointed by the chairperson at the July meeting for the forthcoming fiscal year. The Secretary shall provide all investment transactions and financial reports for presentation to the Board at its regular monthly meetings. The [committee] **Committee** shall consist of five members, **at least** three of whom shall be elected members of the **various Boards of Trustees of the State-administered retirement systems**.

## 17:2-1.4 Election of member-trustee

(a) The procedures as required by N.J.S.A. 43:15A-17 for the election of a State, municipal, or county trustee representative to the [PERS] Board are set forth in this section. For purposes of this section, the election cycle begins upon distribution of the notice of election and ends with the certification of the results by the [PERS] Board.

(b) Eligible candidates shall include any active or retired member of the PERS. Only State members may seek State seats, only municipal members may seek municipal seats, and only county members may seek county seats on the Board. All candidates shall comply with any and all requirements as provided by law and [these rules] **this chapter, including the requirements of the New Jersey First Act, N.J.S.A. 52:14-7, which requires having a principal residence in New Jersey, unless an exemption applies.** Any candidate who fails to comply with the law and this chapter is automatically disqualified as a candidate.

(c) The following shall apply to the notice of election:

1. At least nine months prior to the next election cycle a notice shall be prepared and distributed electronically by the Secretary [of the Board] or a contracted vendor, through the certifying officers, to provide to each member who is eligible to vote;

2. The notice of election shall:

i.-ii. (No change.)

iii. State that instructions for the nominating process are available from the [Board] Secretary at the Division;

iv.-v. (No change.)

vi. Include any other information regarding a particular election, as specified by the Board [of Trustees];

3.-4. (No change.)

5. Election notices shall be distributed electronically to each eligible member through the certifying officer of each employing location. In addition, this notice will be posted to the Division's website. Only active members of the PERS may vote in the election of member-trustees of the Board [of Trustees of the PERS].

(d) The following shall apply to the nominating process:

1. The instructions for the nominating process shall be available from the Office of the [Board] Secretary [of the PERS];

2. A member who is seeking the nomination to be a candidate for an elected position shall prepare a written letter of interest and submit it to the [Board] Secretary. The [Board] Secretary will verify the eligibility of a member to be a candidate. If the member qualifies as a candidate, the Office of the [Board] Secretary shall then forward instructions regarding the nominating process;

3. The nominating instructions shall explain that:

i. For State trustee, at least 500 active State members[,] who are eligible to vote for the position[,] are required to register their nomination for the candidate through a designated website or, if necessary, paper petition;

ii. For municipal trustee, at least [500] **300** active municipal members[,] who are eligible to vote for the position[,] are required to register their nomination for the candidate through a designated website or, if necessary, paper petition;

iii. For county trustee, at least 500 active county members[,] who are eligible to vote for the position[,] are required to register their nomination for the candidate through a designated website or, if necessary, paper petition;

iv. To register a nomination for a candidate, the petitioner shall be required to designate [their] **his or her** candidate selection either electronically through a designated website or, if necessary, through a petition form;

v. An active member shall nominate only one candidate, with State members petitioning for a State candidate, municipal members petitioning for a municipal candidate, and county members petitioning for a county candidate; and

vi. The last date for nominating a candidate shall be identified, as well as the approximate date that election packets shall be sent to employers for distribution to voters;

4. If only one candidate is nominated for a position, the candidate shall be deemed elected to the position without balloting. A notice [to the certifying officers] **indicating no contest** shall be distributed to the

**certifying officers**, for posting at the employing locations, [indicating no contest,] since only one candidate was nominated by petition.

5. If no candidates receive the requisite [500] **number of** signatures to qualify for the position, the [vacancy] **position** will remain vacant **for the remainder of the unexpired term**, until the next election cycle [and the position will be for the remainder of the unexpired term];

6. In the event there are two positions for the same election because a vacancy causes an unexpired term and another term expires (State, municipal, or county), and only two candidates qualify, the Office of the [Board] Secretary shall hold a drawing by lot to determine which candidate shall fill the full-term position and which candidate shall fill the unexpired position; and

7. In the event there are two positions for the same election[,] (State, municipal, or county) and more than two candidates qualify, an election by ballot shall be held. The candidate receiving the highest number of votes will fill the full-term position. The candidate receiving the second highest number of votes will fill the unexpired term position.

(e) The following applies to distribution of election packets:

1. (No change.)

2. For each eligible voter, there shall be forwarded to the certifying officer, individual member packets with instructions for balloting, which shall include the following information:

i. The eligible member's name, pension membership number, pension location number, ballot number, and personal identification number (PIN);

ii. (No change.)

iii. The name of each candidate nominated, including a biographical sketch listing the candidate's background and employer;

iv. Instructions on how to properly cast a vote, including notification that shall advise the member that mutilated ballots, illegible ballots, ballots with write-in votes, ballots with multiple votes, or ballots where [it] **the member's intended vote** cannot be determined [for whom the member intended to vote] shall be declared invalid and not considered in the final election count;

v. Instructions on how to properly cast an electronic vote;

vi. Instructions on proper use of the PIN number;

vii. (No change.)

viii. Notification that the first vote **that a member** casts shall be counted as the **member's** official vote and subsequent votes will be rejected; and

ix. (No change.)

3. The ballot positions shall be determined by a drawing conducted at a time and place determined by the [Board] Secretary. All candidates may attend such drawing by contacting the [Board] Secretary; and

4. (No change.)

(f) The Board may assess the percentage of returned votes after the conclusion of each respective election and determine, based upon an analysis of the frequency of use of the paper ballots versus the cost of providing the paper ballots, whether or not a paper ballot should continue to be incorporated in the election packet in future elections, as denoted in (e) above. The Secretary shall notify the vendor handling the next election of the Board's decision regarding continued inclusion of the paper ballot in the initial election packet. If members cannot cast an electronic ballot, they shall have an opportunity to cast a paper ballot. If the Board determines that paper ballots shall no longer be included in the initial election packet, then the following apply to the distribution of paper ballots upon member request:

1. (No change.)

2. Upon proper request by an eligible voter, the vendor shall mail a paper ballot to the voter's home address, together with instructions for casting the ballot, biographical information about the candidates, and a postage-paid return envelope; and

3. Mutilated ballots, illegible ballots, ballots with a write-in vote, multiple votes, or any ballot where [it] **the member's intended vote** cannot be determined [for whom the voter intended to vote] shall be declared invalid and not considered in the final election count.

(g) (No change.)

(h) The following shall apply to vote tabulation:



1. Only a member's first vote shall be counted as the **member's** official electronic or paper ballot. All duplicate or subsequent votes shall be considered invalid and not included in the final election count;

2. The candidate receiving the highest number of all legal votes [contained in] **resulting from the procedures provided in (e) and (f)** above shall be elected to the position;

3. The Secretary [of the Board] shall oversee the election process to ensure that the vendor complies with all of the requirements and to assure the validity of the final election count; [and]

4. The eligible candidates for the election shall be invited to the presentation of the final results of the election[.]; **and**

**5. Certification of the election results shall occur at the first Board meeting after the final election count.**

(i) The following shall apply to recount procedures:

1. Any candidate or member who shall have reason to believe that an error has been made in counting or declaring the vote may request, in writing, within 20 days of the certification of the results of the election, that the Board [of Trustees], at its next regular meeting or at a special meeting, hold a hearing to consider the request and determine whether a recount shall be held. The Board shall notify all candidates of its decision within 10 days thereafter. At such hearing, any member of the Board who is a candidate on the contested ballot shall not vote in the Board's decision on the request. Candidates on the contested ballot shall be invited to attend the Board's meeting and may present evidence to support their beliefs;

2. If a candidate or other interested party requests a recount, in writing, within the prescribed time, this request shall be reviewed and granted by the Board [of Trustees], if a recount could [possibly] affect the results of the election. All ballots received shall then be recounted and the recount shall be supervised by the [Board] Secretary. The [Board] Secretary shall certify the results of the recount to the Board [of Trustees]. If a recount is not requested within 20 days, the ballots may be destroyed; and

3. Upon election and the taking of an oath of office, the State, municipal, or county member-trustees shall serve for a term of three years. In the event that no member is certified as the winner of an election, the incumbent trustee shall serve until a successor is certified by the Board [of Trustees].

(j) In the event[,], the victorious candidate dies or is unable or unwilling to serve as such member-trustee prior to the beginning of the candidate's term as trustee, the candidate who obtained the second highest number of votes in that election (that is, the first runner-up) shall be selected to fill the Board vacancy caused by the death or inability or unwillingness to serve of the successful candidate. If the Board selects the first runner-up in such election and that person is unable or unwilling to accept the position, then the Board shall select the candidate who obtained the next highest number of votes in that election. If there is no second runner-up, the Board shall conduct a new election to fill the Board vacancy for the remainder of the term during the next election cycle.

#### 17:2-1.5 Certifying Officer (employer)

(a) The Chief Fiscal Officer or other officer duly designated via resolution of each county, municipality, or public agency and the personnel officer of the Division, Bureau, or Institution of the State locations shall serve as the Certifying Officer for that unit.

(b) The Certifying Officer shall be responsible for the duties described by N.J.S.A. 43:15A-67 and 80 and any other section[, which] **that** refers to the Department head.

(c) The Certifying Officer shall also be responsible for all other duties relating to matters concerning the System, including providing requested documentation in a timely manner.

(d) Upon the request of the Board, the Certifying Officer shall be required to sign a statement[.] verifying that any information reported is accurate to the best of the Officer's knowledge[.] and conforms with the statutes and rules governing the [retirement system] **PERS**.

#### 17:2-1.6 Records

(a) In addition to the provisions of N.J.A.C. 17:1-1.2, the approved minutes of the Board are a matter of public record and may be inspected during regular business hours in the Office of the [Board] Secretary.

(b) The annual report of the [system's] **System's** actuary shall not be released until it has been accepted by the Board [of Trustees].

(c) (No change.)

**(d) The mailing address, telephone number, or e-mail address of any active or retired member is considered to be a part of the member's confidential files and shall not be released for any purpose.**

**(e) The beneficiary designations of an active or retired member is considered to be a part of the member's confidential files and shall only be released after the member's death.**

#### 17:2-1.7 Appeal from Board decisions

(a) The following statement shall be incorporated in every written notice setting forth the Board's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative:

"[(a)] If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

[(b)] The Board shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, [N.J.S.A. 52:14B-1 et seq.,] **N.J.S.A. 52:14B-1** and the Uniform Administrative Procedure Rule[s], [N.J.A.C.] **N.J.A.C.** 1:1-1 et seq. [(c)] Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of [N.J.S.A.] **N.J.S.A.** 52:14B-1 et seq. and [N.J.A.C.] **N.J.A.C.** 1:1[-]1.1.

[(d)] If the granted appeal involves solely a question of law, the Board may retain the matter and issue a final determination, which shall include detailed findings of fact and conclusions of law based upon the documents, submissions and legal arguments of the parties. The Board's final determination may be appealed to the Superior Court, Appellate Division. [(e)] If the granted appeal involves a question of facts, the Board shall submit the matter to the Office of Administrative Law."

**(b) The Director of the Division is authorized to grant or deny requests to extend the time allowed for exceptions and replies, and to seek extension of the time for the Board to render a final decision adopting, rejecting, or modifying an initial decision.**

#### 17:2-1.9 Verified discrepancy in member's age

[The] **if proof of age documents establish a verified discrepancy between a member's proven age and the age on file with the Division**, the member's account, active or retired, shall be reconstructed and all benefit entitlements and contributions shall be determined on the basis of the member's correct date of birth.

#### 17:2-1.11 Proof of age

(a) All members shall establish proof of their age with the System. Acceptable proof[s] of age **documents** include birth [or baptismal] certificates **with visible seal**, passports, **U.S. passport cards**, naturalization **or immigration** papers, [Biblical records, affidavits of older members of the immediate family or primary school records] **valid New Jersey, New York, or Pennsylvania digital driver licenses, or digital non-driver ID cards from the New Jersey Motor Vehicle Commission (MVC), indicating a member's age.**

(b) In the event a member dies before satisfactory evidence of the member's date of birth has been filed with the System, appropriate **proof-of-age** evidence may be required before any death claim is processed for settlement.

(c) (No change.)

**(d) If a member is transferring into the PERS from another State-administered retirement system where proof of age was already secured, no additional proof of age will be required. This subsection shall also apply for members transferring into another State-administered retirement system from the PERS.**

#### 17:2-1.13 Age determination; contribution rate

(a) For purposes of enrollment, the age assigned to the applicant is based on the applicant's age on the date of enrollment. However, if the

applicant is six months or more past [their] **his or her** birthday, the assigned age for enrollment will be [their] **the applicant's** age on [their] **his or her** next birthday.

(b) For purposes of purchasing additional service credit, the age used to determine the applicable actuarial factor is based on the applicant's age on the date the purchase request is received by the Division. However, if on that date the applicant is six months or more past [their] **his or her** birthday, the purchase actuarial factor will be based upon [their] **the applicant's** age on [their] **his or her** next birthday.

(c) For purposes of calculating a retirement option selection, the age used to determine the applicable actuarial reduction factor is based upon the [member and designated beneficiary(s)] ages of **the member and designated beneficiary (or beneficiaries)** at the effective date of retirement. If on that date, [either] the [member or the designated beneficiary(s)] age of **either the member or the designated beneficiary (or beneficiaries)** is six months or more past [their] **that individual's** birthday, the age used for the option selection will be based upon [their] **that individual's** age on [their] **his or her** next birthday.

(d) For purposes of calculating an Option 1 reserve balance upon the death of a retired member, when [the] a beneficiary[(s)] elects **(or beneficiaries elect)** an annuity certain (specified number of years) or a life annuity, the applicable factor is based upon the [beneficiary(s)] age of **the beneficiary (or beneficiaries)** at the time of the member's death. If [the beneficiary(s)] **that** age is six months or more past [their] **the birthday of the named beneficiary (or beneficiaries)**, the factor is based upon [their] **the age of the beneficiary or beneficiaries** on [their] **the next birthday attained**.

(e) For purposes of calculating the group life insurance benefits upon the death of an active employee when the beneficiary[(s)] elects **(or beneficiaries elect)** an annuity certain (specified number of years) or a life annuity, the applicable factor is based upon the [beneficiary's(s)] age of **the beneficiary (or beneficiaries)** at the time of the member's death. The factor is based solely on the **age of the beneficiary [age] (or beneficiaries)** at the time of the member's death; it is not rounded up to the next birthday.

(f) Pursuant to P.L. 2007, c. 103, the full contribution rate was increased from five percent to 5.5 percent of salary in July of 2007. Pursuant to N.J.S.A. 43:15A-104, the contribution rate was increased to 6.5 percent of salary in October of 2011, with an additional increase of one percent phased in through seven increments from July 2012 until July 2018, when the total pension contribution rate reaches 7.5 percent of salary.

(g) For members who enrolled in the System prior to July 1, 2007, the contribution rate in effect is applied to the full pensionable salary, up to the current Federal ceiling on pensionable compensation under section 401(a)(17) of the Internal Revenue Code.

(h) For members who enroll (or enrolled) in the System on or after July 1, 2007, the contribution rate in effect is applied to the pensionable salary up to the maximum compensation limit for pension contributions, pursuant to the Federal Insurance Contributions Act and based on the annual maximum wage for Social Security deductions.

## SUBCHAPTER 1A. DEFINITIONS

### 17:2-1A.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Base salary" means the annual compensation of a member, plus the value of maintenance, if applicable, in accordance with contracts, ordinances, resolutions, or other established salary policies of the member's employer for all employees in the same position, or all employees covered by the same collective bargaining agreement, which is paid in regular, periodic installments in accordance with the payroll cycle of the employer.

...

"Break in service" means any pension reporting period without pay, a monthly or biweekly pay period, as appropriate to the employer's reporting method, with the exception of approved leaves

of absence, lay-off, abolishment of position, military leave, Workers' Compensation, litigation, or suspension.

"DCRP" means the Defined Contribution Retirement Program.

...

"Extra compensation" means individual salary adjustments, which are granted primarily in anticipation of a member's retirement; or as additional remuneration (**pay**) for performing temporary duties beyond the regular work day or work year.

"Final compensation" means the average annual compensation for which contributions are made for the three years of creditable service in New Jersey immediately preceding the member's retirement or death, or it shall mean the average annual compensation for New Jersey service for which contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or the member's beneficiary, for PERS members enrolled before May 21, 2010. In the case of a person who becomes a member of the PERS on or after May 21, 2010, the effective date of P.L. 2010, c. 1, "final compensation" means the average annual compensation for which contributions are made for the five years of creditable service in New Jersey immediately preceding the member's retirement or death, or it shall mean the average annual compensation for New Jersey service for which contributions are made during any five fiscal years of his or her membership providing the largest possible benefit to the member or the member's beneficiary.

"Full cost purchase" means a purchase of service credit for which the member assumes the entire cost of the purchase.

"Shared cost purchase" means a purchase of service credit for which the member and employer share the cost of the purchase equally.

"System" or "PERS" means the Public Employees' Retirement System, created pursuant to N.J.S.A. 43:15A-1 et seq.

...

## SUBCHAPTER 2. ENROLLMENT

### 17:2-2.1 Enrollment eligibility

(a) A position with a public employer must be covered by Social Security as a prerequisite for membership in the [system] System. In the case of multiple employments, Social Security coverage is required in each position or employment for each to qualify for membership, for enrollment dates that fall before May 21, 2010. For employment with enrollment dates occurring on or after May 21, 2010, multiple enrollments are prohibited, as provided under N.J.A.C. 17:2-2.2.

[ (b) Subsection (c) below shall only be applicable to individuals who become members of PERS on or after November 2, 2008.]

(b) Salary requirements and full-time fixed weekly work hours applicable to an employee's date of eligibility for enrollment must also be met, in order to qualify for enrollment:

1. If eligibility for enrollment began prior to November 2, 2008, the minimum salary requirement for the position is \$1,500 or more within a work year;

2. If eligibility for enrollment began between November 2, 2008 and May 21, 2010, the position must meet the minimum salary requirements specified under the provisions of N.J.S.A. 43:15A-7, as provided in (c) below.

3. If eligibility for enrollment began after May 21, 2010, regular full-time hours of 35 hours per week for State employees, or 32 hours per week for local government or local education employees, are required for enrollment, pursuant to the provisions of N.J.S.A. 43:15A-7.

4. If a break in a member's service occurs and it has been more than two consecutive years since that member's last pension contribution, reenrollment will occur based on the date of eligibility for enrollment, in accordance with (b)1, 2, or 3 above.

(c) Pursuant to the provisions of N.J.S.A. 43:15A-7, for individuals who became members of the PERS between November 2, 2008 and May 21, 2010, the [\$ 7,500] minimum annual base salary for participation in the [retirement system] PERS, which was initially set at \$7,500, shall be adjusted annually by the Director of the Division in

accordance with changes in the Consumer Price Index, but by no more than four percent. For the calendar year beginning January 1, 2010, the minimum base annual salary required for enrollment will be adjusted annually to reflect increases in the Consumer Price Index. For purposes of this calculation, "Consumer Price Index" means the average of the annual increase in the consumer price index for all urban consumers, not seasonally adjusted for all items, in the New York City and Philadelphia metropolitan statistical areas during the preceding calendar year as reported by the United States Department of Labor, Bureau of Labor Statistics.

1.-3. (No change.)

4. Increases in the minimum annual base salary shall be made in multiples of \$100.00, except that any increase[ , which] **that** is not a multiple of \$100.00 will be rounded to the next lowest multiple of \$100.00. Each annual adjustment shall not be more than four percent when compared to the preceding year's minimum annual base salary.

(d) (No change.)

**(e) An elected official who established membership in the PERS prior to July 1, 2007, based on continuous service in the same elected office, shall continue that PERS membership; service in either House of the State Legislature is considered a single elected public office.**

**(f) An appointed official whose PERS enrollment occurred prior to July 1, 2007, and whose membership has not expired, pursuant to the provisions of N.J.S.A. 43:15A-7.e or 8.a, shall continue as a PERS member while serving in that appointed position, or any new or subsequent appointment, provided that no break in that PERS service of more than two consecutive years occurs, and all other membership requirements are met.**

**(g) Officials who hold a professional license or certificate and are appointed to one of the titles excluded from DCRP enrollment under N.J.S.A. 43:15C-2, are eligible for PERS enrollment, provided that all other eligibility requirements are met.**

#### 17:2-2.2 Multiple employment

[(a) Any employee who has enrolled in a covered position must also enroll in any other position regardless of the employee's employment status in such other position if the employee meets the salary and Social Security qualifications for enrollment. However, if an employee who is ineligible for membership later accepts an additional position which makes the employee eligible for membership in that second position, the employee's ineligibility for membership in the earlier position is not altered by the employee's enrollment in the Public Employees' Retirement System.]

**(a) A multiple enrollee is a member who is employed by more than one PERS participating employer at the same time; each of the member's PERS-participating employers shall report to the PERS about that member's pension account. Pursuant to the provisions of N.J.S.A. 43:15A-25.2, multiple enrollments are not permitted for any member enrolled in the System after May 21, 2010, or for any member who enrolled in the System on or before May 21, 2010, who had a pension reporting period without pay (that is, a break in service) after May 21, 2010.**

**(b) For PERS enrollments that occurred on or before May 21, 2010, an employee employed in two or more positions that met the eligibility requirements for enrollment in the PERS, as stated in N.J.A.C. 17:2-2.1, was required to enroll in the PERS through each of the positions. If a break in service or termination of employment occurs in either position after May 21, 2010, that multiple membership is no longer permitted.**

[(b)] (c) Prior to July 1, 2007, an elected official [must] **was also required to enroll on the basis of such office, if the elected official was already enrolled on the basis of other public employment. If the elected official was employed in the [optional] elected position first and enrollment was optional, the enrollment date for the optional position is [established as] the effective date of enrollment [of] for the position that required the elected official to establish membership in the [retirement system] PERS. If the individual had already established membership in the [retirement system] PERS, the effective date of**

enrollment of the optional employment is [established as] the date of hire.

#### 17:2-2.3 Ineligible persons

(a) The following classes of persons are ineligible for membership in the System:

1.-4. (No change.)

5. Any employee who is employed on a seasonal basis. Seasonal employment is a category of occasional employment in which the employer, consistent with past practices, does not expect **the seasonal position** to lead to permanent employment, and **the position** is not a temporary position as defined under N.J.A.C. 17:2-2.4(d). To qualify as seasonal employment, work periods shall not extend beyond six consecutive months for locations that report contributions on a 12-month basis, or five consecutive months for locations that report contributions on a 10-month basis, and severance of the employer/employee relationship shall occur during breaks in employment; and such breaks shall exceed 30 consecutive days;

6. Any person not in the career, senior executive, and unclassified service, or a regular budgeted position, who is employed on an on-call basis and works on average less than 10 days a month throughout the regular work year of the employer. This type of employment is temporary employment [which] **that** is not continuous;

7. Any retired member who returns to a PERS covered position or positions for which the aggregate compensation is less than the aggregate calendar year compensation limit for exclusion from membership pursuant to N.J.S.A. 43:15A-[57.2b]**57.2.b**. Retired members shall notify their employer or employers when the aggregate calendar year compensation limit will be reached, so that the retired members may be reenrolled in the PERS. If the contractual or regularly budgeted compensation for the position or positions exceeds the calendar year compensation limit, the retired member shall be reenrolled in the PERS as of the beginning of their employment. A retired member who is employed on an hourly basis shall be reenrolled in the PERS as soon as the compensation received exceeds the calendar year compensation limit **or the member's regular work hours per week require reenrollment, under N.J.S.A. 43:15A-7**. For the purposes of this paragraph, a "retired member" is a former member who has terminated all employment covered by the [retirement system] **PERS**, who has not received compensation from employment covered by the [retirement system] **PERS** for at least 30 consecutive calendar days, who is not receiving a disability retirement [allowance] **benefit** and whose retirement benefit has become due and payable as provided in N.J.A.C. 17:2-6.2;

8. (No change.)

9. Any temporary employee hired under the Workforce Investment Act of 1998. Temporary employees hired under the Workforce Investment Act shall be deemed to be Job Training Partnership Act (JTPA) employees and, therefore, ineligible for PERS membership pursuant to N.J.S.A. 43:15A-[7h]**7.h**;

10. (No change.)

11. Any retired member, as defined in (a)7 above, who becomes employed by the State Department of Education in a position of critical need as determined by the State Commissioner of Education, or becomes employed by a board of education in a position of critical need as determined by the superintendent of the district on a contractual basis for a term of not more than one year pursuant to N.J.S.A. 43:15A-57.2. The retired member so reemployed may renew a contract for one additional year, pursuant to N.J.S.A. 43:15A-57.2, provided that the total period of employment with any individual board of education does not exceed a two-year period. The cancellation, reenrollment, and additional retirement allowance provisions and the compensation limitations shall apply if the retired member becomes employed within 120 days of retirement in a position with the employer from which the member retired;

12. Any official who commences service in a State or local elective public office on or after July 1, 2007, except for those who established membership in the PERS prior to July 1, 2007, based on service while

continuously serving in the same elected office, as provided under N.J.A.C. 17:2-2.1(f);

i. Elected officials who are ineligible for PERS enrollment are eligible for enrollment in the DCRP, provided that all other eligibility requirements for DCRP membership are met; and

ii. Any non-veteran elected official whose election occurred prior to July 1, 2007, and who chose not to enroll in the PERS is eligible for membership in the DCRP, regardless of whether that official is elected to the same public office or a different public office.

13. Any official who is directly appointed by the Governor as of July 1, 2007, to serve at the Governor's pleasure during his or her term of office; also, an official whose gubernatorial appointment requires the advice and consent of the Senate, or who is appointed in a substantially similar fashion by a local entity (county, municipality, etc.). [A member who enrolled in the PERS prior to July 1, 2007, and whose membership has not expired pursuant to the provisions of N.J.S.A. 43:15A-7(e) or 8(a), shall continue as a PERS member while serving in that appointed position;]

i. In cases where an official's appointment occurred prior to July 1, 2007, PERS membership will continue as set forth in N.J.A.C. 17:2-2.1(f);

ii. Appointed officials who are ineligible for PERS enrollment may be eligible for enrollment in the DCRP, provided that all eligibility requirements for DCRP membership are met;

14. Any employee working under a Professional Services Contract as of January 1, 2008, as defined by N.J.S.A. 40A:11-5, 18A:18A-5, 18A:64A-25.5, and 43:15A-7.2; [and]

15. Any independent contractor as set forth in regulation or policy of the Federal Internal Revenue Service[.]; and

16. On-call substitute teachers who do not meet the eligibility requirements for PERS enrollment established at N.J.A.C. 17:2-2.1. Such on-call substitute teachers are enrolled in the DCRP, provided all DCRP eligibility requirements are met. Long-term substitute teachers and replacement teachers who meet the provisions of N.J.A.C. 17:2-2.1 and 2.10 shall be eligible to enroll in the PERS.

17:2-2.4 Enrollment date

(a) (No change.)

(b) If an employee is an optional enrollee, the employee shall be enrolled as of the first of the month for those whose employers report on a monthly basis or the first day of the next biweekly pay period for those whose employers report on a biweekly basis, following the receipt of the enrollment application.

(c) An employee in the unclassified service or an elected position shall be considered as beginning service on the date of the original appointment, or the date when the employee assumed duties of the elective office, as the case may be.

1. For local employers not covered by Civil Service, a regular appointment shall [constitute] **begin the first day of work after the date the employee originally accepted employment in a regular budgeted position.**

2. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose beginning employment date falls between the first [through] **and the 16th of the month [and the].** The compulsory enrollment date shall be fixed as the first of the following month for an employee whose beginning employment date falls between the 17th and the end of the month.

3. (No change.)

(d) (No change.)

(e) An employee cannot receive credit in the [retirement system] PERS for the initial pay period or month of employment if that employment began after the seventh day of the pay period or after the 16th day of the month.

17:2-2.5 Optional enrollment

(a) Any employee, other than a veteran, who was considered an optional enrollee prior to July 1, 1966, under the previous rules of the [board] **Board**, shall continue to retain the option to enroll or not enroll if his **or her** employer does not change. This section shall not apply to

elected officials upon the expiration of the term of office held as of June 30, 2007.

(b) (No change.)

17:2-2.6 Enrollment eligibility of professors and instructors employed on a temporary, provisional or adjunct basis by public institutions of higher education

(a) **Adjunct professors and part-time instructors hired as of November 2, 2008, are eligible for enrollment in the ABP and are no longer permitted to enroll in the PERS based solely on that employment.** Prior to November 2, 2008, professors and instructors[,] employed on a temporary, provisional, or adjunct basis by public institutions of higher education, who [are] **were** not in regularly appointed teaching or administrative staff positions, in classified or unclassified positions with a Civil Service employer, or in regularly budgeted positions with a non-Civil Service employer, were eligible for PERS enrollment if they:

1.-3. (No change.)

[(b) Professors and instructors employed on a temporary, provisional or adjunct basis by public institutions of higher education who are not in regularly appointed teaching or administrative staff positions, in classified or unclassified positions with a Civil Service employer, or in regularly budgeted positions with a non-Civil Service employer, shall not be eligible for enrollment on the basis of any course they teach, which:

1. Provides less than three academic credits; or

2. Varies in length from the normal academic term.]

(b) **Current PERS members working as adjunct professors or part-time instructors may continue their PERS membership or transfer membership to the ABP.**

17:2-2.7 Enrollment following deferred retirement

(a) For a member [who has] enrolled in the [retirement system] PERS prior to November 2, 2008, [the membership account under which a member elected deferred retirement who resumes regular service prior to age 60 shall be continued provided the member returns to service within the two-year period stipulated by N.J.S.A. 43:15A-7(e), or the longer period provided by N.J.S.A. 43:15A-8(a)] **who elects a deferred retirement:**

1. **If the member resumes regular service prior to age 60 and within the two-year period stipulated by N.J.S.A. 43:15A-7.e, or the longer period provided by N.J.S.A. 43:15A-8.a, the membership account under which a member elected deferred retirement shall be continued.**

2. **If the member resumes regular service prior to age 60, but after the period for continued membership stipulated by N.J.S.A. 43:15A-7.e or 8.a has expired, then such member shall be enrolled in the PERS under a new membership account and shall be subject to such benefits and requirements as shall apply to new members of the PERS as of the date of such new enrollment.**

[(b) Should a member who has enrolled in the retirement system prior to November 2, 2008, who elected a deferred retirement, resume regular service prior to age 60 after the period for continued membership stipulated by N.J.S.A. 43:15A-7(e) or 8(a) has expired, then such member shall be enrolled in the retirement system under a new membership account and shall be subject to such benefits and requirements as shall apply to new members of the retirement system as of the date of such new enrollment.

(c) For a member who has enrolled in the retirement system on or after November 2, 2008, the membership account under which a member elected deferred retirement who resumes regular service prior to age 62 shall be continued provided the member returns to service within the two-year period stipulated by N.J.S.A. 43:15A-7(e), or the longer period provided by N.J.S.A. 43:15A-8(a).

(d) Should a member who has enrolled in the retirement system on or after November 2, 2008, and who elected a deferred retirement, resume regular service prior to age 62 after the period for continued membership stipulated by N.J.S.A. 43:15A-7(e) or 8(a) has expired, then such member shall be enrolled in the retirement system under a new membership account and shall be subject to such benefits and

requirements as shall apply to new members of the retirement system as of the date of such new enrollment.]

(b) For a member enrolled in the PERS on or after November 2, 2008, but prior to June 28, 2011, who elects a deferred retirement:

1. If the member resumes regular service prior to age 62 and within the two-year period stipulated by N.J.S.A. 43:15A-7.e, or the longer period provided by N.J.S.A. 43:15A-8.a, the membership account under which the member elected a deferred retirement shall be continued.

2. If the member resumes regular service prior to age 62, but after the period for continued membership stipulated by N.J.S.A. 43:15A-7.e or 8.a has expired, then such member shall be enrolled in the PERS under a new membership account and shall be subject to such benefits and requirements as shall apply to new members of the PERS as of the date of such new enrollment.

(c) For a member enrolled in the PERS on or after June 28, 2011, who elects a deferred retirement:

1. If the member resumes regular service prior to age 65 and within the two-year period stipulated by N.J.S.A. 43:15A-7.e, or the longer period provided by N.J.S.A. 43:15A-8.a, the membership account under which a member elected a deferred retirement shall be continued.

2. If the member resumes regular service prior to age 65, but after the period for continued membership stipulated by N.J.S.A. 43:15A-7.e or 8.a has expired, then such member shall be enrolled in the PERS under a new membership account and shall be subject to such benefits and requirements as shall apply to new members of the PERS as of the date of such new enrollment.

[(e)] (d) In the event that [(b) or (d)] (a)2, (b)2, or (c)2 above applies, the member may elect to transfer all service credit associated with the previously vested membership to the new membership account and such service credit will be subject to the benefits and requirements as shall apply to new members of the [retirement system] PERS as of the date of such new enrollment. Should the member elect not to transfer the service credit associated with the vested membership to the new membership account, no benefits shall be payable from the previous application for deferred retirement until such time as the member has terminated all PERS-eligible employment.

17:2-2.9 Eligibility and enrollment of employees of bi-state and multi-state agencies pursuant to P.L. 2003, c. 263 (N.J.S.A. 43:15A-73)

(a) For the purposes of the resolution to adopt the provisions of the PERS for a bi-state or multi-state agency, the “category of officers or employees who may enroll in the [retirement system] PERS” under P.L. 2003, c. 263 shall be defined as those employees:

1.-3. (No change.)

(b) Those employees who do not meet the eligibility requirements found at N.J.S.A. 43:15A-7, or who are subject to professional services contracts as set forth in N.J.S.A. 43:15A-7.2 or who meet the eligibility requirements for the [Defined Contribution Retirement Program] DCRP found at N.J.S.A. 43:15C-2 are ineligible for membership in PERS.

(c) Enrollment in the PERS is at the option of [the] an eligible employee. The employee must elect to enroll in the PERS within 90 days of either the date of the modification of the State of New Jersey’s agreement with the Social Security Administration, following adoption of the Chapter 263 resolution by the bi-state or multi-state agency, or the employee’s date of appointment [for hire] to a PERS-eligible position, whichever is later[, to enroll in the PERS]. If the PERS does not receive an enrollment form for the employee within that 90-day period, the employee shall be ineligible for enrollment in the PERS during [their] his or her continued employment with the agency.

(d)-(e) (No change.)

(f) Once an employee is enrolled in the PERS, that employee must remain a member of the [retirement system] PERS during the entire period of continuous service with the agency. The employee cannot be enrolled or receive credit in the employer’s retirement plan or the Pennsylvania, New York, Connecticut, Delaware, or any other state or local retirement system during the same period of time as the PERS service with the agency. Should the employee terminate employment

with the agency and then be reemployed by that agency or any other bi-state or multi-state agency that has adopted the provisions of PERS, that employee shall be required to continue enrollment in the PERS from that new position, as long as the employee is a New Jersey resident on the date of appointment or employment and has an active PERS account.

(g)-(h) (No change.)

17:2-2.10 Enrollment eligibility of on-call employees who have not established membership; including, but not limited to, substitute teachers, replacement teachers, and bedside or home instructors

(a) An individual who assumes a position as an on-call employee, such as a substitute teacher, or bedside or home instructor, is eligible to enroll in the PERS at the beginning of the 13th month of continuous employment, provided all other eligibility requirements are met, including the achievement of a fixed minimum number of regular hours of 32 hours per week, pursuant to the provisions of N.J.S.A. 43:15A-7. On-call employees have unpredictable work schedules and their employment is usually temporary in nature. In determining eligibility for enrollment in the case of these employees, the following apply:

1.-3. (No change.)

4. On-call employees who do not meet the eligibility requirements for PERS enrollment, pursuant to N.J.A.C. 17:2-2.1, will be enrolled in the DCRP, provided that all other DCRP enrollment eligibility requirements are met.

(b) A replacement teacher is an employee who assumes the duties of a teacher in a regularly budgeted position for the length of time that teacher is on an approved leave of absence. Replacement teachers are eligible for enrollment on the first day of the 13th month after the commencement of continuous service, provided all other PERS enrollment eligibility requirements are met.

(c) A permanent, long-term substitute in a regularly budgeted position is eligible for PERS enrollment on the date of hire, provided all other PERS enrollment eligibility requirements are met.

(d) An employee who has an active PERS membership based upon other employment shall be eligible to participate in the PERS in an on-call position on his or her date of hire, provided the provisions of N.J.S.A. 43:15A-7 and the minimum salary provisions of N.J.A.C. 17:2-4.7 are met; in addition, the on-call employment must represent an intrafund transfer, as multiple enrollments are prohibited after May 21, 2010, pursuant to N.J.S.A. 43:15A-25.2.

### SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

17:2-3.1 Compulsory and optional enrollment

(a) For the purpose of contributory insurance, all compulsory enrollees, including veterans, under age 60 at the time their enrollment application is filed, shall be required to participate in the contributory insurance program for one year (12 calendar months) from the date of enrollment, or the effective date of insurance premium deduction, whichever is later. Proof of insurability shall be required for all compulsory and optional enrollees, age 60 and older, at the time their enrollment application is filed with the Division, in order to qualify for noncontributory and contributory insurance coverage.

(b) Optional enrollees under age 60 at the time their enrollment application is filed with the Division may qualify for noncontributory and contributory insurance coverage only if they were actively at work performing all of the duties that the position requires at the time they made application for enrollment, and such application was filed within one year from the date they first became eligible for enrollment in the [system] System. If an application for an optional enrollee is not received within one year after the optional enrollee became eligible for enrollment, evidence of insurability will be required for the noncontributory and contributory coverage.

(c) (No change.)

17:2-3.2 Computation of insurance benefits

(a)-(i) (No change.)

(j) If a member was reported on a biweekly basis or any combination of 10 and 12-month contract years, the last year's salary prior to death[,] shall be determined on a proportional basis.

#### 17:2-3.4 New enrollments and transfers; contributory insurance premiums

For new enrollees and transferees, contributory insurance premiums will be due from the date insurance is effective as shown on the certification, to the date payroll deductions are certified to begin. In no case will [the] retroactive premiums for more than 15 months be charged.

#### 17:2-3.6 Survivor benefits

(a)-(b) (No change.)

(c) In calculating an Option 1 reserve balance upon the death of a retired member, when [the] a beneficiary[(s)] elects an annuity certain (specified number of years) or a life annuity, the applicable factor is based upon the beneficiary's age at the time of the member's death. If [the] a beneficiary[(s) age] is six months or more past [their] **his or her** birthday, the factor is based upon [their] **the beneficiary's** age on [their] **his or her** next birthday.

(d) In calculating the group life insurance benefits upon the death of an active employee when [the] a beneficiary[(s)] elects an annuity certain (specified number of years) or a life annuity, the applicable factor is based **solely** upon the beneficiary's age at the time of the member's death]. The factor is based solely on the beneficiary(s) age at the time of the member's death] and is not rounded up to the next birthday.

#### 17:2-3.8 Withdrawal and return; contributory insurance

(a) (No change.)

(b) If a member is covered by group life insurance during employment, the coverage shall cease 31 days subsequent to the member's termination date from employment, regardless of the cause of termination. A member may convert the life insurance at the member's expense as set forth in [N.J.A.C. 17:2-3.13(b)] **N.J.S.A. 43:15C-8. The converted individual policy will not take effect until the expiration of the group life insurance policy at the conclusion of the 31-day grace period.**

#### 17:2-3.12 Beneficiary designation; pension contributions

(a) When a member establishes multiple [status] **membership** by becoming employed by one or more additional employers in an eligible position or positions and files an enrollment application, the beneficiaries designated on the most recently submitted enrollment application supersede any older designations of beneficiaries on file with the Division. **However, pursuant to the provisions of N.J.S.A. 43:15A-25.2, multiple membership is not permitted for those enrolling in the PERS after May 21, 2010.**

(b) (No change.)

#### 17:2-3.13 Benefits payable [under P.L. 1984, c.96, as amended by P.L. 1995, c.221] **when a member dies with a retirement application pending**

[(a)] [For the purposes of P.L. 1984, c.96, section 1, as amended by P.L. 1995, c.221, section 2, (Pursuant to N.J.S.A. 43:15A-50)] **and 43:15A-50.1**, the person designated as the beneficiary of an optional settlement on the retirement application may request, **upon the member's death**, that a retirement become effective and that a selection of an optional settlement be made, as authorized by the law. If there is no designated beneficiary for an optional settlement, the person designated as the beneficiary to receive the return of contributions or unpaid benefits due to a retiree at the date of death may make this request. If a beneficiary requests that an optional settlement be made, the death benefits payable on behalf of the member shall be the death benefits payable on behalf of a member who dies after retirement as otherwise provided in the Public Employees' Retirement System Act, N.J.S.A. 43:15A-1 through 141 as amended and supplemented.

[(b)] Where a beneficiary of a member requests that a retirement take effect and that a selection of an optional settlement be made as authorized under P.L. 1984, c.96, section 2, as amended by P.L. 1995, c.221, section 1 (N.J.S.A. 43:15A-50), an additional amount of insurance, not to exceed the amount of insurance that could be converted

under the group policies for noncontributory and contributory death benefits, shall be paid as claims under the group policies only if the member files an application for conversion of the insurance upon retirement as provided under N.J.S.A. 43:15A-93 and pays the initial premium for the converted insurance. The premiums paid for the converted insurance shall be retained by the carrier and be applied to the premiums payable by the State and the retirement system for benefits provided under the group policies.]

#### 17:2-3.15 Suspension

A member suspended without pay will have noncontributory life insurance coverage continued for a period of 93 days following the effective date of such suspension. A member will not be covered by contributory life insurance during a suspension without pay, but may convert the contributory insurance prior to 31 days after the effective date of the suspension. **After 93 days, the member may also convert the non-contributory group life insurance coverage.**

### SUBCHAPTER 4. MEMBERSHIP

#### 17:2-4.1 Creditable compensation

(a) The compensation of a member subject to pension and group life insurance contributions and creditable for retirement and death benefits in the [system] **System** shall be limited to base salary and shall not include extra compensation. Forms of compensation that have been identified as extra compensation include, but are not limited to:

1.-10. (No change.)

11. Any form of compensation [which] **that** is not included in the base salary of all employees in the same position or covered by the same collective bargaining agreement who are members of the [retirement system] **PERS** and who receive the compensation;

12.-13. (No change.)

(b)-(c) (No change.)

(d) With respect to all claims for benefits, the Division shall investigate increases in compensation reported for credit that exceed the reasonably anticipated annual compensation increases for members of the [retirement system] **PERS** based upon either the increase in the Consumer Price Index for the time period of the increases and the table of assumed salary increases recommended by the actuary and adopted by the Board. The Division may also consider the averages of the regular increases in the employees' compensation preceding the periods in which the extra compensation was received or the average increases granted to employees in different bargaining units of the same employer. In those cases where a justification of an increase in salary is not substantiated, the Division may adjust the compensation accordingly.

(e) In connection with an investigation of an increase in compensation, the Division may:

1. Require that a notarized statement under oath be obtained from the member's employer that the reported compensation was not granted primarily in anticipation of retirement and conforms with the statutes and rules governing the [retirement system] **PERS**;

2. Require an employer to provide any record or information it deems necessary for the investigation, including, but not limited to, collective bargaining agreements, employment contracts, ordinances, resolutions, minutes of public meetings (closed or open), job descriptions, salary histories, promotional lists or notices, or any other record or information related to the increase in compensation; and

3. (No change.)

(f) (No change.)

(g) A determination by the Division that a member's compensation for pension purposes includes extra compensation may result in:

1.-4. (No change.)

5. Repayment to the [system] **PERS** by the retiree of any benefits received based upon the extra compensation.

(h) (No change.)

#### 17:2-4.8 Military leave prior to August 1, 1974; employer contributions

(a) The following conditions apply to employer contributions for service during military leave prior to August 1, 1974:

1. Military leave contributions remitted by an employer on behalf of an employee[,] who does not return to the payroll for the minimum 90-day period required by N.J.S.A. 43:15A-[41a]41.a, shall be retained by the System. Such contributions shall be transferred from the annuity savings fund to the contingent reserve fund.

2.-3. (No change.)

17:2-4.10 Waiver of retirement benefits upon withdrawal

Any member[,] who makes application for withdrawal from the System[,] and who may otherwise be eligible to make application for a retirement benefit, shall be required to execute and file a statement with the System, setting forth the benefits the member is waiving in favor of withdrawal, before the member's application for withdrawal may be processed. If a member is eligible to begin receiving a monthly retirement allowance (age 60 or more, or 25 years or more of credited service **for members who enrolled before November 2, 2008; or age 62 or more or 25 years or more of credited service for members who enrolled between November 2, 2008 and June 27, 2011; or age 65 or more or 25 years or more of credited service for members who enrolled on or after June 28, 2011**), the Division shall inform the member how to obtain the estimated amount of the retirement allowance and shall require the member to sign a waiver of such benefits, should the member still wish to withdraw.

17:2-4.11 Termination; withdrawal

(a) (No change.)

**(b) To effect a withdrawal, members are required to submit withdrawal applications over the Internet, using a secure account established by the member through the Division's Member Benefits Online System (MBOS). For members who establish that they cannot submit a withdrawal application online, a paper Application for Withdrawal will be accepted.**

[(b)] (c) No application shall be approved, if:

1.-2. (No change.)

3. The member has been dismissed or suspended from employment. In this event, such a member will be eligible to withdraw if the member has formally resigned from the position and there is no legal action contemplated or pending and the dismissal has been adjudged final. If the member or employer does not advise the Division that there is an appeal and the withdrawal application is processed, the member must repay to the [retirement system] PERS, the full amount of contributions with interest before the account may be reinstated.

4.-5. (No change.)

17:2-4.14 Continuance of membership; transfer

Once an employee establishes membership in the [retirement system] PERS, a member who has maintained an active membership account is eligible to continue such active membership, should the member be temporarily employed in a position covered by the System.

17:2-4.16 Creditable service; Law Enforcement Officers

Two percent service credit for Law Enforcement Officer members is that service rendered in the capacity of a Law Enforcement Officer[,] for which the member has paid at the Law Enforcement Officer rate of contribution unless as otherwise provided by the statute.

17:2-4.17 Maximum compensation limit for pension contributions based upon annual maximum wage contribution base for Social Security

(a) (No change.)

(b) Members enrolled in the PERS[,] who also participate in the DCRP based on (a) above will receive service credit in their corresponding PERS account[,] and will be eligible to retire under the rules of the PERS. The salaries used in the calculation of the retirement benefits are limited to the maximum compensation amounts in effect when the salary is earned.

## SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE

17:2-5.1 Eligibility for purchase

(a) Only active members of the System shall be eligible to make application for purchase of credit. Active members[,] who are not

currently contributing to the [Retirement System] PERS, shall purchase their requested service in a lump sum.

(b) In order to be eligible to purchase service, a member must submit a request to purchase service [and such] **over the Internet, through a secure account established by the member and using the Purchase Application program of the Member Benefits Online System (MBOS). If eligible to purchase service credit, the member will subsequently receive a letter from the Division quoting the terms of the purchase.** Such purchase must be authorized by the member before the expiration date indicated on the purchase cost quotation letter, which quotes the terms of the purchase. If the purchase cost quotation expires prior to authorization and subsequently the member requests the purchase of such service, the purchase cost will be subject to recalculation based upon all cost factors in effect at the time of the new purchase request.

**(c) The Division will make an exception to the MBOS Purchase Application requirement and accept a Purchase Application in printed form under the following circumstances only:**

**1. A member is applying to purchase military service after enrollment under the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA); or**

**2. A member is applying to purchase a leave of absence for union representation, as this type of purchase must be purchased quarterly.**

[(c)] (d) [Upon denial of a purchase] **If a member's Purchase Application is denied**, the member may subsequently resolve the [basis of] reason for the denial and **resubmit the purchase request to the Division [to resubmit the purchase request].** The purchase cost will be subject to the calculation based on all cost factors in effect at the time of the resubmitted purchase request.

[(d)] (e) (No change in text.)

17:2-5.4 Compulsory contributions (back deductions)

(a) An employee who was required to enroll and whose application was filed beyond his or her compulsory date of enrollment will be required to make retroactive contributions to the date of compulsory enrollment. Contributions will be calculated on the basis of the member's current salary at the [full] **current** pension rate of contribution assigned as of his or her compulsory date of enrollment with regular interest. For members enrolled on or after July 1, 2007, the member's salary for each calendar year will be limited by the maximum compensation as determined by N.J.A.C. 17:2-4.17.

(b) Veterans[,] who were ineligible to establish membership in a local contributory pension fund and who elect to enroll in accordance with the provisions of P.L. 1966, [c.71] **c. 71**, must agree, prior to their enrollment, to purchase all continuous public employment with the same employer since January 1, 1955, or the date of their regular appointment. The purchase of service will be calculated on the basis of their current salary multiplied by the actuarial factor established for the member's age at the time of purchase.

17:2-5.5 Optional purchases of eligible service

(a) A shared-cost purchase is one in which the member pays only the employee's share and not the employer's share of the purchase. A member may purchase all or a portion of such eligible service. A shared-cost purchase will be calculated on the basis of the actuarial purchase factor established for the member's age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The following types of purchases are shared-cost purchases:

1.-2. (No change.)

3. Continuous temporary service without interruption, substitute service, or intermittent service immediately preceding enrollment is eligible for purchase provided the following conditions are met:

i. (No change.)

ii. Substitute service is eligible provided the employment immediately precedes enrollment **in the PERS**. Immediately preceding enrollment is defined as employment rendered during the month or biweekly pay period prior to the date of enrollment. The period(s) of substitute service that a member can request to purchase must meet the following criteria:

(1)-(3) (No change.)

iii. (No change.)

4. Leaves of absence without pay:

i.-ii. (No change.)

iii. Maternity leave is considered personal illness. **Absent physician certification, three months is the maximum period of purchase for maternity leave.** [A] **For maternity leave in excess of three months, a certification from a physician is required, indicating** that a member was disabled due to pregnancy and resulted in a disability for the period in excess of three months [is required. Absent physician certification, three months is the maximum period of purchase for maternity leave]. The birth of a child constitutes the start of child care leave of absence immediately following maternity; and

iv. (No change.)

5. Members may purchase continuous service subsequent to the date their employer adopted the [retirement system] **PERS**, provided the service was with the same employer to the date of enrollment;

6. Non-veterans hired prior to July 1, 1966, whose employers have not adopted the [retirement system] **PERS** and are otherwise eligible for enrollment, may enroll any time and purchase continuous service retroactive to July 1, 1966, provided the service was with the same employer to the date of enrollment;

7. Eligible out-of-State public employment, up to a total purchase of 10 years, provided the member is not receiving or eligible to receive a retirement benefit from any other system for the same period of time.

i.-ii. (No change.)

8. (No change.)

(b) The types of purchases indicated in (b)1 through 3 below are considered to be full-cost purchases. A member may purchase all or a portion of such eligible service. The lump sum purchase cost shall be calculated on the basis of the actuarial purchase factor established for the member's nearest age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The computed lump sum purchase cost shall then be doubled to establish the full cost to the member. This cost is calculated in this manner as N.J.S.A. 43:15A-73.1 provides that the employer shall not be liable for any costs of purchasing this service; therefore, the member must pay both the employee and employer share.

1. (No change.)

2. Employment with the Federal government, provided the member is not receiving or eligible to receive a retirement benefit from the Federal retirement system for the same period of time.

i. Pursuant to N.J.S.A. 43:15A-42, [U.S. Government service cannot] **only New Jersey service (public service earned at employing locations in the State of New Jersey) may be used to qualify for an ordinary disability retirement; and**

ii. For purchase applications received November 1, 2008 or later, U.S. Government purchases, **military purchases, and out-of-State purchases cannot be used to qualify for post-retirement medical benefits, pursuant to N.J.S.A. 43:15A-73.1; and**

3. (No change.)

(c) A member shall be eligible to purchase an aggregate of up to 10 years of out-of-State public employment, military service, and Federal employment, provided that the member is not receiving, nor is entitled to receive, a retirement allowance for such service from any other public retirement system and provides proof to the Division that the member has withdrawn from such other system. A qualified veteran shall be eligible to purchase an additional five years of military service rendered during periods of war for an aggregate of 15 years of such service.

(d) Rules concerning the purchase and/or conversion of Class A credit include the following:

1. The cost of Class B service credit is based on the actuarial factors, and such factors provide a retirement benefit which is one-sixth greater than service credited as Class A. If Class A credit is purchased, the cost will be six-sevenths of the amount computed for a Class B purchase. The computation is based on the member's present salary or highest fiscal year base salary multiplied by the actuarial purchase factor for the member's age at the time of purchase with regular interest.

2. (No change.)

17:2-5.11 Service ineligible for purchase

(a) A member will not be granted, nor may a member purchase, prior service or membership credit, including, but not limited to, the following situations:

1. Service rendered outside of the United States, with the exception of service rendered to a local school board in territories or possessions of the United States, Washington, DC, and the Canal Zone;

2. (No change.)

3. Service rendered that is concurrent with service time or employment [that] **for which** the member has received membership service credit in the [Fund] **System;**

4. Any service rendered[, which] **that** was covered by the Alternate Benefits Program (ABP) or another defined contribution plan, including any service associated with pension contributions transferred to the ABP;

5. A period of time when a member was on a suspension without pay during [their] **his or her** employment; or

6. (No change.)

17:2-5.12 Correction of errors for prior service credit

**If errors have been made, correction and adjustment of prior service shall occur in accordance with the provisions of N.J.S.A. 43:15A-54.** Credit for all previous service established under the provisions of P.L. 1974, [c.104] **c. 104** (N.J.S.A. 43:15A-54), and payment therefore, shall be calculated on the basis of salaries received during the period of such service with applicable regular interest. The pension rate of contribution will be determined as of the member's compulsory date of enrollment.

17:2-5.13 Lump sum purchases

If a purchase is paid in a lump sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump sum payment. The service may be used for any purchase for which it is authorized under the Public Employees' Retirement System Act (N.J.S.A. 43:15A-1 et seq.) and [the rules of the Retirement System] **this chapter.**

## SUBCHAPTER 6. RETIREMENTS

17:2-6.1 Applications

(a) Applications for retirement must be made [on] **over the Internet, using the online forms** required by the System **through a member's secure account established through the Member Benefits Online System (MBOS).** Such forms must be completed in all respects and filed with the Division before the requested date of retirement. A member's retirement application becomes effective on the first of the month following receipt of application unless a future date is requested. Applications can be filed no more than one year in advance unless filing for a deferred retirement and the member's PERS-eligible employment has ended. Members enrolled in multiple PERS positions **on or before May 21, 2010, who have not had break in service after May 21, 2010, pursuant to the provisions of N.J.S.A. 43:15A-25.2,** must retire from employment in all covered positions before a retirement shall become effective.

(b) Except for a disability retirement application, in the event a member files an incomplete application, all deficiencies, except the employer certification, shall be brought to the member's attention and the member shall be required to provide the additional information within 90 days to enable processing. If there is no response within the 90-day time frame, the application will expire and the member will be required to refile, **pursuant to the requirements set forth in (a) above.** This [section] **subsection** shall not apply to information [provided by] **that the employer is required to provide.**

(c) **A member who enrolls in the System after May 21, 2010, is not eligible to apply for a disability retirement, pursuant to N.J.S.A. 43:66-39. Instead, the member may be eligible for disability insurance coverage.**

[(c)] (d) A member shall, on the retirement application, select one of nine ways (options) to receive retirement benefits. Each option provides the member with a lifetime monthly retirement benefit. Once a retirement benefit becomes due and payable as defined by N.J.A.C.



17:2-6.2, the option cannot be changed. Except under the Maximum Option and Option 1, once a member designates a pension beneficiary, that beneficiary cannot be changed. [P.L. 2001, c.120 provides for additional payment options that allow the member to choose an actuarially reduced retirement allowance in order to provide a beneficiary with an allowance equivalent to the full amount, three-quarters, one-half or one-quarter of the reduced allowance. If the beneficiary dies before the retiree, the retiree's allowance will increase to the maximum amount. These additional payment options shall be known as Options A, B, C, and D as defined below.] The options, as established by N.J.S.A. 43:15A-50, include the following:

1.-9. (No change.)

[(d)] (e) (No change in text.)

[(e)] (f) [As to] **In addition to the requirements in (a) through (e) above, the following shall apply when an application for disability retirement [ , the following shall apply] is filed:**

1. An application for a physical disability retirement must be supported by at least two medical reports[, one]. **One must be provided** by the member's personal or attending physician and the other may [be either] **consist** of hospital records supporting the **claim** of disability or a report from a second physician. **The medical condition described on the member's retirement application must correspond to the medical reports submitted in support of the member's disability retirement application. Further, in the case of a member filing for an accidental disability retirement, only those disabilities associated with the purportedly disabling event shall be considered. If the member is denied an accidental disability retirement but qualifies for an ordinary disability retirement based on the disabilities associated with the purportedly disabling event identified on the original accidental disability application, no additional application needs to be filed, pursuant to (f)7 below.** The required documentation must be received within six months of the date of filing the disability retirement application. If it is not received, the retirement will be canceled and the member [must] **will be required** to complete a new disability application for a future retirement date;

2. An application for a mental health [medical] disability retirement must be supported by at least two medical reports[, one]. **One must be provided** by the member's personal or attending psychiatrist or psychologist and the other [in the form] **may consist** of either hospital records supporting the **claim** of disability or a report from a second psychiatrist or psychologist or from the member's personal or attending physician or licensed clinical social worker. The required documentation must be received within six months of the date of filing the disability retirement application. If it is not received, the retirement will be canceled and the member [must] **will be required** to complete a new disability application for a future retirement date[.]. **The medical condition described on the member's retirement application must correspond to the medical reports submitted in support of the member's disability retirement application;**

3. **To qualify for a disability retirement, a member must be unable to perform his or her regular and assigned duties due to a permanently disabling medical condition present at the time the member separates from service, as a result of which disabling condition the member should be retired. Upon request, an applicant shall demonstrate that a reasonable request for accommodation of a disability was requested from the employer and the disability could not be accommodated. Termination of employment, voluntary or involuntary, that was caused by any reason other than the claimed disability disqualifies a member from filing for a disability retirement. A member whose employment ended after his or her employer initiated disciplinary action, or who was the subject of criminal or administrative charges or party to a settlement resulting in resignation or termination, is considered to have separated from service as a result of the employer action, charges, or settlement, and not due to a disability, unless the action, charges, or settlement is shown to be a result of the disability. Any agreement by settlement or by forfeiture of office by an administrative body or court would also preclude the member's eligibility for disability, as the member would not be able to comply with N.J.S.A. 43:15A-44;**

**4. Under certain circumstances, members who have discontinued service may be entitled to file for a disability retirement. Following the filing of a disability retirement application, a vested member enrolled prior to May 21, 2010, who has not withdrawn contributions from the PERS, and has discontinued service for more than two consecutive years, and who was otherwise eligible for a disability retirement at the time service was discontinued, shall be approved to receive disability retirement benefits by the Board, if:**

**i. The applicant demonstrates to the satisfaction of the Board that the applicant was physically or mentally incapacitated for the performance of duty at the time service was discontinued, and continues to be so incapacitated, with the same disability or disabilities, at the time of filing; and**

**ii. The applicant factually demonstrates to the satisfaction of the Board that service was discontinued because of the disability or disabilities;**

[3.] **5. A member filing for [a] an accidental or ordinary disability retirement shall not file a separate application for any other type of retirement, including one based on any other allegedly-disabling condition, while [a] the original disability retirement application is pending[; and]. A separate application can be filed only for a date subsequent to withdrawal of the previous application; and**

[4.] **6. If a disability retirement application is denied by the Board and the applicant qualifies for any other retirement benefit, the applicant must submit a written statement accepting the alternate retirement type. If the applicant submits the written statement within 30 days of the Board's decision, the applicant may retain the retirement date designated on the disability retirement application. If a member is denied an accidental disability retirement, but qualifies for an ordinary disability retirement based on the accidental disability application, the ordinary disability retirement will be granted, and no additional application will be required.**

[(f)] (g) Retired members[,] who return to public employment[,] shall have their previous retirement allowances cancelled and be reenrolled in the System, pursuant to N.J.S.A. 43:15A-44, for those who retired on disability retirements, or N.J.S.A. 43:15A-57.2, for those who retired on early, service, veteran, or deferred retirements.

[(g)] (h) A member who previously retired pursuant to (a) through (d) above and is reenrolled pursuant to [(f)] (g) above must file a new retirement application **with the Division** in order to initiate payment of the retirement allowance. Except in the case of disability retirement, the previous retirement allowance shall then be reinstated, and the new retirement allowance, based on the member's subsequent covered employment, shall commence. [The] **If the member retained the same membership level and account upon returning to employment, the previous and subsequent retirement allowances shall then be combined and paid in one monthly benefit check. If the member is enrolled under a different membership level and account, the accounts will not be combined.** The retirement allowance shall become effective on the first of the month following receipt of the application unless a future date is requested.

[(h)] (i) (No change in text.)

17:2-6.3 Effective dates; change

(a) Except as provided by N.J.A.C. 17:2-6.1 and 6.7, a member shall have the right to withdraw, cancel, or change an application for retirement at any time before the member's retirement allowance becomes due and payable **through MBOS** or by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

(b) (No change.)

(c) **The effective date of a deferred retirement is determined by a member's enrollment date:**

[(c)] 1. [A] **For members who enrolled in the PERS prior to November 2, 2008, and submit an application for deferred retirement, a deferred retirement shall become effective on the first of the month following the member's 60th birthday[, or 62nd birthday for those members enrolled on or after November 2, 2008]. Should the member's birthday fall on the first of the month, the member may elect**

the retirement to commence on that date, provided that an application is received by the Division in accordance with N.J.A.C. 17:2-6.1[.];

**2. For members who enrolled in the PERS between November 2, 2008 and June 27, 2011, and submit an application for deferred retirement, a deferred retirement shall become effective on the first of the month following the member's 62nd birthday. Should the member's 62nd birthday fall on the first of the month, the member may elect for the retirement to commence on that date, provided that an application is received by the Division in accordance with N.J.A.C. 17:2-6.1; and**

**3. For members who enrolled in the PERS after June 28, 2011, and submit an application for deferred retirement, a deferred retirement shall become effective on the first of the month following the member's 65th birthday. Should the member's 65th birthday fall on the first of the month, the member may elect for the retirement to commence on that date, provided that an application is received by the Division in accordance with N.J.A.C. 17:2-6.1.**

(d) (No change.)

#### 17:2-6.4 Outstanding loan

(a) A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with accrued interest, as follows:

1. (No change.)

2. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with accrued interest, is repaid, as authorized by [P.L. 1999, c.132 (N.J.S.A. 43:15A-34.1)]. If the member does not request repayment in full, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

(b) (No change.)

#### 17:2-6.5 Willful negligence

(a) Willful negligence is defined as:

1. Deliberate act or deliberate failure to act **that reflects an intentional or purposeful or deviation from the standard of care exercised by a reasonable person in similar circumstances;** [or,]

2. Such conduct as evidences reckless indifference to safety; [or,]

3. (No change.)

#### 17:2-6.7 Disability determination

(a) A member **enrolled in the System before May 21, 2010**, for whom an application for an accidental disability retirement allowance has been filed [by the member, by his employer, or by one acting in behalf of the member], will be retired on an ordinary disability retirement [allowance] **benefit** if the Board finds that:

1. (No change.)

2. The member is physically or mentally incapacitated for the performance of duty **at the time the member terminates employment as a result of the disabling condition identified on the Accidental Disability retirement application, and should be retired;** [and]

3.-4. (No change.)

(b) Once the Board approves a member for a disability retirement [allowance] **benefit**, the member's retirement application shall not be withdrawn or canceled, or amended to a later retirement date than the date specified in the approved retirement application.

(c) **The receipt of a disability retirement is conditioned on a member's honorable service. Full or partial forfeiture of disability retirement benefits may be imposed by the Board when appropriate, as provided in N.J.A.C. 17:1-6.**

#### 17:2-6.8 Option selection; accidental disability denied

If an applicant for an accidental disability retirement [benefit] is rejected for an accidental disability [benefit] **retirement** but is approved by the Board for retirement, in accordance with N.J.A.C. 17:2-6.7, the applicant will be permitted within 30 days following Board approval of the retirement, to amend the option selection [which] **that** the applicant made on the original accidental disability retirement application.

#### 17:2-6.9 Employer and employee notices

If an applicant for an accidental disability retirement is found to be physically or mentally incapacitated for the performance of duty but is

rejected for an accidental disability retirement because the Board finds that the disability was not a direct result of a traumatic event occurring during and as a result of the performance of the applicant's regular or assigned duties and, if the applicant does not meet the minimum statutory requirements for any other type of retirement allowance, the System will notify both the member and the member's employer that the member was found to be physically or mentally incapacitated for the continued performance of duty, as was previously certified to the System.

#### 17:2-6.10 Involuntary disability application

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of [their] its employees **enrolled in the System before May 21, 2010**, the member will be promptly notified by letter that:

1.-3. (No change.)

4. The member will be required to appear for an examination before a physician designated to conduct such an examination for the [retirement system] **PERS;**

5.-6. (No change.)

#### 17:2-6.11 Early retirement; reduction

(a) **The qualifications for an "early retirement" depend on a member's date of enrollment in the PERS, and are as follows:**

**1. For a member whose enrollment date is on or before July 1, 2007:**

**i. Retirement with 25 or more years of credited service before the first of the month in which a member attains age 60 shall be classified as an "early" retirement, unless the member retires on a veteran's retirement allowance.**

**ii. The statutory reduction of 1/4 of one percent applies to each month prior to the month in which the member attains age 55 and for the month in which the member attains age 55 if the member's 55th birthday occurs after the 15th day of the month.**

**2. For a member whose enrollment date is after July 1, 2007, but before November 2, 2008:**

**i. Retirement with 25 or more years of credited service before the first of the month in which a member attains age 60 shall be classified as an "early" retirement, unless the member retires on a veteran's retirement allowance.**

**ii. The statutory reduction of 1/12 of one percent (one percent per year) for each month under age 60 through age 55, and 1/4 of one percent (three percent per year) for each month under age 55 applies to each month prior to the month in which the member attains age 60 and for the month in which the member attains age 60 if the member's 60th birthday occurs after the 15th day of the month.**

**3. For a member whose enrollment date is on or after November 2, 2008, but before June 28, 2011:**

**i. Retirement with 25 or more years of credited service before the first of the month in which a member attains age 62 shall be classified as an "early" retirement, unless the member retires on a veteran's retirement allowance.**

**ii. The statutory reduction of 1/12 of one percent per month (one percent per year) for each year under age 62 through 55; and three percent per year (1/4 of one percent per month) for each year under age 55 applies to each month prior to the month in which the member attains age 62 and for the month in which the member attains age 62 if the member's 62nd birthday occurs after the 15th day of the month.**

**4. For a member whose enrollment date is on or after June 28, 2011:**

**i. Retirement with 30 or more years of credited service before the first of the month in which a member attains age 65 shall be classified as an "early" retirement, unless the member retires on a veteran's retirement allowance.**

**ii. The statutory reduction of 1/4 of one percent per month applies for each month prior to the month in which the member attains age 65 (three percent per year), and for the month in which the member attains age 65 if the member's 65th birthday occurs after the 15th day of the month.**

## 17:2-6.12 Service retirement; eligibility

**(a) The qualifications for a “service retirement” depend on a member’s date of enrollment in the PERS:**

**[(a)] 1.** A member [enrolled prior to] **whose enrollment date is before November 2, 2008**, becomes eligible for a “Service” retirement on the [1st] **first** of the month following the member’s 60th birthday. If the member’s 60th birthday falls on the first of a month, the retirement shall become effective on that date, provided the member files a timely retirement application pursuant to N.J.S.A. 43:15A-[47a]47.a, and requests that date.

**[(b)] 2.** A member [enrolled on or after] **whose enrollment date is between November 2, 2008 and May 21, 2010**, becomes eligible for a “Service” retirement on the [1st] **first** of the month following the member’s 62nd birthday. [If] **At the election of a member, if the member’s 62nd birthday falls on the first of [the] a month**, the retirement shall become effective on that date, provided the member files a timely retirement application pursuant to N.J.S.A. 43:15A-[47a]47.a, and requests that date.

**3. A member whose enrollment date is after May 21, 2010, becomes eligible for a “Service” retirement on the first of the month following the member’s 65th birthday. At the election of a member, if the member’s 65th birthday falls on the first of a month, the retirement shall become effective on that date, provided the member files a timely retirement application pursuant to N.J.S.A. 43:15A-47.a, and requests that date.**

## 17:2-6.13 Disability retiree; annual medical examinations

**(a)** All disability retirees under the [normal retirement] age of 60 may be required to undergo a medical examination each year for a maximum period of five years by a physician designated by the System as of the anniversary date of their retirement, unless such examination requirement has been waived by the Board.

**(b)** (No change.)

## 17:2-6.14 Disability retiree; annual report (employment, earnings, test and adjustment)

**(a)** (No change.)

**(b)** Earnings from employment in New Jersey shall be obtained through the New Jersey Department of Labor and Workforce Development. For all other earnings, the disability retirees shall be required to file a report with the System, which may include copies of the retiree’s IRS 1040 forms and W-2 forms and any other proofs of employment requested of a specific retiree indicating the type of employment they are engaged in, if any, and the gross earned income realized therefrom as of December 31 of the prior year. The Division may also require the retiree to complete Federal Form 4506-T, Request for Transcript of Tax Return. **In cases where a disability retiree does not provide the forms required for reporting earnings, as specified above, the retiree’s disability retirement benefits will be suspended.**

**(c)-(d)** (No change.)

## 17:2-6.15 Disability retirements; filing after more than two years’ discontinuance of service

**(a)** Following the filing of a disability retirement application, a vested member, who has not withdrawn contributions from the [retirement system] **PERS**, and has discontinued service for more than two consecutive years, and who was otherwise eligible for a disability retirement at the time service was discontinued, shall be approved to receive disability retirement benefits by the Board, if:

1.-2. (No change.)

**(b)** (No change.)

## 17:2-6.20 Final compensation; [10] 10- and 12-month members reported monthly

**(a) Final compensation for 10- and 12-month members depends on a member’s date of enrollment. For members enrolled on or before May 10, 2010:**

**[(a)] 1.** In order to determine the final compensation (three-year average) for benefits of a member reported on a monthly basis under a

10-month contract, the creditable salaries upon which contributions were made to the System for the member’s final 30 months, or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

**[(b)] 2.** In order to determine the final compensation (three-year average) for benefits of a member reported on a monthly basis under a 12-month contract, the creditable salaries upon which contributions were made to the [system] **System** for the member’s last 36 months or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

**(b) For members enrolled after May 10, 2010:**

**1. In order to determine the final compensation (five-year average) for benefits of a member reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made to the System for the member’s final 50 months, or the highest five fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.**

**2. In order to determine the final compensation (five-year average) for benefits of a member reported on a monthly basis under a 12-month contract, the creditable salaries upon which contributions were made to the System for the member’s last 60 months or the highest five fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.**

**(c)** If a member was reported on any combination of [ten] 10- and 12-month contract years in such three-year period, **for members enrolled on or before May 10, 2010, or such five-year period, for members enrolled after May 10, 2010**, the final average compensation shall be determined on a proportional basis.

## 17:2-6.21 Determination of last year’s salary; veterans paid on a monthly basis

**(a)** In order to determine the last year’s salary for a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made in the member’s final 10 months of pensionable service preceding retirement or in the consecutive 10-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

**(b)** In order to determine the last year’s salary with a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract, the creditable salaries upon which contributions were made in the member’s final 12 months of pensionable service preceding retirement or in the consecutive 12-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

**(c)** In order to determine the last year’s salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made in the member’s final 10 months of pensionable service preceding retirement or in the consecutive 10-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

**(d)** In order to determine the last year’s salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or

more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract, the member's creditable salaries upon which contributions were made in the member's final 12 months of pensionable service preceding retirement or in the consecutive 12-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

(e) In order to determine the last year's salary for a veteran reported on any combination of [10] 10- and 12-month contract years in such months, the last year's salary shall be determined on a proportional basis.

17:2-6.24 Final compensation; biweekly salary computation for employees reported on a biweekly basis

**(a) The determination of final compensation for 10- and 12-month members is dependent on a member's PERS enrollment date.**

[(a)] 1. In [computing "final compensation" upon which pension contributions were based, in the case of a 12-month employee reported on a biweekly basis,] **the case of members enrolled on or before May 10, 2010, a total of 78 biweekly pensionable pay periods will be used, including] to compute "final compensation" for 12-month employees reported on a biweekly basis. "Final compensation" will include any retroactive salary payments that are attributable to the covered period.**

**2. In the case of members enrolled after May 10, 2010, a total of 130 biweekly pensionable pay periods will be used to compute "final compensation" for 12-month employees reported on a biweekly basis. "Final compensation" will include any retroactive salary payments that are attributable to the covered period.**

(b) In computing [(a)] **(a)1 or 2** above, the total salary will be adjusted by the factors supplied by the actuary to convert biweekly salaries to compensate for biweekly payroll schedules. Application of the factors to the salaries reported for pension purposes will develop "final compensation."

(c) In computing [(a)] **(a)1 or (a)2** above in the case of employees reported on a 10-month basis, the total biweekly pay periods will include those pay periods in the third quarter of each year in which the member does not receive a salary. The adjustment as specified in (b) above shall not be made.

(d) (No change.)

17:2-6.25 Determination of last year's salary; veterans reported on a biweekly basis

(a) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, **and** reported on a biweekly basis under a 12-month contract, the member's creditable salaries upon which contributions were made in the member's final 26 biweekly pay periods of pensionable service preceding retirement, or in the 26 consecutive pay periods in which the member achieved the greatest earnings, **shall be used**, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees [shall be used]. The total salary will be adjusted by factors supplied by the actuary to compensate for biweekly payroll schedules.

(b) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, **and** reported on a biweekly basis under a 10-month contract, the total 26 biweekly pay periods will include those pay periods in the third quarter of each year in which the member does not receive salary, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees. The adjustment [as] specified in (a) above shall not be made.

(c) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, **and** reported on a biweekly basis under a 12-month contract, the member's creditable salaries upon which contributions were made in the member's final 26 biweekly pay periods of pensionable service preceding retirement, or in the 26 consecutive pay periods in which the member achieved the greatest earnings, **shall be used**, including any retroactive salary payments that are attributable to the covered period and paid as part of a

salary agreement with a group of employees [shall be used]. The total salary will be adjusted by factors supplied by the actuary to compensate for biweekly payroll schedules.

(d) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, **and** reported on a biweekly basis under a 10-month contract, the total 26 biweekly pay periods will include those pay periods in the third quarter of each year in which the member does not receive salary, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees. The adjustment [as] specified in (a) above shall not be made.

(e) (No change.)

17:2-6.26 Medical examination; physician

N.J.S.A. 43:15A-42 requires the Board to designate physicians to perform medical examinations. When an applicant provides sufficient medical documentation, as set forth in N.J.A.C. 17:2-6.1, and the Medical Review Board concurs, [then] no further evaluation is necessary. However, if the medical documentation is not sufficient to establish total and permanent disability after a review by the Medical Review Board, then an independent medical evaluation shall be required.

## SUBCHAPTER 7. TRANSFERS

17:2-7.1 Honorable services; interfund transfers; State-administered retirement systems

(a) The receipt of a public pension or retirement benefit is expressly conditioned upon the renderings of honorable service by a public officer or employee. [Therefore, the Board of the new State-administered retirement system shall disallow the transfer of all or a] **If the Board of an employee's former system determines that all or a portion of the employee's prior service is dishonorable, that portion of prior service** [of any member of the former State-administered retirement system for misconduct occurring during the member's prior public service, which renders that prior service, or part thereof, dishonorable] **deemed dishonorable will not be transferable.**

(b) [A] **Except as noted in (a) above, a member is eligible to transfer the former membership in a State-administered defined benefit retirement system into the retirement system that covers the new eligible employment, if the member has first ended employment with the former employer, and has not taken another position subject to coverage in the State-administered retirement system of the former account which would have the same effective date as the membership in the new State-administered retirement system.**

[(c) The System will transfer membership to any State-administered retirement system as follows:]

1. A member[,] desiring to transfer service credit and contributions from one State-administered **defined benefit** retirement system to another[,] must file an "Application for Interfund Transfer." [and an "Enrollment Application" in place of the customary "Application for Withdrawal."] This application will [void all possible claims against the former system when approved and the new membership is commenced in the new system] **terminate membership in the former system when approved.**

2. The member's accumulated contributions, full interest included, less any outstanding loan, shall be transferred to the new [system for the] **membership** account of the respective member. Any outstanding loan, back deductions, or arrears obligation will be scheduled for repayment.

3.-4. (No change.)

5. The member is not eligible to transfer service credit if any of the following conditions apply:

i. (No change.)

ii. The member has credit in the former system for service earned after the date of enrollment in the new system (concurrent service) unless the member meets the criteria established by [P.L. 2001, c. 341 (N.J.S.A. 43:15A-14)]. [P.L. 2001, c. 341] **N.J.S.A. 43:15A-14** provides that a member of the TPAF at the time of enrollment in the PERS may transfer the non-concurrent TPAF service if the member ceased to be an active contributing member of the TPAF three or less

years from the date of enrollment in the PERS. The member must apply to transfer this service no more than two years from the date of the last contribution to the TPAF, [unless the member is vested in the TPAF,] or the member's TPAF account has not expired due to the provisions of N.J.S.A. 18A:66-8. A member who transfers service under this provision shall receive credit for the salaries earned in both the TPAF and PERS during the period of concurrent service; or

iii. (No change.)

6. A data sheet shall be created for the member's new account that will indicate an interfund transfer from the member's former [retirement] system and the service credit transferred into the new membership account.

7. (No change.)

**(c) The system will transfer membership to any State-administered defined benefit retirement system, as provided in (b) above.**

(d)-(e) (No change.)

#### 17:2-7.2 Intrafund transfers; State-administered retirement systems

(a) Members who leave one public employer and take a position with another public employer covered by the same pension system are immediately eligible to transfer their membership to their new employers, as long as the following conditions are met:

1. (No change.)

2. [It] **The account has not expired; that is, it** has not been more than two years since the date of the last contribution or the member's account has remained active due to the provisions of N.J.S.A. 43:15A-[7e]7.e and 8; and

3. The account has not been canceled due to Board action. It is the responsibility of the employer to establish the employee's status. For accounts that are withdrawn, expired, or canceled, an enrollment application is needed, and the standard enrollment rules are again in effect.

(b) (No change.)

### SUBCHAPTER 8. PROSECUTORS PART

#### 17:2-8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Service" as a prosecutor as defined by N.J.S.A. 43:15A-155 shall include service as the following[:]: For members employed as prosecutors on January 7, 2002, service shall also include any PERS service credited to a member's account on January 7, 2002. Pursuant to P.L. 2003, c. 140, for an individual nominated and appointed pursuant to Article VII, Section II, paragraph 1 of the New Jersey Constitution to the position of a county prosecutor [after] **between** January 7, 2002 **and** **May 21, 2010**, service shall also include regular PERS service credited as of the date of appointment.

1. (No change.)

2. The Director of the Division of Criminal Justice in the Department of Law and Public Safety; any assistant director, deputy director, assistant attorney general, or deputy attorney general employed by that Department and assigned to that Division [on or after] **between** January 7, 2002 **and** **May 20, 2010**; and

3. A criminal investigator (as defined by N.J.S.A. 52:17B-100.1) in the Division of Criminal Justice who was ineligible for enrollment in the Police and Firemen's Retirement System [on or after] **between** January 7, 2002 **and** **May 20, 2010**.

**N.J.S.A. 43:15A-156 closed the Prosecutors Part of the PERS to new members as of May 21, 2010. A prosecutor who becomes a member of the PERS on or after the effective date of P.L. 2010, c. 1 shall not be a member of the Prosecutors Part and the provisions of N.J.S.A. 43:15A-155 et seq., shall not apply to such prosecutor or the prosecutor's beneficiary.**

...

#### 17:2-8.3 Contribution rate

(a) The rate of contribution to the Prosecutors Part of the Public Employees' Retirement System shall be a percent of base salary as established by the Board [of Trustees]. The amount of the members' contribution rate shall be established upon recommendation of the actuary using consistent and [generally-accepted] **generally accepted** actuarial standards, as established by the Governmental Accounting Standards Board.

(b) The rate of contribution shall be reviewed by the System's actuaries periodically and adjusted by the Board as necessary. The Board [of Trustees] shall review the contribution rate at every three-year period as part of the valuation by the PERS System's actuary and whenever the PERS, PFRS, TPAF, or SPRS rate is adjusted by the Legislature. A notice of any change in the rate shall be published through a notice in the New Jersey Register and shall become effective on the date authorized by the Board.

**(c) The current rate of contribution for Prosecutors Part members is provided in the Prosecutors Part Addendum to the PERS Member Handbook, provided on the Division of Pensions and Benefits website.**

#### 17:2-8.5 Interfund transfers

(a) A person who contributes to another State-administered retirement system and was not employed as a prosecutor on January 7, 2002, is not eligible to have any portion of his or her State-administered defined benefit retirement system credit transferred into the Prosecutors Part. The State-administered defined benefit retirement system [credit] **service** shall [become] **be credited** as regular PERS credit.

(b) The service credit of a member of the Prosecutors Part who transfers into another State-administered retirement system, pursuant to N.J.S.A. 43:2-1, shall be converted into service credit in the new retirement system. If the member later transfers back into the Public Employees' Retirement System, service [that was] previously credited in the Prosecutors Part shall be credited as Prosecutors Part service, while all other service shall be credited as regular PERS service.

#### 17:2-8.6 Purchase of service

(a) (No change.)

(b) Any purchase requested after January 7, 2002, shall be credited as regular PERS service in the calculation of benefits, except for the following three types of service, which shall be credited as Prosecutors Part service. The cost of this Prosecutors Part service shall be determined using Prosecutors Part actuarial purchase factors:

1. Temporary service [after] **as a prosecutor from** January 7, 2002 [as a prosecutor] **through May 21, 2010**, leading directly to permanent employment as a prosecutor;

2. Service properly credited in the Prosecutors Part on or after January 7, 2002 as to which contributions had been withdrawn in accordance with N.J.S.A. 43:15A-[8b]8.b; and

3. (No change.)

(c) (No change.)

#### 17:2-8.8 Vesting

(a) (No change.)

(b) If the prosecutor begins receipt of a Prosecutors Part retirement benefit prior to the date of eligibility to receive a PERS retirement benefit, the Prosecutors Part service credit shall be subtracted from the member's active account and any credited regular PERS service would remain. A retired member of the Prosecutors Part who does not have 10 or more years of credited regular PERS service remaining in the active account after the Prosecutors Part service is subtracted, and whose regular PERS account will not be active pursuant to N.J.S.A. 43:15A-[7e]7.e when the member attains the age of 60 [or], **for members enrolled before November 2, 2008**; the age of 62 for those members who enroll [on or after] **between** November 2, 2008 **and** **May 21, 2011**; **or the age of 65 for members who enroll after May 21, 2011**, cannot collect a benefit based on that service. An application for return of contributions made on the basis of such other public service, if no part of the service was used in the calculation of a retirement allowance or to qualify for payment of health benefits, may be approved.

## 17:2-8.11 Election of largest possible retirement allowance

(a) At the time of retirement, a member enrolled on the basis of service as a prosecutor, or on a combination of service as a prosecutor and regular PERS service, shall be permitted to elect the largest possible retirement allowance, if the member qualifies for benefits under both the provisions of [P.L. 2001, c.366 and] N.J.S.A. 43:15A-1 et seq., and **43:15A-155 et seq.**, and the combined service provides a higher benefit. The member may elect any PERS retirement benefit for which the member qualifies, including early retirement pursuant to N.J.S.A. 43:15A-41, [veterans] **veteran's** retirement pursuant to N.J.S.A. 43:15A-61, and service retirement pursuant to N.J.S.A. 43:15A-48. A prosecutor who elects to receive a regular PERS retirement benefit instead of a prosecutor's benefit, and has 10 or more years of service credit, will have a death benefit equal to 3/16 of the last 12 months of salary upon retirement.

(b)-(c) (No change.)

## 17:2-8.13 Eligibility for disability and accidental death retirement benefit

(a) A prosecutor who has a total of 10 years of non-concurrent New Jersey service in the Prosecutors Part, regular PERS, or a combination thereof, may be eligible for an ordinary disability retirement [allowance] **benefit** as provided by N.J.S.A. 43:15A-42. The benefit shall be the same as that provided by N.J.S.A. 43:15A-45.

(b) A prosecutor who is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of the prosecutor's regular or assigned duties may be eligible for an accidental disability retirement [allowance] **benefit** as provided by N.J.S.A. 43:15A-43. The benefit shall be the same as that provided by N.J.S.A. 43:15A-46.

(c) (No change.)

(d) A prosecutor who is awarded a disability **retirement** benefit as stated in (a) and (b) above, cannot receive an additional Prosecutors Part retirement benefit or death benefit as defined in N.J.S.A. 43:15A-158, 159, and 160 or any additional PERS benefit. There will be no refund of Prosecutors Part employee contributions if a PERS disability **retirement** benefit is elected; nor will there be a refund of the difference in employee contribution rates between the Prosecutors Part and regular PERS service.

## 17:2-8.14 Retirement date for prosecutors having both regular and Prosecutors Part PERS service

(a) (No change.)

(b) A prosecutor who has both regular and Prosecutors Part PERS service may, after filing the necessary application, begin receipt of the Prosecutors Part benefit at age 55, or at any age with 20 or more years of service if the member was employed as a prosecutor as of January 7, 2002. The member may begin receipt of the remaining regular PERS benefit at age 60 [or] **if enrolled in the regular PERS before November 2, 2008; at age 62 for those members who enroll [on or after] between November 2, 2008 and May 21, 2010; or at age 65 for those members who enroll after May 21, 2010**, based on the member's final average salary in the regular PERS covered position in accordance with the PERS retirement rules, so long as the member is vested in the regular PERS account, or the regular PERS account is still active pursuant to N.J.S.A. 43:15A-[7e]7.e. The maximum amount of the PERS benefit shall be determined as of the effective date of retirement from the Prosecutors Part. Should a retired member of the Prosecutors Part return to employment prior to receipt of the regular PERS retirement benefit, that PERS benefit shall not increase and the provisions of N.J.A.C. 17:2-8.16 shall apply. If the member has 25 years or more of regular PERS service, the member may begin receipt of the regular PERS benefit at any age after filing the necessary application.

(c) (No change.)

## 17:2-8.16 Return to employment

(a) Retired members of the Prosecutors Part[,] who return to Public Employees' Retirement System or Prosecutors Part covered employment, shall have their previous retirement allowances suspended and shall be reenrolled in the System in the same manner as provided by N.J.S.A. 43:15A-44 for those who retired on disability retirements or

N.J.S.A. 43:15A-57.2 for those who retired on early, service, veteran, special, or deferred retirements. A member who ceases covered employment and retires again must file a new retirement application with the Division in accordance with N.J.A.C. 17:2-6.1 to initiate payment of the retirement allowance. The previous retirement allowance shall then be reinstated, and the new retirement allowance, based on the member's subsequent covered employment, shall commence. [The] **If the member returned to regular PERS service and retained the same membership level and account, the previous and subsequent retirement allowances shall be combined and paid in one monthly benefit check. If the member returned to regular PERS service and is enrolled under a different membership level and account, the checks will not be combined.** The retirement allowance shall become effective on the first of the month following receipt of the application unless a future date is requested.

(b) (No change.)

## TREASURY — TAXATION

## (a)

## DIVISION OF TAXATION

## Transfer Inheritance Tax and Estate Tax

## Proposed New Rules: N.J.A.C. 18:26

Authorized By: John J. Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:38-7 and 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-128.

Submit written comments by September 15, 2017, to:

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Administrative Practice Officer  
Division of Taxation  
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50 Barrack Street  
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The agency proposal follows:

## Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 18:26 expired on June 25, 2015. The Division of Taxation (Division) has reviewed the expired rules and has determined them to be necessary, reasonable, and proper for the purposes for which they had been proposed. In addition, the expired rules have been updated, supplemented, and amended to take into account changes in statutes and case law affecting the implementation of the transfer inheritance tax and estate tax. The new rules are proposed to carry out the statutory mandates of N.J.S.A. 54:33-1 through 54:36-16, which govern the imposition and collection of transfer inheritance tax and estate tax.

The Transfer Inheritance Tax Law (N.J.S.A. 54:33-1 through 54:37-8) imposes a tax on the transfer of real and personal property valued at \$500.00 or more. This tax is collected on the estates of both resident and nonresident decedents. However, only real property and tangible personal property located in New Jersey are subject to tax in cases of a nonresident decedent.

The Estate Tax Law (N.J.S.A. 54:38-1 through 16) provides for an estate tax in addition to the inheritance tax on the estate of a resident decedent. For the estate of a decedent dying before January 1, 2002, the estate tax is an amount equal to the difference between the gross amount of inheritance, legacy, and succession taxes actually paid this State and any other states, territories, possessions, or the District of Columbia and the amount of the maximum credit for state death taxes allowable against any Federal estate tax payable under the Federal Estate Tax Law in effect on the decedent's date of death. For the estate of a decedent dying after December 31, 2001 but before January 1, 2017, the estate tax